

REGULATIONS

FOR THE OPEN COMPETITION

**“QUALITY ASSESSMENT STUDY ON USAGE OF LOCAL MINERAL MATERIALS IN LITHUANIA
FOR RAIL BALTICA GLOBAL PROJECT”**

(IDENTIFICATION NO RBR 2019/18)



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

Riga
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1. ABBREVIATIONS AND TERMS

- 1.1. **Common procurement vocabulary (CPV)** – a nomenclature approved by the European Union which is applied in public procurement procedures;
- 1.2. **Contract** - signed agreement between Contracting authority and a Contractor to provide services defined in this agreement;
- 1.3. **Contracting authority** - the joint stock company RB Rail AS, registration number 40103845025, legal address: Kr. Valdemāra iela 8-7, Riga, LV-1010, Latvia;
- 1.4. **Contractor** - service provider awarded the right to enter into the Contract in Open competition to provide services in accordance with requirements stipulated in Regulations and Contract;
- 1.5. **Identification number** – designation which includes the abbreviation of the name of the Contracting authority (the first capital letters), the relevant year and the procurement sequence number in ascending order (RBR 2019/18);
- 1.6. **Open competition** (also the Procurement) - a procurement procedure “Quality assessment study on usage of local mineral materials in Lithuania for Rail Baltica Global Project” (identification number: RBR 2019/18) in which all interested Suppliers are entitled to submit their Proposals;
- 1.7. **Procurement commission** – commission the composition of which has been established by the joint stock company RB Rail AS, order No 11/2019-60 dated 6 September 2019, issued by the Management Board of joint stock company RB Rail AS;
- 1.8. **Proposal** - documentation package the Tenderer submits to participate in the Open competition;
- 1.9. **Public Procurement Law** – Public Procurement Law of the Republic of Latvia;
- 1.10. **Regulations** – regulations of the Open competition “Quality assessment study on usage of local mineral materials in Lithuania for Rail Baltica Global Project” (identification number: RBR 2019/18), as well as all the enclosed annexes;
- 1.11. **Supplier** – a natural person or a legal person, a group or association of such persons in any combination thereof which offers to perform works, supply products or provide services accordingly;
- 1.12. **Tenderer** – a Supplier which has submitted a Proposal.

2. GENERAL INFORMATION

- 2.1. The identification number of the Open competition is No RBR 2019/18.
- 2.2. The Open competition is co-financed by the Contracting authority and Connecting Europe Facility (CEF).
- 2.3. Open competition is organized in accordance with the Public Procurement Law in effect on the date of publishing the contract notice.
- 2.4. Open competition is carried out using E-Tenders system (<https://www.eis.gov.lv/EKEIS/Supplier>) which is subsystem of the Electronic Procurement System (<https://www.eis.gov.lv/EIS/>).
- 2.5. The Regulations is freely available on Contracting authority's profile in the E-Tenders system at webpage <https://www.eis.gov.lv/EKEIS/Supplier/Procurement/27914> and the webpage of the Contracting authority <http://railbaltica.org/tenders/>.
- 2.6. Amendments to the Regulations and answers to Suppliers' questions shall be published on Contracting authority's profile in the E-Tenders system at webpage <https://www.eis.gov.lv/EKEIS/Supplier/Procurement/27914> and the Contracting authority's webpage <http://railbaltica.org/tenders/>. It is the Supplier's responsibility to constantly follow the information published on the webpages and to take it into consideration in preparation of its Proposal.
- 2.7. Contact person of the Contracting authority for Open competition is Procurement Specialist - Lawyer, Vineta Ezergaile, telephone: +371 29352018, e-mail address: vineta.ezergaile@railbaltica.org.
- 2.8. The exchange of information between the Procurement commission and the Supplier shall be in writing (by sending documents electronically via e-mail or using E-Tenders system) in English. If information is submitted in Latvian, it shall be accompanied by a translation into English.

- 2.9. If the Supplier does not have access to the E-Tenders system, the Supplier shall follow the guidance for obtaining access to the system available on the Contracting authority's website at <http://www.railbaltica.org/procurement/e-procurement-system/>.
- 2.10. The Supplier can request additional information regarding the Regulations. Additional information can be requested in writing via the E-Tenders system or (in case the Supplier does not yet have access to the system) by sending it to the Procurement commission electronically via e-mail (see Section 2.7 of the Regulations). Any additional information must be requested in a timely fashion, so that the Procurement commission can reply on time - no later than 6 (six) days prior to the deadline of the Proposal submission. The Procurement commission shall provide response within 5 (five) business days from the day of receipt of the request from the Supplier.
- 2.11. The Supplier covers all expenses which are related to the preparation of the Proposal and its submission to the Contracting authority. Under no circumstances will the Contracting authority be liable for compensation of any costs and damages related to the preparation and submission of the Proposal (including, *inter alia*, costs associated with any site visits) or the Supplier's participation in the Procurement exercise.

3. THE RIGHTS OF THE PROCUREMENT COMMISSION

- 3.1. The Procurement commission has the right to demand at any stage of the Open competition that the Tenderer submits all or part of the documents which certify Tenderer's compliance to the requirements for the selection of Tenderers. The Procurement commission does not demand documents or information which is already at its disposal or is available in public data bases.
- 3.2. If the Tenderer submits document derivatives (e.g. copies), then, in case of doubt about the authenticity of the submitted document derivation, the Procurement commission can demand that the Tenderer shows the original documents.
- 3.3. In the course of Proposal assessment, the Procurement commission has the right to demand that the included information is clarified.
- 3.4. If the Procurement commission determines that the information about the Tenderer, its subcontractors and persons upon whose capacity the Tenderer is relying that is included in the submitted documents is unclear or incomplete, it demands that the Tenderer or a competent institution clarifies or expands the information included in the Proposal. The deadline for submission of the necessary information is determined in proportion to the time which is required to prepare and submit such information. If the Procurement commission has demanded to clarify or expand upon the submitted documents but the Tenderer has not done this in accordance with the requirements stipulated by the Procurement commission, the Procurement commission is under no obligation to repeatedly demand that the information included in these documents be clarified or expanded upon. The Procurement commission has the right to reject all Proposals which are found not to comply with the requirements of the Procurement documentation.

4. THE OBLIGATIONS OF THE PROCUREMENT COMMISSION

- 4.1. The Procurement commission ensures the process documentation of the Open competition.
- 4.2. The Procurement commission ensures free and direct electronic access to the Open competition documents on Contracting authority's profile at the E-Tenders system's webpage <https://www.eis.gov.lv/EKEIS/Supplier/Procurement/27914> and on the webpage of the Contracting authority <http://railbaltica.org/tenders/>.
- 4.3. If an interested Supplier has in a timely fashion in writing by post or electronically (including via E-Tenders system), or delivering in person requested additional information about the requirements included in Open competition documents regarding the preparation and submission of the Proposal or regarding the selection of Tenderers, the Procurement commission provides a response electronically within 5 (five) business days but not later than 6 (six) days before the deadline for submitting Proposals. Simultaneously with sending this information to the Supplier who had asked the question, the Contracting authority publishes this information on Contracting authority's profile in the E-Tenders system's webpage <https://www.eis.gov.lv/EKEIS/Supplier/Procurement/27914> and on its webpage <http://railbaltica.org/tenders/> where Open competition documents are available, indicating the question asked.
- 4.4. If the Contracting authority has amended the Open competition documents, it publishes this information on Contracting authority's profile in the E-Tenders system's webpage

<https://www.eis.gov.lv/EKEIS/Supplier/Procurement/27914> and on the Contracting authority's webpage <http://railbaltica.org/tenders/> where Open competition documents are available, no later than 1 (one) day after the notification regarding the amendments has been submitted to Procurement Monitoring Bureau for publication. If Supplier wishes to receive relevant updates/notifications by email regarding the Procurement exercise (e.g. when amendments to the procurement package documentation are published), Supplier shall register as an interested supplier on the E-Tenders system for the particular Procurement exercise accordingly.

- 4.5. The exchange and storage of information is carried out in such a way that all data included in the Proposals is protected and the Contracting authority can check the content of the Proposals only after the expiration of the deadline for their submission. During the time from the deadline of submission of Proposals until the opening of the Proposals the Contracting authority does not disclose any information regarding the existence of other Proposals therefore. During the time of Proposal assessment, the Contracting authority does not disclose any information regarding the assessment process until the announcement of the results.
- 4.6. The Procurement commission assesses the Tenderers and their Proposals based on the Public Procurement Law, Open competition documents, as well as other applicable regulatory enactments.
- 4.7. The Procurement commission prepares a report on the Open competition and publishes it on Contracting authority's profile in the E-Tenders system's webpage <https://www.eis.gov.lv/EKEIS/Supplier/Procurement/27914> and on the Contracting authority's webpage <http://railbaltica.org/tenders/> within 5 (five) business days from the day when the decision about the results of the Open competition is made.

5. THE RIGHTS OF THE TENDERER

- 5.1. The Tenderer has the right to submit registration documents for the Electronic Procurement System (if the Tenderer is not registered in Electronic Procurement System) in State Regional Development Agency (please see information here <http://www.railbaltica.org/procurement/e-procurement-system/>).
- 5.2. The Tenderer can request and within 3 (three) business days after submitting the request receive a copy of the Proposal opening sheet which is an annex to the Proposal opening session minutes.
- 5.3. If the Contracting authority gets the necessary information about the Tenderer directly from a competent institution through data bases or other sources and the Tenderer's submitted information differs from information obtained by the Contracting authority, the Tenderer in question has the right to submit evidence to prove the correctness of the information the Tenderer has submitted, if the information obtained by the Contracting authority does not conform to the factual situation.
- 5.4. If a Tenderer believes that its rights have been violated or such violation is possible due to possible violation of the regulatory enactments of the European Union or other regulatory enactments, the Tenderer has the right to submit a complaint to the Procurement Monitoring Bureau according to the procedure stipulated in the Section 68 of Public Procurement Law regarding the Tenderer selection requirements, Technical specification or other requirements relating to Open competition, or relating to the activities by the Contracting authority or the Procurement commission during the Open competition.

6. SUBJECT-MATTER OF THE OPEN COMPETITION

- 6.1. The subject-matter of the Procurement is provision of quality assessment study on usage of local mineral materials in Lithuania for Rail Baltica Global Project (hereinafter – Services). Services must be provided in accordance with Annex No 1 “Technical specification for the Part No 1” and Annex No 2 “Technical specification for the Part No 2” respectively.
- 6.2. The subject-matter of the Open competition has been divided in 2 (two) parts:

No	Subject-matter	CPV codes
Part No 1	Quality assessment study on usage of local mineral materials in Lithuania for Rail Baltica Global Project – Sampling and Testing	71630000-3 (Technical inspection and testing services)

No	Subject-matter	CPV codes
Part No 2	Quality assessment study on usage of local mineral materials in Lithuania for Rail Baltica Global Project – Engineering Services	71300000-1 (Engineering services)

- 6.3. In the Part No 1 of the Open competition Contractor shall investigate the properties of locally produced aggregates in Lithuania in order to enable RB Rail AS to assess the suitability of the aggregates to be used for constructing Rail Baltica project, namely, embankment, prepared subgrade and subballast layers. For detailed information please see the Annex No 1 “Technical specification for the Part No 1”.
- 6.4. In the Part No 2 of the Open competition Contractor shall review the results of the study “Quality Assessment Study on Usage of Local Mineral Materials for Rail Baltica Railway Project in Latvia” and assess the suitability and feasibility of the proposed solutions from Lithuanian perspective for constructing the embankment, prepared subgrade and subballast layers of Rail Baltica structure. For detailed information please see the Annex No 2 “Technical specification for the Part No 2”.
- 6.5. The Tenderer can submit a Proposal for the entire volume of the Procurement or for any separate part indicated in Section 6.2 of the Regulations.
- 6.6. The Tenderer is not permitted to submit variants of the Proposal. If variants of the Proposal shall be submitted, the Proposal will not be reviewed.
- 6.7. The estimated value of the contract is:
- 6.7.1. for the Procurement Part No 1 “Quality assessment study on usage of local mineral materials in Lithuania for Rail Baltica Global Project – Sampling and Testing” - 40 000,00 EUR (forty thousand euros zero cents), excluding value added tax (hereinafter – VAT);
- 6.7.2. for the Procurement Part No 2 “Quality assessment study on usage of local mineral materials in Lithuania for Rail Baltica Global Project – Engineering Services” - 60 000,00 EUR (sixty thousand euros zero cents), excluding VAT.
- 6.8. The delivery of the Services in Part No 1 and Part No 2 will take place in Latvia and Lithuania.
- 6.9. Contract period:
- 6.9.1. For Part No 1 – 14 weeks after the commencement date of the Contract;
- 6.9.2. For Part No 2 – 16 weeks after the commencement date of the Contract.

7. TENDERER

- 7.1. The Proposal can be submitted by:
- 7.1.1. A Supplier who is a legal or natural person (hereinafter – the Tenderer) which offers on the market to perform works, supply products or provide services accordingly and who complies with the selection criteria for Tenderers;
- 7.1.2. A group of Suppliers (hereinafter also – the Tenderer, partnership) which offers on the market to perform works, supply products or provide services accordingly and who complies with the selection criteria for Tenderers:
- (a) A group of Suppliers who have formed a partnership for Open competition. In this case all the members of the partnership shall be listed in Annex No 3 “Application for participating in the Open competition”. If it will be decided to award contracting rights to such partnership, then prior to concluding the Contract the partnership shall at its discretion either enter into a partnership agreement (within the meaning of the Civil Law of the Republic of Latvia, Sections 2241-2280) and shall submit one copy of this agreement to the Contracting authority or establish a general or limited partnership (within the meaning of the Commercial Law of the Republic of Latvia (hereinafter – the Commercial Law), Division IX and X) and notify the Contracting authority in writing;
- (b) An established and registered partnership (a general partnership or a limited partnership within the meaning of the Commercial Law, Division IX and X) which complies with the selection criteria for Tenderers.

8. SELECTION CRITERIA FOR TENDERERS

8.1. Exclusion grounds (refers to both parts of the subject-matter)

The Contracting authority shall exclude the Tenderer from further participation in the Open competition in any of the following circumstances:

No	Requirement	Documents to be submitted ¹
1.	<p>Within previous 3 (three) years before submission of the Proposal the Tenderer or a person who is Tenderer's management board or supervisory board member, person with representation rights or a procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a branch, has been found guilty of or has been subjected to coercive measures for committing any of the following criminal offences by such a public prosecutor's order regarding punishment or a court judgement that has entered into force and may not be challenged and appealed:</p> <p>a) establishment, management of, involvement in a criminal organization or in an organized group included in the criminal organization or other criminal formation, or participation in criminal offences committed by such organization,</p> <p>b) bribe-taking, bribery, bribe misappropriation, intermediation in bribery, unauthorized participation in property transactions, taking of prohibited benefit, commercial bribing, unlawful claiming of benefits, accepting or providing of benefits, trading influences,</p> <p>c) fraud, misappropriation or money-laundering,</p> <p>d) terrorism, terrorism funding, creation or organization of a terrorist group, traveling for terrorist purposes, justification of terrorism, calling to terrorism, terrorism threats or recruiting or training a person in performance of acts of terrorism,</p> <p>e) human trafficking,</p> <p>f) evasion from payment of taxes or similar payments.</p>	<ul style="list-style-type: none"> - For a Tenderer and a person who is Tenderer's management board or supervisory board member, person with representation rights or a procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a branch, who is registered or residing in Latvia, the Contracting authority shall verify the information itself in publicly available databases. - For a Tenderer and a person who is Tenderer's management board or supervisory board member, person with representation rights or a procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a branch, who is registered or residing outside of Latvia the Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence.
2.	<p>It has been detected that on the last day of Proposal submission term or on the day when a decision has been made on possible granting of rights to conclude the Contract, the Tenderer has tax debts in Latvia or a country where it has been incorporated or is permanently residing, including debts of mandatory state social insurance contributions exceeding 150 euro in total in any of the countries.</p>	<ul style="list-style-type: none"> - For a Tenderer registered or residing in Latvia Contracting authority shall verify the information itself in publicly available databases. - For a Tenderer registered or residing outside of Latvia Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence.
3.	<p>Tenderer's insolvency proceedings have been announced, the Tenderer's business activities have</p>	<ul style="list-style-type: none"> - For a Tenderer registered or residing in Latvia Contracting authority shall verify the

¹ If the Candidate submits the European single procurement document as the initial proof, there is no obligation to submit other documents, unless specifically requested by the Procurement commission.

No	Requirement	Documents to be submitted ¹
	<p>been suspended, the Tenderer is under liquidation.</p>	<p>information itself in publicly available databases.</p> <ul style="list-style-type: none"> - For a Tenderer registered or residing outside of Latvia Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence.
4.	<p>A person who drafted the procurement procedure documents (Contracting authority's official or employee), Procurement commission member or expert is related to the Tenderer or is interested in selection of some Tenderer and the Contracting authority cannot prevent this situation by measures that cause less restrictions on Tenderer. A person who drafted the procurement procedure documents (Contracting authority's official or employee), Procurement commission member or expert is presumed to be related to the Tenderer in any of the following cases:</p> <p>a) If he or she is a current and/or an ex-employee, official, shareholder, procura holder or member of a Tenderer or a subcontractor which is legal person and if such relationship with the legal person was terminated within the last 24 (twenty-four) months;</p> <p>b) If he or she is the father, mother, grandmother, grandfather, child, grandchild, adoptee, adopter, brother, sister, half-brother, half-sister or spouse (hereinafter – relative) of a Tenderer's or subcontractor's, which is a legal person, shareholder who owns at least 10% of the shares in a joint-stock company, shareholder in a limited liability company, procure holder or an official;</p> <p>c) If he or she is a relative of a Tenderer or a subcontractor which is a natural person.</p> <p>If the Tenderer is a partnership, consisting of natural or legal persons, a relation to the Tenderer is presumed also if a person who drafted the procurement procedure documents (Contracting authority's official or employee), Procurement commission member or expert is related to a member of a partnership in any of the above-mentioned ways.</p>	<p>No obligation to submit documents, unless specifically requested by the Procurement commission.</p>
5.	<p>The Tenderer has an advantage that limits competition in the procurement procedure if it or its related legal person consulted the Contracting authority or otherwise was involved in preparing the Open competition, and the advantage cannot be prevented by less restrictive measures, and the Tenderer cannot prove that its or its related legal person's participation in preparing the procurement procedure documents does not restrict competition.</p>	<p>No obligation to submit documents, unless specifically requested by the Procurement commission.</p>
6.	<p>Within the previous 12 (twelve) months before submission of the Proposals by such a decision of a competent authority or a court judgment which</p>	<ul style="list-style-type: none"> - For a Tenderer registered or residing in Latvia Contracting authority shall verify the

No	Requirement	Documents to be submitted ¹
	has entered into force and may not be challenged and appealed Tenderer has been found guilty of violating competition laws manifested as a horizontal cartel agreement, except for the case when the relevant authority, upon detecting violation of competition laws, has released the Tenderer from a fine or has decreased the fine for cooperation within a leniency program.	<p>information itself in publicly available databases.</p> <ul style="list-style-type: none"> - For a Tenderer registered or residing outside of Latvia Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence or other objective proof of good standing. For example, a link to the database of the competent authority's public database (website) listing all its decisions and validity thereof (provided that access to any such database/website is free of charge to the Contracting authority).
7.	Within the previous 3 (three) years before submission of the Proposals by such a decision of a competent authority, a court judgment or a public prosecutor's order which has entered into force and may not be challenged and appealed Tenderer has been found guilty and is punished for a violation manifested as employment of one or more persons who do not possess the required employment permit or if it is illegal for such persons to reside in a Member State of the European Union.	<ul style="list-style-type: none"> - For a Tenderer registered or residing in Latvia Contracting authority shall verify the information itself in publicly available databases. - For a Tenderer registered or residing outside of Latvia Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence.
8.	Within the previous 12 (twelve) months before submission of the Proposals by such a decision of a competent authority, a court judgment or a public prosecutor's order which has entered into force and may not be challenged and appealed Tenderer has been found guilty and is punished for a violation manifested as employment of a person without a written employment contract, by failing within the term specified in regulatory enactments to submit an informative employee declaration regarding this person, which must be submitted about persons, who start working.	<ul style="list-style-type: none"> - For a Tenderer registered or residing in Latvia Contracting authority shall verify the information itself from publicly available databases. - For a Tenderer registered or residing outside of Latvia Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence.
9.	The Tenderer has provided false information to prove its compliance with provisions of this Section 8.1 of the Regulations or qualification criteria, or has not provided the required information at all.	No obligation to submit documents, unless specifically requested by the Procurement commission.
10.	The Tenderer is a registered offshore ² company (legal person) or offshore association of persons.	<ul style="list-style-type: none"> - For a Tenderer which is registered in Latvia Contracting authority shall verify the information itself in publicly available databases. - For the Tenderer and each member of the partnership (if Tenderer is an unregistered partnership) which is a legal person registered abroad – a copy of a valid registration certificate or a similar document issued by a foreign authority in

² **Offshore:** low tax or tax-free country or territory in accordance with Corporate income tax law of the Republic of Latvia except Member States of EEA (European Economic Area) or its territories, Member States of the World Trade Organization Agreement on State Treaties or territories and such countries and territories with which European Union and Republic of Latvia has international agreements for open market in public procurement area.

No	Requirement	Documents to be submitted ¹
		charge of the registration of legal persons in the country of their residence wherefrom at least the fact of registration.
11.	The owner or shareholder (with more than 25% of share capital) of the Tenderer who is registered in Republic of Latvia, is a registered offshore company (legal person) or offshore association of persons.	<ul style="list-style-type: none"> - For a Tenderer which is registered in Latvia: <ul style="list-style-type: none"> • Contracting authority shall verify the information itself in publicly available databases; • if such information by publicly available data bases is not provided, Tenderer shall submit self – declaration which approves fact that there are no registered owners or shareholders of the Tenderer (with more than 25% of share capital) who are registered offshore.
12.	The subcontractors indicated by the Tenderer whose share of services is equal to or exceeds 10% of the Contract price or person on whose capacities Tenderer is relying, is a registered offshore company (legal person) or offshore association of persons.	<ul style="list-style-type: none"> - For a subcontractor whose share of services is equal to or exceeds 10% of the Contract price or person on whose capacities Tenderer is relying which is registered in Latvia Contracting authority shall verify the information itself in publicly available databases; - For a subcontractor or person on whose capacities Tenderer is relying which is a legal person registered abroad (with its permanent place of residence abroad) – a copy of a valid registration certificate or a similar document issued by a foreign authority in charge of the registration of legal persons in the country of their residence wherefrom at least the fact of registration.
13.	<p>International or national sanctions or substantial sanctions by the European Union (EU) or the North Atlantic Treaty Organization (NATO) Member State affecting the interests of the financial and capital market has been imposed to the:</p> <p>a) Tenderer or a person who is the Tenderer's management board or supervisory board member, beneficial owner³, person with representation rights or a procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a branch,</p> <p>b) member of the partnership or a person who is the partnership's management board or supervisory board member, beneficial owner⁴,</p>	<ul style="list-style-type: none"> - For a Tenderer registered or residing in Latvia Contracting authority shall verify the information itself from the Register of Enterprises of the Republic of Latvia. - For a Tenderer registered or residing outside of Latvia Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence with all the information necessary for the examination regarding the Tenderer or a member of the partnership if the Tenderer is a partnership), including but not limited, information about beneficial owner or the fact that there is no possibility to find out the beneficial owner.

³ **Beneficial owner:** a natural person who is the owner of the customer - legal person - or who controls the customer, or on whose behalf, for whose benefit or in whose interests business relationship is being established or an individual transaction is being executed, and it is at least:

a) regarding legal persons - a natural person who owns, in the form of direct or indirect shareholding, more than 25 per cent of the capital shares or voting stock of the legal person or who directly or indirectly controls it;

b) regarding legal arrangements - a natural person who owns or in whose interests a legal arrangement has been established or operates, or who directly or indirectly exercises control over it, including who is the founder, proxy or supervisor (manager) of such legal arrangement.

⁴ Ibid.

No	Requirement	Documents to be submitted ¹
	<p>person with representation rights or a procura holder (if the Tenderer is a partnership),</p> <p>and such sanctions can affect the execution of the Contract.</p>	
14.	<p>Within the previous 12 (twelve) months before submission of the Proposals Tenderer (as a contracting party or a participant or member of the contracting party, if the contracting party has been an association of suppliers or a partnership), its participant or member (if a Tenderer is an association of suppliers or partnership) has not performed the procurement contract, framework agreement or concession contract entered into with the Contracting authority and therefore the Contracting authority has exercised the right provided for in the procurement contract, framework agreement or concession contract to unilaterally withdraw from the procurement contract, framework agreement or concession contract.</p>	<p>No obligation to submit documents, unless specifically requested by the Procurement commission.</p>

8.2. Legal standing and suitability to pursue the professional activity (refers to both parts of the subject-matter)

No	Requirement	Documents to be submitted
1.	<p>The Tenderer or all members of the partnership (if the Tenderer is a partnership) must be registered in the Registry of Enterprises or Registry of Inhabitants, or an equivalent register in their country of residence, if the legislation of the respective country requires registration of natural or legal persons.</p>	<ul style="list-style-type: none"> - For a Tenderer (or a member of a partnership), a person on whose capacity Tenderer relies, subcontractor which is a legal person registered in Latvia Contracting authority shall verify the information itself in publicly available databases. - For a Tenderer (or a member of a partnership), a person on whose capacity Tenderer relies, subcontractor who is a natural person – a copy of an identification card or passport. - For a Tenderer (or a member of a partnership), a person on whose capacity Tenderer relies, a subcontractor which is a legal person registered abroad (with its permanent place of residence abroad) – a copy of a valid registration certificate or a similar document issued by a foreign authority in charge of the registration of legal persons in the country of their residence wherefrom at least the fact of registration, shareholders, officials and procura holders (if any) can be determined. - If a Proposal is submitted by a partnership, the Proposal shall include an agreement (or letter of intent to enter into agreement) signed by all members on the participation in the Procurement which lists responsibilities of each and every partnership members and a joint commitment to fulfil the Contract/-s and which authorizes one key member to sign the Proposal and other documents, to receive and issue orders on behalf of the partnership members, and with whom all payments will be made. In this

No	Requirement	Documents to be submitted
		<p>document Tenderer additionally indicates the member of the partnership on whose capacity it relies to certify its financial and economic performance and who will be financially and economically responsible for the fulfilment of the Contract/-s.</p> <ul style="list-style-type: none"> - If the Proposal or any other document, including any agreement, is not signed by the legal representative of the Tenderer, members of the partnership, person on whose capacity Tenderer relies or subcontractors, then a document certifying the rights of the persons who has signed the Proposal or any other documents to represent the Tenderer, a member of the partnership, a person on whose capacity Tenderer is relying, or a subcontractor (powers of attorney, authorization agreements etc.) shall be included.
2.	The representative of the Tenderer, or a member of a partnership, or a person on whose capacity Tenderer relies who has signed documents contained in the Proposal has the right of signature, i.e., it is an official having the right of signature or a person authorized by the Tenderer.	<ul style="list-style-type: none"> - A document confirming the right of signature (representation) of the representative of the Tenderer or a member of a partnership, or a person on whose capacity Tenderer relies who signs the Proposal. For a Tenderer (or a member of a partnership), a person on whose capacity Tenderer relies which is a legal person registered in Latvia the Contracting authority shall verify the information itself in publicly available databases. - If the Tenderer (or a member of a partnership), or a person on whose capacity Tenderer relies, submits a power of attorney (original or a copy certified by the Tenderer) there shall be additionally submitted documents confirming that the issuer of the power of attorney has the right of signature (representation) of the Tenderer.

8.3. Economic and financial standing (refers to both parts of the subject-matter)

No	Requirement	Documents to be submitted
1.	<p><u>If the Tenderer submits a Proposal for one part of the Procurement only</u>, the Tenderer's or all members of the partnership together (if the Tenderer is a partnership and confirms the average financial turnover jointly), average financial turnover within the last 3 (three) financial years (2016, 2017, 2018) is not less than 80 000 EUR (eighty thousand euros) per year.</p> <p><u>If the Tenderer submits a Proposal for both parts of the Procurement</u>, the Tenderer's or all members of the partnership together (if the Tenderer is a partnership and confirms the average financial turnover jointly), average financial turnover within the last 3 (three) financial years (2016, 2017, 2018) is not less than 200 000 EUR (two hundred thousand euros) per year.</p>	<ul style="list-style-type: none"> - Filled and signed Annex No 4 “Confirmation of Tenderer's financial standing”. - Audited or self-approved (if the annual financial statement is not required by the law of the country of residence of the Tenderer) annual financial statements for financial years 2016, 2017, 2018, showing the turnover of the Tenderer or each member of the partnership on whose capacity Tenderer is relying to certify its financial and economic performance and who will be financially responsible for the fulfilment of the Contract/-s (if the Tenderer is a partnership), or other entity on whose capacity Tenderer is relying to certify its financial and economic performance and who will be financially responsible for the fulfilment of the Contract/-s. - If annual financial statement for financial year 2018 is not available yet, Tenderer shall submit other documents showing the annual financial

No	Requirement	Documents to be submitted
	<p>In the event the average annual financial turnover of a limited partner of the limited partnership (within the meaning of The Commercial Law, Division X) exceeds its investment in the limited partnership, the average financial turnover shall be recognized in the amount of the investment in the limited partnership.</p> <p>In the event the Tenderer or a member of a partnership (if the Tenderer is a partnership) has operated in the market for less than 3 (three) financial years, the requirement shall be met during the Tenderer's actual operation period.</p>	<p>turnover and values of the Tenderer for the financial year 2018.</p> <ul style="list-style-type: none"> - For a limited partnership (within the meaning of the Commercial Law, Division X) - an additional document evidencing the amount of the investment by the limited partner (the partnership agreement or a document with a similarly binding legal effect). - If the previous 3 (three) reporting years of the Tenderer differ from the years specified in this Section 8.3.1 of the Regulations (2016, 2017, 2018), the financial turnover necessary must be indicated for the Tenderer's previous 3 (three) reporting years. - If the Proposal is submitted by a partnership, Tenderer shall indicate the member of the partnership on whose capacity Tenderer is relying to certify its financial and economic performance and who will be financially and economically responsible for fulfilment of the Contract/-s including this information in the agreement of cooperation (or letter of intent to enter into agreement) stipulated in Section 8.2.1 of the Regulations. - If the Tenderer is relying on any other entity's capacity to certify its financial and economic performance and this entity will be financially and economically responsible for the fulfilment of the Contract/-s, Tenderer along with the Proposal submits confirmation or agreement on cooperation and/or passing of resources to the Tenderer, signed between such entity and the Tenderer (please see the Section 9 of the Regulations for detailed information).
2.	<p>The Tenderer and each member of the partnership (if the Tenderer is a partnership) on whose capacity Tenderer is relying to certify its financial and economic performance and who will be financially and economically responsible for the fulfilment of the Contract/-s and other entity on whose capacity Tenderer is relying to certify its financial and economic performance and who will be financially and economically responsible for the fulfilment of the Contract/-s, shall have stable financial and economic performance, namely, in the last financial year (2018) liquidity ratio (current assets divided by short-term liabilities) shall be equal to or exceed 1 (one) and shall have positive equity.</p>	<ul style="list-style-type: none"> - Filled and signed Annex No 4 “Confirmation of Tenderer's financial standing”. - Audited or self-approved (if the audited annual financial statement is not required by the law of the country of residence of the Tenderer) annual financial statement for financial year 2018, showing the balance and calculation that proves liquidity ratio and positive equity. - If annual financial statement for financial year 2018 is not available yet, Tenderer shall submit other documents showing the annual financial turnover and values of the Tenderer for the financial year 2018. - If the Tenderer is a partnership, Tenderer shall indicate the member of the partnership on whose capacity it relies to certify its financial and economic performance and who will be financially and economically responsible for the fulfilment of the Contract/-s, including this information in the agreement of cooperation or letter of intent to enter into agreement or in any other similar document, signed by all

No	Requirement	Documents to be submitted
		<p>parties involved and submits it along with the Proposal (please see Section 9 of the Regulations for detailed information).</p> <ul style="list-style-type: none"> - If the Tenderer is relying on any other entity's capacity to certify its financial and economic performance and this entity will be financially and economically responsible for the fulfilment of the Contract, Tenderer along with the Proposal submits confirmation or agreement on cooperation and/or passing of resources to the Tenderer, signed between such entity and the Tenderer (please see Section 9 of the Regulations for detailed information).
3.	<p>If the Tenderer submits a Proposal for Part No 2 of the Procurement, the Tenderer or at least one member of the partnership (if the Tenderer is a partnership) shall have a valid professional risk indemnity insurance:</p> <ul style="list-style-type: none"> - with limit of liability in the amount of at least 120 000 EUR (one hundred twenty thousand euros); - limit mentioned before shall be for any insurance claim and in the aggregate for the policy period during whole term of performance of the Contract. 	<p>Documentation that proves its possession of a valid insurance certificate that meets requirements set in Section 8.3.3 of the Regulations or a written statement of an insurance institution specifying that in case the Tenderer is awarded the Contract, the insurance institution will issue the insurance certificate that meets requirements set in Section 8.3.3 of the Regulations.</p>

8.4. Technical and professional ability

8.4.1. REQUIREMENTS FOR THE PART NO 1

No	Requirement	Documents to be submitted
1.	<p>In the last 3 (three) years (2016, 2017 and 2018) until the submission date of the Proposal Tenderer has managed road and railway construction material tests in total value of at least 40 000 EUR (forty thousand euros) without VAT⁵.</p>	<ul style="list-style-type: none"> - Filled and signed Annex No 5 “Description of the Tenderer's experience” where the Tenderers experience is clearly specified; - At least 1 (one) reference letter from client confirming that the services were provided within the term specified in the contract and in accordance with client's instructions. References shall correspond to required qualification criteria in Section 8.4.1.1 of the Regulations.
2.	<p>The Tenderer has to be able to involve in the provision of the services laboratory accredited based on Standard EN ISO/IEC 17025 with accredited test methods mentioned in the Table 1 of the Annex No 1 “Technical specification for the Part No 1” (if the accreditation is needed for specific test method in accordance with the Table 1 of the Annex No 1 “Technical specification for the Part No 1”).</p>	<p>Copy of the accreditation certificate and annex of the accreditation certificate that describes the scope of accreditation (a list of accredited test methods), accompanied with letter of intention to provide these services in case if the rights to enter into agreement shall be awarded to Tenderer.</p>

⁵ Experience can be covered with one or several tests.

3.	The Tenderer should propose an Aggregate production expert or Laboratory expert meeting the following requirements:	
3.1.	Bachelor’s degree or equivalent ⁶ .	<ul style="list-style-type: none"> - Filled in Annex No 6 “Description of the Expert’s experience” and signed by the relevant expert; - A certified copy of diploma proving relevant level education.
3.2.	Experience in position of <u>aggregate production specialist or laboratory specialist (aggregates testing)</u> for at least 3 (three) years within the last 5 (five) years (2014, 2015, 2016, 2017 and 2018) until the submission date of the Proposal.	Filled in Annex No 6 “Description of the Expert’s experience” and signed by the relevant expert.
3.3.	English language skills (at least B2 Level - based on Common European Framework of Reference for Languages ⁷) in communication, presentation, negotiation and report writing.	Self-declared information about language skills filled in Annex No 6 “Description of the Expert’s experience” and signed by the relevant expert.

8.4.2. REQUIREMENTS FOR THE PART NO 2

No	Requirement	Documents to be submitted
1.	In the last 3 (three) years (2016, 2017 and 2018) until the submission date of the Proposal Tenderer has completed at least 3 (three) projects with total amount of fees (for 3 (three) projects together) at least 60 000 EUR (sixty thousand euros) without VAT related to provision of consulting services for the studies related to transportation infrastructure pavement calculations, geotechnical calculations or pavement construction materials.	<ul style="list-style-type: none"> - Filled and signed Annex No 5 “Description of the Tenderer’s experience” where the Tenderers experience is clearly specified; - At least 2 (two) reference letters from clients confirming that the services were provided within the term specified in the contract and in accordance with client’s instructions. References shall correspond to required qualification criteria in Section 8.4.2.1 of the Regulations.
2.	The Tenderer or each member of the partnership (if the Tenderer is a partnership) shall have quality management system in place.	A copy of a document proving that Tenderer or each member of the partnership (if the Tenderer is a partnership) has implemented quality management system.
3.	The Tenderer should propose a team consisting of the following key experts. One expert can serve both roles, if he/ she meets the requirements for both roles.	
3.1.	Project manager meeting the following requirements:	
	(a) PhD of technology of Sciences (Civil Engineering).	<ul style="list-style-type: none"> - Filled in Annex No 6 “Description of the Expert’s experience” and signed by the Project manager; - A certified copy of diploma proving relevant level education.
	(b) Experience in a <u>position of project manager</u> in organizing and carrying out at least 3 (three) research projects related with road and/ or railway	Filled in Annex No 6 “Description of the Expert’s experience” and signed by the Project manager.

⁶ Here and for all references of required education: minimal education degree of an expert is specified as a requirement. By submitting a Proposal, Tenderer is obligated to provide necessary information and evidence confirming that expert’s education (specialisation) is directly linked to the professional profile of the corresponding key expert for which an expert is applying for.

⁷ See <http://europass.cedefop.europa.eu/resources/european-language-levels-cefr>

construction materials within the last 5 (five) years (2014, 2015, 2016, 2017 and 2018) until the submission date of the Proposal.		
(c)	English language skills (at least B ₂ Level - based on Common European Framework of Reference for Languages ⁸) in communication, presentation, negotiation and report writing.	Self-declared information about language skills filled in Annex No 6 “Description of the Expert’s experience” and signed by the Project manager.
3.2. Geotechnical expert meeting the following requirements:		
(a)	PhD of technology of Sciences (Civil Engineering) or Geology.	<ul style="list-style-type: none"> - Filled in Annex No 6 “Description of the Expert’s experience” and signed by the Geotechnical expert; - A certified copy of diploma proving relevant level education.
(b)	Experience in a <u>position of leading geotechnical expert</u> in designing at least 3 (three) of the following objects ⁹ that were classified as Category 2 or above (in accordance with European Standard EN1997-1): <ul style="list-style-type: none"> 1) road and/ or railway embankments; 2) substructures and/ or earth retaining structures; 3) foundations and earthworks for road and/ or railway bridges. within the last 5 (five) years (2014, 2015, 2016, 2017 and 2018) until the submission date of the Proposal.	Filled in Annex No 6 “Description of the Expert’s experience” and signed by the Geotechnical expert.
(c)	English language skills (at least B ₂ Level - based on Common European Framework of Reference for Languages ¹⁰) in communication, presentation, negotiation and report writing.	Self-declared information about language skills filled in Annex No 6 “Description of the Expert’s experience” and signed by the Geotechnical expert.

- 8.5. Information, provided in the Proposal to prove the compliance with above-mentioned requirements for Economic and financial standing (Section 8.3 of the Regulations), Technical and professional ability (Section 8.4 of the Regulations) shall be clear and understandable without any additional analysis or external proof of the submitted information. The Contracting authority shall not be obliged to use additional sources of information to decide regarding Tenderer’s compliance with the qualification requirements. The Tenderer shall remain fully responsible for the provision of sufficiently detailed information in the Proposal required to confirm clearly the compliance with qualification requirements set in the Regulations.
- 8.6. Notices and other documents mentioned in the Section 8.1 of the Regulations which are issued by Latvian competent institutions are accepted and recognized by the Procurement commission, if they are issued no earlier than 1 (one) month prior to the date of submission of particular notices and documents. Notices and other documents mentioned in the Section 8.1 of the Regulations which are issued by foreign competent institutions are accepted and recognized by the Procurement commission, if they are issued no earlier than 6 (six) month prior to the date of submission of notices and documents, if the issuer of the notice or document has not set shorter period of validity.
- 8.7. If the documents with which a Tenderer registered or permanently residing abroad can certify its compliance with the requirements of Section 8.1 of the Regulations are not issued or these documents are insufficient, such documents can be replaced with an oath or, if the regulatory enactments of the country in question do not allow for an oath, - with a certification by the Tenderer or by another person mentioned in Section 8.1 of the Regulations before a competent executive governmental or judicial institution, a sworn notary or a competent organization of a corresponding industry in their country of registration (permanent residence). Regarding all documents submitted based on an oath given under

⁸See <http://europass.cedefop.europa.eu/resources/european-language-levels-cefr>

⁹ Experience can be covered with any of 1), 2), 3) objects in any combination.

¹⁰See <http://europass.cedefop.europa.eu/resources/european-language-levels-cefr>

law (e.g. sworn-statements, declarations on oath etc.), the Tenderer must provide (indicate) legal grounds to law or enactment in accordance with such statements or declarations on oath have been given.

- 8.8. If the Tenderer complies with any of the exclusion grounds mentioned in Section 8.1 of the Regulations (except Section 8.1.2, 8.1.10 – 8.1.13 of the Regulations), the Tenderer indicates this fact in Annex No 3 “Application for participating in the Open competition”. If the Tenderer to whom the Contract should be awarded will comply with any of exclusion grounds mentioned in this Section, Procurement commission will follow the procedures specified in the Section 43, Paragraph 2-5 of the Public Procurement Law.
- 8.9. The Tenderer to certify that it complies with the selection criteria for Tenderers may submit the European single procurement document (hereinafter - ESPD) as initial proof. This document must be submitted electronically and for each person upon whose capacity Tenderer relies to certify its compliance with the requirements stipulated in the Regulations, and for each of their indicated subcontractors the share of whose work is equal to or exceeds 10 % (ten percent) of the value of the Contract but if the Tenderer is a partnership – for each member thereof. To fill in the ESPD the Tenderer uses the "ESPD.xml" file at the Internet webpage <http://espd.eis.gov.lv/>.
- 8.10. If Tenderer has chosen to submit an ESPD as initial proof, in the ESPD for person upon whose capacity Tenderer relies to certify its compliance with the requirements stipulated in the Regulations it shall be filled in the part regarding the exclusion grounds and information regarding the selection criteria relevant for the specific capacity or capacities on which Tenderer relies. In the ESPD for subcontractor the share of whose work is equal to or exceeds 10 % (ten percent) of the contract - part regarding the exclusion grounds only.
- 8.11. If the Tenderer to whom the Contract should be awarded has chosen to submit an ESPD as initial proof, Procurement commission will follow the procedure stipulated in the Paragraph 17 of the Cabinet regulation No 107 of 28 February 2017 “Tendering Procedures or Procurement Procedures and Design Contests”.

9. RELIANCE ON THE CAPACITY OF OTHER PERSONS

- 9.1. For the fulfilment of the specific contract, to comply with the selection requirements for the Tenderers relating to the economic and financial standing and technical and professional capacity, Tenderer may rely on the capacity of other persons regardless of the legal nature of their mutual relationship. In this case:
 - 9.1.1. The Tenderer indicates in the Proposal all persons on whose capacity it relies by filling in the table which is attached as Annex No 7 “A list of other entities on whose capacity Tenderer relies” and proves to the Contracting authority that the Tenderer shall have available all the necessary resources for the fulfilment of the Contract by submitting a signed confirmation or agreement on cooperation and/or passing of resources to the Tenderer between such persons and the Tenderer. The confirmations and agreements on cooperation and passing of resources can be replaced by the Tenderer with any other type of documents with which the Tenderer is able to prove that the necessary resources will be available to the Tenderer and will be used during the term of fulfilment of the Contract.
 - 9.1.2. Documents on cooperation and passing of resources must be sufficient to prove to the Contracting authority that the Tenderer will have the ability to fulfil the Contract, as well as that during the validity of the Contract Tenderer will in fact use the resources of such person upon whose capacity it relies.
 - 9.1.3. The Contracting authority shall require joint and several liability for the execution of the Contract between the:
 - (a) Tenderer and a person on whose capacity Tenderer is relying to certify its financial and economic performance and who will be financially and economically responsible for fulfilment of the Contract;
 - (b) Each member of the partnership (if the Tenderer is a partnership) on whose capacity Tenderer is relying and who will be financially and economically responsible for fulfilment of the Contract.
- 9.2. Tenderer may rely on the capacity of other persons only if these persons will provide services that require the relevant capacity.

- 9.3. The Contracting authority shall evaluate the person on whose capacity Tenderer to whom the rights to conclude the Contract should be assigned is relying according to Section 8.1.1 - 8.1.8 and Section 8.1.12 - 8.1.14 of the Regulations. In case such person will comply with any of the exclusion grounds which are mentioned in Section 8.1.1 - 8.1.8 or Section 8.1.12 - 8.1.14 of the Regulations, Contracting authority shall request Tenderer to change such person. If the Tenderer shall not submit documents about another person which complies with the selection criteria within 10 (ten) business days from the date when the request was issued or sent to the Tender, the Contracting authority shall exclude such Tenderer from further participation in the Open competition.

10. SUBCONTRACTING

- 10.1. The Tenderer shall indicate in the Proposal all subcontractors of the Tenderer by filling in the table which is attached as Annex No 8 “A list of subcontractors”.
- 10.2. The Contracting authority shall evaluate the subcontractor (whose share of services is equal to or exceeds 10% of the Contract price) of the Tenderer to whom the rights to conclude the Contract should be assigned according to Sections 8.1.2 – 8.1.8 and Sections 8.1.12 - 8.1.14 of the Regulations. In case such subcontractor whose share of services is equal to or exceeds 10% of the Contract price, will comply with any of the exclusion grounds which are mentioned in Section 8.1.2 – 8.1.8 and Section 8.1.12 - 8.1.14 of the Regulations, the Contracting authority shall request Tenderer to change such subcontractor. If the Tenderer shall not submit documents about another subcontractor which complies with the selection criteria within 10 (ten) business days from the date when the request was issued or sent to the Tender, the Contracting authority shall exclude such Tenderer from further participation in the Open competition.

11. FINANCIAL PROPOSAL

- 11.1. The Financial proposal shall be submitted as part of Annex No 9 “Financial proposal” for each Part of the Open competition (Part No 1 and Part No 2) separately.
- 11.2. In accordance with Section 41, Paragraph 11, Article 2 of the Public Procurement Law Contracting authority rejects the Tenderer’s proposal for Open competition, if Tenderer’s proposed contract price for any of part of the Procurement exceeds 150% from estimated contract price set in Section 6.7.1 or 6.7.2 of the Regulations.
- 11.3. The proposed contract price shall include all taxes, fees and payments, and all costs related to the fulfilment of the specific services, that can be reasonably estimated, except VAT, including but not limited to:
 - 11.3.1. cost of business trips, time of consultants and daily allowance,
 - 11.3.2. field research,
 - 11.3.3. purchase of external materials and researches,
 - 11.3.4. purchase of external experts if applicable.
- 11.4. Tenderer shall include any travel expenses (if any arise) in proposed contract price. Contracting authority will not additionally reimburse any travel expenses incurred by Tenderer during the provision of Services.
- 11.5. The costs shall be specified in EUR.
- 11.6. The costs must be calculated and indicated with an accuracy of 2 (two) decimal places after comma. If more than 2 (two) decimal places after comma will be indicated, then only the first two decimal places will be considered.

12. CONTENTS AND FORM OF THE PROPOSAL

- 12.1. Proposal must be submitted electronically in E-Tenders subsystem of the Electronic Procurement System in accordance with the following options for the Tenderer:
 - 12.1.1. by using the available tools of E-Tenders subsystem, filling the attached forms of the E-Tenders subsystem for Procurement procedure;

- 12.1.2. by preparing and filling the necessary electronic documents outside the E-Tenders subsystem and attaching them to relevant requirements (in this situation the Tenderer takes responsibility for the correctness and compliance of the forms to requirements of documentation and form samples);
- 12.1.3. by encrypting electronically prepared Proposal outside of E-Tenders subsystem with data protection tools provided by third parties, and protection with electronic key and password (in this situation, Tenderer takes responsibility for the correctness and compliance of the forms to requirements of documentation and form samples as well as ensuring capability to open and read the document by the Contracting authority).
- 12.2. During preparation of the Proposal, Tenderer shall respect the following requirements:
 - 12.2.1. Each document mentioned in Section 12.3 of the Regulations must be filled separately, each in a separate electronic document in line with forms attached to Procurement on Contracting authority's profile in E-Tenders subsystem (<https://www.eis.gov.lv/EKEIS/Supplier/Procurement/27914>) in a Microsoft Office 2010 (or later) format and attached to the Procurement;
 - 12.2.2. Upon submission, the Tenderer signs the Proposal with secure electronic signature and time-stamp or with electronic signature provided by Electronic Procurement System. The Tenderer can use secure electronic signature and time-stamp and sign Application form, Financial proposal and other documents separately. Proposal (its parts, if signed separately) is signed by authorized person, including authorization document (e.g. power of attorney).
- 12.3. Documents to be included in the Proposal:
 - 12.3.1. Application for participating in the Open competition in accordance with Annex No 3;
 - 12.3.2. Financial proposal in accordance with Annex No 9;
 - 12.3.3. Information and documents confirming compliance of the Tenderer with the selection criteria for the Tenderers (set in Section 8 of the Regulations) or the corresponding ESPD;
 - 12.3.4. Information and documents relating to other entities on whose capacity Tenderer is relying (in accordance with Annex No 7) or the corresponding ESPD;
 - 12.3.5. Information and documents relating to subcontractors (in accordance with Annex No 8) or the corresponding ESPD.
- 12.4. The Proposal may contain original documents or their derivatives (e.g. copies). In the Proposal or in reply to a request of the Procurement commission Tenderer shall submit only such original documents which have legal force. For the document to gain legal force it must be issued and formatted in accordance with the Law on Legal Force of Documents of the Republic of Latvia (<https://likumi.lv/ta/en/id/210205-law-on-legal-force-of-documents>) but public documents issued abroad shall be formatted and legalized in accordance with the requirements of the Document Legalization Law of the Republic of Latvia (<https://likumi.lv/ta/en/en/id/155411-document-legalisation-law>). Public documents issued abroad can be self-approved by the Tenderer, if it is applicable by the legislation of the respective country. When submitting the Proposal, the Tenderer has the right to certify the correctness of all submitted documents' derivatives and translations with one certification.
- 12.5. The Proposal must be signed by a person who is legally representing the Tenderer or is authorized to represent the Tenderer in this Open competition.
- 12.6. The Tenderer shall prepare Proposal in electronic form using the E-Tenders system available at <https://www.eis.gov.lv/EKEIS/Supplier/Procurement/27914>.
- 12.7. The Proposal must be submitted in a written form in English or Latvian (if submitted in Latvian, translation in English of the Proposal must be provided together with the Proposal).

13. ENCRYPTION OF THE PROPOSAL INFORMATION

- 13.1. E-Tenders system which is a subsystem of the Electronic Procurement System ensures first level encryption of the information provided in the Proposal documents.
- 13.2. If the Tenderer applied additional encryption to the information in the Proposal (according to Section 12.1.3 of the Regulations), Tenderer must provide the Procurement commission with the electronic key with the password to unlock the information not later than in 15 (fifteen) minutes after the deadline of the Proposal submission.

14. SUBMISSION OF A PROPOSAL

- 14.1. The Proposal (documents referred to in the Section 12.3 of the Regulations) shall be submitted electronically using the E-Tenders system available at <https://www.eis.gov.lv/EKEIS/Supplier/Procurement/27914> by:

21 October 2019 till 15:00 o'clock.

- 14.2. The Tenderer may recall or amend its submitted Proposal before the expiry of the deadline for the submission of Proposals by using the E-Tenders system.
- 14.3. Only Proposals submitted via E-Tenders system will be accepted and evaluated for participation in the Open competition. Any Proposal submitted outside the E-Tenders system will be declared as submitted in a non-compliant manner and will not participate in the Open competition.

15. OPENING OF PROPOSALS

- 15.1. The Proposals will be opened on the E-Tenders system on 21 October 2019 starting at 15:00 Latvian time during the opening session. On the E-Tenders system it is possible to follow the opening of submitted Proposals online.
- 15.2. The Proposals are opened by using the tools offered by E-Tenders system. The proposed price and other information that characterizes the Proposal (excluding confidential information) shall be published on the E-Tenders system.
- 15.3. The information regarding the Tenderer, the time of Proposal submission, the proposed price and other information that characterizes the Proposal is generated at the opening of the Proposals by E-Tenders system and written down in the Proposal opening sheet which shall be published on E-Tenders system and Contracting authority's webpage.

16. VERIFICATION OF PROPOSALS FOR COMPLIANCE

- 16.1. Following of the opening of Proposals, each part (Part No 1 and Part No 2) of the Open competition shall be evaluated separately.
- 16.2. Procurement commission shall proceed with the verification of compliance of Proposals received and opened in accordance with the opening procedure.
- 16.3. The Procurement commission verifies whether the submitted Proposals comply with the requirements stipulated in Section 12 of the Regulations and whether all required information and documents are submitted and selects for further evaluation the compliant Proposals.
- 16.4. In accordance with Paragraph 16 of the Cabinet regulation No 107 of 28 February 2017 “Tendering Procedures for Procurement Procedures and Design Contests” Procurement commission is entitled to carry out the eligibility check only to the Tenderer to whom the Contract should be awarded.

17. VERIFICATION OF FINANCIAL PROPOSALS

- 17.1. The Procurement commission verifies whether Tenderers have completed Annex No 9 “Financial proposal” in accordance with the requirements.
- 17.2. The Procurement commission verifies whether there are any arithmetical errors, whether an abnormally low Proposal has been received, as well as assesses and compares the contract prices proposed.
- 17.3. The Procurement commission informs the Tenderer whose arithmetical errors have been corrected about the correction of arithmetical errors and the corrected Financial proposal.
- 17.4. When evaluating the Financial proposal, Procurement commission takes corrections into account.
- 17.5. The Procurement commission has the right to demand that the Tenderer explains the calculation upon which the Financial proposal is based and other related aspects to ascertain the objectivity of the Financial proposal and whether an abnormally low Proposal has been submitted.
- 17.6. The Procurement commission further evaluates the compliant Proposals which have not been declared as abnormally low Proposals.

18. CONTRACT AWARD CRITERIA

- 18.1. The Proposal selection criterion is the most economically advantageous proposal according to the evaluation methodology described in this Section below.
- 18.2. The economically most advantageous proposal shall be Proposal with the lowest proposed contract price (the only evaluation criterion), which complies with the requirements stipulated by the Regulations.
- 18.3. The Procurement commission shall determine a Tenderer in accordance with Section 18.2 of the Regulations and the Contract shall be awarded to the Tenderer with lowest proposed contract price.
- 18.4. In case several Tenderers will propose equal contract price, the Procurement commission will invite representatives of those particular Tenderers and organize a draw. In situation, when representatives of Tenderers chose to not be present at the draw, Procurement commission will carry out the draw without representatives of Tenders present.

19. TENDERER CHECK PRIOR TO MAKING THE DECISION REGARDING THE CONCLUSION OF THE CONTRACT

- 19.1. Prior to making the decision about assigning rights to conclude the Contract, Procurement commission performs a check regarding the existence of grounds of exclusion for Tenderers, members of a partnership (if the Tenderer is a partnership), persons on whose capacity Tenderer is relying to certify its compliance with the requirements and subcontractors.
- 19.2. If in accordance with the information published on the day of the last data update in a public database on the last day of Proposal submission or on the day when the decision regarding the possible assignment of rights to conclude a Contract is made, the Tenderer, member of a partnership (if the Tenderer is a partnership), a subcontractor whose share of services is equal to or exceeds 10% of the Contract price or a person on whose capacity Tenderer is relying to certify its compliance with the requirements, have tax debts, including state mandatory insurance contributions debts, the total sum of which exceeds 150 euro, Procurement commission informs the Tenderer and sets a deadline – 10 (ten) days from the day of issuing or receiving information – for the submission of a statement evidencing absence of tax debt, including state mandatory insurance contributions debts, the total sum of which exceeds 150 euro, on the last day of Proposal submission or on the day when the decision regarding the possible assignment of rights to conclude a Contract was made.
- 19.3. If the Tenderer fails to submit required evidence before the deadline, Procurement commission excludes the Tenderer from participation in the Open competition.
- 19.4. Change of persons on whose capacity Tenderer is relying to certify its compliance with the requirements or subcontractors whose share of services is equal to or exceeds 10% of the Contract price is performed in accordance with Sections 9.3 and 10.2 of the Regulations respectively.
- 19.5. In the event the Tenderer or partnership member (if the Tenderer is a partnership) fails to comply with requirements stipulated in Section 8.1 of the Regulations (except Section 8.1.2, 8.1.10 – 8.1.13 of the Regulations) and has indicated this in the Proposal, upon Procurement commission's request it submits an explanation about the implemented measures in order to restore reliability and prevent occurrences of the same or similar violations in future, as well as attaches evidence which proves the implemented measures, such as but not limited to evidence about compensating damages, on cooperation with investigating authorities, implemented technical, organizational or personnel measures, an assessment of a competent authority regarding the sufficiency of the implemented measures etc. The Procurement commission assesses such information. If the Procurement commission deems the measures taken to be sufficient for the restoration of reliability and the prevention of similar cases in the future, it makes the decision not to exclude the Tenderer from participation in the Open competition. If the measures taken are insufficient, Procurement commission makes the decision to exclude the Tenderer from further participation in the Open competition. If the Tenderer within the indicated time does not submit the requested information, Procurement commission excludes the Tenderer from participation in the Open competition.

20. DECISION MAKING, ANNOUNCEMENT OF RESULTS AND ENTERING INTO A CONTRACT

- 20.1. The Procurement commission selects Tenderers in accordance with the set selection criteria for Tenderers, verifies the compliance of the Proposals with the requirements stipulated in the Regulations and chooses the Proposal in accordance with the contract award criteria as described in Section 18 of the Regulations. In each Part of the Open competition Tenderer with the lowest price proposal shall be selected.
- 20.2. Within 3 (three) business days from the date of decision about the Open competition results Procurement commission informs all Tenderers about the decision made by sending the information by post or electronically (including via the E-Tenders system) and keeping the evidence of the date and means of sending the information. The Procurement commission announces the name of the successful Tenderer, indicating:
 - 20.2.1. to the refused Tenderer - the reasons for refusing its Proposal;
 - 20.2.2. to the Tenderer who has submitted an eligible Proposal - the characterization of the successful Proposal and the relative advantages;
 - 20.2.3. the deadline by which the Tenderer may submit a complaint to the Procurement Monitoring Bureau regarding violations of the public procurement procedure.
- 20.3. If only 1 (one) Tenderer complies with all Tenderer selection requirements, Procurement commission prepares and includes in the report of the Open competition a justification of the fact that the set requirements for Tenderer selection are objective and commensurate. If the Procurement commission cannot justify that the set requirements for Tenderer selection are objective and commensurate, Procurement commission makes the decision to terminate the Procurement in relevant Part.
- 20.4. If the Procurement is terminated partly or in total, Procurement commission within 3 (three) business days simultaneously informs all Tenderers about all the reasons because of which the Open competition is partly or in total terminated and informs about the deadline within which a Tenderer may submit a complaint to the Procurement Monitoring Bureau regarding the violations of the public procurement procedure.
- 20.5. The Procurement commission when informing about the results has the right not to disclose specific/confidential information, if it may infringe upon public interests or if the Tenderer's legal commercial interests or the conditions of competition would be violated.
- 20.6. As soon as possible but not later than within 5 (five) working days from day when the decision about the results of the Open competition is taken, Procurement commission prepares a report of the Open competition and publishes it on the Contracting authority's profile in E-Tenders system's webpage <https://www.eis.gov.lv/EKEIS/Supplier/Procurement/27914> and on Contracting authority's webpage <http://railbaltica.org/en/procurements>.
- 20.7. **The selected Tenderer upon receiving the notification from Procurement commission must:**
 - 20.7.1. within 5 (five) business days – submit to the Contracting authority a copy of partnership agreement or notification regarding the establishment of the partnership, if required pursuant to requirements under Section 7.1.2 (a) of the Regulations;
 - 20.7.2. within 5 (five) business days – submit to the Contracting authority a copy valid insurance certificate that meets the requirements set in Section 8.3.3 of the Regulations (if the Tenderer submits a Proposal for Part No 2 of the Procurement);
 - 20.7.3. within 10 (ten) days upon receiving the invitation - sign the Contract.
- 20.8. The Contract is concluded based on the selected Tenderer's Proposal and in accordance with Annex No 10 “Draft contract for the Part No 1” and/ or Annex No 11 “Draft contract for the Part No 2” respectively.
- 20.9. Tenderer to whom the rights to conclude the Contract should be assigned in the Part No 1 of the Procurement shall submit a contract performance guarantee in amount that is not less than 10% of the Contract value in Part No 1 of the Procurement (without VAT). Contract performance guarantee shall be submitted in accordance with procedure set in Annex No 10 “Draft contract for the Part No 1”.
- 20.10. The Procurement commission has the right to choose the next most economically advantageous proposal, if the Tenderer in the time stipulated by the Regulations:

- 20.10.1. refuses to conclude a partnership contract or to establish the partnership in the cases and deadlines defined by the Regulations or in the cases and deadlines defined by the Regulations does not submit a copy of the partnership contract, or does not inform of the founding of a partnership company;
 - 20.10.2. in the cases and deadlines defined by the Regulations does not submit a copy of valid insurance certificate that meets the requirements set in Section 8.3.3 of the Regulations (if the Tenderer submits a Proposal for Part No 2 of the Procurement);
 - 20.10.3. refuses to conclude the Contract or does not submit a signed Contract within the deadlines defined in the Regulations.
- 20.11. In any of such a case mentioned in Section 20.10 of the Regulations Procurement commission is entitled to terminate this Open competition without selecting any Proposal or to select the Proposal with the next lowest proposed contract price. For either of these decisions a written decision must be made.
- 20.12. Prior to making the decision regarding the conclusion of the Contract with the next Tenderer, the Procurement commission assesses whether the next Tenderer is one market participant together with the initially selected Tenderer. If the next selected Tenderer is found to be one market participant together with the initially selected Tenderer or it does not comply with requirements set in the Section 20.7 of the Regulations, Procurement commission decides to terminate the Open competition without selecting any Proposal.

ANNEXES:

- 1. Technical specification for the Part No 1 on 9 (nine) pages;
- 2. Technical specification for the Part No 2 on 5 (five) pages;
- 3. Application for participation in the Open competition on 2 (two) pages;
- 4. Confirmation of the Tenderer's financial standing on 2 (two) pages;
- 5. Description of the Tenderer's experience on 2 (two) pages;
- 6. Description of the Expert's experience on 2 (two) pages;
- 7. A list of other entities on whose capacity Tenderer relies on 1 (one) page;
- 8. A list of the subcontractors on 1 (one) page;
- 9. Financial proposal on 1 (one) page;
- 10. Draft contract for the Part No 1 on 37 (thirty-seven) pages;
- 11. Draft contract for the Part No 2 on 36 (thirty-six) pages.

ANNEX NO 1: TECHNICAL SPECIFICATION FOR THE PART NO 1

TECHNICAL SPECIFICATION FOR THE OPEN COMPETITION
"QUALITY ASSESSMENT STUDY ON USAGE OF LOCAL MINERAL MATERIALS IN LITHUANIA FOR RAIL
BALTICA GLOBAL PROJECT "
(ID NO RBR 2019/18)

PART NO 1 "QUALITY ASSESSMENT STUDY ON USAGE OF LOCAL MINERAL MATERIALS IN LITHUANIA FOR
RAIL BALTICA GLOBAL PROJECT – SAMPLING AND TESTING"



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

Riga
2019

1. INTRODUCTION TO RAIL BALTICA

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.

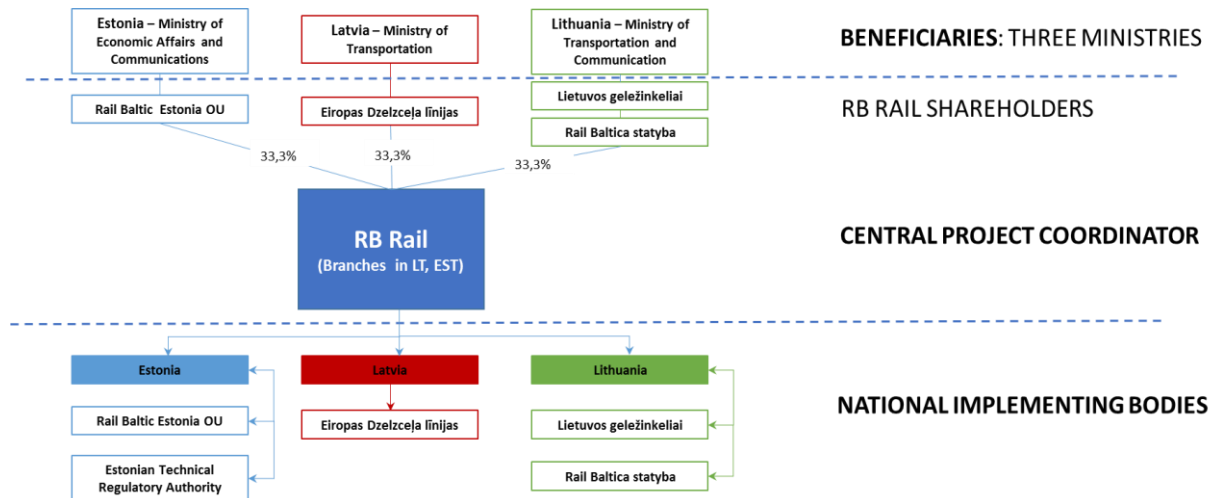
The ambitions of the Rail Baltica Global project (Global Project) are:

- 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 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 applications were successful and INEA grants are available to support the Global Project expenses.

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

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

2. PROCUREMENT OBJECTIVES

The aim of this study is to investigate the properties of locally produced aggregates in Lithuania in order to enable RB Rail AS to assess the suitability of the aggregates to be used for constructing Rail Baltica project, namely embankment, prepared subgrade and subballast layers.

The study consists mainly of following parts:

- Fieldworks (sampling in Lithuania);
- Laboratory testing according to the test methods described in this document (see Table 1);
- Comparing test results with the Rail Baltica Design Guidelines (RB DG) (see Annex A) and UIC 719R requirements and Annex B frost susceptibility criteria;
- Delivering Inception, Interim and Final Reports presenting the test results.

To deliver the results, sampling (in Lithuania) and testing must be carried out by the Contractor. Only active quarries in Lithuania with appropriate and valid Certificate of Factory Production Control (FPC) should be included in this study (hereinafter – Study). The quarries must provide most recent Declaration of Performance (DoP) or Declaration of Conformity (DoC) for the material(s) which shall be included to the Study. The Study shall include suitable quarries within a range of 60 km from the Rail Baltica corridor in Lithuania. This range can be extended only if appropriate quarries do not exist within the aforementioned range and it has been previously agreed by the Contracting authority.

NOTE: The aim of the Study is not to check the compliance of the products with the declared values expressed on the DoPs or DoCs. Therefore, the final report shall be prepared in a way which does not allow to link quarries with the results described in the report.

The Contractor shall:

1. Choose **5 sand, 5 gravel and 5 dolomite/limestone quarries** in Lithuania with appropriate and valid certificate of FPC and which are producing aggregates according to EN 13242 and/or EN 13285 product specifications. The quarries/producers must provide DoP or DoC for every product which is included in the Study. When choosing the quarries, the Contractor must provide a list of at least 10 sand, 10 gravel and 10 dolomite/limestone quarries to the Contracting authority. The Contractor shall study, review and use as a reference report “Supply of Mineral Materials for Rail Baltica in Lithuania” (shall be made available to Contractor by Contracting authority no later than 5 (five) days after commencement day of the Contract).

NOTE 1: The choice must be made assuming that the quarries produce aggregates with average and most widespread properties regarding the Lithuanian aggregate market. List with the selected and chosen quarries must be submitted to the Contracting authority for approval. The Contracting authority shall review the list and approve the list within one week after receipt of it.

For sand and gravel quarries or unbound limestone/dolomite mixtures, the declared maximum fines content must be f15 or lower according to EN 13242 (UF15 or lower according to EN 13285). For gravel quarries and unbound limestone/dolomite mixtures, the declared resistance to fragmentation must be LA30, LA35 or LA40 according to EN 13242.

NOTE 2: If the Tenderer or member of the partnership (if the Tenderer is a partnership) is related with aggregate production, then the Tenderer must inform Contracting authority about the existence of such related partnership with proven evidence.

If the Tenderer is willing to take the samples from related partnership quarries, then the number of partnership related quarries shall not exceed 2 sand, 2 gravel and 2 dolomite/limestone quarries.

2. Organize sampling, transport and reduction of the samples according to EN 932-1 “Tests for general properties of aggregates - Part 1: Methods for sampling” from the quarries.

NOTE 1: The Contractor shall contact the quarries to get the permission for sampling and inform the quarries about the tests to be done. The Contractor shall inform the Contracting authority's representatives about the sampling schedule and providing information about the quarries (contacts, location, products, etc.) and sampling dates and times. The Contractor shall collect FPCs and DoPs or DoCs for each quarry and material included in the Study. The Contractor must be aware that the Contracting authority's representative may be present during the sampling and guide the Contractor choosing the stock for sampling.

NOTE 2: The Contractor shall make sure that the amount of each sample is sufficient to conduct all the necessary tests according to the prescribed test methods. The Contractor has to take into account that test methods can set requirements for minimum quantity of the sample to conduct the test.

3. Organize the testing of the samples in accredited laboratory or laboratories (accredited according to EN ISO/IEC 17025) according to test methods as described in Table 1.

NOTE: The Contractor must provide accreditation certificate and accreditation scope for every laboratory which will be used by the Contractor.

4. Compare the test results with the RB DG requirements described in Annex A, UIC 719R and three frost susceptibility criteria described in Annex B.

Table 1. Necessary tests, methods and quantities, including additional comments for test conditions and accreditation

Material	Test description	Method	Accreditation required?	No. Quarries	Comments
Sand	Gradation and fines content	EN 933-1	Yes	5	Basic sieve set plus set 1 or 2
	Classification according to EN ISO 14688-2	EN 14688-2	No		Gradation based classification, including <0,02, <0,006 and <0,002 mm particles necessary for frost susceptibility assessment. Can be combined with gradation and fines content from previous line
	Methylene blue value MB _F	EN 933-9	No		Fr 0/0,125 mm
	California bearing ratio (CBR)	EN 13286-47	No		Saturated conditions. Minimum 3 specimen
	Modified Proctor density	EN 13286-2	Yes		Opt. moisture content and max. density based on Modified Proctor test
	Water absorption	EN 1097-6	Yes		WA ₂₄ (fr 0,063/4 mm)
Gravel	Gradation and fines content	EN 933-1	Yes	5	Basic sieve set plus set 1 or 2
	Classification according to EN ISO 14688-2	EN 14688-2	No		Gradation based classification, including <0,02, <0,006 and <0,002 mm particles necessary for frost susceptibility assessment. Can be combined with gradation and fines content from previous line
	Methylene blue value MB _F	EN 933-9	No		Testing 0/0,125 mm fraction
	California bearing ratio (CBR)	EN 13286-47	No		Saturated conditions. Minimum 3 specimen
	Modified Proctor density	EN 13286-2	Yes		Opt. moisture content and max. density based on Modified Proctor test
	Water absorption (WA ₂₄)	EN 1097-6	Yes		WA ₂₄ (fr 0,063/31,5 mm)
	Simplified petrographic description	EN 932-3	No		Content of sedimentary rocks (d≥4 mm)
	Frost resistance	EN 1367-1	Yes		Resistance to freeze-thaw cycles in water (fr 8/16 mm)
	Flakiness index	EN 933-3	Yes		
	Percentage of crushed and broken surfaces	EN 933-5	Yes		
	Resistance to fragmentation (Los Angeles)	EN 1097-2	Yes		
	Resistance to wear (Micro-Deval)	EN 1097-1	No		
Dolomite or limestone unbound mixtures	Gradation and fines content	EN 933-1	Yes	5	Basic sieve set plus set 1 or 2
	Classification according to EN ISO 14688-2	EN 14688-2	No		Gradation based classification, including <0,02, <0,006 and <0,002 mm particles necessary for frost susceptibility assessment. Can be combined with gradation and fines content from previous line
	Methylene blue value MB _F	EN 933-9	No		Testing 0/0,125 mm fraction
	Modified Proctor density	EN 13286-2	Yes		Opt. moisture content and max. density based on Modified Proctor test
	Water absorption (WA ₂₄)	EN 1097-6	Yes		WA ₂₄ (fr 0,063/31,5 mm)
	Frost resistance	EN 1367-1	Yes		Resistance to freeze-thaw cycles in water (fr 8/16 mm)
	Flakiness index	EN 933-3	Yes		
	Resistance to fragmentation (Los Angeles)	EN 1097-2	Yes		
	Resistance to wear (Micro-Deval)	EN 1097-1	No		

3. SCHEDULE OF DELIVERABLES

The deadlines for Inception Report, Interim Report, Final Report are described in Table 2. The content and deliverables of each report are described in Table 3.

Table 2. Reports schedule

Deliverables/Reports	No. of copies	Submission schedule	Approval by the Contracting authority
Inception Report	1 hard copy, 1 soft copy	CD* + 2 weeks	Within 2 weeks after reception
Interim Report	1 hard copy, 1 soft copy	CD* + 6 weeks	within 2 weeks after reception
Final Report	1 hard copy, 1 soft copy	CD* + 10 weeks	within 4 weeks after reception

(*) CD: commencement date of the Contract.

An Inception Report is required within two weeks after commencement of the Contract. Any clarifications to the present Technical specification and methodology and organization shall be carried out during the inception period of the Study and shall be agreed with the Contracting authority.

Reports and documents will be officially delivered and accepted when the Contracting authority or its authorized representative will approve the receipt of the document in writing by signing the Final acceptance note.

One week after the commencement date of the Contract, a Kick-Off meeting is organized by the Contracting authority at RB Rail AS Riga office (Kr. Valdemāra iela 8, Riga, Latvia), to where the Contractor's proposed Aggregate production expert or Laboratory expert must attend to. After every report (Inception Report, Interim Report, Final Report) the Contractor must prepare a presentation presenting the status of the Study and results to the Contracting authority at RB Rail AS Riga office. The Contractor's proposed Aggregate production expert or Laboratory expert must present the results of the reports in person.

The content of the deliverables/reports to be drafted and delivered and issues to be agreed as part of the Study are summarized in Table 3.

Table 3. Content of reports and deliverables.

Week	Deliverables/Reports	Minimum content/ issues to be agreed
2.	Inception Report	<ol style="list-style-type: none"> Detailed work program for the Study; Principles for selecting the quarries, list of suitable quarries and sampling schedule; Draft structure of Final Report and data delivery structure, as well as format; Presentation to Contracting authority.
6.	Interim Report	<ol style="list-style-type: none"> Description of the activities to date and correlation with the work program; Detailed descriptions of activities that have been carried out over the course of the Study and updates on the timeline; Samples' testing progress and results so far; Presentation to Contracting authority.
10.	Final Report	<ol style="list-style-type: none"> Report which is completely in accordance with the Procurement documentation and Technical specification; Detailed descriptions of activities that have been carried out over the course of the Study; Presentation to Contracting authority.

ANNEX A - RAIL BALTICA DESIGN GUIDELINES REQUIREMENTS

This annex contains consolidated table (Table A.1) about the requirements stated in the Rail Baltica Design Guidelines (RB DG) for the following structural layers:

- Materials for Prepared Subgrade (Table A.1);
- Materials for Subballast/Blanket layer (Table A.1).

For embankment soil quality classes, properties and classification criteria please see UIC 719R.

Table A.1. Requirements for aggregates used for constructing subballast and prepared subgrade layer.

Properties	Subballast EN 13285	Prepared subgrade EN 13285
Type and d/D	Unbound mixture G_B 0/32; 0/45; 0/56	Unbound mixture G_V 0/8 mm to 0/90 $C_U \geq 6$
Oversize	OC 90	OC 90
Fines content	UF_5	UF_5
LA	≤ 30	-
Fractured/rounded surfaces according to EN 13242	$C_{50/30}$	-
Content of harmful fines MB_F	≤ 10 g/kg	≤ 10 g/kg
Frost resistance	F_2	$F_4^{(a)}$
Note: (a) - applicable to unbound mixtures produced from gravel and crushed rock. Not applicable to natural sand (Sa), gravelly sand (grSa) or sandy gravel (saGr);		

ANNEX B - METHODS FOR ASSESSING THE FROST SUSCEPTIBILITY OF SOILS

This chapter refers to two different methods for assessing the frost susceptibility of soils (Table B.1 and Figure B.1). Both methods are considered to be acceptable for assessing the frost susceptibility of the soils according to UIC 719R.

Table B.1. Casagrande's frost susceptibility criteria.

Coefficient of Uniformity C_u	Maximum fines content
5	10
15	3
NOTE: For other C_u values the maximum fines content can be interpolated	

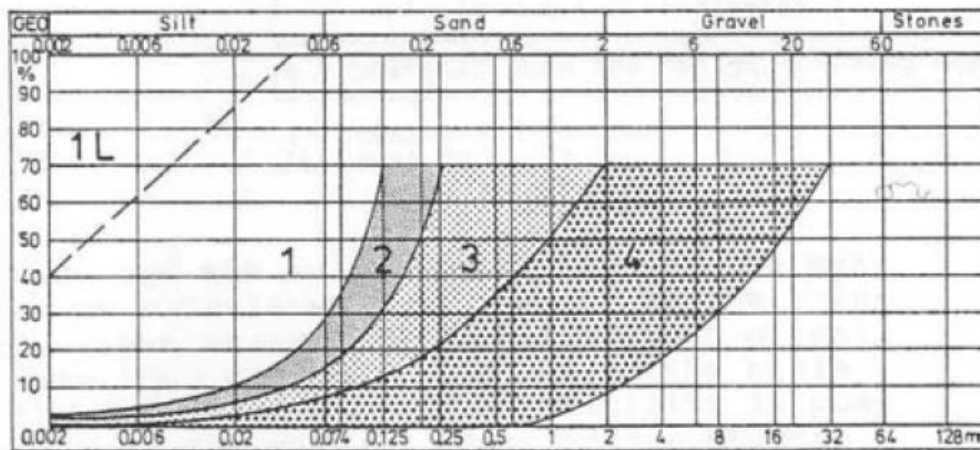


Figure B.1. Gradation limits for frost non-susceptible soils (according to “DETERMINATION OF FROST-SUSCEPTIBILITY OF SOILS”, Slunga, E., Saarelainen, S., 1989)

- If the gradation lies completely within the region 1, the soil is always frost susceptible, in the region 1L, the frost-susceptibility of a soil is low;
- If the gradation falls completely inside the regions 2, 3 or 4, the soil is not susceptible to frost;
- If the lower part of the gradation permanently passes the boundary of the next region on the finer side (upper limit), the soil is frost susceptible.

ANNEX NO 2: TECHNICAL SPECIFICATION FOR THE PART NO 2

TECHNICAL SPECIFICATION FOR THE OPEN COMPETITION

"QUALITY ASSESSMENT STUDY ON USAGE OF LOCAL MINERAL MATERIALS IN LITHUANIA FOR RAIL BALTICA GLOBAL PROJECT "

(ID NO RBR 2019/18)

**PART NO 2 "QUALITY ASSESSMENT STUDY ON USAGE OF LOCAL MINERAL MATERIALS IN LITHUANIA FOR
RAIL BALTICA GLOBAL PROJECT – ENGINEERING SERVICES"**



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

Riga

2019

1. INTRODUCTION TO RAIL BALTICA

The Baltic countries Estonia, Lithuania 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, Lithuania 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.

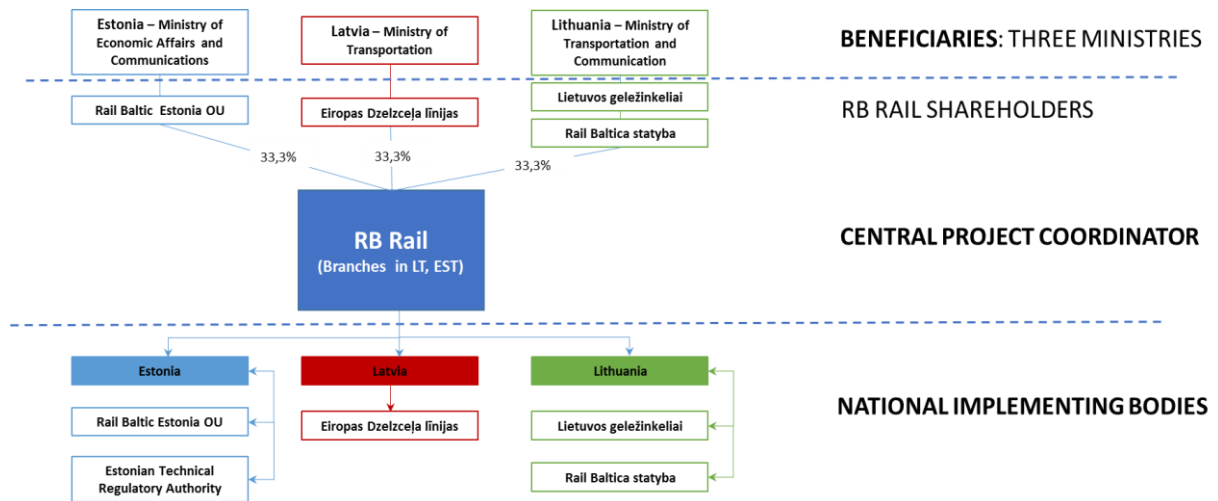
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The diagram below illustrates the shareholder and project governance structure of the Rail Baltica project.



RBR together with governments of Estonia, Lithuania 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 applications were successful and INEA grants are available to support the Global Project expenses.

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

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

2. PROCUREMENT OBJECTIVES

The aim of this study is to review the results of the study “Quality Assessment Study on Usage of Local Mineral Materials for Rail Baltica Railway Project in Latvia” (Latvian study) and assess the suitability and feasibility of the proposed solutions from Lithuanian perspective for constructing the **embankment** (soil stabilisation methods), **prepared subgrade** and **subballast** layers of Rail Baltica railway substructure (hereinafter – Engineering study).

Contracting authority will provide Latvian study to the Contractor in one week after the commencement date of the Contract, sending it to the email of Contractor’s representative indicated in the Contract.

The Engineering study is divided into **two work packages** which are described below.

Work Package 1

Analyse the proposed stabilisation methods in Latvian study aimed at improving the properties “*high plasticity soils with more than 15% of fines*” (QS0 and QS1 soils according to UIC 719R). If deemed necessary by the Contractor, provide recommendations to update the solutions, taking into account the properties of the most commonly encountered high plasticity soils in Lithuania and taking into account the current ground improvement practices in Lithuania.

Work Package 2

Analyse the suitability and feasibility of the solutions proposed in the Latvian study for constructing **prepared subgrade** and **subballast** layers. If deemed necessary by the Contractor, provide recommendations to update the solutions, taking into account the properties and availability of local soils (filling materials) and aggregates in Lithuania.

3. SCHEDULE OF DELIVERABLES

The deadlines for Inception Report, Interim Report and Final Report are described in Table 1. The content and deliverables of each report are described in Table 2.

Table 1. Reports schedule

Deliverables/Reports	No. of copies	Submission schedule	Approval by the Contracting authority
Inception Report	1 hard copy, 1 soft copy	CD* + 2 weeks	Within 2 weeks after reception
Interim Report	1 hard copy, 1 soft copy	CD* + 8 weeks	within 2 weeks after reception
Final Report	1 hard copy, 1 soft copy	CD* + 12 weeks	within 4 weeks after reception

(*) CD: commencement date of the Contract.

An Inception Report is required within two weeks after commencement of the Contract. Any clarifications to the present Technical specification and methodology and organization shall be carried out during the inception period of the Engineering study and shall be agreed with the Contracting authority.

Reports and documents will be officially delivered and accepted when the Contracting authority or its authorized representative will approve the receipt of the document in writing by signing the Final acceptance note.

One week after the commencement date of the Contract, a Kick-Off meeting is organized by the Contracting authority at RB Rail AS Riga office (Kr. Valdemāra iela 8, Riga, Latvia), to where the Contractor’s Project manager must attend to. After every report (Inception Report, Interim Report and Final Report) the Contractor must prepare a presentation presenting the results to the Contracting authority at RB Rail AS Riga office. The Contractor’s Project manager must present the results of the reports in person, other members of the Contractor’s team may be present at the meetings via Skype, if necessary.

The content of the deliverables/reports to be drafted and delivered and issues to be agreed as part of the Engineering study are summarized in Table 2.

Table 2. Content of reports and deliverables.

Week	Deliverables/Reports	Minimum content/ issues to be agreed
2.	Inception Report	<ol style="list-style-type: none"> 1. Detailed overview about the work program and schedule of the Engineering study; 2. Draft structure and format of the Final Report.
8.	Interim Report	<ol style="list-style-type: none"> 1. Detailed description of the activities and their correlation with the submitted work program; 2. Detailed description of the methodology for conducting the Engineering study (Work Package 1 and 2); 3. Draft report about Work Package 1; 4. Draft report about Work Package 2.
12.	Final Report	<ol style="list-style-type: none"> 1. Final Report is provided and is in accordance with Work Packages (1 and 2) and feedback provided by the Contracting authority. Report is completely in accordance with the Procurement documentation and Technical specification; 2. Work Package 1 and 2 results described in detail; 3. Recommendations for updating soil stabilisation, prepared subgrade and subballast layer solutions, taking into account Lithuanian practice and market; 4. Presentation to the Contracting authority.

ANNEX NO 3: APPLICATION

APPLICATION FOR PARTICIPATION IN THE OPEN COMPETITION
“QUALITY ASSESSMENT STUDY ON USAGE OF LOCAL MINERAL MATERIALS IN LITHUANIA FOR RAIL
BALTICA GLOBAL PROJECT”
(ID NO RBR 2019/18)

Name of the Tenderer or all members of the partnership	
Registration number of the Tenderer or all members of the partnership	
VAT payer registration number of the Tenderer or all members of the partnership	
Name, surname and position of the person authorized to represent the Tenderer or name of nominated representative (in case of established partnership)	
Legal address of the Tenderer or all members of the partnership	
Correspondence address of the Tenderer or all members of the partnership	
Bank of the Tenderer or all members of the partnership	
Bank code (SWIFT) of the Tenderer or all members of the partnership	
Bank account (IBAN) of the Tenderer or all members of the partnership	
Contact person and contact information of the Tenderer (name, surname, position, telephone number, e-mail)	

By submitting the Proposal, the Tenderer hereby:

- Confirms participation in the Open competition “Quality assessment study on usage of local mineral materials in Lithuania for Rail Baltica Global Project”, ID No RBR 2019/18, in a¹¹;

Part No 1 “Quality assessment study on usage of local mineral materials in Lithuania for Rail Baltica Global Project – Sampling and Testing” ☐

Part No 2 “Quality assessment study on usage of local mineral materials in Lithuania for Rail Baltica Global Project – Engineering Services” ☐

- Inform that the following entities and/or persons comply with the following exclusion grounds (if any):

Name of the entity (person)	Exclusion ground and brief description of the violation
[•]	
[•]	
[•]	

¹¹Please indicate by ticking relevant box/ -es (Part No 1, Part No 2 or combination of these parts) in which the Tenderer takes participation.

3. Confirms that, if the Tenderer will be awarded the Contract, Tenderer will provide the services in accordance with the requirements of the Annex No 1 “Technical specification for the Part No 1” and/ or Annex No 2 “Technical specification for the Part No 2” respectively;
4. Confirms that Regulations is clear and understandable, that it does not have any objections and complaints and that in the case of granting the right to enter into a Contract it shall fulfil all conditions of the Regulations as well as enter into a Contract in accordance with the Draft contract enclosed with the Regulations (Annex No 10 “Draft contract for the Part No 1” and/ or Annex No 11 “Draft contract for the Part No 2”) respectively;
5. Confirms that in the preparation and submission of its Proposal, Tenderer has fully considered all the clarifications issued by the Contracting authority;
6. Agrees that the Contracting authority reserves itself the right to reject any or all Proposals and cancel the procurement process before entry into Contract on the grounds specified in the Regulations or the law;
7. Guarantees that all information and documents provided are true;
8. **Confirms¹² that meets the criteria of (please indicate by ticking relevant box):**
☐ a small ☐ medium ☐ other

sized enterprise¹³ as defined in the Article 2 of the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprise.¹⁴

[date of signing]

[name and position of the representative of the Tenderer]

¹² Tenderer must indicate size of enterprise for each member of the partnership, if the Tenderer is a partnership.

¹³ The information on the size of the Tenderer is used solely for statistical purposes and is not in any way whatsoever used in the evaluation of the Tenderer or the Proposal.

¹⁴ Available here - http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2003.124.01.0036.01.ENG&toc=OJ:L:2003:124:TOC

ANNEX NO 4: CONFIRMATION OF FINANCIAL STANDING

CONFIRMATION OF TENDERER’S FINANCIAL STANDING FOR THE OPEN COMPETITION “QUALITY ASSESSMENT STUDY ON USAGE OF LOCAL MINERAL MATERIALS IN LITHUANIA FOR RAIL BALTICA GLOBAL PROJECT” (ID NO RBR 2019/18)

1. Section 8.3.1 of the Regulations

If the Tenderer submits a Proposal for one part of the Procurement only, the Tenderer’s or all members of the partnership together (if the Tenderer is a partnership and confirms the average financial turnover jointly), average financial turnover within the last 3 (three) financial years (2016, 2017, 2018) is not less than 80 000 EUR (eighty thousand euros) per year.

If the Tenderer submits a Proposal for both parts of the Procurement, the Tenderer’s or all members of the partnership together (if the Tenderer is a partnership and confirms the average financial turnover jointly), average financial turnover within the last 3 (three) financial years (2016, 2017, 2018) is not less than 200 000 EUR (two hundred thousand euros) per year.

In the event the average annual financial turnover of a limited partner of the limited partnership (within the meaning of The Commercial Law, Division X) exceeds its investment in the limited partnership, the average financial turnover shall be recognized in the amount of the investment in the limited partnership.

In the event the Tenderer or a member of a partnership (if the Tenderer is a partnership) has operated in the market for less than 3 (three) financial years, the requirement shall be met during the Tenderer’s actual operation period.

No	Year	Total Turnover in EUR	Notes
The Tenderer or member of the partnership (if the Tenderer is a partnership) on whose capacity Tenderer is relying to certify its financial and economic performance (Section 8.3.1 of the Regulations) and who will be financially and economically responsible for fulfilment of the Contract/-s or other entity on whose capacity Tenderer is relying (if the Tenderer is relying on other entity’s capacity) to certify its financial and economic performance and who will be financially and economically responsible for fulfilment of the Contract/-s:			
Name of the Tenderer/member of a partnership/other entity			
1.	2018		
2.	2017		
3.	2016		
Average annual turnover within the last 3 (three) financial years			

2. Section 8.3.2 of the Regulations

The Tenderer and each member of the partnership (if the Tenderer is a partnership) on whose capacity Tenderer is relying to certify its financial and economic performance and who will be financially and economically responsible for the fulfilment of the Contract/-s and other entity on whose capacity Tenderer is relying to certify its financial and economic performance and who will be financially and economically responsible for the fulfilment of the Contract/-s, shall have stable financial and economic performance, namely, in the last financial year (2018) liquidity ratio (current assets divided by short-term liabilities) shall be equal to or exceed 1 (one) and shall have positive equity.

Name of the Tenderer/member of partnership/other entity

$$\text{liquidity ratio} = \frac{\text{current assets}}{\text{short-term liabilities}} = \underline{\hspace{2cm}}$$

$$\text{equity} = \text{total assets} - \text{total liabilities} = \underline{\hspace{2cm}}$$

[date of signing]

[name and position of the representative of the Tenderer]

ANNEX NO 5: EXPERIENCE OF THE TENDERER

DESCRIPTION OF THE TENDERER'S EXPERIENCE FOR THE OPEN COMPETITION "QUALITY ASSESSMENT STUDY ON USAGE OF LOCAL MINERAL MATERIALS IN LITHUANIA FOR RAIL BALTICA GLOBAL PROJECT" (ID NO RBR 2019/18)

The Tenderer is required to complete only the part of the Open competition in which Tenderer is taking part.

Part No 1 "Quality assessment study on usage of local mineral materials in Lithuania for Rail Baltica Global Project – Sampling and Testing"

SECTION 8.4.1.1 OF THE REGULATIONS

No	Client, client's contact information for references (name of representative, phone, e-mail) ¹⁵	Period of the contract (month/year – month/year)	Tests managed (indicating the materials tested)	Value of the tests (EUR without VAT)	Description of the services
1.					
2.					
n+1					

Part No 2 "Quality assessment study on usage of local mineral materials in Lithuania for Rail Baltica Global Project – Engineering Services"

SECTION 8.4.2.1 OF THE REGULATIONS

No	Client, client's contact information for references (name of representative, phone, e-mail) ¹⁶	Period of the contract (month/year – month/year)	Project	Is project completed (please indicate "Yes" or "No")	Project's value (EUR without VAT)	Description of the services
1.						

¹⁵ In case of doubt, the Contracting authority has the right to contact the Client to verify that the services specified complies with the requirements set in Section 8.4.1.1 of the Regulations.

¹⁶ In case of doubt, the Contracting authority has the right to contact the Client to verify that the services specified complies with the requirements set in Section 8.4.2.1 of the Regulations.

2.						
n+1						

[date of signing]

[name and position of the representative of the Tenderer]

ANNEX NO 6: EXPERIENCE OF THE EXPERT

DESCRIPTION OF THE EXPERT'S EXPERIENCE FOR THE OPEN COMPETITION "QUALITY ASSESSMENT STUDY ON USAGE OF LOCAL MINERAL MATERIALS IN LITHUANIA FOR RAIL BALTICA GLOBAL PROJECT" (ID NO RBR 2019/18)

The Tenderer is required to complete only the part of the Open competition in which Tenderer is taking part.

GENERAL INFORMATION:

_____ (The position to which an expert is offered), _____ (Name, Surname), _____ (phone, e-mail)

EDUCATION

No	Educational institution	Period of studies (month/year – month/year)	Obtained degree (-s)
1.			
n+1			

EXPERIENCE

For expert mentioned in Section 8.4.1.3 of the Regulations

No	Client/ employer, client's/ employer's contact information for references (name of the representative, phone, e-mail) ¹⁷	Period of provision of services/ period of employment (month/year – month/year)	Expert's position in the Project/ Company	Description of the services/ duties
1.				
2.				
n+1				

¹⁷ In case of doubt, the Contracting authority has the right to contact the Client to verify that the services specified complies with the requirements set in Section 8.4.1.3.2 of the Regulations.

For experts mentioned in Section 8.4.2.3.1 and 8.4.2.3.2 of the Regulations

No	Client, client's contact information for references (name of the representative, phone, e-mail) ¹⁸	Period of provision of services (month/year – month/year)	Project/ Object	Expert's position in the Project	Description of the services
1.					
2.					
n+1					

ENGLISH LANGUAGE SKILLS¹⁹

Understanding		Speaking		Writing
Listening	Reading	Spoken interaction	Spoken production	
<i>Enter level</i>	<i>Enter level</i>	<i>Enter level</i>	<i>Enter level</i>	<i>Enter level</i>

Levels: A1/A2 - Basic user; B1/B2 - Independent user; C1/C2 - Proficient user.

I confirm that I have consented that my candidature is proposed in the Open competition "Quality assessment study on usage of local mineral materials in Lithuania for Rail Baltica Global Project", ID No RBR 2019/18.

I confirm that in case the Tenderer [name of the tenderer or members of the partnership] will conclude the Contract as the result of the Open competition I will participate as [position of an expert] in the execution of the Contract.

[date of signing] [signature] [name of the expert]

¹⁸ In case of doubt, the Contracting authority has the right to contact the Client to verify that the services specified complies with the requirements set in Section 8.4.2.3.1(b) or/ and 8.4.2.3.2(b) of the Regulations.

¹⁹ Language skill level is based on Common European Framework of Reference for Languages (see <http://europass.cedefop.europa.eu/resources/european-language-levels-cefr>)

ANNEX NO 7: OTHER ENTITIES ON WHOSE CAPACITY TENDERER RELIES

A LIST OF OTHER ENTITIES ON WHOSE CAPACITY TENDERER RELIES TO MEET THE REQUIREMENT OF THE OPEN COMPETITION
 “QUALITY ASSESSMENT STUDY ON USAGE OF LOCAL MINERAL MATERIALS IN LITHUANIA FOR RAIL BALTICA GLOBAL PROJECT”
 (ID NO RBR 2019/18)

No	Name of the entity (registration No., legal address)	Description of the capacity
1		
2		
n+1		

[date of signing]

[name and position of the representative of the Tenderer]

ANNEX NO 8: SUBCONTRACTORS

A LIST OF THE SUBCONTRACTORS FOR THE OPEN COMPETITION
“QUALITY ASSESSMENT STUDY ON USAGE OF LOCAL MINERAL MATERIALS IN LITHUANIA FOR RAIL
BALTICA GLOBAL PROJECT”
(ID NO RBR 2019/18)

No	Name of the sub-contractor (registration No., legal address)	Description of the sub- contracted task	Sub-contracted tasks		Size of the enter- prise ²⁰
			Amount, EUR (without VAT)	% from the proposed price	
I	Total amount of the sub- contracted tasks is equal to or exceeds 10% from the proposed contract price				
1					
2					
n+1					
Total:					
II	Total amount of the sub- contracted tasks is smaller than 10% from the proposed contract price				
1					
2					
n+1					
Total:					
Total (I+II)					

 [date of signing]

 [name and position of the representative of the Tenderer]

²⁰ Please indicate the size of enterprise (small, medium or other) as defined in the Article 2 of Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprise. Available here: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2003.124.01.0036.01.ENG&toc=OJ.L:2003:124:TOC

ANNEX NO 9: FINANCIAL PROPOSAL

FINANCIAL PROPOSAL FOR THE OPEN COMPETITION “QUALITY ASSESSMENT STUDY ON USAGE OF LOCAL MINERAL MATERIALS IN LITHUANIA FOR RAIL BALTICA GLOBAL PROJECT” (ID NO RBR 2019/18)

The Tenderer is required to complete only the part of the Open competition in which Tenderer is taking part.

Part No 1 “Quality assessment study on usage of local mineral materials in Lithuania for Rail Baltica Global Project – Sampling and Testing”

The Tenderer [name of the Tenderer] offers to deliver services in accordance with the Annex No 1 “Technical specification for the Part No 1” for the following costs²¹:

No.	Service	Unit	Unit price (EUR without VAT)	Amount	Price (EUR without VAT)
1.	Fieldwork and laboratory tests	test		135 ²²	
2.	Engineering consultations ²³	hour		²⁴	
Total (EUR without VAT):					

Total price (Position No 1 + Position No 2) EUR (excl. VAT) in words: _____.

Part No 2 “Quality assessment study on usage of local mineral materials in Lithuania for Rail Baltica Global Project – Engineering Services”

The Tenderer [name of the Tenderer] offers to deliver services in accordance with the Annex No 2 “Technical specification for the Part No 2” for the following costs²⁵:

No.	Service	Unit	Unit price (EUR without VAT)	Amount	Price (EUR without VAT)
1.	Engineering consultations	hour		²⁶	
Total (EUR without VAT):					

Total price EUR (excl. VAT) in words: _____.

[date of signing]

[name and position of the representative of the Tenderer]

²¹ When preparing the Financial proposal, the rules of Section 11 of the Regulations shall be considered.

²² In accordance with the Table 1 in the Annex No 1 “Technical specification for the Part No 1”.

²³ Must include every other service mentioned in the Annex No 1 “Technical specification for the Part No 1”, except fieldwork (sampling in Lithuania) and laboratory testing.

²⁴ The Tenderer must indicate the number of hours required to complete the service.

²⁵ When preparing the Financial proposal, the rules of Section 11 of the Regulations shall be considered.

²⁶ The Tenderer must indicate the number of hours required to complete the service.

ANNEX NO 10: DRAFT CONTRACT FOR THE PART NO 1**STUDY AGREEMENT**

**for Quality assessment study on usage of local mineral materials in Lithuania for Rail Baltica Global
Project – Sampling and Testing**

between

RB Rail AS

and

[●]

Contract registration number 8/20[●]-[●]

CEF²⁷ Contract No INEA/CEF/TRAN/M2016/1360716 C02ALT

Procurement procedure identification No RBR 2019/18

Riga

Dated [●] [●] 20[●]

²⁷ Grant Agreement under the Connecting Europe Facility

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STUDY AGREEMENT

This STUDY AGREEMENT (the “Agreement”), together with all Annexes thereto, is entered into in Riga, on [●] [●] of the year 20[●] (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 Krišjāņa Valdemāra iela 8-7, Riga, LV-1010, Latvia (the “Principal”), represented by Management Board Member [●] and Management Board Member [●] acting on the basis of the Regulations on Representation Rights dated 25 May 2018, on the one side,

and

[●], a [●] company organized and existing under [●] law, registration number with [●], having its registered address at [●] (the “Contractor”), represented by [●] acting on the basis of [●] 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 commercialize 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 organized procurement procedure “Quality assessment study on usage of local mineral materials in Lithuania for Rail Baltica Global Project” (identification No RBR 2019/18) (the “Procurement Procedure”) whereby the Contractor’s tender proposal (the “Contractor’s Proposal”) was selected as the winning bid for Part No 1 of the Procurement Procedure: “Quality assessment study on usage of local mineral materials in Lithuania for Rail Baltica Global Project – Sampling and Testing”;
- (C) This Agreement is co-financed from the Connecting Europe Facility (CEF), CEF Contract No INEA/CEF/TRAN/ M2016/1360716, Activity No 2, Action: C1.1.8: Supplier market studies and studies to accelerate design and construction phases and determine of economics of scale in procurement consolidation (RB Rail).

Section I. Definitions and Interpretation

- 1.1. *Definitions.* In this Agreement, unless the context requires otherwise, all Definitions shall have the meanings as described to such terms in accordance with *Annex A: Definitions and common terms*.
- 1.2. *Interpretation.*
 - (a) The headings contained in this Agreement shall not be used in its interpretation.
 - (b) References to the singular shall include references in the plural and vice versa, words denoting a gender shall include any other gender where the context requires, and words denoting natural persons shall include any other Persons.
 - (c) References to a treaty, directive, regulation, law or legislative provision shall be construed, at any particular time, as including a reference to any modification, extension or re-enactment of the respective treaty, directive, regulation, law or legislative provision at any time then in force and to all subordinate legislation enacted from time to time.
 - (d) In the event there arises a conflict between provisions of the Agreement, the last provision to have been written chronologically shall take precedence.
 - (e) Any reference in this Agreement to a Person acting under the direction of another Person shall not include any action that is taken in contravention of any Applicable Law or Standards, unless the relevant Person can demonstrate that an explicit instruction or direction was given to take the relevant action.

- (f) Unless expressly stated to the contrary, any reference in this Agreement to the right of consent, approval or agreement shall be construed such that the relevant consent, approval or agreement shall not be unreasonably delayed or withheld. The Parties agree and acknowledge as follows:
 - (i) neither Party shall 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 (including Technical specifications (Scope of Service));
 - (d) Clarifications of the Contractor’s Proposal;
 - (e) Contractor’s Proposal;
 - (f) All other Annexes of the Agreement.

Section II. General terms and conditions

- 2.1 *Engagement.* 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 endeavor 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 and its Sub-Contractors are professionally qualified, registered, and licensed to practice in [●], if it is required to duly and diligently perform the Study in accordance with statutory legal acts of [●].
- 2.4 *General Obligations of Contractor.* The Contractor shall be responsible for the professional quality, technical accuracy, and coordination of all concepts, programming, reports, designs, drawings, specifications, and other services furnished under this Agreement. The Contractor shall have an obligation, without additional compensation of any kind, to correct or revise any errors, deficiencies, or omissions in concepts, programming, reports, designs, drawings, specifications, estimates, and other services rendered hereunder and forming part of the Study.
- 2.5 *Acceptance Not a Waiver.* The Principal’s review, approval, acceptance, or payment for the Works forming part of the Study shall not be interpreted or construed to operate as a waiver of any right or cause for action arising out of the Contractor’s performance of any Works under this Agreement. The Contractor shall remain liable to the Principal as allowed under this Agreement and under Applicable Law for any and all costs and/or Damages caused by the Contractor’s negligent performance of any of the Works and Study 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. *Additional Action Necessary for the Study.* The Contractor shall furnish testing, inspections, and reports as necessary for the carrying out of the Study such as structural, mechanical, chemical, and other laboratory tests, inspections, and reports as described in *Annex B: Technical Specification*.
- 3.4. *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. The Principal is not limited to provide any answer and information to the Contractor by e-mail.
- 3.5. *Accounting and Auditing Services.* The Principal shall furnish accounting and auditing services as may be necessary for the Study as the Principal may require ascertaining how and/or for what purposes the Contractor has used the funds paid under the terms of this Agreement.
- 3.6. *Action Upon Becoming Aware of Defects.* In the event the Principal observes or otherwise becomes aware of any error, fault, omission, or defect in the Study or non-conformance of any action forming part of the Study with the Documentation or information, the Principal shall give prompt notice thereof to the Contractor. The Contractor shall have the obligation to correct such error, fault, omission, or defect in the Study or non-conformance of any action forming part of 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 or information furnished by the Principal 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 is properly qualified and competent in accordance with the relevant Standards;
 - (c) ensure that all maps, drawings, plans, specifications, estimates, surveys and other documents and information 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, documents and information;
 - (d) at all times during the term of the Study, ascertain and comply with all Applicable Laws and Good Industry Practice of the Republic of Latvia, as well as the local mandatory statutory laws and regulations of the locations where the Study will be practically carried out;
 - (e) comply, where applicable, with any reasonable requirements of the Principal not otherwise provided for in this Agreement;
 - (f) ensure that all designs are performed, and that the design process is documented, and all documents and information is furnished in accordance with Good Industry Practice, and using conventional industry quality control methods; and

- (g) notify the Principal of any Defects in accordance with Clause 7.3 of this Agreement as soon as such Defects are identified by the Contractor.
- 4.4. *Maintenance of Records.* During the term of the Study and during ten (10) years from expiration or termination of this Agreement for any reason whatsoever, the Contractor shall keep and maintain clear, adequate and accurate records and Documentation evidencing, to the reasonable satisfaction of the Principal, that the 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 to be accessed in a generally recognized format for a period of ten (10) years from the date of expiration or termination of this Agreement. 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.*
- (a) 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 Law of the Republic of Latvia. Parties shall specify the name, contact details and legal representative(s) of each Approved Sub-Contractor as of the Effective Date in *Annex E: List of approved Sub-Contractors and Staff*. The Contractor shall have an obligation to notify the Principal in writing of any changes to Sub-Contractor 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 or Staff member which it may subsequently engage toward provision of the Study.
- (b) Pursuant to the Public Procurement Law of the Republic of Latvia the Contractor shall obtain prior written consent of the Principal for the replacement of each Sub-Contractor or each Staff member, or each key personnel indicated in *Annex E: List of approved Sub-Contractors and Staff* and involvement of additional Sub-Contractors or Staff members, or key personnel.
- (c) Review and evaluation of the replacement of Sub-Contractors or Staff shall be carried out, and the consent or refusal to give consent shall be rendered by the Principal in accordance with Section 62 of the Public Procurement Law of the Republic of Latvia.
- (d) The Contractor shall not involve employee and/or staff (including but not limited to key office-holders, key personnel (including but not limited to the Aggregate production expert or Laboratory expert) who have a criminal record, in the implementation of the Agreement.
- (e) The Contractor shall submit to the Principal the name, surname, personal code (identification number), professional title (job position) of every natural person that will implement the Agreement and/or will be present on site at least ten (10) Working Days prior involvement of this person in the implementation of the Agreement and/or its presence on site. Contractor shall provide a brief (concise) description of duties towards the implementation of the Agreement of the persons, and, if requested by the Principal.
- (f) The Principal has a right to demand dismissal of such a natural person non-compliant with the security clearance requirements stipulated in this Clause 4.6 at the Principal's sole discretion on the basis of the Principal's written request for dismissal. Parties agree that such Principal's decision is in-contestable.
- (g) The Contractor 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 and/or the Principal has demanded his/her dismissal according to Clause 4.6(f) and to prevent (i) involvement of such a natural person in the implementation of the Agreement and (ii) the presence of this person in the real estate, construction site or any other site of the Principal. The Contractor shall immediately undertake all the necessary actions and measures to ensure that any risk of involvement of such a natural person in the implementation of the Agreement is promptly and duly eliminated.
- (h) In case mentioned in Clause 4.6(f) the Contractor is obliged:
- (i) to immediately replace the dismissed person according to Section 62 of the Public Procurement Law of the Republic of Latvia and the Agreement, and

- (ii) to comply with the Principal's written instructions pursuant to this Clause 4.6 and not to challenge these instructions, and
- (iii) to inform the Principal about dismissal or replacement proceedings pursuant to this Clause.

In case if the immediate dismissal or replacement of the dismissed natural person non-compliant with the security clearance requirements stipulated in this Clause 4.6 results in the unreasonable increase of the costs towards the Contractor, the Contractor shall immediately inform the Principal about this fact in written and the Parties shall agree upon the conditions of the provision of the Study.

The Contractor's non-compliance with the security clearance requirements stipulated in this Clause 4.6, the Principal's instructions towards the Contractor regarding these security clearance requirements or other provisions of this Clause 4.6 constitutes a material breach (breach of a material term or condition) of the Agreement.

- 4.7. *Responsibility for Performance by Sub-Contractors and Staff.* 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 and Staff 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 with any persons. The Contractor shall arrange Study's communication's planning meetings as described in *Annex B: Technical Specification* (or more frequently, to the extent mutually agreed by the Parties), at which personnel of the Contractor and the Principal mentioned in *Annex B: Technical Specification* shall be present. The Contractor shall record all meetings (also online meetings) between Parties and prepare meeting reports within five (5) Working Days after each meeting. All meeting reports shall be harmonized by Principal.
- 4.10. *Compliance with Laws.* The Contractor shall review the Applicable Laws that is 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 the information provided by the Principal or in the preparation or provision of Study 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 a procura holder of an Approved Sub-Contractor, or is authorized to represent or act on behalf of an Approved Sub-Contractor with respect to any activity related to any subsidiary company of such Approved Sub-Contractor, and such Person has been accused of commitment of any of the following criminal offences pursuant to an order issued by a public prosecutor or was found to be guilty of commitment of any of the following criminal offences in accordance with a court judgment that has entered into legal force, is non-disputable and non-appealable:
 - (i) establishment, management of, involvement in criminal organization or another criminal organization or in an organized group included in the criminal organization or other criminal formation, or participation in the criminal offences committed by such organization;
 - (ii) bribe-taking, bribery, misappropriation of a bribe, intermediation toward giving or taking of a bribe, acceptance of a prohibited benefit or commercial bribing, unauthorized participation in property transactions, unlawful claiming of benefits, accepting or providing benefits, trading influences;
 - (iii) fraud, misappropriation of funds or money laundering;

- (iv) tax evasion or evasion of payments equivalent to tax;
- (v) terrorism, terrorism funding, creation or organization of terrorist group, traveling for terrorist purpose, justification of terrorism, instigation of acts of terrorism, terrorist threats or recruitment and training of a person with the aim of committing acts of terrorism;
- (vi) human trafficking;
- (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 labor 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 program;
- (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 organized 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;
- (f) the Person is an entity registered offshore or offshore association of persons;
- (g) International or national sanctions or substantial sanctions by the European Union or the North Atlantic Treaty Organization Member State affecting the interests of the financial and capital market has been imposed to the Person and such sanctions can affect the execution of the Contract; and
- (h) 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: “Co-financed by the Connecting Europe Facility of the European Union”;
 - (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 utilize the above logo, the Contractor shall ensure that the individual elements forming part of the logo are not separated (the logo shall be utilized as a single unit) and sufficient free space is ensured around the logo; and

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

4.14. *Reporting.* The Contractor shall, in a format and at intervals to be agreed with the Principal:

- (a) provide the Principal with regular reports and status updates on the progress of the Works;
- (b) report on any changes to the Annexes of this Agreement, including but not limited to Study Schedule and Estimated Costs, which the Contractor considers may be needed in order to fulfil the objectives set out in the Agreement; and
- (c) use reasonable endeavors to provide any other information and status updates as may be reasonably requested by the Principal at any time.

In order to avoid any doubt, any change to the above-mentioned documentation can be made only pursuant to this Agreement, if agreed by both Parties, and, if the proposed changes are compliant with the Public Procurement Law of the Republic of Latvia.

Section V. Representations and Warranties

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

- (a) it has entered into this Agreement with the aim of attaining all of the objectives and performing in all material respects all of the obligations and commitments herein set forth;
- (b) it has entered into this Agreement without having any intention or goal whatsoever to violate the Applicable Law, its own Articles of Association, other constitutional documents, laws 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 favorable 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 this Agreement and *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 has not been registered as a VAT payer in the Republic of [COUNTRY] [IF APPLICABLE];
- (g) it is compliant with all of the requirements of the Contractor’s Declaration contained in *Annex J: Declaration of Contractor* and will continue to be compliant with all such requirements during the term of this Agreement;
- (h) 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 Contractor 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 [COUNTRY]”(the “Residence Certificate”) confirmed by Competent Authority of the [COUNTRY] 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. The Principal is entitled to make any deductions from the payments due to the Contractor if the Contractor doesn’t comply with this provision [IF APPLICABLE]; and
- (i) immediately arrange for engagement of supplemental personnel when necessary at the cost of the Contractor. For the avoidance of any doubt, the engagement of supplemental personnel shall not require approval by the Principal, provided that this personnel complies with the Applicable Law, including the Public Procurement Law of the Republic of Latvia, and this Agreement.

Section VI. Fee and Payment

- 6.1 *Fee.* In consideration of provision of the Study, the Principal undertakes to pay the Contractor a Fee 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 the Study. The Fee specified in accordance with this Clause 6.1 excludes value added tax that will be charged at the rate applicable in accordance with Applicable Law at the time of invoicing.
- 6.2 *Invoicing.* According to *Annex D: Fee and Payment Schedule* and following each Completion Date and/or Final Acceptance Date, provided that the Principal has accepted/approved the particular Deliverable of the Study which the invoice related to, the Contractor shall deliver to the Principal an invoice specifying the amount of the 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 in the form chosen by the Principal to this effect shall be given by the Principal to the Contractor not later than seven (7) days before the due date for payment under this Clause 6.2. This 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 Agreement. 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 7.4, 7.5, 7.6 and 7.7 of this Agreement.
- 6.3 *Payment.* Subject to the provisions of Clause 6.2, the Principal reserves the rights to make the payments to the Contractor with set-off, retention, counterclaim, abatement or other deduction of any kind that arises from this Agreement and from the obligations of the Contractor provided herein (i.e. in cases of accrued contractual penalty amounts, in case if the Principal haven’t received residence certificate as stipulated in this Agreement, 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 or other right.

Invoices shall be paid within thirty (30) 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 the both Parties, taking into account that the Study shall be accepted by the Principal in accordance with Clauses 7.4, 7.5, 7.6 and 7.7 of this Agreement.

- 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 [COUNTRY].* 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 (the “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 [COUNTRY] and in accordance with Applicable Law of [COUNTRY]. In addition, the Contractor shall assume all risks associated with the payment or obligation to pay such taxes and duties, if any. The Contractor assumes all risks associated with the possible increase in the amount of the Fee arising as a result of the obligation of having to pay any such taxes or duties.
- 6.6 *Invoice.* The Contractor’s invoices shall contain the following Contractor’s details and details about the Agreement:

Contractor	[●]
Registration No	[●]
VAT payer's No or indication that the Contractor is not a VAT payer	[●]
The Principal's VAT No	LV40103845025
Legal address, city, Zip code, country	[●]
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 8/20[●] (CEF Contract No INEA/CEF/TRAN/M2016/1360716, Activity No 2, Contract Manager: Karli Kontson

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

Section VII. Commencement of Study, remedying of Defects and acceptance

- 7.1 *Study Commencement.* The Contractor shall not commence provision of the Study until Study Start Date, as identified in accordance with *Annex C: Schedule of Study* and shall ensure that the Deliverables are furnished to the Principal on or before each relevant Study Milestone. The Contractor shall perform the Study timely and 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 and Public Procurement Law of the Republic of Latvia.
- 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:
- 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
 - 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 each Defect as soon as Defect is identified by the Principal and the

Contractor shall have an obligation to notify the Principal of each Defect as soon as Defect is identified by the Contractor. Upon discovering a Defect, or upon receipt by the Contractor of a notification of Defect from the Principal, the Contractor shall have seven (7) days (unless otherwise specified by the Principal) to remedy the Defect (the “Cure Period”). In the event of inability or failure by the Contractor to remedy the Defect within the Cure Period, the Principal shall be entitled, at 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 Defect, such time period to be determined in the sole discretion of the Principal;
- (b) remedy the Defect 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. Termination and suspension*; or
- (d) remedy the Defect in accordance with Clause 7.3.

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

- 7.4 *Completion of Study and Completion 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 the *Annex B: Technical Specification* and *Annex C: Schedule of Study* by the relevant Study Milestone. On meeting a Study Milestone and/or producing a Deliverable (including all Documentation and information 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 Notice* (hereinafter, the “Provisional Completion Note”). The Provisional Completion Note shall include the Deliverable and adequate supporting Documentation and information 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 as specified in the *Annex B: Technical Specification* and *Annex C: Schedule of Study* 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 and in the Agreement, 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 Applicable Law; 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 and information 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. In the event

the Principal objects to the issuance of a Provisional Completion Note in accordance with this Clause 7.6, it shall give the second Objection Notice to the Contractor in the previously mentioned order. For the avoidance of any doubt, the giving by the Principal of any Objection Notice under Clause 7.5 or second Objection Notice under this Clause 7.6 shall be without prejudice to and shall not relieve the Contractor from the obligation to pay any contractual penalty in accordance with the provisions of Clause 10.2 or to pay Damages in accordance with the provisions Clause 10.3 of this Agreement.

- 7.7 *Final Acceptance.* Final acceptance of the Study shall occur upon remedying by the Contractor of all Defects notified by the Principal to the Contractor in accordance with Clause 7.3, irrespective of the extent or nature of such Defects. Final acceptance shall be evidenced by means of the Principal issuing and both Parties attaching their signatures to the Final Acceptance Note substantially in the form of *Annex H: Form of Final Acceptance Note* (the “Final Acceptance Note”). In the event the Principal objects to the issuance of the Final Acceptance Note, no later than on the Defects Date, the Principal shall give notice to the Contractor setting out in reasonable detail all Defects which remain un-remedied, or reason(s) for refusal to issue the Final Acceptance 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 at the moment of creation 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 and 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 and information 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 and information, or any part thereof, and distribute copies of the Documentation and information or any part thereof;
 - (b) the right to modify, amend and supplement the Documentation and information, or any part thereof;
 - (c) the right to license the Documentation and information, or any part thereof, for use by others; and
 - (d) the right to transfer ownership in the Documentation and information, 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, 7.5, 7.6 and 7.7 the Principal shall be deemed to have granted the Contractor an irrevocable and exclusive license 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 and information, or any part thereof, for the purposes of performing, implementing or modifying the Study; and

- (c) the Documentation and information, 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 and information 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. Intellectual Property Rights* 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 and information. 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 and information 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 defense against claims alleging infringement of Intellectual Property and shall be entitled to reimbursement by the Contractor of reasonable costs and expenses incurred toward such defense.
- 8.8 *Continued Use.* In the event a court of competent jurisdiction resolves in a binding judgment that the Documentation and information, 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 and information, or part thereof infringing Intellectual Property of a third party.
- 8.9 *License in Intellectual Property of the 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 endeavors 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 and Costs 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 does not have right to include photographic or artistic representations of the design of the Project among the Contractor's promotional and professional materials. 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. These materials also shall not contain any information or data that shall be used in accordance to any conditions and requirements set forth by the Principal or other entity; in this case the Contractor shall comply with such conditions and requirements.

Section IX. Termination and suspension

- 9.1 *Termination for Material Breach or Bankruptcy.* Subject to the provisions of Clause 9.2, either Party shall be entitled to terminate this Agreement upon giving a written notice of termination to the other Party in the event of material breach by the other Party of any of its obligations under this Agreement. The written notice of termination shall contain an itemized description of the breach. For the purposes of this Clause 9.1 an event of material breach shall include any of the following:
- (a) commitment by a Party of any persistent or material breach of this Agreement (which shall include failure to pay an amount of at least EUR 5,000 due to the other Party or perform any part of the 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) Working Days from the date of payment falling due;
 - (e) any of the representations or warranties given by either Party under Clause 5.1 or any of the representations or warranties given by the 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 9.3. 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.*
- (a) 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:
 - (i) breach by the other Party of Clause 17.2;
 - (ii) an event of Force Majeure has been continuing during more than sixty (60) days;
 - (iii) the other Party had passed a resolution for winding-up (other than in order to amalgamate or reconstruct);
 - (iv) breach by the Contractor any of the confidentiality undertakings contained in *Section XII. Force Majeure*;
 - (v) the other Party is unable to pay its debts and has presented a petition for voluntary bankruptcy;
 - (vi) the other Party had a bankruptcy order issued against it;
 - (vii) liquidation, insolvency or legal protection proceedings have been initiated with respect to the other Party or the other Party is declared insolvent;

- (viii) the occurrence of any event analogous to the events enumerated under Clauses 9.3(a) (v) - (vii) under the law of any jurisdiction to which the other Party's assets and undertaking are subject.
- (b) *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:
- (i) CEF Co-financing for further financing of the Study are not available to the Principal fully or partly;
- 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.
- (ii) it is not possible to execute 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.
- (c) *Termination according to Public Procurement Law.* The Agreement can be immediately terminated 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 Section 64 of the Public Procurement Law. In such a case, the Principal shall pay the Contractor the fees in respect of the Works and 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.
- 9.4 *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, 8.5, 8.6, 8.7, 8.8, 8.9, 8.11, 8.12, 8.13, 9.6, 10.1, 10.2, 10.3, 17.2, 17.6, 17.8, 17.9 and *Section XIII. Confidentiality, Section XIV. Right to Audit, Section XV. On-the-spot-visits and Section XVI. Governing Law and Resolution of Disputes* 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 9.5(b).
- 9.6 *Partial Acceptance.* Notwithstanding anything in this Agreement to the contrary including, without limitation, the provisions of Clauses 7.4, 7.5, 7.6 and 7.7 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 17.2, or termination by the Principal according to Clause 9.3(b) or 9.3(c) 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, due to the application of international sanctions, breach by the Contractor, insolvency of the Contractor or a Force Majeure Event under *Section XII. Force Majeure*:

- (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, 7.6 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 five percent (0.5%) of the amount of total the Fee payable under this Agreement with respect to the relevant Study period for each day of delay starting from the first delayed day 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 6.1, the Principal shall be liable to pay the Contractor a penalty of zero point five percent (0.5%) 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 80 000,00 (eighty thousand euros).

Section XI. Performance guarantee

- 11.1 *Performance Guarantee.* In order to secure proper performance by the Contractor under this Agreement, the Contractor shall, at the sole cost and expense of the Contractor, provide to the Principal a performance guarantee within twenty-eight (28) days after the Effective Date. The amount of the guarantee shall be no less than 10% (ten percent) of the value of the Agreement, VAT exclusive (the “Performance Guarantee”).
- 11.2 *Requirements to Performance Guarantee.* The Performance Guarantee shall be in the form of first-demand bank guarantee the bank registered in the Republic of Latvia or abroad, issued for the benefit of the Principal and shall meet the criteria and state the data contained in *Annex I: Performance Guarantee* to this Agreement. The bank issuing the Performance Guarantee shall have the long-term borrowing rating of at least BB+ as determined by the credit agencies Fitch Ratings or Standard and Poor’s or Ba1 as determined by Moody’s on the day of issuance of the Performance Guarantee, if no separate borrowing rating has been assigned to a bank or branch of the finance group, the principal (parent or holding) bank shall have the rating at least comparable to the above ratings as of the date of the issuance of the Performance Guarantee. The Contractor shall be responsible for supplying to the Principal a document evidencing that the bank issuing the Performance Guarantee under this *Section XI. Performance guarantee* has the relevant rating as of the day of issue of the Performance Guarantee. In the event the bank issuing the Performance Guarantee itself does not have the required rating, a counter-guarantee or any other re-guarantee by another not associated bank is provided, such Performance Guarantee shall not be acceptable and may be rejected. The Performance Guarantee shall be governed by the laws of the Republic of Latvia, and the ICC Uniform rules for demand guarantees (Issue No. 758) approved by the International Chamber of Commerce. The Principal shall be entitled to use the Performance Guarantee in the event of:
- (a) failure by the Contractor to extend the term of validity of the Performance Guarantee to cover the entire term of this Agreement. In such case, the Principal may claim the full amount of the Performance Guarantee;
 - (b) failure by the Contractor to pay any amount due to the Principal under this Agreement;
 - (c) in other events provided for in the Agreement.
- 11.3 The Performance Guarantee shall be valid until the completion of the Study until the final Study Deliverable hereunder and for an additional term of one (1) year thereafter. The Principal reserves the right to reject the Performance Guarantee not compliant with the terms of this *Section XI. Performance guarantee*.

Section XII. Force Majeure

- 12.1 *Effects of Force Majeure.* Subject to the requirements set forth in accordance with Clauses 12.2 and 12.3, 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.
- 12.2 *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 endeavors 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 12.2(a).
- 12.3 *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 12.2(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.

- 12.4 *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).
- 12.5 *Mitigation of Effects of Force Majeure.* As soon as practicable after the notification specified pursuant to Clause 12.3, the Parties shall use reasonable endeavors 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 XIII. Confidentiality

- 13.1 *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 and information 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.
- 13.2 *Undertakings with Respect to Confidential Information.* Subject to Clauses 13.1 and 13.3, 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.
- 13.3 *Permitted Disclosure.* Notwithstanding anything to the contrary set forth in accordance with Clauses 13.1 and 13.2, 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. On-the-spot-visits*;
 - (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.
- 13.4 *Obligation of Confidentiality Pertinent to Recipients of Confidential Information.* Whenever disclosure is permitted to be made pursuant to Clauses 13.3(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.
- 13.5 *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.
- 13.6 *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.

- 13.7 *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.
- 13.8 *Remedies.* The Parties acknowledge and agree that a breach of the provisions of this *Section XIII. Confidentiality* 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 13.2, 13.4 or 13.6 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 XIV. Right to Audit

- 14.1 *Right to Audit.* Notwithstanding anything to the contrary set forth in this Agreement including, the Principal itself, a reputable outside independent body or expert engaged and authorized by the Principal shall be entitled to inspect and/or audit the Contractor to ensure compliance with the terms of this Agreement, including inspecting and/or auditing:
- (a) the performance of any aspect of the 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.
- 14.2 *Obligation to Assist.* The Contractor shall provide all reasonable assistance to the Principal or the independent body authorized by the Principal in carrying out any inspection or audit pursuant to this *Section XIV. Right to Audit*. 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.
- 14.3 *Survival of Termination.* The rights and obligations of the Principal set forth in accordance with this *Section XIV. Right to Audit* 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 XV. On-the-spot-visits

- 15.1 *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.
- 15.2 *Personnel involved.* On-the-spot visits may be carried out either directly by authorized staff or representatives of the Principal or by any other outside body or third party authorized 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 authorized outside body or third party shall be bound by the same confidentiality obligations.
- 15.3 *Access to the information.* Contractor shall provide to the performer of the on-the-spot visit or any other authorized outside body or third party access to all the information and documents, including information and documents in electronic format, which is requested by the authorized staff of the performer of the on-the-spot visit or any other authorized 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 authorized staff of the performer of the on-the-spot visit or any other authorized outside body or third party the copying of the information and documents, with due respect to the confidentiality obligation.
- 15.4 *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 XVI. Governing Law and Resolution of Disputes

- 16.1 *Governing Law.* This Agreement shall be governed by and construed in accordance with law of the Republic of Latvia.
- 16.2 *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.
- 16.3 *Venue for Resolution of Disputes.* Should the Parties fail to agree by means of amicable negotiations within the time period of one (1) month from the date of serving of the respective written complaint to the other Party, the Parties shall submit all their disputes arising out of or in connection with this Agreement to the exclusive jurisdiction of the courts of 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 XVII. Miscellaneous provisions

- 17.1 *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.
- 17.2 *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.
- 17.3 *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.
- 17.4 *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.
- 17.5 *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.
- 17.6 *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.
- 17.7 *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.

- 17.8 *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 Section 61 of the Public Procurement Law of the Republic of Latvia.
- 17.9 *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.
- 17.10 *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:

Signature:

Signature:

Name, title:

Name, title:

Bank details:

Signature:

Name, title:

Bank details:

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, these terms shall include any legislative act or directive relevant to public procurement.
- (c) “Approved Staff”, any person or organization 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 organization 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 Date”, as defined in accordance with Clause 7.4 and 7.6, as appropriate.
- (f) “Confidential Information”, as defined in accordance with Clause 13.1 of the Agreement.
- (g) “Contractor”, the company [•], as further specified in the Preamble of this Agreement, which is employed by the Principal as an independent professional contractor to perform the Study, and legal successors to the Principal and permitted assignees of the Principal.
- (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 Works relating to the Study;
 - (v) costs of all employee benefits and taxes for items such as social security and other benefits for the labor and employees;
 - (vi) costs, including transportation and maintenance, of equipment and hand tools not owned by workmen employed by the Contractor which are employed or consumed toward the Study;
 - (vii) payments for rental charges for machinery, equipment, facilities and tools used in connection with the Study, and payments for installations, repairs, replacements, dismantling, removal, lubrication, transportation and delivery of those rental items;
 - (viii) other transportation costs incurred in connection with the Study;
 - (ix) that portion attributable to this Agreement of premiums for insurance that is required by this Agreement (if applicable) 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 Works under this Agreement (if applicable), 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”, a part of the Study which is not in accordance with *Annex B: Technical Specification*, *Annex C: Schedule of Study*, the Applicable Law or Good Industry Practice.
- (m) “Defects Date”, a date specified in accordance with *Annex C: Schedule of Study* by which date the Principal or the Contractor is obliged to notify about each Defect in the each Deliverable.
- (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:
 - (i) an act of the public enemy or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;
 - (ii) an act of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;
 - (iii) a natural disaster or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);
 - (iv) nuclear, chemical or biological contamination;
 - (v) pressure waves caused by devices travelling at supersonic speeds;
 - (vi) discovery of fossils, antiquities or unexploded bombs; and/or
 - (vii) strike, lockout or other industrial action other than involving the Contractor or the Principal.
- (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 Work, Study 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 neighboring rights, rights in computer software and database and topography rights), know how or unregistered design right.
- (x) “Intellectual Property of the 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) “Performance Guarantee”, as defined in accordance with Clause 11.1.
- (bb) “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.

- (cc) “Project”, development of a 1435 mm standard gauge railway line in the 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) “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.
- (ee) “Provisional Acceptance Note”, as defined in accordance with Clause 7.5.
- (ff) “Provisional Completion Note”, as defined in accordance with Clause 7.4.
- (gg) “Railway”, a new fast conventional double track electrified railway line according TSI INF P2-F1 criteria and European standard gauge (1435 mm) on the Route.
- (hh) “Residence Certificate”, a certificate mentioned in Clause 5.2(h).
- (ii) “Right of Partial Acceptance”, as defined in accordance with Clause 9.6.
- (jj) “Standards”, CEF Standards and Grant Agreement Standards.
- (kk) “Study”, Quality assessment study on usage of local mineral materials in Lithuania for Rail Baltica Global Project – Sampling and Testing, that shall be done in accordance with *Annex B: Technical Specification*;
- (ll) “Study Milestone”, the date for delivery of one or more Deliverables, as set out in *the Annex B: Technical Specification* and *Annex C: Schedule of Study*.
- (mm) “Study Start Date”, as specified in accordance with *Annex C: Schedule of Study*.
- (nn) “VAT”, value added tax.
- (oo) “Working Day”, any day (other than Saturday or Sunday) on which banks in the Republic of Latvia are open for conduct of business.
- (pp) “Works”, all incidental works, steps and actions performed by the Contractor for the attainment of the objectives of the Study and/or the Project.

Annex B: Technical Specification

Annex C: Schedule of Study

1. Study Start Date: Commencement date of the Agreement.

2. Deliverables:

Deliverables/Reports	No. of copies	Submission schedule/ Study Milestone dates	Approval by the Contracting authority
Inception Report	1 hard copy, 1 soft copy	CD* + 2 weeks	Within 2 weeks after reception
Interim Report	1 hard copy, 1 soft copy	CD* + 6 weeks	within 2 weeks after reception
Final Report	1 hard copy, 1 soft copy	CD* + 10 weeks	within 4 weeks after reception

(*) CD: commencement date of the Agreement.

3. The Principal will accept all reports as describe in Clauses 7.5 and 7.6 only if they will be provided fully in good and enough quality and covers full scope defined in *Annex B: Technical Specification*.

4. The Principal may provide comments or remarks to Inception Report and Interim Report after signing of the Provision Acceptance Note. In such situations the Contractor shall implement and/or consider mentioned comments and remarks until the submission of subsequent report.

Annex D: Fee and Payment Schedule

1. Fee: Fee in the amount of [●] EUR ([amount] euro and [amount] cents) and value added tax (VAT) at the prevailing rate (* currently [●]%) amounting to [●] EUR ([amount] euro and [amount] cents) [IF APPLICABLE].
2. Schedule of payment of Fee: after delivery of the following Deliverables and acceptance by signing of the Provisional Acceptance Note or Final Acceptance Note the Principal shall pay following amount of the Fee:

Deliverable	Payment amount	
	%	EUR
Interim Report	30	[●]
Final Report	70	[●]

Annex E: List of approved Sub-Contractors and Staff

[A LIST OF ALL SUB-CONTRACTORS AND/OR SUPPLIERS THE CONTRACTOR ANTICIPATES TO ENGAGE TOWARD PROVISION OF THE STUDY. PLEASE INDICATE NAME, CONTACT DETAILS AND LEGAL REPRESENTATIVE(S) OF EACH SUB-CONTRACTOR]

Annex F: Form of Provisional Completion Note

No [INSERT NUMBER]

Date: [INSERT DATE IN THE FORM OF 1 January 2018]

Location: [INSERT LOCATION]

For:

RB Rail AS

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

(hereinafter, the “Principal”)

This provisional completion note (the “Provisional Completion Note”) is issued to the Principal by [·][INSERT NAME, REGISTRATION NUMBER, INSERT 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 Definitions 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 *Annex B: 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 2018], 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 IN THE FORM OF 1 JANUARY 2018] 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, or twenty-eight (28) days as according to the Agreement 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 2018]

Location: [INSERT LOCATION]

For: [•] (the “Contractor”)

This Provisional Acceptance Note (the “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 Definitions shall have the meaning ascribed to such terms in accordance with the [INSERT AGREEMENT DATE] Agreement on [INSERT AGREEMENT NAME] 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 7.5 of the Agreement, 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”).

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

INSERT COMPANY NAME]

Annex H: Form of Final Acceptance Note

No [INSERT NUMBER]

Date: [INSERT DATE IN THE FORM OF 1 January 2018]

Location: [INSERT LOCATION]

For: [•] (the “Contractor”)

This Final Acceptance Note (the “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 Definitions shall have the meaning ascribed to such terms in accordance with the Agreement on [INSERT AGREEMENT NAME] 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

Annex I: Performance Guarantee

The performance guarantee shall:

- (a) guarantee the full and due performance by the Contractor under the Agreement in conformity with the terms of the Agreement, the Scope of Study contained in *Annex B: Technical Specification* and Schedule of Study contained in *Annex C: Schedule of Study*;
- (b) provide sufficient and suitable security for the performance of the Contractor's obligations under the Agreement;
- (c) be in the form of bank guarantee issued by a first-class bank meeting the criteria enumerated in accordance with Clause 11.2 of the Agreement;
- (d) be irrevocable and unconditional, including not being conditional on:
 - (i) another right or obligation contained in another document; or
 - (ii) payable, in whole or in part, immediately on demand; or
 - (iii) payable without reference to another person;
- (e) be available for the time period specified in Clause 11.3 of the Agreement;
- (f) be payable on demand; and
- (g) be written in the English language (letter of performance guarantee).

The following data must be stated in the letter of performance guarantee:

- (a) a particular sum, i.e. the maximum amount of fulfilment;
- (b) currency, namely EUR;
- (c) the beneficiary's (RB Rail AS) account, to which the guarantee sum shall be paid, i.e.: the current account No LV73NDEA0000084270995, EUR. Bank's address: Luminor Bank AS, Skanstes iela 12, Riga, LV-1013, Latvia;
- (d) exact identification of the guarantor bank;
- (e) beneficiary: RB Rail AS, K. Valdemāra iela 8-7, Riga, LV-1010, Latvia;
- (f) exact identification of the committer;
- (g) a reference to international rules issued by the International Chamber of Commerce in Paris, Uniform Rules for Contract Guarantees (No 325) or Uniform Rules for Demand Guarantees (No 458); and
- (h) the guarantee validity time.

The bank issuing the performance guarantee must conform to at least one of the following requirements regarding its rating:

- Moody's – minimum “Ba1”;
- Fitch/IBCA – minimum “BB+”; or
- Standard & Poor's – minimum “BB+”.

Annex J: Declaration of Contractor

I, the undersigned duly authorized representative, on behalf of *[NAME OF THE CONTRACTOR]* 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 labor 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 15 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, color, 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 agreement, 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 favorable than the best conditions prevailing locally (i.e., as contained in: (i) collective agreements 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 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 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 suppliers:
 - a. Who, or its member of the Management Board or the Supervisory Board or procurator of such supplier, or a person having the right to represent such supplier 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, management of criminal organization;
 - ii. fraud, misappropriation or laundering, human trafficking;
 - 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 agreement aimed at restricting the opportunity of a purchaser to determine the resale price, or horizontal cartel agreement, 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 program;

- 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 supplier to participate in the tender), economic activity of such supplier has been suspended or discontinued, proceedings regarding bankruptcy of such supplier have been initiated or such supplier will be liquidated;
- e. who has tax debts in the country where the procurement is organized or a country where such supplier 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.

[SIGNATURE] [NAME, LAST NAME] [POSITION] [DATE]

Annex K: Contractor’s Proposal

[CONTRACTOR’S PROPOSAL]

ANNEX NO 11: DRAFT CONTRACT FOR THE PART NO 2**STUDY AGREEMENT**

Quality assessment study on usage of local mineral materials in Lithuania for Rail Baltica Global Project – Engineering Services

between

RB Rail AS

and

[●]

Contract registration number 8/20[●]-[●]

CEF²⁸ Contract No INEA/CEF/TRAN/M2016/1360716 C02ALT

Procurement procedure identification No RBR 2019/18

Riga

Dated [●] [●] 20[●]

²⁸ Grant Agreement under the Connecting Europe Facility

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STUDY AGREEMENT

This STUDY AGREEMENT (the “Agreement”), together with all Annexes thereto, is entered into in Riga, on [●] [●] of the year 20[●] (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 Krišjāņa Valdemāra iela 8-7, Riga, LV-1010, Latvia (the “Principal”), represented by Management Board Member [●] and Management Board Member [●] acting on the basis of the Regulations on Representation Rights dated 25 May 2018, on the one side,

and

[●], a [●] company organized and existing under [●] law, registration number with [●], having its registered address at [●] (the “Contractor”), represented by [●] acting on the basis of [●] 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 commercialize 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 organized procurement procedure “Quality assessment study on usage of local mineral materials in Lithuania for Rail Baltica Global Project” (identification No RBR 2019/18) (the “Procurement Procedure”) whereby the Contractor’s tender proposal (the “Contractor’s Proposal”) was selected as the winning bid for Part No 2 of the Procurement Procedure: “Quality assessment study on usage of local mineral materials in Lithuania for Rail Baltica Global Project – Engineering Services”;
- (C) This Agreement is co-financed from the Connecting Europe Facility (CEF), CEF Contract No INEA/CEF/TRAN/ M2016/1360716, Activity No 2, Action: C1.1.8: Supplier market studies and studies to accelerate design and construction phases and determine of economics of scale in procurement consolidation (RB Rail).

Section I. Definitions and Interpretation

- 1.1. *Definitions.* In this Agreement, unless the context requires otherwise, all Definitions shall have the meanings as described to such terms in accordance with *Annex A: Definitions and common terms*.
- 1.2. *Interpretation.*
 - (a) The headings contained in this Agreement shall not be used in its interpretation.
 - (b) References to the singular shall include references in the plural and vice versa, words denoting a gender shall include any other gender where the context requires, and words denoting natural persons shall include any other Persons.
 - (c) References to a treaty, directive, regulation, law or legislative provision shall be construed, at any particular time, as including a reference to any modification, extension or re-enactment of the respective treaty, directive, regulation, law or legislative provision at any time then in force and to all subordinate legislation enacted from time to time.
 - (d) In the event there arises a conflict between provisions of the Agreement, the last provision to have been written chronologically shall take precedence.
 - (e) Any reference in this Agreement to a Person acting under the direction of another Person shall not include any action that is taken in contravention of any Applicable Law or Standards, unless the relevant Person can demonstrate that an explicit instruction or direction was given to take the relevant action.

- (f) Unless expressly stated to the contrary, any reference in this Agreement to the right of consent, approval or agreement shall be construed such that the relevant consent, approval or agreement shall not be unreasonably delayed or withheld. The Parties agree and acknowledge as follows:
 - (i) neither Party shall 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 (including Technical specifications (Scope of Service));
 - (d) Clarifications of the Contractor’s Proposal;
 - (e) Contractor’s Proposal;
 - (f) All other Annexes of the Agreement.

Section II. General terms and conditions

- 2.1 *Engagement.* 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 endeavor 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 and its Sub-Contractors are professionally qualified, registered, and licensed to practice in [●], to duly and diligently perform the Study in accordance with statutory legal acts of [●].
- 2.4 *General Obligations of Contractor.* The Contractor shall be responsible for the professional quality, technical accuracy, and coordination of all concepts, programming, reports, designs, drawings, specifications, and other services furnished under this Agreement. The Contractor shall have an obligation, without additional compensation of any kind, to correct or revise any errors, deficiencies, or omissions in concepts, programming, reports, designs, drawings, specifications, estimates, and other services rendered hereunder and forming part of the Study.
- 2.5 *Acceptance Not a Waiver.* The Principal’s review, approval, acceptance, or payment for the Works forming part of the Study shall not be interpreted or construed to operate as a waiver of any right or cause for action arising out of the Contractor’s performance of any Works under this Agreement. The Contractor shall remain liable to the Principal as allowed under this Agreement and under Applicable Law for any and all costs and/or Damages caused by the Contractor’s negligent performance of any of the Works and Study 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. *Additional Action Necessary for the Study.* The Contractor shall furnish testing, inspections, and reports as necessary for the carrying out of the Study such as structural, mechanical, chemical, and other laboratory tests, inspections, and reports as described in *Annex B: Technical Specification*.
- 3.4. *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. The Principal is not limited to provide any answer and information to the Contractor by e-mail.
- 3.5. *Accounting and Auditing Services.* The Principal shall furnish accounting and auditing services as may be necessary for the Study as the Principal may require ascertaining how and/or for what purposes the Contractor has used the funds paid under the terms of this Agreement.
- 3.6. *Action Upon Becoming Aware of Defects.* In the event the Principal observes or otherwise becomes aware of any error, fault, omission, or defect in the Study or non-conformance of any action forming part of the Study with the Documentation or information, the Principal shall give prompt notice thereof to the Contractor. The Contractor shall have the obligation to correct such error, fault, omission, or defect in the Study or non-conformance of any action forming part of 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 or information furnished by the Principal 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 is properly qualified and competent in accordance with the relevant Standards;
 - (c) ensure that all maps, drawings, plans, specifications, estimates, surveys and other documents and information 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, documents and information;
 - (d) at all times during the term of the Study, ascertain and comply with all Applicable Laws and Good Industry Practice of the Republic of Latvia, as well as the local mandatory statutory laws and regulations of the locations where the Study will be practically carried out;
 - (e) comply, where applicable, with any reasonable requirements of the Principal not otherwise provided for in this Agreement;
 - (f) ensure that all designs are performed, and that the design process is documented, and all documents and information is furnished in accordance with Good Industry Practice, and using conventional industry quality control methods; and

- (g) notify the Principal of any Defects in accordance with Clause 7.3 of this Agreement as soon as such Defects are identified by the Contractor.
- 4.4. *Maintenance of Records.* During the term of the Study and during ten (10) years from expiration or termination of this Agreement for any reason whatsoever, the Contractor shall keep and maintain clear, adequate and accurate records and Documentation evidencing, to the reasonable satisfaction of the Principal, that the 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 to be accessed in a generally recognized format for a period of ten (10) years from the date of expiration or termination of this Agreement. 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.*
- (a) 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 Law of the Republic of Latvia. Parties shall specify the name, contact details and legal representative(s) of each Approved Sub-Contractor as of the Effective Date in *Annex E: List of approved Sub-Contractors and Staff*. The Contractor shall have an obligation to notify the Principal in writing of any changes to Sub-Contractor 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 or Staff member which it may subsequently engage toward provision of the Study.
 - (b) Pursuant to the Public Procurement Law of the Republic of Latvia the Contractor shall obtain prior written consent of the Principal for the replacement of each Sub-Contractor or each Staff member, or each key personnel indicated in *Annex E: List of approved Sub-Contractors and Staff* and involvement of additional Sub-Contractors or Staff members, or key personnel.
 - (c) Review and evaluation of the replacement of Sub-Contractors or Staff shall be carried out, and the consent or refusal to give consent shall be rendered by the Principal in accordance with Section 62 of the Public Procurement Law of the Republic of Latvia.
 - (d) The Contractor shall not involve employee and/or staff (including but not limited to key office-holders, key personnel (including but not limited to Project manager, Geotechnical expert) who have a criminal record, in the implementation of the Agreement.
 - (e) The Contractor shall submit to the Principal the name, surname, personal code (identification number), professional title (job position) of every natural person that will implement the Agreement and/or will be present on site at least ten (10) Working Days prior involvement of this person in the implementation of the Agreement and/or its presence on site. Contractor shall provide a brief (concise) description of duties towards the implementation of the Agreement of the persons, and, if requested by the Principal.
 - (f) The Principal has a right to demand dismissal of such a natural person non-compliant with the security clearance requirements stipulated in this Clause 4.6 at the Principal's sole discretion on the basis of the Principal's written request for dismissal. Parties agree that such Principal's decision is in-contestable.
 - (g) The Contractor 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 and/or the Principal has demanded his/her dismissal according to Clause 4.6(f) and to prevent (i) involvement of such a natural person in the implementation of the Agreement and (ii) the presence of this person in the real estate, construction site or any other site of the Principal. The Contractor shall immediately undertake all the necessary actions and measures to ensure that any risk of involvement of such a natural person in the implementation of the Agreement is promptly and duly eliminated.
 - (h) In case mentioned in Clause 4.6(f) the Contractor is obliged:
 - (i) to immediately replace the dismissed person according to Section 62 of the Public Procurement Law of the Republic of Latvia and the Agreement, and

- (ii) to comply with the Principal's written instructions pursuant to this Clause 4.6 and not to challenge these instructions, and
- (iii) to inform the Principal about dismissal or replacement proceedings pursuant to this Clause.

In case if the immediate dismissal or replacement of the dismissed natural person non-compliant with the security clearance requirements stipulated in this Clause 4.6 results in the unreasonable increase of the costs towards the Contractor, the Contractor shall immediately inform the Principal about this fact in written and the Parties shall agree upon the conditions of the provision of the Study.

The Contractor's non-compliance with the security clearance requirements stipulated in this Clause 4.6, the Principal's instructions towards the Contractor regarding these security clearance requirements or other provisions of this Clause 4.6 constitutes a material breach (breach of a material term or condition) of the Agreement.

- 4.7. *Responsibility for Performance by Sub-Contractors and Staff.* 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 and Staff 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 with any persons. The Contractor shall arrange Study's communication's planning meetings as described in *Annex B: Technical Specification* (or more frequently, to the extent mutually agreed by the Parties), at which personnel of the Contractor and the Principal as mentioned in *Annex B: Technical Specification* shall be present. The Contractor shall record all meetings (also online meetings) between Parties and prepare meeting reports within five (5) Working Days after each meeting. All meeting reports shall be harmonized by Principal.
- 4.10. *Compliance with Laws.* The Contractor shall review the Applicable Laws that is 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 the information provided by the Principal or in the preparation or provision of Study 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 a procura holder of an Approved Sub-Contractor, or is authorized to represent or act on behalf of an Approved Sub-Contractor with respect to any activity related to any subsidiary company of such Approved Sub-Contractor, and such Person has been accused of commitment of any of the following criminal offences pursuant to an order issued by a public prosecutor or was found to be guilty of commitment of any of the following criminal offences in accordance with a court judgment that has entered into legal force, is non-disputable and non-appealable:
 - (i) establishment, management of, involvement in criminal organization or another criminal organization or in an organized group included in the criminal organization or other criminal formation, or participation in the criminal offences committed by such organization;
 - (ii) bribe-taking, bribery, misappropriation of a bribe, intermediation toward giving or taking of a bribe, acceptance of a prohibited benefit or commercial bribing, unauthorized participation in property transactions, unlawful claiming of benefits, accepting or providing benefits, trading influences;
 - (iii) fraud, misappropriation of funds or money laundering;

- (iv) tax evasion or evasion of payments equivalent to tax;
- (v) terrorism, terrorism funding, creation or organization of terrorist group, traveling for terrorist purpose, justification of terrorism, instigation of acts of terrorism, terrorist threats or recruitment and training of a person with the aim of committing acts of terrorism;
- (vi) human trafficking;
- (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 labor 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 program;
- (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 organized 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;
- (f) the Person is an entity registered offshore or offshore association of persons;
- (g) International or national sanctions or substantial sanctions by the European Union or the North Atlantic Treaty Organization Member State affecting the interests of the financial and capital market has been imposed to the Person and such sanctions can affect the execution of the Contract; and
- (h) 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: “Co-financed by the Connecting Europe Facility of the European Union”;
 - (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 utilize the above logo, the Contractor shall ensure that the individual elements forming part of the logo are not separated (the logo shall be utilized as a single unit) and sufficient free space is ensured around the logo; and

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

4.14. *Reporting.* The Contractor shall, in a format and at intervals to be agreed with the Principal:

- (a) provide the Principal with regular reports and status updates on the progress of the Works.
- (b) report on any changes to the Annexes of this Agreement, including but not limited to Study Schedule and Estimated Costs, which the Contractor considers may be needed in order to fulfil the objectives set out in the Agreement; and
- (c) use reasonable endeavors to provide any other information and status updates as may be reasonably requested by the Principal at any time.

In order to avoid any doubt, any change to the above-mentioned documentation can be made only pursuant to this Agreement, if agreed by both Parties, and, if the proposed changes are compliant with the Public Procurement Law of the Republic of Latvia.

Section V. Representations and Warranties

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

- (a) it has entered into this Agreement with the aim of attaining all of the objectives and performing in all material respects all of the obligations and commitments herein set forth;
- (b) it has entered into this Agreement without having any intention or goal whatsoever to violate the Applicable Law, its own Articles of Association, other constitutional documents, laws 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 favorable 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 this Agreement and *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 has not been registered as a VAT payer in the Republic of [COUNTRY] [IF APPLICABLE];
- (g) it is compliant with all of the requirements of the Contractor’s Declaration contained in *Annex I: Declaration of Contractor* and will continue to be compliant with all such requirements during the term of this Agreement;
- (h) 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 Contractor 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 [COUNTRY] (the “Residence Certificate”)*” confirmed by Competent Authority of the [COUNTRY] 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. The Principal is entitled to make any deductions from the payments due to the Contractor if the Contractor doesn’t comply with this provision [IF APPLICABLE]; and
- (i) immediately arrange for engagement of supplemental personnel when necessary at the cost of the Contractor. For the avoidance of any doubt, the engagement of supplemental personnel shall not require approval by the Principal, provided that this personnel complies with the Applicable Law, including the Public Procurement Law of the Republic of Latvia, and this Agreement.

Section VI. Fee and Payment

- 6.1 *Fee.* In consideration of provision of the Study, the Principal undertakes to pay the Contractor a Fee 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 the Study. The Fee specified in accordance with this Clause 6.1 excludes value added tax that will be charged at the rate applicable in accordance with Applicable Law at the time of invoicing.
- 6.2 *Invoicing.* According to *Annex D: Fee and Payment Schedule* and following each Completion Date and/or Final Acceptance Date, provided that the Principal has accepted/approved the particular Deliverable of the Study which the invoice related to, the Contractor shall deliver to the Principal an invoice specifying the amount of the 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 in the form chosen by the Principal to this effect shall be given by the Principal to the Contractor not later than seven (7) days before the due date for payment under this Clause 6.2. This 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 Agreement. 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 7.4, 7.5, 7.6 and 7.7 of this Agreement.
- 6.3 *Payment.* Subject to the provisions of Clause 6.2, the Principal reserves the rights to make the payments to the Contractor with set-off, retention, counterclaim, abatement or other deduction of any kind that arises from this Agreement and from the obligations of the Contractor provided herein (i.e. in cases of accrued contractual penalty amounts, in case if the Principal haven’t received residence certificate as stipulated in this Agreement, 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 or other right.

Invoices shall be paid within thirty (30) 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 the both Parties, taking into account that the Study shall be accepted by the Principal in accordance with Clauses 7.4, 7.5, 7.6 and 7.7 of this Agreement.

- 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 [COUNTRY].* 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 (the “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 [COUNTRY] and in accordance with Applicable Law of [COUNTRY]. In addition, the Contractor shall assume all risks associated with the payment or obligation to pay such taxes and duties, if any. The Contractor assumes all risks associated with the possible increase in the amount of the Fee arising as a result of the obligation of having to pay any such taxes or duties.
- 6.6 *Invoice.* The Contractor’s invoices shall contain the following Contractor’s details and details about the Agreement:

Contractor	[●]
Registration No	[●]
VAT payer's No or indication that the Contractor is not a VAT payer	[●]
The Principal's VAT No	LV40103845025
Legal address, city, Zip code, country	[●]
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 8/20[●] (CEF Contract No INEA/CEF/TRAN/M2016/1360716, Activity No 2, Contract Manager: Karli Kontson

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

Section VII. Commencement of Study, remedying of Defects and acceptance

- 7.1 *Study Commencement.* The Contractor shall not commence provision of the Study until Study Start Date, as identified in accordance with *Annex C: Schedule of Study* and shall ensure that the Deliverables are furnished to the Principal on or before each relevant Study Milestone. The Contractor shall perform the Study timely and 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 and Public Procurement Law of the Republic of Latvia.
- 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:
- 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
 - 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 each Defect as soon as Defect is identified by the Principal and the

Contractor shall have an obligation to notify the Principal of each Defect as soon as Defect is identified by the Contractor. Upon discovering a Defect, or upon receipt by the Contractor of a notification of Defect from the Principal, the Contractor shall seven (7) days (unless otherwise specified by the Principal) to remedy the Defect (the “Cure Period”). In the event of inability or failure by the Contractor to remedy the Defect within the Cure Period, the Principal shall be entitled, at 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 Defect, such time period to be determined in the sole discretion of the Principal;
- (b) remedy the Defect 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. Termination and suspension*; or
- (d) remedy the Defect in accordance with Clause 7.3.

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

- 7.4 *Completion of Study and Completion 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 the *Annex B: Technical Specification* and *Annex C: Schedule of Study* by the relevant Study Milestone. On meeting a Study Milestone and/or producing a Deliverable (including all Documentation and information 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 Notice* (hereinafter, the “Provisional Completion Note”). The Provisional Completion Note shall include the Deliverable and adequate supporting Documentation and information 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 as specified in the *Annex B: Technical Specification* and *Annex C: Schedule of Study* 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 and in the Agreement, 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 Applicable Law; 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 and information 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. In the event

the Principal objects to the issuance of a Provisional Completion Note in accordance with this Clause 7.6, it shall give the second Objection Notice to the Contractor in the previously mentioned order. For the avoidance of any doubt, the giving by the Principal of any Objection Notice under Clause 7.5 or second Objection Notice under this Clause 7.6 shall be without prejudice to and shall not relieve the Contractor from the obligation to pay any contractual penalty in accordance with the provisions of Clause 10.2 or to pay Damages in accordance with the provisions Clause 10.3 of this Agreement.

- 7.7 *Final Acceptance.* Final acceptance of the Study shall occur upon remedying by the Contractor of all Defects notified by the Principal to the Contractor in accordance with Clause 7.3, irrespective of the extent or nature of such Defects. Final acceptance shall be evidenced by means of the Principal issuing and both Parties attaching their signatures to the Final Acceptance Note substantially in the form of *Annex H: Form of Final Acceptance Note* (the “Final Acceptance Note”). In the event the Principal objects to the issuance of the Final Acceptance Note, no later than on the Defects Date, the Principal shall give notice to the Contractor setting out in reasonable detail all Defects which remain un-remedied, or reason(s) for refusal to issue the Final Acceptance 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 at the moment of creation 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 and 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 and information 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 and information, or any part thereof, and distribute copies of the Documentation and information or any part thereof;
 - (b) the right to modify, amend and supplement the Documentation and information, or any part thereof;
 - (c) the right to license the Documentation and information, or any part thereof, for use by others; and
 - (d) the right to transfer ownership in the Documentation and information, 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, 7.5, 7.6 and 7.7 the Principal shall be deemed to have granted the Contractor an irrevocable and exclusive license 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 and information, or any part thereof, for the purposes of performing, implementing or modifying the Study; and

- (c) the Documentation and information, 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 and information 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. Intellectual Property Rights* 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 and information. 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 and information 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 defense against claims alleging infringement of Intellectual Property and shall be entitled to reimbursement by the Contractor of reasonable costs and expenses incurred toward such defense.
- 8.8 *Continued Use.* In the event a court of competent jurisdiction resolves in a binding judgment that the Documentation and information, 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 and information, or part thereof infringing Intellectual Property of a third party.
- 8.9 *License in Intellectual Property of the 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 endeavors 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 and Costs 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 does not 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’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. These materials also shall not contain any information or data that shall be used in accordance to any conditions and requirements set forth by the Principal or other entity; in this case the Contractor shall comply with such conditions and requirements.

Section IX. Termination and suspension

- 9.1 *Termination for Material Breach or Bankruptcy.* Subject to the provisions of Clause 9.2, either Party shall be entitled to terminate this Agreement upon giving a written notice of termination to the other Party in the event of material breach by the other Party of any of its obligations under this Agreement. The written notice of termination shall contain an itemized description of the breach. For the purposes of this Clause 9.1 an event of material breach shall include any of the following:
- (a) commitment by a Party of any persistent or material breach of this Agreement (which shall include failure to pay an amount of at least EUR 5,000 due to the other Party or perform any part of the 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) Working Days from the date of payment falling due;
 - (e) any of the representations or warranties given by either Party under Clause 5.1 or any of the representations or warranties given by the 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 9.3. 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.*
- (a) 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:
 - (i) breach by the other Party of Clause 16.2;
 - (ii) an event of Force Majeure has been continuing during more than sixty (60) days;
 - (iii) the other Party had passed a resolution for winding-up (other than in order to amalgamate or reconstruct);
 - (iv) breach by the Contractor any of the confidentiality undertakings contained in *Section XI. Force Majeure*;
 - (v) the other Party is unable to pay its debts and has presented a petition for voluntary bankruptcy;
 - (vi) the other Party had a bankruptcy order issued against it;
 - (vii) liquidation, insolvency or legal protection proceedings have been initiated with respect to the other Party or the other Party is declared insolvent;

- (viii) the occurrence of any event analogous to the events enumerated under Clauses 9.3(a) (v) - (vii) under the law of any jurisdiction to which the other Party's assets and undertaking are subject.
- (b) *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:
- (i) CEF Co-financing for further financing of the Study are not available to the Principal fully or partly;
- 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.
- (ii) it is not possible to execute 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.
- (c) *Termination according to Public Procurement Law.* The Agreement can be immediately terminated 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 Section 64 of the Public Procurement Law. In such a case, the Principal shall pay the Contractor the fees in respect of the Works and 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.
- 9.4 *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, 8.5, 8.6, 8.7, 8.8, 8.9, 8.11, 8.12, 8.13, 9.6, 10.1, 10.2, 10.3, 16.2, 16.6, 16.8, 16.9 and *Section XII. Confidentiality, Section XIII. Right to Audit, Section XIV. On-the-spot-visits and Section XV. Governing Law and Resolution of Disputes* 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 9.5(b).
- 9.6 *Partial Acceptance.* Notwithstanding anything in this Agreement to the contrary including, without limitation, the provisions of Clauses 7.4, 7.5, 7.6 and 7.7 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, or termination by the Principal according to Clause 9.3(b) or 9.3(c) 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, due to the application of international sanctions, breach by the Contractor, insolvency of the Contractor or a Force Majeure Event under *Section XI. Force Majeure*:

- (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, 7.6 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 five percent (0.5%) of the amount of total the Fee payable under this Agreement with respect to the relevant Study period for each day of delay starting from the first delayed day 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 6.1, the Principal shall be liable to pay the Contractor a penalty of zero point five percent (0.5%) 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 120 000,00 (one hundred twenty thousand euros).

10.6 *Insurance Against Liability.* The Contractor shall insure against public/third party liability (Professional risk indemnity insurance).

- 10.7 *Obligation to Effect Insurance.* The Contractor undertakes to effect such insurance with an insurer and on terms and conditions acceptable to the Principal. The limit of Professional risk indemnity insurance liability (Clause 10.6) for the insurance coverable shall be no less than EUR 120 000,00 (one hundred twenty thousand euros) per claim/occurrence during the whole period of performance of the Agreement. The costs of such insurance shall be at the expense of the Contractor.
- 10.8 *Insurance Certificate.* Before entering into the Agreement, the Contractor shall provide certificate from its insurer or broker stating that the insurance required under this *Section X. Liability* are in full force and effect. The Contractor shall maintain it in force as long as it is necessary to accomplish any obligations according to this Agreement. In addition, the Contractor shall provide not less than thirty (30) days prior written notice to the Principal of any cancellation or material reduction in the insurance. The Contractor is obliged to submit to the Principal a copy of a renewed insurance certificate or a new insurance certificate including the provisions set in Clause 10.6 within five (5) Working Days before the date of expiry of the previous insurance certificate.

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 endeavors in accordance with Good Industry Practice to remedy its failure to perform; and
 - (b) not be relieved from liability under this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to any failure to comply with its obligations under Clause 11.2(a).
- 11.3 *Notification Requirements.* Upon the occurrence of a Force Majeure Event, the affected Party shall notify the other Party as soon as reasonably practicable and in any event within ten (10) Working Days of it becoming aware of the relevant Force Majeure Event. Such notification shall give sufficient details to identify the particular event claimed to be a Force Majeure Event and shall contain detailed information relating to the failure to perform (or delay in performing), including the date of occurrence of the Force Majeure Event, the effect of the Force Majeure Event on the ability of the affected Party to perform, the action being taken in accordance with Clause 11.2(a) and an estimate of the period of time required to overcome the Force Majeure Event. The affected Party shall provide the other Party with any further information it receives or becomes aware of which relates to the Force Majeure Event and provide an update on the estimate of the period of time required to overcome its effects.
- 11.4 *Notification of Resumed Performance.* The affected Party shall notify the other Party as soon as practicable once the performance of its affected obligations can be resumed (performance to continue on the terms existing immediately prior to the occurrence of the Force Majeure Event).
- 11.5 *Mitigation of Effects of Force Majeure.* As soon as practicable after the notification specified pursuant to Clause 11.3, the Parties shall use reasonable endeavors 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 and information which contain or otherwise reflect or are derived from such information, but excludes information which:
- (a) the Principal confirms in writing is not required to be treated as confidential; or
 - (b) the Contractor can show that the Confidential Information was in its possession or known to it (by being in its use or being recorded in its files or computers or other recording media) prior to receipt from the

Principal and was not previously acquired by the Contractor from the Principal under an obligation of confidence; or

- (c) was developed by or for the Contractor at any time independently of this Agreement.

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

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

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

- (a) that is reasonably required by the Contractor in the performance of its obligations pursuant to this Agreement, including the disclosure of any Confidential Information to any employee, contractor, agent, officer, Sub-Contractor (of any tier) or adviser to the extent necessary to enable the Contractor to perform its obligations under this Agreement;
- (b) to enable a determination to be made pursuant to *Section XIV. On-the-spot-visits*;
- (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 XII. Confidentiality* may cause the owner of Confidential Information to suffer irreparable Damages that could not be adequately remedied by an action at law. Accordingly, the Contractor agrees that the owner of Confidential Information that is disclosed in breach of Clauses 12.2, 12.4 or 12.6 may be entitled to specific performance of those provisions to enjoin a breach or attempted breach thereof and to any other remedy, including, inter alia, damages and injunctive relief, awarded by a court of competent jurisdiction.

Section XIII. Right to Audit

13.1 *Right to Audit.* Notwithstanding anything to the contrary set forth in this Agreement including, the Principal itself, a reputable outside independent body or expert engaged and authorized by the Principal shall be entitled to inspect and/or audit the Contractor to ensure compliance with the terms of this Agreement, including inspecting and/or auditing:

- (a) the performance of any aspect of the 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. Right to Audit*. 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. Right to Audit* 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 authorized staff or representatives of the Principal or by any other outside body or third party authorized 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 authorized 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 authorized outside body or third party access to all the information and documents, including information and documents in electronic format, which is requested by the authorized staff of the performer of the on-the-spot visit or any other authorized 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 authorized staff of the performer of the on-the-spot visit or any other authorized 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 one (1) month from the date of serving of the respective written complaint to the other Party, the Parties shall submit all their disputes arising out of or in connection with this Agreement to the exclusive jurisdiction of the courts of 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 Section 61 of the Public Procurement Law of the Republic of Latvia.
- 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:

Signature:

Name, title:

Signature:

Name, title:

Bank details:

Signature:

Name, title:

Bank details:

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, these terms shall include any legislative act or directive relevant to public procurement.
- (c) “Approved Staff”, any person or organization 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 organization 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 Date”, as defined in accordance with Clause 7.4 and 7.6, as appropriate.
- (f) “Confidential Information”, as defined in accordance with Clause 12.1 of the Agreement.
- (g) “Contractor”, the company [•], as further specified in the Preamble of this Agreement, which is employed by the Principal as an independent professional contractor to perform the Study, and legal successors to the Principal and permitted assignees of the Principal.
- (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 Works relating to the Study;
 - (v) costs of all employee benefits and taxes for items such as social security and other benefits for the labor and employees;
 - (vi) costs, including transportation and maintenance, of equipment and hand tools not owned by workmen employed by the Contractor which are employed or consumed toward the Study;
 - (vii) payments for rental charges for machinery, equipment, facilities and tools used in connection with the Study, and payments for installations, repairs, replacements, dismantling, removal, lubrication, transportation and delivery of those rental items;
 - (viii) other transportation costs incurred in connection with the Study;
 - (ix) that portion attributable to this Agreement of premiums for insurance that is required by this Agreement (if applicable) 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 Works under this Agreement (if applicable), 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”, a part of the Study which is not in accordance with *Annex B: Technical Specification, Annex C: Schedule of Study*, the Applicable Law or Good Industry Practice.
- (m) “Defects Date”, a date specified in accordance with *Annex C: Schedule of Study* by which date the Principal or the Contractor is obliged to notify about each Defect in the each Deliverable.
- (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:
 - (i) an act of the public enemy or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;
 - (ii) an act of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;
 - (iii) a natural disaster or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);
 - (iv) nuclear, chemical or biological contamination;
 - (v) pressure waves caused by devices travelling at supersonic speeds;
 - (vi) discovery of fossils, antiquities or unexploded bombs; and/or
 - (vii) strike, lockout or other industrial action other than involving the Contractor or the Principal.
- (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 Work, Study 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 neighboring rights, rights in computer software and database and topography rights), know how or unregistered design right.
- (x) “Intellectual Property of the 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) “Project”, development of a 1435 mm standard gauge railway line in the 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).
- (cc) “Principal”, the company RB Rail AS, as further specified in the Preamble of this Agreement, which employs the services of the Contractor, and legal successors to the Contractor and permitted assignees of the Contractor.
- (dd) “Provisional Acceptance Note”, as defined in accordance with Clause 7.5.
- (ee) “Provisional Completion Note”, as defined in accordance with Clause 7.4.
- (ff) “Railway”, a new fast conventional double track electrified railway line according TSI INF P2-F1 criteria and European standard gauge (1435 mm) on the Route.
- (gg) “Residence Certificate”, a certificate mentioned in Clause 5.2(h).
- (hh) “Right of Partial Acceptance”, as defined in accordance with Clause 9.6.
- (ii) “Standards”, CEF Standards and Grant Agreement Standards.
- (jj) “Study”, Quality assessment study on usage of local mineral materials in Lithuania for Rail Baltica Global Project - Engineering Services, that shall be done in accordance with *Annex B: Technical Specification*;
- (kk) “Study Milestone”, the date for delivery of one or more Deliverables, as set out in *the Annex B: Technical Specification* and *Annex C: Schedule of Study*.
- (ll) “Study Start Date”, as specified in accordance with *Annex C: Schedule of Study*.
- (mm) “VAT”, value added tax.
- (nn) “Working Day”, any day (other than Saturday or Sunday) on which banks in the Republic of Latvia are open for conduct of business.
- (oo) “Works”, all incidental works, steps and actions performed by the Contractor for the attainment of the objectives of the Study and/or the Project.

Annex B: Technical Specification

Annex C: Schedule of Study

1. Study Start Date: Commencement date of the Agreement.
2. Deliverables:

Deliverables/Reports	No. of copies	Submission schedule/ Study Milestone dates	Approval by the Contracting authority
Inception Report	1 hard copy, 1 soft copy	CD* + 2 weeks	Within 2 weeks after reception
Interim Report	1 hard copy, 1 soft copy	CD* + 8 weeks	within 2 weeks after reception
Final Report	1 hard copy, 1 soft copy	CD* + 12 weeks	within 4 weeks after reception

(*) CD: commencement date of the Agreement.

3. The Principal will accept all reports as describe in Clauses 7.5 and 7.6 only if they will be provided fully in good and enough quality and covers full scope defined in *Annex B: Technical Specification*.
4. The Principal may provide comments or remarks to Inception Report and Interim Report after signing of the Provision Acceptance Note. In such situations the Contractor shall implement and/or consider mentioned comments and remarks until the submission of subsequent report.

Annex D: Fee and Payment Schedule

1. **Fee:** Fee in the amount of [•] EUR ([amount] euro and [amount] cents) and value added tax (VAT) at the prevailing rate (* currently [•]%) amounting to [•] EUR ([amount] euro and [amount] cents) [IF APPLICABLE].
2. **Schedule of payment of Fee:** after delivery of the following Deliverables and acceptance by signing of the Provisional Acceptance Note or Final Acceptance Note the Principal shall pay following amount of the Fee:

Deliverable	Payment amount	
	%	EUR
Interim Report	30	[•]
Final Report	70	[•]

Annex E: List of approved Sub-Contractors and Staff

[A LIST OF ALL SUB-CONTRACTORS AND/OR SUPPLIERS THE CONTRACTOR ANTICIPATES TO ENGAGE TOWARD PROVISION OF THE STUDY. PLEASE INDICATE NAME, CONTACT DETAILS AND LEGAL REPRESENTATIVE(S) OF EACH SUB-CONTRACTOR]

Annex F: Form of Provisional Completion Note

No [INSERT NUMBER]

Date: [INSERT DATE IN THE FORM OF 1 January 2018]

Location: [INSERT LOCATION]

For:

RB Rail AS

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

(hereinafter, the “Principal”)

This provisional completion note (the “Provisional Completion Note”) is issued to the Principal by [.] [INSERT NAME, REGISTRATION NUMBER, INSERT 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 Definitions 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 *Annex B: 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 2018], 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 IN THE FORM OF 1 JANUARY 2018] 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, or twenty-eight (28) days as according to the Agreement 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 2018]

Location: [INSERT LOCATION]

For: [•] (the “Contractor”)

This Provisional Acceptance Note (the “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 Definitions shall have the meaning ascribed to such terms in accordance with the [INSERT AGREEMENT DATE] Agreement on [INSERT AGREEMENT NAME] 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 7.5 of the Agreement, 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”).

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

INSERT COMPANY NAME]

Annex H: Form of Final Acceptance Note

No [INSERT NUMBER]

Date: [INSERT DATE IN THE FORM OF 1 January 2018]

Location: [INSERT LOCATION]

For: [•] (the “Contractor”)

This Final Acceptance Note (the “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 Definitions shall have the meaning ascribed to such terms in accordance with the Agreement on [INSERT AGREEMENT NAME] 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

Annex I: Declaration of Contractor

I, the undersigned duly authorized representative, on behalf of *[NAME OF THE CONTRACTOR]* 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 labor 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 15 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, color, 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 agreement, 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 favorable than the best conditions prevailing locally (i.e., as contained in: (i) collective agreements 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 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 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 suppliers:
 - a. Who, or its member of the Management Board or the Supervisory Board or procurator of such supplier, or a person having the right to represent such supplier 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, management of criminal organization;
 - ii. fraud, misappropriation or laundering, human trafficking;
 - 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 agreement aimed at restricting the opportunity of a purchaser to determine the resale price, or horizontal cartel agreement, 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 program;

- 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 supplier to participate in the tender), economic activity of such supplier has been suspended or discontinued, proceedings regarding bankruptcy of such supplier have been initiated or such supplier will be liquidated;
- e. who has tax debts in the country where the procurement is organized or a country where such supplier 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.

[SIGNATURE] [NAME, LAST NAME] [POSITION] [DATE]

Annex J: Contractor’s Proposal

[CONTRACTOR’S PROPOSAL]