



SERVICE AGREEMENT

*RAIL BALTICA GLOBAL PROJECT DESIGN REVIEW AND APPROVAL PROCESS IMPROVEMENT
(SIX-SIGMA)*

between

RB Rail AS

("Company")

and

[●]

("Contractor")

Agreement registration No. [●]

Procurement procedure identification No. RBR 2023/16

Riga

2023



**Co-funded by
the European Union**

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SERVICE AGREEMENT

Rail Baltica Global Project Design Review and Approval Process Improvement (Six-Sigma)

This Agreement is entered into in Riga, on [date OR the date indicated on the timestamp of the last signature of the Agreement], by and between:

- (1) **RB Rail AS**, a joint stock company registered in the Latvian Commercial Register with registration No. 40103845025, legal address at Satekles iela 2B, Riga, LV-1050, Latvia (the "Company"), represented by [●], and
- (2) [●], a [●] company registered in [●] with registration No. [●], legal address at [●] (the "Contractor"), represented by [●], on the other side,

(the Company and the Contractor referred to as the "Parties" and separately – as the "Party").

WHEREAS:

- (A) this Agreement is entered into under the Rail Baltica Global Project which includes all activities undertaken by the respective beneficiaries and implementing bodies of the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania in order to build, render operational and commercialise the Rail Baltica railway – a new fast conventional double track electrified railway line with 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 (the "Global Project");
- (B) the Company has organised a procurement procedure "Rail Baltica Global Project Design Review and Approval Process Improvement (Six-Sigma)" (identification No. RBR 2023/16) (the "Procurement Procedure") where the tender proposal submitted by the Contractor (the "Contractor's Proposal") was selected as the winning bid;
- (C) This Agreement is co-financed from the Connecting Europe Facility funding instrument ("CEF") and other recently signed grant agreements or future grant or financing agreements to be signed;

THEREFORE, the Parties agree as follows:

1. DEFINITIONS, INTERPRETATION AND ORDER OF PRECEDENCE

- 1.1. Definitions. In this Agreement, unless the context requires otherwise, the following definitions shall have the following meaning:
 - 1.1.1. "Acceptance Deed" as defined in Clause 3.5.
 - 1.1.2. "Analyse" means the third of five commonly known SIX-SIGMA phases, which, inter alia, includes: 1) the obligation to perform a set of tasks referred in Clause 40 of the Technical Specification and other clauses of the Technical Specification (in case relevant to the particular phase); 2) performance of other duties which, based on Good Industry Practice, are part of the performance of the particular SIX-SIGMA phase.
 - 1.1.3. "Annex" means any of the annexes enclosed to this Agreement and listed in Clause 1.3.
 - 1.1.4. "Agreement" means this Agreement together with all its Annexes; whenever in the Agreement there is a reference to the Agreement, it includes a reference to all its Annexes, and reference to specific Annex following the reference to the Agreement is without prejudice to it.
 - 1.1.5. "Applicable Laws" means any legislative act, regulation, decree, order, ordinance, statute, treaty, directive, judgment, or other legislative measure applicable to the Agreement, the Services, the Parties, etc. (including, but not limited to the Public Procurement Law of the Republic of Latvia).
 - 1.1.6. "Approved Experts" means persons (Project manager or experts) listed in Annex A whose involvement the Contractor has indicated in the Contractor's Proposal and which meet the requirements referred to in Clause 8.4.2 or 8.4.3 of the Procurement Regulations.
 - 1.1.7. "Approved Sub-Contractor" any person or organisation listed in Annex A which is in a contractual relationship with the Contractor to provide a part of the Services.
 - 1.1.8. "Business day" means any day except Saturday, Sunday and any day which is a public holiday in the Republic of Latvia.

- 1.1.9. "CEF" as defined in the Preamble of the Agreement.
- 1.1.10. "Company" as defined in the above list of the parties to the Agreement.
- 1.1.11. "Completion Date" as defined in Clause 3.6(a).
- 1.1.12. "Confidential Information" as defined in Clause 14.1 of the Agreement.
- 1.1.13. "Contractor" as defined in the above list of the parties to the Agreement.
- 1.1.14. "Contractor's Proposal" as defined in the Preamble of the Agreement and enclosed in **Annex B** to the Agreement.
- 1.1.15. "Control" means the fifth of five commonly known SIX-SIGMA phases, which, inter alia, includes: 1) the obligation to perform a set of tasks referred in Clause 42 of the Technical Specification and other clauses of the Technical Specification (in case relevant to the particular phase); 2) performance of other duties which, based on Good Industry Practice, are part of the performance of the particular SIX-SIGMA phase.
- 1.1.16. "Corrective Period" as defined in Clause 11.3.
- 1.1.17. "Cure Period" as defined in Clause 3.3.
- 1.1.18. "Damages" any cost, claim, damage, demand, loss, expense or liability incurred by the relevant Party.
- 1.1.19. "Defect" means any error, fault, omission, defect or other non-compliance of the Deliverable or the Services with the requirements of the Agreement.
- 1.1.20. "Define" means the first of five commonly known SIX-SIGMA phases, which, inter alia, includes: 1) the obligation to perform a set of tasks referred in Clause 38 of the Technical Specification and other clauses of the Technical Specification (in case relevant to the particular phase); 2) performance of other duties which, based on Good Industry Practice, are part of the performance of the particular SIX-SIGMA phase.
- 1.1.21. "Deliverables" as defined in Clause 2.1.2 of the Agreement.
- 1.1.22. "Documentation" means all documents, records, correspondence, and files of the Contractor, its employees, engineers, consultants, Approved experts, etc. created, developed, subsisting or used in relation to the Deliverable and/or the Services.
- 1.1.23. "Fee" as defined in Clause 4.1 of the Agreement.
- 1.1.24. "First Part" as defined in Clause 2.1.2(c).
- 1.1.25. "Force Majeure Event" means any event which meets all the following criteria:
 - (a) It is an event that cannot be avoided and whose consequences cannot be overcome;
 - (b) It could not be foreseen at the time when the Agreement was concluded;
 - (c) It was not caused by the act of the affected Party or a person under its control;
 - (d) It makes it impossible to fulfil the obligation arising from the Agreement.

For example, these events could be considered as Force Majeure Events if they meet the criteria defined above (this list is not exhaustive)

- (a) an act of the public enemy or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration, or sabotage;
- (b) an act of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;
- (c) 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);
- (d) nuclear, chemical or biological contamination, epidemic or pandemic (except for COVID-19 pandemic);
- (e) strike, lockout or other industrial action other than involving the Company or the Contractor.

- 1.1.26. “Global Project” as defined in the Preamble of the Agreement.
- 1.1.27. “Good Industry Practice” means, 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 Services or services of a similar size, nature, scope, type and complexity, complying with the Applicable Laws.
- 1.1.28. “Improve” means the fourth of five commonly known SIX-SIGMA phases, which, inter alia, includes: 1) the obligation to perform a set of tasks referred in Clause 41 of the Technical Specification and other clauses of the Technical Specification (in case relevant to the particular phase); 2) performance of other duties which, based on Good Industry Practice, are part of the performance of the particular SIX-SIGMA phase.
- 1.1.29. “Intellectual Property” as defined in Clause 10.1 of the Agreement.
- 1.1.30. “Measure” means the second of five commonly known SIX-SIGMA phases, which, inter alia, includes: 1) the obligation to perform a set of tasks referred in Clause 39 of the Technical Specification and other clauses of the Technical Specification (in case relevant to the particular phase); 2) performance of other duties which, based on Good Industry Practice, are part of the performance of the particular SIX-SIGMA phase.
- 1.1.31. “Notice to Proceed” a notice substantially in the form of **Annex D**, that must be given by the Company to the Contractor thus informing the Contractor that the provision of the Services must be started.
- 1.1.32. “Objection Notice” as defined in Clause 3.6(b).
- 1.1.33. “Party” or “Parties” as defined in the above list of the parties to the Agreement.
- 1.1.34. “Person” includes any person, company, body corporate, government, state or agency of a state or any association or partnership (whether or not it is separate legal person).
- 1.1.35. “Presentation” as defined in Clause 2.1.2(a).
- 1.1.36. “Procurement Procedure” as defined in the Preamble of the Agreement.
- 1.1.37. “Procurement Regulations” means the documents governing the requirements of the Procurement Procedure and submission of proposals under the Procurement Procedure.
- 1.1.38. “Report” as defined in Clause 2.1.2(b).
- 1.1.39. “Representatives” as defined in Clause 9.4.
- 1.1.40. “Results Report” as defined in Clause 2.1.2(c).
- 1.1.41. “Right of Partial Acceptance” as defined in Clause 11.9.
- 1.1.42. “Second Part” as defined in Clause 2.1.2(c).
- 1.1.43. “Services” as defined in Clause 2.1.
- 1.1.44. “Signing Date” means the date on which this Agreement is signed by the Parties as indicated above or, if signed with secure electronic signature, the date indicated on the timestamp of the last signature of the Agreement.
- 1.1.45. “Supplier’s Declaration” means Appendix 6¹ to the Common Procurement Standards and Guidelines for the Rail Baltica Project.
- 1.1.46. “Technical Specification” means Annex No 1 “Technical Specification” of the Procurement Regulations attached in **Annex C** to this Agreement.
- 1.1.47. “Variations” as defined in Clause 8.1.
- 1.2. Interpretation.
- (a) The headings contained in this Agreement shall not be used in its interpretation.

¹ https://www.railbaltica.org/wp-content/uploads/2021/06/APPENDIX-6_SUPPLIERS-DECLARATION_June_2021.pdf

- (b) References to the singular shall include references in the plural and vice versa 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) 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.
- (e) A reference to “writing” shall include an e-mail transmission and any means of reproducing words in a tangible and permanently visible form.
- (f) The words “include” and “including” are to be construed without limitation.
- (g) Unless indicated otherwise, all references to “days” shall mean calendar days.

1.3. Annexes. The Agreement contains the following Annexes:

- 1.3.1. Annex A: Approved Experts and Approved Sub-Contractors;
- 1.3.2. Annex B: Contractor’s Proposal;
- 1.3.3. Annex C: Technical Specification;
- 1.3.4. Annex D: Notice to Proceed;
- 1.3.5. Annex E: Acceptance Deed Form;
- 1.3.6. Annex F: Non-disclosure Undertaking Form.

1.4. 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 (body text);
- (b) explanations (clarifications) of the Procurement Procedure documentation provided during the Procurement Procedure;
- (c) the Technical Specification;
- (d) other Procurement Procedure documents with annexes;
- (e) clarifications of the Contractor’s Proposal;
- (f) the Contractor’s Proposal.

2. SERVICES

2.1. Services. The Company hereby engages, and the Contractor accepts such engagement and hereby undertakes to assess the existing Design review and approval process and propose improvements based on the Six-Sigma process improvement methodology (the “Services”) described under this Agreement (including the Technical Specification and other Annexes). The performance of the Services, inter alia, includes:

- 2.1.1. Performing of all the activities related to Define, Measure, Analyse, Improve, Control phases as specified or required under or in relation to the Agreement and;
- 2.1.2. preparation of the following deliverables (the “Deliverables”) to be prepared and submitted by the Contractor to the Company in accordance with the requirements set out in the Agreement (including the Technical Specification and other Annexes):
 - (a) The Contractor must prepare a presentation at the end of the Analysis phase, reflecting the key findings emerging from the execution of the Define, Measure and Analyse phases (the “Presentation”);
 - (b) The Contractor must prepare a report at the end of Improve phase, detailing the methodology required to be followed in order to ensure that the outcome referred in Clause 27 of the Technical Specification is achieved (the “Report”). The Report must include detailed info on methodology and tool that allows to measure the success of outcome of

the Services provided. The first version of the Report must be submitted for the Company's review and comments within the period of [●] ([●]) weeks starting from the moment the Notice to Proceed is issued. The Company shall have 14 (fourteen) days to review the first version of the Report and to provide comments. As far as reasonably practicable, the Contractor must take into account the comments made by the Company and the finalised and enhanced Report must be prepared and submitted to the Company within 14 (fourteen) days after the Company has provided aforementioned comments.

- (c) In the Control phase, the Contractor must prepare the following Deliverable - report on the results, which consists of 2 (two) parts (the "Results Report"), i.e., the first part of the Results Report must be prepared and submitted 3 (three) months after the completion of the Report (the "First Part") and the second part of the Results Report must be prepared and submitted 6 (six) months after the completion of the Report (the "Second Part").

The First Part must reflect on the results achieved (metrics collected by the Company based on the tools/approach proposed in Report) from the moment when the methodology contained in the Report was applied to the Company's processes until the First Part was submitted to the Company. The First Part must also propose the first set of corrective actions that can be used to improve the previously achieved results.

The Second Part must reflect on the results achieved (metrics collected by the Company based on the tools/approach proposed in Report) and from the moment when the methodology contained in the Report was applied to the Company's processes until the Second Part was submitted to the Company. The Second Part must also propose the final set of corrective actions that can be used to improve the previously achieved results.

For the sake of the clarity, preparation and submission of the First Part and the Second Part includes the obligation to present the finalised version of the Results Report in person at the Company's office at Satekles iela 2B, Riga.

The Results Report (as a separate Deliverable) will be deemed to have been completed when the final presentation is presented by the Contractor at the Company's office.

- 2.2. Scope of the Services. The scope of the Services covers all measures, including those not explicitly listed in the Agreement required for due performance of the Services and provision of the Deliverables in accordance with the terms and conditions of the Agreement. When achievement of the above results is not possible without performance of a measure not explicitly listed in the Agreement, then performance of such a measure is considered as contractual obligation of the Contractor according to the Agreement. Such measures include, but are not limited to:
- 2.2.1. interviews with the Company, its executives, officers, employees, consultants etc.;
 - 2.2.2. obtaining of data, studies, other information etc. from the Company and the third Persons, as well as assessment, structuring and other relevant use of such data, studies or other information;
 - 2.2.3. providing advice to the Company or relevant third Persons to the extent required for performance of the Services;
 - 2.2.4. taking other measures required for due provision of the Services and performance of the Agreement.
- 2.3. Term of the Agreement and the Services. The Agreement enters into force when signed by the Parties and shall remain effective until complete fulfilment of contractual obligations arising from the Agreement.
- 2.4. Co-operation. The Parties shall cooperate with one another to fulfil their respective obligations under this Agreement. Parties shall endeavour to maintain good working relationships among all key personnel engaged toward provision of the Services.
- 2.5. NDU. After the Signing Date, the Company will have the right to request that the persons involved in the execution of the Services on the Contractor's side sign the non-disclosure undertaking substantially in the form of **Annex F** prior to any information is handed over to such persons, and it will be the Contractor's responsibility to ensure that such non-disclosure undertaking are signed.

3. DELIVERY, ACCEPTANCE AND DEFECTS

Commencement of Services. Within 28 (twenty eight) days after the Signing Date, the Company shall issue a Notice to Proceed to the Contractor. Within 7 (seven) days after receipt of the Notice to Proceed, the Contractor must commence the performance of the Services.

- 3.1. Milestones. The Deliverables shall be submitted to the Company according to the schedule indicated in the Contractor's Proposal, Clause 2.1. and Clause 3.5 of the Agreement. Each such deadline for submission of each Deliverable hereinafter shall be referred to as the "Milestone". For the avoidance of doubt, the Contractor is entitled to submit the drafts, first versions etc. of the Deliverables as well as the Deliverables earlier than on the respective deadline.
- 3.2. Language and copies. The Contractor shall ensure that the Deliverables as well as other Documentation are prepared in high quality English language using appropriate terminology, and the Contractor shall in this respect ensure proof reading by a person proficient in the use of the English language and undertake other relevant measures prior to submission of the Deliverables (or their drafts) or the Documentation to the Company.
- 3.3. Defects and Cure Period. During the provision of and until the final acceptance of the Services, the Company shall notify the Contractor of each Defect within reasonable term after the Defect is identified by the Company and the Contractor shall have an obligation to notify the Company of each Defect within reasonable term after the Defect is identified by the Contractor. Upon discovering a Defect, or upon receipt by the Contractor of a notification of the Defect from the Company, the Contractor shall, at the Contractor's cost, remedy the Defect within 10 (ten) days, unless otherwise reasonably specified by the Company or agreed by the Parties (the "Cure Period").
- 3.4. Failure to remedy Defects. In the event of inability or failure by the Contractor to remedy the Defect within the Cure Period, the Company shall be entitled, at the sole and exclusive discretion of the Company, 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 Company,
 - (b) remedy the Defect at own cost of the Company (including by means of relying on the services of a third Person) and demand reimbursement by the Contractor of costs incurred by the Company as a result of having to pay other Person toward carrying out any work or action,
 - (c) terminate the Agreement according to Section 11.
- 3.5. Completion of Deliverables. Upon producing of the Deliverable (including all Documentation and information forming part of the Deliverable), the Contractor shall issue to the Company a signed acceptance deed substantially in the form of **Annex E** (the "Acceptance Deed"). The Acceptance Deed shall include information on the Deliverable and adequate supporting Documentation and other information relevant to the Deliverable completed. After receipt of the Acceptance Deed, The Company will conduct a review process indicated in the Clause 3.6 of the Agreement.
- 3.6. Review by Company. The Company shall review the received Deliverable within 10 (ten) Business days from the date of receipt of the Acceptance Deed in order to make sure that the respective Deliverable complies with the requirements of the Agreement (including Technical Specification, the Contractor's Proposal etc.) and the Company does not have objections against the quality of the delivered Deliverable. After the Deliverable is reviewed, the Company either:
 - (a) accepts the Deliverable by signing the Acceptance Deed if no reasons for rejection of the Acceptance Deed exist and deliver the signed Acceptance Deed to the Contractor. The date the Company accepts and signs the Acceptance Deed shall constitute the "Completion Date" with respect to the relevant Deliverable; or
 - (b) rejects the Deliverable or the Services and issues to the Contractor a written notice (the "Objection Notice") setting out in reasonable detail any Defect or reason for the rejection, thus initiating the Cure Period and the Defects remedy period pursuant to Clause 3.3.
- 3.7. Completion of Deliverables after Objection Notice. After the Defects specified by the Company in the Objection Notice have been remedied, the Contractor shall issue to the Company a second signed Acceptance Deed as per the procedure specified in Clause 3.5 and the Company shall perform the review as generally provided for in Clause 3.6, and:
 - (a) in the event no further reasons for objection to the second Acceptance Deed exist, then the Defects remedy procedure is concluded and the provisions of Clause 3.6(a) are to be applied; or

- (b) in the event the Company rejects the submitted second Acceptance Deed, it shall give a second Objection Notice, thus simultaneously continuing the Defects remedy procedure with the possibility for the Company, at its own discretion, to exercise its rights under Clause 3.4.
- 3.8. Acceptance. The respective Deliverable is deemed to be accepted by the Company only when the Company has signed the Acceptance Deed.
- 3.9. Objection Notice and contractual penalty. For the avoidance of any doubt, issuance of the Objection Notice 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 12.2 or to pay Damages in accordance with the provisions Clause 12.3 of this Agreement.
- 3.10. No waiver. The Company's review or acceptance of the Deliverable or any payments made under this Agreement shall not be interpreted or construed to operate as a waiver of any right or cause for action under this Agreement.
- 3.11. Adjustments to Deliverables. Without prejudice to any other rights available to the Company hereunder, the Company shall have a right to request and, upon receipt of such request, the Contractor shall have an obligation to explain in writing or adjust or supplement any of the information or data contained in the Deliverable no later than within 10 (ten) days from the date of receipt of the Company's request, unless a longer period is agreed between the Parties. The Contractor agrees and acknowledges that it shall supply any such additional explanations, adjustments, or supplements in accordance without any additional fees or charges whatsoever being applicable; provided, however, that the requests for additional explanations, adjustments or supplements are reasonably within the scope of the Services.
- 3.12. Meetings. The Company shall have a right, at any time during the Services provision period, to convene online meetings with the Contractor for the assessment of any of the Deliverables and/or to discuss other matters relevant to any activities contemplated under this Agreement. The place and time of such meetings shall be within the sole discretion of the Company. The Contractor undertakes to act in good faith and reasonably cooperate with the Company with respect to the holding of and participating in any such meetings. If requested by the Company, the Contractor shall record meetings (also online meetings) between Parties and prepare meeting reports within 5 (five) Business days after each meeting. All meeting reports shall be confirmed by the Company.
- 3.13. Circumstances affecting performance. Each Party shall have an obligation to promptly notify the other Party in writing of any event or circumstances capable of impeding the proper or timely performance of its respective obligations under this Agreement.
- 3.14. Impediments and delays. If timely performance of the Services is affected due to impediments or delays caused by the Company or any third Persons engaged by the Company:
- (a) the Contractor shall promptly notify the Company of the circumstances and probable effects of such impediment or delay on the performance of the Services (if not notified in timely manner, the Contractor shall lose its right to make any claim in this respect); and
 - (b) the Parties shall in good faith discuss such allegation of the Contractor, and, if agreed, the duration of the Services (including the term for delivery of any pending Deliverable) shall be extended by the number of days directly affected by such impediment or delay.

4. FEE AND PAYMENTS

- 4.1. Fee. For properly provided Services, the Company shall pay to the Contractor [●] EUR ([●]) euro, [●] cents) in total (the "Fee"). The Fee shall be paid as follows:
- 4.1.1. 20% (twenty per cent) of the Fee shall be paid as an advance payment within 30 (thirty) days after the Company has received from the Contractor an invoice that is drawn up in accordance with the requirements of the Agreement.
 - 4.1.2. 20% (twenty per cent) of the Fee shall be paid as within 30 (thirty) days after the Company has accepted the Presentation by signing the respective Acceptance Deed and the Company has received from the Contractor an invoice that is drawn up in accordance with the requirements of the Agreement.
 - 4.1.3. 40% (forty per cent) of the Fee shall be paid as within 30 (thirty) days after the Company has accepted the Report by signing the respective Acceptance Deed and the Company has received from the Contractor an invoice that is drawn up in accordance with the requirements of the Agreement.

- 4.1.4. 20% (twenty per cent) of the Fee shall be paid as within 30 (thirty) days after the Company has accepted the Results Report by signing the respective Acceptance Deed and the Company has received from the Contractor an invoice drawn up in accordance with the requirements of the Agreement.
- 4.2. VAT. The Fee excludes value added tax (“VAT”) that will be charged at the rate applicable by the Applicable Laws at the time of invoicing.
- 4.3. Compliance with tax obligations. It is acknowledged and agreed by the Parties that the Fee shall include all taxes and duties payable by the Contractor in the consequence of provision of the Services, except 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 Services in accordance with Applicable Laws. 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 payable taxes or duties.
- 4.4. All-inclusive. The Fee is the all-inclusive consideration for the duly provided Services, i.e., the Fees includes reimbursement of all and any expenditure incurred by the Contractor toward performance of any steps, actions or measures contemplated in accordance with this Agreement (including, without limitation, meetings with the Company, travel costs, necessary materials, programs used, etc.). The Contractor agrees and acknowledges that it shall have no right to request reimbursement by the Company of any additional expenditure whatsoever as may have been incurred toward provision of the Services contemplated by this Agreement unless reimbursement of such additional expenditure has been explicitly agreed between the Parties in writing.
- 4.5. Payments, costs, and commissions. Payment of the Contractor's invoices will be made in euro by bank transfer. 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.
- 4.6. Invoice details. The Contractor's invoices shall contain the following details:
- Contractor: [●]
 - Registration No: [●]
 - VAT payer's No or indication that the Contractor is not a VAT payer: [●]
 - Legal address, city, Zip code, country: [●]
 - Legal name of Bank: [●]
 - Bank SWIFT Code: [●]
 - Bank Account No IBAN: [●]
 - The Company's VAT No: [●]
 - Subject: For provided services according to the Agreement No. [●]
 - Specific information for the Company: [CEF reference if so requested by the Company and/or other information requested by the Company, if any.] Company's Contract Manager: [●].
- 4.7. Invoicing. The Contractor shall send the invoice to the Company electronically to the following e-mail address: invoices@railbaltica.org. The invoice is sent following the respective Completion Date when the Contractor has received the respective Acceptance Deed signed by the Company. In case payment for the Services (in whole or in part) will be made from more than one financing source, and upon the Company's request, the Contractor shall issue separate invoices corresponding to the amounts financed from the financing source as indicated by the Company. The Parties agree to recognize as valid and payable invoices prepared electronically without the “signature” part of the details area.
- 4.8. Set-offs. The Company shall have the right 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. If the Company uses the right to make the payments to the Contractor with set-off, retention, counterclaim, abatement, or other deduction of any kind, then the Company notifies the Contractor no later than on the due date of the respective payment stating the amount, the grounds and the basis for the use of the right to set-off, retention, counterclaim, abatement or other deduction or other right.

5. CONTRACTOR'S OTHER OBLIGATIONS AND COVENANTS

- 5.1. Standard of performance. Without prejudice to the requirements prescribed elsewhere under the Agreement, the Contractor shall:
- 5.1.1. ensure that the Services and the Deliverables comply with (i) the specifications and requirements contained in the Agreement, Procurement Regulations, including the Technical Specification, (ii) the Applicable Laws, (iii) reasonable requirements, comments or specific instructions of the Company as well as the requirements under the agreements in relation to or binding to the Company (including, but not limited to CEF, inter-governmental agreements, etc.), (iv) to the extent not being contrary to any of the above, the terms and conditions contained in the Contractor's Proposal, as well as (v) the Good Industry Practices;
 - 5.1.2. carry out the Services and develop and provide the Deliverables in a conscientious, diligent, expeditious, proper, workmanlike and impartial manner;
 - 5.1.3. use its best efforts, skill and experience in developing the Deliverables and to allocate qualified and suitable key personnel devoting such time as is reasonably required to fulfil the Contractor's duties hereunder;
 - 5.1.4. ensure that whenever required under this Agreement, the Applicable Laws or upon receipt of a separate request from the Company, the Deliverables, presentation materials etc. under or in relation to this Agreement features logos or other requisites pertinent to the Global Project, including, without limitation, reference to the fact that the Global Project is financed under the auspices of CEF.
- 5.2. Maintenance of records. During the term of the Services and for a period of 10 (ten) years (or, at the Contractor's discretion, longer) 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 Company, that the Services have been carried out in accordance with the Agreement. 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.
- 5.3. Access to documentations. At all times during the term of the Services, the Company's representative or auditor shall have access to all documentation related to the Services. This access shall be continuing and survive the termination of this Agreement for either cause or convenience. The documentation shall be kept accessible in a generally recognized format for a period of 10 (ten) years from the date of expiration or termination of this Agreement. All records forming part of such Documentation shall be available to the Company's auditor, or expert appointed by the Company during the abovementioned period of time.
- 5.4. Right to sub-contractors and staff. In carrying out the Services, the Contractor may rely only on the services of the Approved Sub-Contractors and the Approved Experts. In this respect:
- 5.4.1. The list of the Approved Sub-Contractors and the Approved Experts indicated in **Annex A** may, from time to time, be modified or supplemented always subject to a prior written consent of the Company and in accordance with the terms and subject to the criteria contained in the Applicable Laws.
 - 5.4.2. The Contractor shall have an obligation to notify the Company in writing of any changes to Approved Sub-Contractor or the Approved Experts data occurring during the term of this Agreement and of the required information for any new Approved Sub-Contractors or the Approved Experts which it may subsequently engage toward provision of the Services.
 - 5.4.3. The Contractor shall obtain prior written consent of the Company for the replacement of each Approved Sub-Contractor or each Approved Expert or involvement of any additional persons. Review and evaluation of the replacement of Approved Sub-Contractors or Approved Experts shall be carried out, and the consent or refusal to give consent shall be rendered by the Company in accordance with Applicable Laws (in particular, Article 62 of the Public Procurement Law of the Republic of Latvia).
 - 5.4.4. 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 or the Approved Experts or other Persons involved by the Contractor shall, for the purposes of this Agreement, be deemed to be the act, failure to act, breach or negligence of the Contractor itself.

- 5.4.5. The distribution of work among the Approved Experts shall be organised by the Expert, but it shall be organised in accordance with the requirements generally applicable to the provision of Services (it must be based on practices accepted in the market).
 - 5.4.6. The Contractor shall be responsible for the work of the Approved Experts and ensure that the Company has free access to the Approved Experts during the Company's working hours with response time being reasonable.
 - 5.4.7. The Contractor shall ensure that all Approved Experts are fully available with respect to the Services until the end of the Service provision. The Contractor shall ensure that the Approved Experts participate in the meetings with the Company as requested by the Company from time to time.
 - 5.4.8. The Contractor must replace any Approved Experts involved in the performance of the Service if requested by the Company and supported by the reasons such as repeated careless performance of duties, incompetence or negligence, non-fulfilment of obligations or duties stipulated in the Agreement, as well as other reasons prescribed under the Agreement.
- 5.5. Security clearance requirements. The Contractor shall not involve in the performance of the Agreement a person convicted of an intentional criminal offense (employees, sub-contractors and/or any other person and personnel), regardless of the criminal record having been set aside or extinguished, and/or a person of whom there are known facts that give grounds to doubt his or her ability to retain restricted access and/or classified information, as well as a person who has or may have a conflict of interest by involving him in the performance of the obligations under this Agreement. In this respect:
- 5.5.1. At the Company's request, the Contractor shall submit to the Company a statement (certificate) from the relevant state penalty register regarding the criminal record of the natural person who will be involved in the performance of the Agreement.
 - 5.5.2. In order to assess the compliance of the natural person whom the Contractor intends to involve in the performance of the Agreement with the requirements specified in this Clause 5.5, the Company has the right to organize an additional security compliance check.
 - 5.5.3. The Contractor undertakes to inform the natural person involved in the performance of the Agreement about the processing of personal data performed by the Company when organizing a security compliance check.
 - 5.5.4. The Contractor shall submit to the Company in writing at least 10 (ten) Business days prior to the involvement of any natural person in the performance of the Agreement the following information of the person: name, surname, personal identification code (or equivalent personal identification information), place of birth, position, company name (in case involved staff of sub-contractors), the country from which the person comes. At the Company's request, the Contractor shall also submit a brief description of the role and responsibilities of the natural person in the performance of the Agreement.
 - 5.5.5. The Company has the right, at its own discretion, to prohibit a natural person specified by the Contractor from performing tasks related to the performance of the Agreement by notifying the Contractor thereof in writing if the requirements referred to in this section of the Agreement are not complied with. The Parties agree that such decision of the Company is incontestable.
 - 5.5.6. If the Company prohibits a natural person specified by the Contractor from performing the tasks related to the performance of the Agreement, the Contractor shall replace this natural person with another natural person by notifying the Company in accordance with the procedure laid down in Clause 5.5.4.
 - 5.5.7. If the Contractor cannot replace a natural person or if its replacement would cause disproportionately high expenses to the Contractor, the Contractor shall immediately provide the Company with a motivated explanation and the Parties shall try to agree on possible conditions and procedures in which this natural person may perform tasks related to the performance of the Agreement.
 - 5.5.8. The Contractor shall take all necessary actions and measures in a timely manner to ensure that a natural person is not involved in the performance of the Agreement or the involvement is immediately terminated if the natural person does not comply with this Clause 5.5, otherwise creates or may create security risks for the Company, incl. risks to the Company's information systems, information or data, as well as risks to the Company's reputation or operations.

- 5.5.9. The Contractor is obliged to:
- (a) ensure that a natural person who does not comply with the security clearance requirements is not involved in the performance of the Agreement;
 - (b) immediately replace a natural person who does not comply with the security clearance requirements in accordance with the provisions of this Agreement (and/or with the requirements of the Applicable Laws);
 - (c) observe and not contest the Company's written instructions and decisions in accordance with this Clause 5.5;
 - (d) provide the Company with all the necessary information and support related to the necessity to replace a natural person.
- 5.5.10. In any case, the Contractor shall immediately notify the Company in writing of any situation that has arisen before the start and during the performance of the Agreement, as a result of which there is or may be a risk of involving a natural person who does not comply with the security clearance requirements under this Clause 5.5, as well as notify the Company in writing of the replacement of such natural person involved in the performance of the Agreement.
- 5.5.11. If the Contractor violates the conditions referred to in this Clause 5.5 and/or disregards the Company's instructions regarding security clearance requirements, then it constitutes a material breach of the Agreement and a ground for the Company to immediately terminate the Agreement according to Clause 11.5(b).
- 5.6. No conflicting activity. Except with the Company'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 provision of Services and/or the Global Project. In performing the Services, the Contractor shall take all necessary measures to prevent any situation where the impartial and objective implementation of the Services is compromised for reasons involving economic interest, political or national affinity, family, or emotional ties or any other shared interest.
- 5.7. Information furnished by Company. The Contractor shall be entitled to rely on the accuracy and completeness of information furnished by the Company. The Contractor shall provide prompt written notice to the Company if the Contractor becomes aware of any errors, omissions, or inconsistencies in the information provided by the Company or in the preparation of the Deliverables or provision of the Services.
- 5.8. Visibility requirements. At all times during performance of the Services, the Contractor undertakes to comply with each of the following requirements:
- 5.8.1. any report, brochure, document, or information related to the Services carried out by the Contractor hereunder or any other person, which the Contractor makes publicly available shall include each of the following:
- (a) a funding statement which indicates that the Services are financed from CEF funds substantially in the following form: "Co-funded by the European Union";
 - (b) 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://cinea.ec.europa.eu/communication-toolkit_en; and
 - (c) the flag of the Council of Europe and the European Union.
- 5.8.2. the requirements set forth in Clauses 5.8.1(a) and 5.8.1(c) can be complied with by means of utilizing the following logo (if the Contractor uses this logo, the Contractor shall ensure that the individual elements forming part of the logo are not separated (the logo shall be used as a single unit) and sufficient free space is ensured around the logo):



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5.8.3. 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 at the Signing Date, the visibility requirements are available for review on the webpage https://cinea.ec.europa.eu/communication-toolkit_en.

5.9. Reporting. The Contractor shall, in a format and at intervals to be agreed with the Company:

- (a) provide the Company with regular reports and status updates on the progress of the Services;
- (b) use reasonable endeavours to provide any other information and status updates as may be reasonably requested by the Company at any time; and
- (c) report on any changes to the Annexes of this Agreement which the Contractor considers may be needed in order to fulfil the objectives set out in the Agreement (in any case, any change to the above-mentioned documentation can be made only pursuant to this Agreement, if agreed by Parties, and, if the proposed changes are compliant with the Applicable Laws).

6. COMPANY'S OTHER OBLIGATIONS AND COVENANTS

6.1. Supply of information. Unless otherwise provided under this Agreement, the Company shall, in a timely manner, provide to the Contractor any information as may reasonably be requested by the Contractor for the purposes of the Services, provided that the Company is in possession of such information.

6.2. Review of Documentation. The Company shall examine Documentation as may be submitted by the Contractor for review by the Company toward partial completion of the Services.

6.3. Decisions. On all matters properly referred to it in writing by the Contractor, the Company shall give its decision in writing so as not to delay the provision of Services and within a reasonable time.

7. REPRESENTATIONS AND WARRANTIES

7.1. Certain representations and warranties of the Parties. Each Party represents and warrants to the other Party, as of the Signing Date, as follows:

- (a) 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;
- (b) it has read this Agreement, understands it and agrees to be bound by it;
- (c) 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;
- (d) it has entered into this Agreement without having any intention or goal whatsoever to violate the Applicable Laws, its own articles of association, other constitutional documents, laws or agreements of any kind to which it is a party to;
- (e) 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
- (f) it has entered into this Agreement of its own volition and in good faith.

7.2. Certain representations and warranties of the Contractor. The Contractor represents and warrants to the Company, as of the Signing Date, as follows:

- (a) it has all requisite qualification, skills and competence to perform the Services on the terms and conditions of this Agreement which are no less favourable than the terms and conditions of service identified by the Contractor in any document submitted by the Contractor to the Company as part of the Procurement Procedure and on the terms of the Contractor's Proposal;
- (b) it holds and will hold for the entire term of the Agreement all requisite accreditations, recognitions, licenses, permits, approvals and consents necessary under the Applicable Laws to enable performance by the Contractor of the Services;
- (c) it has all requisite ability to ensure the highest quality of the Services;
- (d) it will assign competent and duly qualified personnel to carry out the Services according to the highest professional standards and the Good Industry Practices;

- (e) it is not deemed to be a person associated with the Company for the purposes of the Applicable Laws;
- (f) it has been registered as a VAT payer in [●];
- (g) *[if the Contractor and the Company are residing in different jurisdictions, the Services under this Agreement will not be provided through a permanent establishment or fixed base maintained by the Contractor in the Republic of Latvia.]* The Contractor is aware that the applicable laws of Latvia prescribe certain instances when payments to non-residents are subject to a withholding tax (for instance, in case of management and consultancy services), and the Company will be obliged to make such withholdings with the following exception. No withholdings will be made if the Contractor (before the Company will be obliged to make any payment under the Agreement) will provide all necessary information and documents (including, where relevant, a residence certificate confirmed by the competent authority of the Contractor's country of residence and the Latvian State Revenue Service) allowing to make an exemption from such withholding pursuant to the terms of the applicable laws of Latvia and international conventions or agreements between Latvia and the Contractor's country of residence;
- (h) it is compliant with all of the requirements of the Supplier's Declaration and will continue to be compliant with all such requirements during the term of this Agreement.

8. VARIATIONS

- 8.1. Variations. Notwithstanding any provisions in this Agreement to the contrary, whenever the Company or the Contractor reasonably consider that a variation to the Agreement (the "Variations") is necessary, the Company and the Contractor shall negotiate in good faith on the terms of the intended Variations. For the avoidance of doubt, no Variation shall be effective unless and until concluded in writing by the respective Parties.
- 8.2. Variations scope. The Company and the Contractor may agree on Variations in case such Variations are permitted under Applicable Laws (including Public procurement law of Latvia).
- 8.3. Variations fee. Fee for additional services as a result of Variations, if any, shall be determined taking into account the calculations and fees under the Technical Specification and the Contractor's Proposal. Furthermore, such fee shall be consistent with the market practice and proportionate to the Fee for the Services with similar scope under the Agreement, if any. Variations not resulting in additional services or works, including Variations related to the timeline of the provision of the Services, shall not result in additional fees or compensation of costs.

9. COMMUNICATION

- 9.1. Main principles. Communication under the Agreement (e.g., information, requests, submissions, formal notifications, etc.) must:
 - (a) be carried out in English;
 - (b) be made in writing (including electronic form);
 - (c) be primarily carried out between the Representatives as specified in Clause 9.4 or otherwise notified to each other;
 - (d) as far as reasonably possible, bear the Agreement's number.
- 9.2. Presumption of receipt. Notices, declarations, invoices etc. shall be deemed received:
 - (a) if delivered by hand, on the first (1) Business day following the delivery day;
 - (b) if sent by post, on the fifth (5) Business day after the date of posting;
 - (c) if sent by e-mail, the same Business day if sent prior to 17:00 o'clock and the next Business day if sent after 17:00 o'clock (Eastern European Time); communication by e-mail is deemed made when it is sent by the sending Party to the receiving Party, unless the sending Party receives a message of non-delivery.
- 9.3. Exchange over internet. For the purposes of the performance of the Agreement, the Parties agree that information may be exchanged electronically over the internet, always complying with the IT security requirements, if any, determined by the Company.

- 9.4. Representatives. The Company and the Contractor shall appoint an officer, employee or individual to serve as its representative toward the implementation of the Agreement and supply or receipt of the Services (including the request or confirmation of the Services, signing of the Acceptance Deed and the Objection Notice), with full authority to act on its behalf in connection with this Agreement, without the right to conclude amendments to the Agreement (the "Representative"). Any restriction placed by either Party on its Representative's authority shall be notified to the other Party in writing to be effective. The Representatives may delegate their authority by notice in writing specifying the contact information of the delegate and specifying the scope of authority so delegated. Each Party may replace or remove any Representative by notifying in writing the other Party immediately, but not later than 1 (one) Business day after the replacement or the removal of the respective Representative. The initial Representatives are:
- (a) the authorised representative of the Company for the Agreement fulfilment issues and procedures is [●], e-mail: [●], phone: [●];
 - (b) the authorised representative of the Contractor for the Agreement fulfilment issues and procedures is [●], e-mail: [●], phone: [●].

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1. Proprietary rights. All intellectual property rights (the "Intellectual Property") created, developed, subsisting during provision of the Services is and shall become the property of the Company as of the moment of creation regardless of whether the respective Deliverable, Documentation etc. is produced or finally accepted.
- 10.2. Copyright waiver. The Company may use any Deliverable (or its draft) or Documentation in any manner the Company sees useful. This, among other things, means that the Company may reproduce and disclose or transfer the rights to any of the Deliverables or Documentation to any of its cooperation partners or other Global Project stakeholders without any approval of the Contractor and without incurring obligation to pay any royalties or additional compensation whatsoever to the Contractor.
- The Company shall be entitled to combine any Deliverable (or its draft) or Documentation produced by the Contractor and can use them with other deliverables produced by other persons, however the Contractor undertakes liability solely for the intellectual property created by the Contractor.
- 10.3. 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 Company to the Contractor or to any third party in consideration of the transfer of ownership in the Intellectual Property.
- 10.4. Other Contractor's representations and warranties. The Contractor represents and warrants that:
- (a) it owns all intellectual property rights required for the purposes of completing its obligations under this Agreement and in all Deliverables and other 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 such intellectual property 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;
 - (b) that no Deliverable, Documentation and information deliverable to the Company under the terms of this Agreement will infringe any existing intellectual property of any third party.
- 10.5. Contractor's liability. In the event, any of the representations or warranties contained in this Section 10 prove to be untrue or inaccurate, the Contractor undertakes, at its own cost and expense, to indemnify the Company and defend and settle any claim raised by any third-party against the Company alleging infringement of its intellectual property in the Documentation and information. 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 Company the right of continued use of the Documentation and information, or part thereof infringing intellectual property of a third party.

11. TERM, TERMINATION AND SUSPENSION

- 11.1. Entry into force and expiry. The Agreement enters into force when signed by the Parties and expires once the Parties have fulfilled their contractual obligations arising out of this Agreement, unless terminated earlier pursuant to the provisions of the Agreement.
- 11.2. Termination for material breach. Subject to the provisions of Clause 11.3, either the Company or the Contractor 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 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 11.2 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 8,000 due to the other Party or perform any part of the Services valued at least EUR 8,000);
 - (b) failure by the Contractor to duly address any of the matters raised in the second Objection Notice given by the Company in accordance with Clause 3.7(b);
 - (c) failure by any Deliverable to conform to any of the material requirements to such Deliverable contained in the Agreement, provided that such failure is not capable of being remedied upon receipt of the rejection in accordance with Clause 3.6(b);
 - (d) failure by the Company, as applicable, to make any payment to the Contractor in accordance with this Agreement within at least 15 (fifteen) Business days from the date of payment falling due;
 - (e) any of the representations or warranties given by either Party under Clause 7.1 or any of the declarations, representations or warranties given by the Contractor under Clause 7.2 or the Contractor's Declaration proves to be untrue.
- 11.3. Corrective Period. In the event of a material breach by either Party of its obligations under this Agreement, the non-breaching Party shall allow the breaching Party 14 (fourteen) days for the 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 11.3 shall not apply with respect to any of the events listed in Clause 11.4. In addition and for the avoidance of any doubt, the application of the Corrective Period under this Clause 11.3 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 12.2 or to pay Damages incurred by the other Party in accordance with the provisions of Clause 12.3. To clarify, the Corrective Period is not applied where the breach of the Agreement is related to Defects and Acceptance procedures as referred to in Clauses 11.2(b) and 11.2(c) as in these cases the purpose of the Corrective Period is fulfilled by the Cure Period and its prior application.
- 11.4. Parties' right to terminate immediately. Notwithstanding anything to the contrary contained in this Agreement, the Company and the Contractor may terminate this Agreement immediately upon giving the other Party a written notice of termination explaining, in reasonable detail, the reason for termination upon occurrence of any of the following:
- (a) breach by the other Party of Clause 18.1;
 - (b) an event of Force Majeure has been continuing during more than sixty (60) days;
 - (c) the other Party had passed a resolution for winding-up (other than in order to amalgamate or reconstruct);
 - (d) the other Party is unable to pay its debts and has presented a petition for voluntary bankruptcy;
 - (e) the other Party had a bankruptcy order issued against it;
 - (f) liquidation, insolvency or legal protection proceedings have been initiated with respect to the other Party or the other Party is declared insolvent;
 - (g) the occurrence of any event analogous to the events enumerated under above paragraphs (d) - (f) under the law of any jurisdiction to which the other Party's assets and undertaking are subject.

- 11.5. Company's right to terminate immediately. The Company may terminate this Agreement immediately upon giving the Contractor a written notice of termination explaining, in reasonable detail, the reason for termination, if:
- (a) CEF co-financing for further financing of the Services is not available to the Company fully or partly;
 - (b) breach by the Contractor of any of the confidentiality undertakings contained in Section 14 or the undertakings under Clause 5.4 or Clause 5.5;
- If paragraph (a) or (b) of this Clause 11.5 is applied, the Company shall pay the Contractor the Fee in respect of the Services already provided under this Agreement up to the date of the notification of the termination of this Agreement, but the Company shall have no other liability in this respect (including, but not limited to not being obliged to pay contractual or any other penalty or Damages to the Contractor);
- (c) it is not possible to execute the Agreement due to the application of international or national sanctions, or the European Union or the North Atlantic Treaty Organization applied sanctions significantly affecting interests of financial or capital market.
- 11.6. Termination according to Public Procurement Law. The Agreement can be immediately terminated by the Company upon giving the Contractor a written notice of termination explaining, in reasonable detail, the reason for termination upon occurrence of any of the provisions mentioned in the Article 64 of the Public Procurement Law of the Republic of Latvia. In such a case, the Company shall pay the Contractor the Fee in respect of the Services already provided under this Agreement up to the date of the notification of the termination of this Agreement, but the Company shall have no other liability in this respect (including, but not limited to not being obliged to pay contractual or any other penalty or Damages to the Contractor).
- 11.7. Right to advance. In the event the Contractor fails to fulfil any of its obligations, or fails to cure any breach in accordance with Clause 11.3 of this Agreement, and the Agreement is terminated by the Company, the Company may advance the Services to completion by employing the services of other professional service supplier(s) or by other means available to the Company. The Contractor shall be liable to the Company for any and all additional costs incurred due to failure by the Contractor to perform. The rights and remedies available to the Company set forth in accordance with this Clause shall be in addition to any and all other rights and remedies available under the Applicable Laws or this Agreement.
- 11.8. 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 5.2, 5.3, Section 10, Section 12, Section 14, Section 15, Section 16, Section 17 and Clause 18.1 which shall survive the termination or expiry of this Agreement and continue in full force and effect along with any other Clauses of or Annexes hereof which are necessary to give effect to the Clauses specifically identified in this Clause 11.8(b).
- 11.9. Partial Acceptance. Notwithstanding anything in this Agreement to the contrary and in the event of termination of this Agreement, the Company shall have the right, in the sole discretion of the Company, to partially accept any part of the Services delivered to the Company under this Agreement (the "Right of Partial Acceptance"). The Company shall notify the Contractor of its intention to exercise the Right of Partial Acceptance in the termination notice given in accordance with the Agreement, specifying, in reasonable detail, the part of the Services which the Company would like to partially accept. In the event of receipt of such notice, the Contractor shall reasonably cooperate with the Company in order to ascertain transfer to the Company of ownership in the result(s) of such Services and determination of the amount of consideration payable by the Company.
- 11.10. Company's obligation to pay. Except in the event of termination by the Company occurring as a result of violation by the Contractor of Clause 18.1 or termination by the Company according to Clause 11.5(c), in the event this Agreement is terminated for any reason prior to completion of the Services, the Company shall have an obligation to pay the Contractor the documented costs reasonably and properly incurred by the Contractor with respect to the Services up to the date of termination. This Clause does not apply to the part of the Services accepted pursuant to Clause 11.9. The "costs" for the purposes of this Clause shall include:

- (a) salaries for the Approved Experts and other personnel in the direct employ of the Contractor in the performance of the Services or relating to the Services (including related benefits and taxes for items such as social security and other benefits for the labour and employees),
- (b) payments to the Approved Sub-Contractors with respect to actually provided Services,
- (c) sales, use, gross receipts or other taxes related to the Services, imposed by any governmental authority, to the extent that the Contractor is responsible for such taxes,
- (d) costs of any data processing services used in connection with the performance of the Services required under this Agreement.

For the sake of clarity, in the event that the Company has paid to the Contractor the advance payment or part thereof specified in Clause 4.1.1 of the Agreement, the Contractor shall, within 5 days of termination of the Agreement, return the part of the advance payment paid in excess of the amount to which the Contractor is entitled under the terms of the Agreement.

- 11.11. No obligation to pay costs incurred prior to acceptance. Notwithstanding anything set forth in this Agreement to the contrary including, without limitation, under Clause 11.10, the Company shall have no obligation to pay any of the costs incurred by the Contractor with respect to the Services (or part of the Services) not deemed as having been accepted by the Company in accordance with Clauses 3.5, 3.6, 3.7 and 3.8.
- 11.12. 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 the Applicable Laws.

12. LIABILITY

- 12.1. Liability of Parties. The Contractor shall be liable to compensate Damages incurred by the Company arising out of or in connection with this Agreement and pay contractual penalty set forth in accordance with Clause 12.2 if a breach of any of the obligations of the Contractor under this Agreement is established against the Contractor. The Company shall be liable to pay the contractual penalty set forth in accordance with Clause 12.2 if a breach of payment obligations of the Company under this Agreement is established against the Company.
- 12.2. Contractual penalty.
 - 12.2.1. In the event the actions and/or inactions of the Contractor result in a failure by the Contractor to meet any of the Milestones (i.e., to submit a draft of the Deliverable or a fully compliant Deliverable by the set Milestone), the Company shall be entitled to claim from the Contractor a contractual penalty in the amount of 0.1% (zero point one percent) from the total amount of the Fee for each day of delay, provided that the total amount of the contractual penalty payable by the Contractor under this Clause 12.2.1 shall not exceed 10% (ten percent) of the total amount of the Fee.
 - 12.2.2. For each breach of Clause 5.4 by the Contractor, the Company shall be entitled to request the Contractor to pay a contractual penalty in the amount of EUR 500 (five hundred euros, 00 cents) provided that the total amount of the contractual penalty payable by the Contractor under this Clause 12.2.2 shall not exceed 10% (ten percent) of the total amount of the Fee.
 - 12.2.3. In the event of failure by the Company to pay any amount in accordance with Section 6, the Contractor shall be entitled to request the Company to pay a contractual penalty in the amount of 0.1% (zero point one percent) from the delayed amount for each day of delay, provided that the total amount of such contractual penalty payable by the Company under this Clause 12.2.3 shall not exceed 10% (ten percent) of the delayed amount.
 - 12.2.4. The contractual penalties shall be applied upon the sole discretion of the entitled Party under the Agreement considering the material consequences of the infringement.
 - 12.2.5. Payment of the contractual penalty shall not release the Party from performance of any of its obligations under the Agreement. The contractual penalty applied in accordance with Clauses 12.2.1 - 12.2.4 shall be deducted from the overall damage claim of the Company for the same breach.
- 12.3. Compensation for Damages. Notwithstanding of and without prejudice to any contractual penalty payable in accordance with Clause 12.2, 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.

12.4. Attribution of Damages. Any Damages suffered by either Party shall, for the purposes of Clause 12.3, 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.

13. FORCE MAJEURE

13.1. Effects of Force Majeure Event. Subject to the requirements set forth in accordance with Clauses 13.2 and 13.3, 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.

13.2. Action on becoming aware of Force Majeure Event. Each Party shall at all times, following the occurrence of a Force Majeure Event:

- (a) take reasonable steps to prevent and mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the Force Majeure Event as soon as practicable and use reasonable endeavours in accordance with Good Industry Practice to remedy its failure to perform; and
- (b) not be relieved from liability under this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to any failure to comply with its obligations under Clause 13.2(a).

13.3. 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 10 (ten) Business 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 13.2(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.

13.4. Notification of resumed performance. The affected Party shall notify the other Parties as soon as practicable once the performance of its affected obligations can be resumed (performance to continue on the terms existing immediately prior to the occurrence of the Force Majeure Event).

13.5. Mitigation of effects of Force Majeure Event. As soon as practicable after the notification specified pursuant to Clause 13.3, the Parties shall use reasonable endeavours to agree appropriate terms or modifications to the Services to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.

14. CONFIDENTIALITY

14.1. Confidential Information. "Confidential Information" means, in relation to the Company, all information of a confidential nature relating to the Company and its affiliates which is supplied by the Company (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 Company 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 Company and was not previously acquired by the Contractor from the Company or its affiliates under an obligation of confidence.

For the avoidance of doubt, the Confidential Information, inter alia, includes information that:

- (i) will be created within implementation of the Agreement;
- (ii) will be received from the Company irrespectively whether it is specified as “Confidential”; “Limited Access Information” etc.

In case of doubt, whether respective information is confidential, the Contractor will process and handle it as Confidential Information until the Company confirms otherwise.

14.2. Undertakings with respect to Confidential Information. 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 Company.

14.3. Permitted disclosure. The Contractor shall, without the prior written consent of the Company, 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, agent, officer, Approved Sub-Contractor, Approved Experts 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 16;
- (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 the Applicable Laws 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.

14.4. Obligations of recipients. Whenever disclosure is permitted to be made pursuant to Clauses 14.3(a) or 14.3(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.

14.5. Obligations on termination or expiry of Agreement. If this Agreement is terminated for whatsoever reason or it expires or the Company so requests, the Contractor shall:

- (a) return to the Company 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.

14.6. No press release. Save as required by the Applicable Laws, the Parties shall not issue any press release in relation to the matters contemplated under this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed) as to both the content and the timing of the issue of the press release.

14.7. Remedies. The Parties acknowledge and agree that a breach of the provisions of this Section 14 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 14.2, 14.4 or 14.6 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.

15. RIGHT TO AUDIT

15.1. Right to audit. Notwithstanding anything to the contrary set forth in this Agreement, the Company itself or authority auditing the Company shall at reasonable times, on reasonable notice and during normal

business hours 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 Services; and/or
- (b) any documentation of the Contractor and/or other records used in or reasonably related to the performance of the Services provided that nothing herein shall obligate the Contractor to disclose any documents or other material relating to the profitability or internal profit and loss/balance sheets associated with the Contractor's business, payroll information, or information or material that constitute legally privileged documents or information that Contractor is bound to maintain as confidential by written obligation to a third party.

- 15.2. Obligation to assist. The Contractor shall provide all reasonable assistance in carrying out any such inspection or audit pursuant to this Section 15. The Company shall be responsible for its own costs 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 Company for all of its additional reasonable costs incurred, provided such non-compliance is material.
- 15.3. Survival of termination. The rights and obligations of the Company set forth in accordance with this Section 15 shall survive expiration or termination of this Agreement for any reason and shall continue to apply during the period of 10 (ten) years following expiration or termination of this Agreement for any reason whatsoever.
- 15.4. Confidential nature. Audit results, including information and documentation disclosed or made available to the Company in the course of any such audit shall be deemed the Confidential Information and treated as such.

16. ON-THE-SPOT VISITS

- 16.1. Right to perform on-the-spot visits. By submitting a written notice 5 (five) Business days in advance, the Company may carry out on-the-spot visits to the sites and premises where the activities implemented within the Agreement are or were carried out.
- 16.2. Personnel involved. On-the-spot visits may be carried out by authorised staff of the Company. Information provided and collected in the framework of on-the-spot visits shall be treated on confidential basis.
- 16.3. Access to the information. The Contractor shall provide to the performer of the on-the-spot visit access to all the information and documents, including information and documents in electronic format, which is requested by the authorised staff of the performer of the on-the-spot visit which relates solely to the Contractor's obligations pursuant to this Agreement, as well as shall allow the authorized staff of the performer of the on-the-spot visit the copying of the information and documents, with due respect to the confidentiality obligation. Any review of the Contractor's records, facilities or procedures, made pursuant to a written request from the Company, shall be conducted at reasonable times, on reasonable notice and during normal business hours. Nothing herein shall obligate the Contractor to disclose to the Company any documents or other material relating to the profitability or internal profit and loss/balance sheets associated with the Contractor's business, payroll information, or information or material that constitute legally privileged documents or information that Contractor is bound to maintain as confidential by written obligation to a third party.
- 16.4. Checks and inspections. By virtue of Council Regulation (Euratom, EC) No 2185/96 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 883/2013 of the European Parliament and the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and other laws and documentation relating to European Union grant awarding and subsequent monitoring processes, the European Commission; the European Anti-Fraud Office; the European Climate, Infrastructure and Environment Executive Agency; the European Court of Auditors and other European Union institutions and bodies might perform checks, reviews, audits and investigations towards Contractor in case such activities are related to the use of grants awarded.

17. GOVERNING LAW AND RESOLUTION OF DISPUTES

- 17.1. Governing law. This Agreement shall be governed by and construed in accordance with law of the Republic of Latvia.

- 17.2. 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.
- 17.3. Venue for resolution of disputes. Should the Parties fail to settle such disputes, controversies or claims within 2 (two) months by amicable negotiations, 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.
- 17.4. Language. 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.

18. MISCELLANEOUS PROVISIONS

- 18.1. Conflict of interest, corruption and fraud. Notwithstanding any penalties that may be enforced against the Contractor under the Applicable Laws, or the laws of other jurisdiction(s), the Contractor shall be deemed to have committed a breach under this Agreement and the Company shall be entitled to terminate this Agreement immediately and without any regard to the provisions of Clause 11.3, if it is shown that the Contractor is guilty of:
- (a) offering, giving, receiving or soliciting anything of value with a view to influencing the behaviour or action of anyone, whether a public official or otherwise, directly or indirectly in the selection process or in the conduct of the Agreement; or
 - (b) misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Company, including the use of collusive practices intended to stifle or reduce the benefits of free and open competition.
- 18.2. Personal data. For the purpose of execution of this Agreement, the Parties might transfer to each other certain personal data, such as data on employees of the Parties, data on suppliers, the Global Project stakeholders' employees, etc. The Party transferring to the other Party certain personal data shall be responsible for informing and obtaining the consent of the data subject for the processing of the personal data, if needed. The Parties acknowledge that for the purpose of the Agreement the Parties will be considered as independent controllers. In this respect each of the Party undertakes:
- (a) to process the personal data to the minimum extent necessary;
 - (b) not to infringe any rights of the data subjects;
 - (c) to apply proper organizational and technical measures ensuring the compliance with the requirements of the Applicable law;
 - (d) to ensure the compliance with other requirements of the statutory law governing the protection of personal data.
- 18.3. Damages covered by insurance. To the extent any Damages are actually covered by any insurance, the Parties 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.
- 18.4. Relationship of Parties. The relationship between the Contractor and the Company under this Agreement is that of independent contractor. The Contractor (or the Approved Sub-Contractors or Approved Experts) is not an employee of the Company, is not carrying out the regular business of the Company and is not subject to the same employment regulations as are applicable to employees of the Company. 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 Company to the Contractor, its employees, its consultants, or the employees of such consultants.
- 18.5. Severability. If any provision of this Agreement shall be held to be illegal, invalid, void or unenforceable under the 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.
- 18.6. Successors and assigns. The Parties 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, if not directly provided otherwise under the Agreement.

- 18.7. Amendments and Variations. No amendment to or Variation of this Agreement shall be effective unless made in writing by duly authorized representatives of both Parties, if not provided otherwise herein. The Agreement can be amended in compliance with the provisions of Article 61 of the Public Procurement Law of the Republic of Latvia.
- 18.8. Entire agreement. This Agreement, and the Annexes hereto, constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes and extinguishes all and any prior drafts, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.
- 18.9. Execution. [*This Agreement is executed in 2 (two) copies, one for each Party, both having the same legal effect OR This Agreement is executed as an electronic document*].

For and on behalf of the Company:

For and on behalf of the Contractor:

[●]

[●]

THIS DOCUMENT IS SIGNED ELECTRONICALLY WITH A QUALIFIED ELECTRONIC SIGNATURE
AND CONTAINS TIME STAMP

Annex A: Approved Experts and Approved Sub-Contractors

[•]

Annex B: Contractor's Proposal

[•]

Annex C: Technical Specification

[•]

Annex D: Notice to Proceed

Date of the Notice to Proceed:	[●]
Number of the Agreement:	[●]
Project:	Rail Baltica Global Project Design Review and Approval Process Improvement (Six-Sigma)
Company:	RB Rail AS, reg. No. 40103845025
Contractor:	[●]
Description of services ordered under the Notice to Proceed:	By issuing this Notice, the Company informs the Contractor that the provision of the Services must be started within 1 (one) week.
Time for Completion:	In accordance with the deadlines set out in the Agreement.
Other comments/requirements for performance of the ordered Services:	All definitions used in this Notice shall bear the same meaning as in the Agreement unless otherwise specified herein. [●]

On behalf of the Company:

[●]

/the document is signed with a qualified electronic signature/

Annex E: Acceptance Deed Form

No.: [number]

Date: [date]

Place: [place]

From: [●], a company registered in [●] registration No. [●], legal address at [●] (the "Contractor")

To: **RB Rail AS**, registration No. 40103845025, legal address at Satekles iela 2B, Riga, LV-1050, Latvia (the "Company").

This Acceptance Deed is issued to the Company by the Contractor, represented by [name, surname, position] acting on the basis of [basis of representation].

Whereas:

- (A) the Company and the Contractor on [●] entered into the Agreement on [●] No. [●] (the "Agreement");
- (B) the Contractor has completed certain Deliverable;
- (C) as stipulated by Clause 3.5 of the Agreement, completion of a Deliverable shall be evidenced by means of the Contractor issuing a signed Acceptance Deed;
- (D) as per Clause 3.6 of the Agreement the Company following the receipt of a signed Acceptance Deed shall review the submitted Acceptance Deed and either sign the Acceptance Deed conforming the compliance of the Deliverable completed or raise objections by issuing an Objection Notice.

Therefore:

By issuing this Acceptance Deed, the Contractor announces that the following Deliverable has been fully completed in accordance with the terms of the Agreement and delivered to the Company on [●]: [description in reasonable details, supporting documentation to be attached].

By signing this Acceptance Deed, the Company confirms its satisfaction with the result of the aforementioned Deliverable completed, and the Company accepts the fulfilment of the respective Deliverable in its entirety.

All definitions used in this Acceptance Deed shall bear the same meaning as in the Agreement unless otherwise specified herein.

For and on behalf of the Company:

For and on behalf of the Contractor:

[●]

[●]

Annex F: Non-disclosure Undertaking Form**Non-disclosure Undertaking No. [●]**

[Riga], [date OR the date indicated on the timestamp of the qualified electronic signature]

This non-disclosure undertaking (the "**Undertaking**") is issued by:

[name], identity code: [ID code] (the "**Recipient**"), acting as a [title] of [company name], a company registered in [country of registration] under the registration No. [registration number], having its registered address [registered address] (the "**Contractor**").

1. **Purpose.** The Recipient recognises that in order to execute the agreement No. [●] and contribute in process called Rail Baltica Global Project Design Review and Approval Process Improvement (Six-Sigma), (the "**Activity**"), RB Rail AS ("**RB Rail**") will provide to the Recipient certain information on RB Rail that must be carefully protected (the "**Confidential Information**"). This Undertaking is intended to certify that RB Rail's Confidential Information (including Confidential Information previously disclosed to other parties in relation to the purpose indicated in this Clause or information yet to be created) shall be protected against unauthorised use or disclosure and that the Recipient will be compliant with all the terms and conditions mentioned below.
2. **Confidential Information** means all and any technical and non-technical information – including, but not limited to which relates to report, patents, patent applications, research, product plans, products, developments, inventions, processes, designs, drawings, engineering, formulae, markets, software (including source and object code), computer programs, algorithms, business plans, agreements with third parties, services, customers, marketing or finances of RB Rail statements and deliberations – whether in oral, visual machine-readable or written form, recorded or embodied in whatever medium – received before, during or after implementation of the Activity that are related to RB Rail and/or Rail Baltica project. Confidential Information cannot be disclosed to any third parties/persons or made public otherwise under any circumstances except as set in the Undertaking.

For the avoidance of doubt, the Confidential Information, inter alia, includes information that:

- (i) will be created within implementation of the Activity;
- (ii) will be received from RB Rail under this Undertaking irrespectively whether it is specified as "Confidential"; "Limited Access Information" etc.

In case of doubt, whether respective information is confidential, the Recipient will process and handle it as Confidential Information until RB Rail confirms otherwise.

3. Obligations of the Recipient:

- 3.1. not to use the Confidential Information for purposes other than the performance of the Activity;
- 3.2. not disclose or permit disclosure of any Confidential Information to third parties or to directors, officers, employees, consultants or agents of the Contractor. In case it is necessary to disclose the Confidential Information to directors, officers, employees, consultants and agents of the Contractor or other third persons who are required to have the Confidential Information in relation to the implementation of the Activity, a written consent must be obtained from RB Rail prior to disclosure of the Confidential Information;
- 3.3. if the Confidential Information is to be disclosed pursuant to Clause 3.2. of this Undertaking, the Recipient is obliged to inform person receiving the Confidential Information of the confidential nature of the Confidential Information, and that some or all of such Confidential Information may be price-sensitive information (commercial secret) and to ensure that any person to whom the Confidential Information is to be given undertakes the same confidentiality obligations in relation to the Confidential Information as included in this Undertaking;

- 3.4. take all reasonable measures to protect and avoid disclosure or use of Confidential Information in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized under this Undertaking to have any such information. Such measures shall include, but not be limited to, the highest degree of care that the Recipient utilizes to protect its own Confidential Information of a similar nature, which shall be no less than reasonable care;
 - 3.5. notify RB Rail in writing of any actual or suspected misuse, misappropriation or unauthorized disclosure of Confidential Information which may come to the Recipient's attention;
 - 3.6. notify RB Rail in writing of the existence, terms and circumstances regarding a request or demand to disclose all or any part of the Confidential Information by a court or competent public authority (the "**Disclosure Order**").
4. **Exceptions.** Notwithstanding the above, the Recipient shall not be liable to RB Rail with regard to disclosure of any Confidential Information if it:
 - 4.1. have been made public in a way that does not constitute a violation of this Undertaking;
 - 4.2. becomes known to the Recipient, without restriction, from a source other the RB Rail without breach of this Undertaking by the Recipient and otherwise not in violation of the RB Rail's rights;
 - 4.3. is disclosed with the prior written approval of RB Rail.
 5. **Limitations.** The obligation not to disclose the Confidential Information does not apply when it results from the applicable provisions of law and respective persons demand its disclosure. In the event that the Recipient receives a Disclosure Order, the Recipient shall disclose only that portion of the Confidential Information which it is legally required to disclose, and prior to such disclosure, the Recipient, if permitted by applicable law, shall give the RB Rail, and its legal counsel, an opportunity to review the Confidential Information in prior to the disclosure.
 6. **Confidential Information access and protection.** Access to the Confidential Information might be performed in oral, paper form or in electronic (digital) form using the agreed electronical document exchange and storage site in the IT infrastructure of RB Rail. RB Rail shall grant access rights to document exchange and storage site in case it is needed. A user's account in said storage site shall be linked to an e-mail of the Recipient that contains the Contractor's e-mail domain (Internet network address). The Recipient shall apply IT solutions to protect acquired Confidential Information which are not worse than solutions which the Recipient applies to protect its own confidential information.

Confidential Information shall be managed under the following principles:

- (i) "*Need to know*" principle: the Recipient shall provide the Confidential Information to the persons who need it in order to carry out activities required to perform the Activity and only in extent objectively required to perform obligations entrusted to these persons.
- (ii) "*Clean screen*" principle: upon completion of work with the Confidential Information the browser software shall be closed, and upon completion of work with the specific document or specific portion of the Confidential Information the computer shall be shut-down or the user shall sign out of its user account in the operating system.
- (iii) "*Clean desk*" principle: upon completion of work with the Confidential Information in paper form the documents shall be removed from the work tables and other work surfaces and stored in lockable documents boxes or strong-boxes which shall be locked with a key in a way to prevent falling into unauthorised hands or documents shall be destroyed in line with procedure set-forth in law.
- (iv) "*Awareness*" principle: the Confidential Information shall not be left unsupervised and the content shall not be disclosed to persons it does not apply to.

7. **Return of Materials.** All Confidential Information supplied to the Recipient shall be destroyed or promptly returned to RB Rail, accompanied by all copies of such Confidential Information made by the Recipient, within five (5) business days after the written request and the Recipient shall use its reasonable endeavors to ensure that anyone to whom the Recipient has supplied any Confidential Information destroys or permanently erases (to the extent technically practicable) such Confidential Information and any copies made by them, in each case save to the extent that such recipients are required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body, or where the Confidential Information has been disclosed under Clause 5 of this Undertaking.
8. **Liability.** The Recipient is aware that unauthorised disclosure of Confidential information may result in civil, administrative or criminal liability.
9. **Remedies.** In the event that the Recipient breaches its commitments under the Undertaking, the Recipient shall compensate all damages to the RB Rail. The Recipient agrees that its obligations set forth in this Undertaking are necessary and reasonable in order to protect RB Rail and its business and the Recipient expressly agree that due to the unique nature of the Confidential Information, only monetary damages would be inadequate to compensate RB Rail for any breach by the Recipient of its covenants and agreements set forth in this Undertaking. Accordingly, the Recipient agrees and acknowledges that any such violation or threatened violation shall cause irreparable injury to the RB Rail and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the RB Rail shall be entitled to obtain injunctive relief against the threatened breach of this Undertaking or the continuation of any such breach by the Recipient, without the necessity of posting a bond or other security or proving actual damages.
10. **Governing Law and Dispute Resolution.** The Recipient acknowledges that this Undertaking and all acts and transactions pursuant hereto and the rights and obligations of the Recipient and RB Rail shall be governed, construed and interpreted in accordance with the laws of the Republic of Latvia, without giving effect to principles of conflicts of law. All disputes arising out of or in connection with this Undertaking shall be dealt with by amicable negotiation. If the Recipient and RB Rail are unable to reach an agreement by negotiation, then any dispute, disagreement or claim arising from this Undertaking which relates to the same or any breach thereof, termination or invalidity shall be finally resolved in the light of general civil jurisdiction rules of the Republic of Latvia.
11. **Amendment and Waiver.** Any term of this Undertaking may be amended with the written consent of RB Rail and the Recipient. Failure to enforce any provision of this Undertaking shall not constitute a waiver of any term hereof.
12. **Inside Information.** The Recipient acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation and the Recipient undertakes not to use any Confidential Information for any unlawful purpose.
13. **Personal data processing.** By signing this Undertaking, the acknowledges that RB Rail shall process Recipients personal data in accordance with GDPR requirements in order to achieve goals linked with the Activity identified in Clause 1 of this Undertaking and to ensure that the purpose of this Agreement is fulfilled.
14. **Term.** The obligations of this Undertaking shall become effective as date of its signing by the Recipient and shall be effective for unlimited time period or maximum time period allowed by applicable laws.

The Recipient:

[name, surname, position]