

**PROFESSIONAL CONSULTANT SERVICE
AGREEMENT**
for Tax Advisory and Reporting Services for RB Rail AS in 2019-2020
for Part No 1 “Tax compliance and reporting services for RB Rail AS Estonia branch”
between

RB Rail AS
and
Ernst & Young Baltic AS

Contract registration number 8/2019-22
CEF¹ Contract No INEA/CEF/TRAN/M2014/1045990 A34,
CEF Contract No INEA/CEF/TRAN/M2015/1129482 B18
CEF Contract No INEA/CEF/TRAN/M2016/1360716 C09
Procurement procedure identification No RBR 2018/31

Riga
Dated 1 April 2019

¹ Grant Agreement under the Connecting Europe Facility

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PROFESSIONAL CONSULTANT SERVICE AGREEMENT

This Professional Consultant Service Agreement (the "Agreement"), together with all Annexes thereto, is entered into in Riga, on 1 April of the year 2019 (the "Effective Date") by and between:

RB Rail AS, a joint stock company registered in the Latvian Commercial Register with registration No 40103845025, legal address at Krišjāņa Valdemāra iela 8-7, Riga, LV-1010, Latvia (the "Principal"), represented by the Chairperson of the Management Board Timo Riihimäki and Management Board Member Kaspars Rokens acting on the basis of the Regulations on Representation Rights dated 25 May 2018, on the one side,
and

Ernst & Young Baltic AS, a public limited company organized and existing under Estonian law, with registration number 10877299, having its registered address at Rävälä pst 4, Tallinn 10142, Estonia (the "Service Provider"), represented by Associate Partner Silje Sander acting on the basis of power of attorney dated 30 June 2016, on the other side.

WHEREAS:

- (A) This Agreement is entered into under the Global Project which includes all activities undertaken by the respective beneficiaries and implementing bodies of the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania in order to build, render operational and commercialise the Rail Baltica railway – a new fast conventional double track electrified railway line according TSI INF P2-F1 criteria and European standard gauge (1435mm) on the route from Tallinn through Pärnu-Riga-Panevėžys-Kaunas to Lithuanian-Polish border, with the connection of Kaunas – Vilnius, and related railway infrastructure in accordance with the agreed route, technical parameters and time schedule;
- (B) The Principal has organised procurement procedure "Tax Advisory and Reporting Services for RB Rail AS in 2019-2020" (identification No RBR 2018/31) (the "Procurement Procedure") whereby the Service Provider's tender proposal (the "Service Provider's Proposal") was selected as the winning bid for Part No 1 "Tax compliance and reporting services for RB Rail AS Estonia branch";
- (C) This Agreement is co-financed from the Connecting Europe Facility (CEF), CEF Contract No INEA/CEF/TRAN/ M2014/1045990, Activity 34, Action No: A5.1.1: "Project implementation support measures (RBR)", CEF Contract No INEA/CEF/TRAN/ M2015/1129482, Activity 18, Action: "Global project management" and CEF Contract No INEA/CEF/TRAN/ M2016/1360716, Activity 9, Action No: C5.1.2: "Global project and Action project implementation support measures (RB Rail, EE, LV, LT)".

Section I DEFINITIONS AND INTERPRETATION

1.1. *Definitions.* In this Agreement, unless the context requires otherwise, all Definitions shall have the meanings as described to such terms in accordance with *Annex A: Definitions and common terms*.

1.2. *Interpretation.*

- (a) The headings contained in this Agreement shall not be used in its interpretation.
- (b) References to the singular shall include references in the plural and vice versa, words denoting a gender shall include any other gender where the context requires, and words denoting natural persons shall include any other Persons.
- (c) References to a treaty, directive, regulation, law or legislative provision shall be construed, at any particular time, as including a reference to any modification, extension or re-enactment of the respective treaty, directive, regulation, law or legislative provision at any time then in force and to all subordinate legislation enacted from time to time.
- (d) In the event there arises a conflict between provisions of the Agreement, the last provision to have been written chronologically shall take precedence.
- (e) Any reference in this Agreement to a Person acting under the direction of another Person shall not include any action that is taken in contravention of any Applicable Law or Standards, unless the relevant Person can demonstrate that an explicit instruction or direction was given to take the relevant action.
- (f) Unless expressly stated to the contrary, any reference in this Agreement to the right of consent, approval or agreement shall be construed such that the relevant consent, approval or agreement shall not be unreasonably delayed or withheld. The Parties agree and acknowledge as follows:

- (i) neither Party shall be required to seek or apply for any consent, approval or agreement by any Person which would place the respective Party in breach of the Applicable Law, Standards or any Good Industry Practice; and
 - (ii) nothing in this Agreement shall require the Principal to give or procure the giving of any consent or approval which would be contrary to the protection, safety and efficient operation of the Railway and the Project.
 - (g) A reference to "writing" shall include an e-mail transmission and any means of reproducing words in a tangible and permanently visible form.
 - (h) The words "include" and "including" are to be construed without limitation.
 - (i) Unless indicated otherwise, all references to "days" shall mean calendar days.
 - (j) The words in this Agreement shall bear their natural meaning, except for any Definitions in accordance with *Annex A: Definitions and common terms*.
- 1.3. *Order of Precedence*. In the event of any discrepancy or inconsistency between the documents forming part of this Agreement, the following order of precedence shall apply:
- (a) This Agreement document;
 - (b) Explanations (clarifications) of the procurement documentation;
 - (c) Procurement documents with the annexes (including Technical specification (Scope of Service));
 - (d) Clarifications of the Service Provider's Proposal;
 - (e) Service Provider's Proposal;
 - (f) All other Annexes of the Agreement.

Section II General terms and conditions

- 2.1 *Engagement*. The Principal hereby engages the Service Provider to provide and perform the Service for the purposes of the Project with the objective of ensuring provision and performance of all Works more fully identified in *Annex B: Technical Specification* attached to this Agreement (the "Scope of Service") subject to the terms of this Agreement, and the Service Provider hereby accepts such engagement.
- 2.2 *Objective*. The Service shall result in the performance of all Works identified in according to the terms of this Agreement and delivery to the Principal of the Deliverables according to the schedule specified in *Annex B: Technical Specification* to this Agreement.
- 2.3 *Ordinary, Additional and Extraordinary Services*. The Service under this Agreement shall comprise the following:
- (a) Ordinary Services are those designated as "Monthly Tasks" and "Annual Tasks" in accordance with *Annex B: Technical Specification* (the "Ordinary Services");
 - (b) Additional Services are those designated as "Additional tasks" in accordance with *Annex B: Technical Specification* or which by written agreement of the Parties are otherwise additional to Ordinary Services (the "Additional Services") and which are necessarily performed by the Service Provider, provided that the Scope of Services identified in accordance with *Annex B: Technical Specification* is supplemented with the Additional Services in strict compliance with Applicable Law. Irrespective of anything to the contrary set forth in this Agreement, each Additional Service shall constitute an Alteration.
- 2.4 *Alteration Requests by Principal*. Notwithstanding any provisions in this Agreement to the contrary, whenever the Principal reasonably considers that an Alteration is necessary:
- (a) to address, alleviate or comply with (as appropriate) a Mandatory Alteration; or
 - (b) to address changes to the underlying assumptions set out in the Scope of Service,
- the Principal shall send to the Service Provider a written notice requesting an Alteration to the Scope of Service and/or Service Schedule (the "Alteration Request") to the extent that the Alteration is reasonable in the circumstances. For the avoidance of any doubt, no Alteration shall be effective unless and until agreed in writing by both Parties and made in accordance with Applicable Law of Latvia.
- 2.5 *Co-Operation of the Parties*. The Parties shall cooperate with one another to fulfil their respective obligations under this Agreement. The Parties shall endeavour to maintain good working relationships among all key personnel engaged toward provision of the Service.

- 2.6 *Licensing Requirements.* By signing this Agreement, the declaration is made by the Service Provider that the Service Provider is professionally qualified, registered, and licensed to practice in the Republic of Estonia, if it's required in accordance with legal acts of Estonia.
- 2.7 *General Obligations of Service Provider.* The Service Provider shall be responsible for the professional quality, technical accuracy and coordination of all concepts, programming, reports, designs, drawings, specifications and other services furnished under this Agreement. The Service Provider shall have an obligation, without additional compensation of any kind, to correct or revise any errors, deficiencies, or omissions in concepts, programming, reports, designs, drawings, specifications, estimates, and other services rendered hereunder and forming part of the Service. The Service Provider shall furnish to the Principal all Deliverables as described in *Annex B: Technical Specification*, configured according to this Agreement.

Section III Obligations of Service Provider

- 3.1 *General Obligations.* The Service Provider's services shall be performed as expeditiously as is consistent with professional skill and care, orderly progress of the Service, and in accordance with this Agreement. The Service Provider shall, at all times during the term of this Agreement, act in good faith towards the Principal in respect of all matters under the Agreement. The Service Provider undertakes to perform or procure the performance of the Service in its entirety. The Service Provider shall develop and supplement the Scope of Service in consultation with the Principal with respect to identifying key dates, Deliverables, the underlying assumptions and any Necessary Consents. The Service Provider agrees with the Principal that it shall use all relevant knowledge obtained by the Service Provider in designing, building and maintaining public infrastructure networks having characteristics similar to the characteristics of the Project in the performance of its obligations under this Agreement. Specifically, the Service Provider undertakes to perform the Service in accordance with all of the following (this list is not all-inclusive):
- (a) requirements of Applicable Law;
 - (b) Good Industry Practice;
 - (c) legal requirements and Standards as may be applicable from time to time;
 - (d) Necessary Consents; and
 - (e) the terms and conditions of this Agreement.
- 3.2 *Duty of Care and Exercise of Authority.* The Service Provider shall:
- (a) in performing its obligations under this Agreement, exercise reasonable professional skill, diligence and care as may be expected of a properly qualified and competent person carrying out services of a similar size, nature, type and complexity;
 - (b) ensure that its personnel are properly qualified and competent in accordance with the relevant standards and the Agreement and are qualified to perform their duties efficiently;
 - (c) ensure that all maps, drawings, plans, specifications, estimates, studies, computer files and other documents and information required to be prepared or submitted by the Service Provider under this Agreement conform to Good Industry Practice generally acceptable at the time of submission of such maps, drawings, plans, specifications, estimates, studies, documents and information;
 - (d) at all times during the term of the Service, ascertain and comply with all Applicable Laws and Good Industry Practice of the Republic of Estonia. In case Good Industry Practice for any particular aspects is not available in Estonia, the Service Provider shall apply the Good Industry Practice from elsewhere in the European Union and ensure that it is in compliance with Applicable Law of the Republic of Estonia;
 - (e) comply, where applicable, with any reasonable requirements of the Principal not otherwise provided for in this Agreement;
 - (f) notify the Principal of any Defects in accordance with Clause 8.3 of this Agreement as soon as such Defects are identified by the Service Provider; and
 - (g) whenever the Service includes the exercise of powers or performance of duties authorized or required pursuant to the terms of any contract entered into between the Principal and any third party, the Service Provider shall:
 - (i) act in accordance with the terms and conditions of the agreement entered into between the Principal and the relevant third party; provided, however, that the details of such powers and

duties, to the extent not described pursuant to Scope of Services are acceptable to the Service Provider;

(ii) if authorized to certify, decide or exercise discretion, do so fairly between the Principal and third party not as an arbitrator but as an independent professional exercising its best skill and judgment; and

(iii) to the extent so authorized, cause the obligations of any third party to be adjusted or modified, subject to obtaining the prior approval of the Principal to any adjustment or modification which can have a material effect on Costs, quality or time (except in any emergency when the Service Provider shall inform the Principal as soon as practicable).

3.3 *Maintenance of Records.* During the term of the Service and during ten (10) years from expiration or termination of this Agreement for any reason whatsoever, the Service Provider shall keep and maintain clear, adequate and accurate records and documentation evidencing, to the reasonable satisfaction of the Principal, each of the following:

- (a) the amount of time (rounded up to 30 minutes) actually spent by personnel of the Service Provider and personnel of each Approved Sub-Contractor toward performance of any of the Works forming part of the Service;
- (b) the fact that the Service has been and is being carried out in accordance with Applicable Law and Good Industry Practice and, to the extent applicable, conditions of any Necessary Consents; and
- (c) title or license of the Service Provider with respect to any object code forming part of or embedded in Service Provider Software used in the performance of the Service.

In addition to the obligations set forth in accordance with this Clause 3.3, the Service Provider shall have an obligation, during the term of this Agreement, to retain copies of the object code of all software used in the design and production of the Service Provider software, if such software shall be used.

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.

3.4 *Access to Documentation.* At all times during the term of the Service, the Principal shall have access to all Documentation. This access shall be continuing and survive the termination of this Agreement for either cause or convenience. The Documentation shall be kept being accessed in a generally recognized format for a period of for period of ten (10) years from the date of expiration or termination of this Agreement. All records forming part of the Documentation shall be available to the Principal auditor, or expert appointed by the Principal during the period of time specified in accordance with this Clause 3.4.

3.5 *Right to Sub-Contract and Staff.*

- (a) In performing the Services in accordance with the Scope of Service and subject to the provisions of Clause 3.14 and this Clause, the Service Provider may only rely on the services of those Approved Sub-Contractors and Staff listed in *Annex D: List of Approved Sub-Contractors and Staff*, as such list may, from time to time, be modified or supplemented in agreement with the Principal and in accordance with the terms and subject to the criteria contained in the applicable Public Procurement Law of the Republic of Latvia. Parties shall specify the name, contact details and legal representative(s) of each Approved Sub-Contractor as of the Effective Date in *Annex D: List of Approved Sub-Contractors and Staff*. The Service Provider shall have an obligation to notify the Principal in writing of any changes to Sub-Contractor or Staff data specified in *Annex D: List of Approved Sub-Contractors and Staff* occurring during the term of this Agreement and of the required information for any new Sub-Contractors or Staff member which it may subsequently engage toward performing the Service.
- (b) Pursuant to the Public Procurement Law of the Republic of Latvia the Service Provider shall obtain prior written consent of the Principal for the replacement of each Sub-Contractor or each Staff member, or each key personnel indicated in *Annex D: List of Approved Sub-Contractors and Staff* and involvement of additional Sub-Contractors or Staff members, or key personnel.
- (c) Review and evaluation of the replacement of Sub-Contractors or Staff shall be carried out, and the consent or refusal to give consent shall be rendered by the Principal in accordance with Section 62 of the Public Procurement Law of the Republic of Latvia.
- (d) The Service Provider shall not involve employee and/or staff (including but not limited to key office-holders, key personnel (including but not limited to Supervisor/manager, Consultants) who have a criminal record, in the implementation of the Agreement.

- (e) The Service Provider shall submit to the Principal the name, surname, personal code (identification number), professional title (job position) of every natural person that will implement the Agreement and/or will be present on site at least ten (10) Working Days prior involvement of this person in the implementation of the Agreement and/or its presence on site. The Service Provider shall provide a brief (concise) description of duties towards the implementation of the Agreement of the persons, and, if requested by the Principal.
- (f) The Principal has a right to demand dismissal of such a natural person non-compliant with the security clearance requirements stipulated in this Clause 3.5 at the Principal's sole discretion on the basis of the Principal's written request for dismissal. Parties agree that such Principal's decision is in-contestable.
- (g) The Service Provider shall replace the Sub-Contractor and/or Staff member which, during the effectiveness of this Agreement, meets any of the compulsory grounds for exclusion of tenderers (or Sub-Contractors) that were verified during the Procurement Procedure and/or the Principal has demanded his/her dismissal according to Clause 3.5(f) and to prevent (i) involvement of such a natural person in the implementation of the Agreement and (ii) the presence of this person in the real estate, construction site or any other site. The Service Provider shall immediately undertake all the necessary actions and measures to ensure that any risk of involvement of such a natural person in the implementation of the Agreement is promptly and duly eliminated.
- (h) In case mentioned in Clause 3.5(f) the Service Provider is obliged:
 - (i) to immediately replace the dismissed person according to Section 62 of the Public Procurement Law of the Republic of Latvia and the Agreement, and
 - (ii) to comply with the Principal's written instructions pursuant to this Clause 3.5 and not to challenge these instructions, and
 - (iii) to inform the Principal about dismissal or replacement proceedings pursuant to this Clause.

In case if the immediate dismissal or replacement of the dismissed natural person non-compliant with the security clearance requirements stipulated in this Clause 3.5 results in the unreasonable in-crease of the costs towards the Service Provider, the Service Provider shall immediately inform the Principal about this fact in written and the Parties shall agree upon the conditions of the provision of the Services.

The Service Provider's non-compliance with the security clearance requirements stipulated in this Clause 3.5, the Principal's instructions towards the Service Provider regarding these security clearance requirements or other provisions of this Clause 3.5 constitutes a material breach (breach of a material term or condition) of the Agreement.

- 3.6 *Responsibility for Performance by Sub-Contractors and Staff.* The Service Provider shall retain the complete responsibility for the proper performance of all of its obligations under this Agreement, and any act, failure to act, breach or negligence on the part of any of its Approved Sub-Contractors and Staff shall, for the purposes of this Agreement, be deemed to be the act, failure to act, breach or negligence of the Service Provider.
- 3.7 *Property of Principal.* Anything supplied by or paid for by the Principal for the use by the Service Provider toward provision of the Service under this Agreement shall constitute the property of the Principal and, to the extent practicable, shall be marked by the Service Provider as property of the Principal. For the avoidance of any doubt, such delivery shall not be forming part of *Annex B: Technical Specification* and the terms of the delivery shall be agreed between the Principal and the Service Provider separately.
- 3.8 *Reservation of Certain Approval Rights.* Nothing in this Agreement shall require the Principal to give or procure the giving of any consent or approval which would be contrary to or inconsistent with the interests of protection, safety and efficient operation of the Railway or the Project and the safety of persons or property.
- 3.9 *Acceptance Not a Waiver.* The Principal's review, approval, acceptance, or payment with respect to any part of the Service provided by the Service Provider shall not be interpreted or construed to operate as a waiver of any rights or cause for action arising out of the Service Provider's performance of the Service under this Agreement. The Service Provider shall remain liable to the Principal as allowed under this Agreement and under Applicable Law for any and all Costs and/or Damages caused by the Service Provider's negligent performance of any part of the Works and Service furnished under this Agreement.
- 3.10 *Obligations of Service Provider on Termination.* In the event of issue or receipt of a notice of termination of the Agreement under Clause 10.1, the Service Provider shall:

- (a) take immediate steps to bring an end to the performance of the Service in an orderly manner;
 - (b) make arrangements to minimize the expenditure under this Agreement as rapidly as possible; and
 - (c) pass to the Principal a complete set of any documents, manuals or other information that the Principal may require in connection with the Project and the Railway and which, at the time of termination, are in the possession or under the control of the Service Provider.
- 3.11 *Attendance of Meetings.* To the extent necessary to ensure smooth and efficient provision of the Service, the Service Provider shall, at the Principal's request, hold and/or attend meetings with any Persons, at which appropriate personnel of the Service Provider and the Principal and the Representatives of each Party shall be present. The Service Provider shall record all meetings (also online meetings) between Parties and prepare meeting reports within five (5) Working Days after each meeting. All meeting reports shall be harmonized by Principal.
- 3.12 *Compliance with Laws.* The Service Provider shall review the Applicable Law that is applicable to the Service Provider's services. In carrying out any activities forming part of the Service, the Service Provider shall, at all times, ensure compliance with requirements imposed by supra-national and/or governmental authorities having jurisdiction over the Project.
- 3.13 *No Material Interference.* The Service Provider agrees that non-Principal activities undertaken by the Service Provider will be managed so as not to materially interfere with the Service Provider's obligations to the Principal under this Agreement.
- 3.14 *No Conflicting Activity.* Except with the Principal's knowledge and express written permission, the Service Provider shall not engage in any activity, or accept any employment, other agreement, interest, or contribution that would reasonably appear to compromise the Service Provider's professional judgment and performance with respect to the Service and/or the Project. In performing the Service, the Service Provider shall take all necessary measures to prevent any situation where the impartial and objective implementation of the Service is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest.
- 3.15 *Certain Negative Covenants.* In carrying out the Service, the Service Provider undertakes not to procure goods or services of any kind from any person meeting any of the following criteria:
- (a) the Person who is a member of the Management Board or Supervisory Board of an Approved Sub-Contractor or procurator of an Approved Sub-Contractor, or is authorised to represent or act on behalf of an Approved Sub-Contractor with respect to any activity related to any subsidiary company of such Approved Sub-Contractor, and such Person has been accused of commitment of any of the following criminal offences pursuant to an order issued by a public prosecutor or was found to be guilty of commitment of any of the following criminal offences in accordance with a court judgment that has entered into legal force, is non-disputable and non-appealable:
 - (i) formation, organisation, leading or involvement in the criminal organisation or another criminal formation, or participation in the criminal acts of such organisation or formation;
 - (ii) accepting a bribe, giving of a bribe, misappropriation of a bribe, intermediation toward giving or taking of a bribe, acceptance of a prohibited benefit or commercial bribing, unauthorized participation in property transactions, unlawful claiming of benefits, accepting or providing benefits, trading influences;
 - (iii) fraud, misappropriation of funds or money laundering;
 - (iv) tax evasion or evasion of payments equivalent to tax;
 - (v) terrorism, financing of terrorism, creation or organization of terrorist group, traveling for terrorist purpose, justification of terrorism, instigation of acts of terrorism, terrorist threats or recruitment and training of a person with the aim of committing acts of terrorism;
 - (vi) human trafficking;
 - (b) the Person has, by decision of a competent authority or judgment of a court which has entered into legal force and is non-disputable and non-appealable, been found guilty of violation of labour law in any of the following manners:
 - (i) employment of one or more citizens or nationals of countries who are not citizens or nationals of a Member State of the European Union and are residing in the territory of a Member State of the European Union unlawfully;
 - (ii) employment of one or more persons without having entered into written employment agreement with such persons, or without having submitted an employee declaration with

respect to such persons within a period of time stipulated in accordance with applicable laws and regulations applicable to persons that enter into salaried employment;

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

3.16 *Visibility Requirements.* At all times during provision of the Service, the Service Provider undertakes to comply with each of the following requirements:

- (a) any report, brochure, document or information related to the Service provided by the Service Provider to the Principal or any other Person, or which the Service Provider makes publicly available shall include each of the following:
 - (i) a funding statement which indicates that the Service is financed from CEF funds substantially in the following form: "Co-financed by the Connecting Europe Facility of the European Union";
 - (ii) with respect to printed materials, a disclaimer releasing the European Union from liability with respect to any contents of any distributed materials substantially in the form as follows: "The sole responsibility of this publication lies with the author. The European Union is not responsible for any use that may be made of the information contained therein". The disclaimer in all official languages of the European Union can be viewed on the website <https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos>; and
 - (iii) the flag of the Council of Europe and the European Union.
- (b) the requirements set forth in Clauses 3.16(a)(i) and 3.16(a)(iii) of this Agreement can be complied with by means of utilizing the following logo:



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

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

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

Section IV OBLIGATIONS OF PRINCIPAL

- 4.1. *Acting in Good Faith and Supply of Information.* At all times during the term of this Agreement, the Principal undertakes to act in good faith toward the Service Provider in respect of all matters under this Agreement. The Principal shall, so as not to delay the Service and within a reasonable time, supply to the Service Provider free of cost all information in the power of the Principal to obtain which pertains to the Service, the Project and the Railway. The Principal shall, free of any Costs to the Service Provider, to the extent not explicitly stated otherwise in this Agreement, comply with all of its obligations under this Agreement, including with respect to carrying out any action or providing any information identified and specifically requested by the Service Provider, as reasonably necessary to enable the Service Provider to progress the Service. Information or instructions provided to the Service Provider by or on behalf of the Principal in connection with the Railway or the Project shall be prepared and given in such a diligent and professional manner and with such clarity, in such detail and in a timely manner as is necessary to enable the Service Provider to comply with its obligations under this Agreement.
- 4.2. *Decisions by Principal.* On all matters properly referred to it by the Service Provider in writing the Principal shall give its decision in writing so as not to delay the Service and within a reasonable time. The Principal is not limited to provide any answer and information to the Service Provider by e-mail.
- 4.3. *Assistance and Cooperation by Principal.* In each country of the Railway and in respect of the Service Provider, its personnel and dependents, as the case may be, the Principal shall have an obligation to do all in its power to reasonably assist the Service Provider and reasonably cooperate with the Service Provider with respect to each of the following matters:
- (a) providing unobstructed access wherever access is required for purposes of enabling, establishing or providing the Service; and
 - (b) providing access to other organizations to enable collection of information which is to be obtained by the Service Provider.
- 4.4. *No Material Interference.* The Principal agrees that non-Service Provider activities undertaken by the Principal will be managed so as not to materially interfere with the Principal's obligations to the Service Provider under this Agreement.
- 4.5. *Accounting and Auditing Services.* The Principal shall furnish accounting and auditing services as may be necessary for the Service as the Principal may require ascertaining how and/or for what purposes the Service Provider has used the funds paid under the terms of this Agreement.
- 4.6. *Action Upon Becoming Aware of Defects.* In the event the Principal observes or otherwise becomes aware of any error, fault, omission, or defect in the Service or non-conformance of any action forming part of the Service with the Documentation or information, the Principal shall give prompt notice thereof to the Service Provider. The Service Provider shall have the obligation to correct such error, fault, omission, or defect in the Service or non-conformance of any action forming part of the Service.

Section V REPRESENTATIONS AND WARRANTIES

- 5.1 *Certain Representations and Warranties by Parties.* Each Party represents and warrants to the other Party, as of the Effective Date, as follows:
- (a) it has entered into this Agreement with the aim of attaining all of the objectives and performing in all material respects all of the obligations and commitments herein set forth;
 - (b) it has entered into this Agreement without having any intention or goal whatsoever to violate the Applicable Law, its own Statutes, other constitutional documents, laws or agreements of any kind to which it is a party;
 - (c) it is not bankrupt and is not the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, it is not in an arrangement with creditors,

where its business activities are suspended, or it is in any analogous situation arising from a similar procedure under the laws of the country where it is registered and submits its tax accounts; and

(d) it has entered into this Agreement of its own volition and in good faith.

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

- (a) it has all requisite qualification, skills and competence to provide the Service to the Principal on the terms and conditions of this Agreement which are no less favourable than the terms and conditions of service identified by the Service Provider in any document submitted by the Service Provider to the Principal as part of the Procurement Procedure and on the terms of the Service Provider's Proposal identified in accordance with Service Provider's Proposal;
- (b) it holds all requisite licenses, permits, approvals and consents necessary to enable performance of the Service according to the specifications contained in this Agreement and *Annex B: Technical Specification*;
- (c) it has all requisite ability to ensure the highest quality of the Service;
- (d) it will assign competent and duly qualified personnel to carry out the Service set out in this Agreement according to the highest professional Standard and Good Industry Practice;
- (e) it is not deemed to be a person associated with the Principal for the purposes of Applicable Law;
- (f) it is compliant with all of the requirements of the Service Provider's Declaration contained in *Annex J: Declaration of Service Provider*;
- (g) and will continue to be compliant with all such requirements during the term of this Agreement;
- (h) the income mentioned in this Agreement will not derive through permanent establishment or fixed base maintained by the Service Provider in the Republic of Latvia. The Service Provider agrees to submit to the Principal four (4) copies of "Residence Certificate–Application for Reduction of or Exemption from Latvian anticipatory taxes withheld at source from payments (management and consultancy fees, leasing fees and certain other types of income), paid to residents of the Estonia" (the "Residence Certificate") confirmed by Competent Authority of the Estonia and the Latvian State Revenue Service. The Residence Certificate shall be submitted to the Principal prior the Principal will due to make a payment of the fee or other payments to the Service Provider. Otherwise the Principal will withhold withholding tax at the rate of 20% from the fee and payments made to the Service Provider. The Principal is entitled to make any deductions from the payments due to the Service Provider if the Service Provider doesn't comply with this provision.

Section VI PERSONNEL AND REPRESENTATIVES

6.1. *Supply of Personnel.* The personnel who are designated by the Service Provider shall be fit for their respective assignments, and their qualifications shall be acceptable to the Principal.

6.2. *Representatives.* Each Party shall appoint an officer, employee or individual to serve as its representative toward supply or receipt of the Service with full authority to act on its behalf in connection with this Agreement (hereinafter, the "Representative"), the initial Representatives having been identified in accordance with *Annex H: Representatives*. Any restriction placed by either Party on its Representative's authority shall be notified to the other Party in writing in order to be effective. The Representatives may delegate their authority by notice in writing specifying the identity of the delegate and specifying the scope of authority so delegated. In addition to the appointment of a Representative in accordance with this Clause 6.2, to the extent required by the Principal, the Service Provider shall designate an individual to liaise with the Representative of the Principal in each country where the Project is implemented.

6.3. *Changes in Personnel.* To the extent necessary to replace any Person among personnel or Representative of either Party engaged toward provision or receipt of the Service, the Party responsible for the appointment of such Person shall immediately arrange for replacement of the appointed Person by another Person of comparable competence. The costs of such replacement shall be borne by the Party responsible for the appointment, except that if the replacement is requested by the other Party,

- (a) such request shall be made in writing and state the reason for the request; and
- (b) the Party making the request shall bear the costs of replacement, unless misconduct or inability to perform is satisfactorily established as the reason for the replacement.

- 6.4. *Supplemental Personnel.* To the extent necessity arises to supplement the personnel of the Service Provider engaged toward provision of the Service with additional personnel, the Service Provider shall immediately arrange for engagement of such supplemental personnel. The costs of such engagement shall be borne by the Service Provider. For the avoidance of any doubt, the engagement of supplemental personnel under this Clause 6.4 shall not require approval by the Principal, provided that this personnel complies with the Applicable Law, including the Public Procurement Law of the Republic of Latvia, and this Agreement.

Section VII SERVICE MEETINGS, REPORTING AND RISK REDUCTION

- 7.1 *Service Meetings.* The Service Provider shall arrange meetings if requested by the Principal, at which appropriate personnel of the Service Provider and the Principal and the Representatives of each Party shall be present. Service Provider shall record all meetings (also online meetings) between Parties and prepare meeting reports within five (5) Working Days after each meeting. All meeting reports shall be harmonized by Principal.

- 7.2 *Reporting.* The Service Provider shall, in a format and at intervals to be agreed with the Principal:

- (a) provide the Principal with regular reports and status updates on the progress of the Works.
- (b) report on any changes to the *Annex B: Technical Specification*, *Annex C: Schedule of Service*, which the Service Provider considers may be needed in order to fulfil the objectives set out in the *Annex B: Technical Specification* and *Annex C: Schedule of Service* and
- (c) use reasonable endeavours to provide any other information and status updates as may be reasonably requested by the Principal at any time.

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

- 7.3 *Early Warnings.* Each Party undertakes to give an early warning by notifying the other Party as soon as such Party becomes aware of any matter that is capable of producing any of the following effects:

- (a) delay any Due Date of supply of any Deliverable specified in accordance with *Annex B: Technical Specification*; or
- (b) impair the usefulness of the Service to the Service Provider.

Notwithstanding the above, the Service Provider may give an early warning by notifying the Principal of any other matter which the Service Provider deems to be necessary. The Principal shall enter each early warning into the Risk Register or another register in any form/document as decided by the Principal.

- 7.4 *Risk Reduction Meetings.* Either Party may instruct the other Party to attend a risk reduction meeting at which appropriate personnel of each Party and, to the extent practicable, the Representatives of each Party, shall be present, in order for those who attend to co-operate with respect to any of following matters:

- (a) making and considering proposals for how the effect of the risks registered with the Risk Register or identified at any stage can be avoided or reduced;
- (b) deciding on the course of action which will be taken and which Party, in accordance with this Agreement, will take the relevant course of action; and
- (c) deciding which risks have now been avoided or have passed and can be removed from the list of identified risks or from the Risk Register.

- 7.5 *Risk Register Revisions.* The Principal shall be responsible for revising the Risk Register or another register in any form/document as decided by the Principal to record the decisions made at each risk reduction meeting and issuing the revised Risk Register to the Service Provider in the form chosen by the Principal. In the event a decision requires a modification to be made to the *Annex B: Technical Specification*, the Principal shall request an Alteration to the *Annex B: Technical Specification* to be made in accordance with this Agreement at the same time as the Principal issues the revised Risk Register.

- 7.6 *Obligation to Act Pursuant to Principal's Comments.* The Service Provider shall have due regard to any comments expressed by the Principal in connection with any report or at any meeting and shall provide reasons to the Principal where it does not take into account any such comments or representations.

- 7.7 *Ambiguities and Inconsistencies.* Either Party shall notify the other Party as soon as it becomes aware of any ambiguity or inconsistency in or between the documents or information forming part of this Agreement or inconsistency in such documents, information and comments made by the Principal under Clause 7.3, 7.4, 7.5, and 7.6. The Principal shall have the absolute and exclusive discretion in resolving any such ambiguity or inconsistency.

Section VIII COMMENCEMENT OF SERVICE, REMEDY OF DEFECTS AND ACCEPTANCE

- 8.1 *Service Commencement.* The Service Provider shall not commence provision of the Service until Service Start Date as identified in accordance with *Annex C: Schedule of Service* and shall ensure that the Deliverables are furnished on or before each relevant Due Date set in the *Annex B: Technical Specification*. The Service Provider shall render the Service timely and with due diligence having due regard to any applicable Due Date and any other key dates for performance of the Service set out in the Agreement and the applicable Annexes, as may be amended from time to time with the consent of the Principal or in accordance with this Agreement and Public Procurement Law of the Republic of Latvia.
- 8.2 *Impediments and Delays.* If the Service, or any part thereof, is impeded or delayed by the Principal or any third party engaged by the Principal so as to increase the duration of the Service or any of the applicable Due Dates:
- (a) the Service Provider shall inform the Principal of the circumstances and probable effects of such impediment or delay upon the agreed schedule of Service specified in accordance with *Annex C: Schedule of Service*; and
 - (b) the duration of the Service shall be increased, and any Due Date affected by the impediment or delay shall be extended accordingly.
- 8.3 *Defects and Defects Date.* Until the Defects Date specified in accordance with *Annex C: Schedule of Service* the Principal shall notify the Service Provider of each Defect of any kind as soon as Defect is identified by the Principal and the Service Provider shall have an obligation to notify the Principal of each Defect as soon as Defect is identified by the Service Provider. Upon discovering a Defect, or upon receipt by the Service Provider of a notification of Defect from the Principal, the Service Provider shall have period to remedy the Defect as set in accordance with *Annex C: Schedule of Service* (the "Cure Period"). In the event of inability or failure by the Service Provider to remedy the Defect within the Cure Period, the Principal shall be entitled, at the sole and exclusive discretion of the Principal, to do any of the following:
- (a) allow the Service Provider an additional time period for remedying the Defect, such time period to be determined in the sole discretion of the Principal;
 - (b) remedy the Defect at own cost of the Principal (including by means of relying on the services of a third Person) and demand reimbursement by the Service Provider of Costs incurred by the Principal as a result of having to pay other Persons toward carrying out any work or action;
 - (c) terminate the Agreement according to *Section X TERMINATION AND SUSPENSION*; or
 - (d) remedy the Defects, irrespective of the extent or nature of the Defects, in accordance with Clause 8.3 (b) and terminate the Agreement pursuant to *Section X TERMINATION AND SUSPENSION*.
- For the avoidance of any doubt, the application of the Cure Period under this Clause 8.3 shall be without prejudice to and shall not relieve the Service Provider from the obligation to pay any contractual penalty in accordance with the provisions of Clause 11.2 or to pay Damages in accordance with the provisions of Clause 11.3 of this Agreement.
- 8.4 *Completion of Service and Completion Note.* All the Milestones and Deliverables completed by the Service Provider during the previous month in accordance with the *Annex B: Technical Specification* and *Annex C: Schedule of Service*, and by the relevant Due date shall be supplied to the Principal until the fifth (5) date of the current month. On producing all Deliverables (including all Documentation and information forming part of the Deliverable), the Service Provider shall issue to the Principal one Provisional Completion Note substantially in the form of *Annex E: Form of Provisional Completion Note* (hereinafter, the "Provisional Completion Note"). The Provisional Completion Note shall include the Deliverables and adequate supporting Documentation and information relevant to the Deliverables completed in the previous month.
- 8.5 *Objection Notice and Provisional Acceptance Note.* In the event the Principal objects to the issuance of a Provisional Acceptance Note for all or some of the Deliverables, it shall give notice to the Service Provider setting out in reasonable detail any Defect or reason for the objection (the "Objection Notice") within reasonable time following receipt of the Provisional Completion Note. In the event no reasons for objection to the Provisional Completion Note exist, the Principal shall issue, within reasonable time

following receipt of the Provisional Completion Note, a Provisional Acceptance Note in the form of *Annex F: Form of Provisional Acceptance Note* (the "Provisional Acceptance Note"). Subject to Clause 3.9 of this Agreement, the date of the Provisional Acceptance Note shall constitute "Completion Date" with respect to the relevant Deliverable. The Principal shall not unreasonably withhold or delay issuance of a Provisional Acceptance Note. The Provisional Acceptance Note may have annexed to it a list of any outstanding Defects or deficiencies to be corrected by the Service Provider.

8.6 *Completion of Service Following Receipt of Objection Notice.* In the event of receipt by the Service Provider of an Objection Notice in accordance with Clause 8.5, the Service Provider shall:

- (a) take due account of all Defects, irrespective of their extent or nature, and other matters raised in the Objection Notice;
- (b) as soon as reasonably practicable but no later as mentioned in the Objection Notice and in the Agreement, correct such Defects and deficiencies, irrespective of their extent or nature, and complete the Works indicated in the Objection Notice so as to comply in all material respects with the requirements of this Agreement and Applicable Law; and
- (c) issue to the Principal a second Provisional Completion Note substantially in the form of *Annex E: Form of Provisional Completion Note* of this Agreement.

The second Provisional Completion Note issued in accordance with Clause 8.6(c) shall include the Deliverable and adequate supporting Documentation and information relevant to the Service Milestone attained and/or Deliverable completed. In the event no reasons for objection to the second Provisional Completion Note exist, the Principal shall, within reasonable time following receipt of the second Provisional Completion Note, issue a Provisional Acceptance Note in the form of *Annex F: Form of Provisional Acceptance Note* and, subject to the provisions of Clause 3.9 of this Agreement, the date of the Provisional Acceptance Note shall constitute "Completion Date" with respect to the relevant Service Milestone and/or Deliverable. In the event the Principal objects to the issuance of a Provisional Completion Note in accordance with this Clause 8.6, it shall give the second Objection Notice to the Service Provider in the previously mentioned order. For the avoidance of any doubt, the giving by the Principal of any Objection Notice under Clause 8.5 or second Objection Notice under this Clause 8.6 shall be without prejudice to and shall not relieve the Service Provider from the obligation to pay any contractual penalty in accordance with the provisions of Clause 11.2 or to pay Damages in accordance with the provisions Clause 11.3 of this Agreement.

8.7. *Final Acceptance.* Final acceptance of the Service shall occur upon remedying by the Service Provider of all Defects notified by the Principal to the Service Provider in accordance with Clause 8.3, irrespective of the extent or nature of such Defects. Final acceptance shall be evidenced by means of the Principal issuing and both Parties attaching their signatures to the Final Acceptance Note substantially in the form of *Annex G: Form of Final Acceptance Note* (the "Final Acceptance Note"). In the event the Principal objects to the issuance of the Final Acceptance Note, no later than on the Defects Date, the Principal shall give notice to the Service Provider setting out in reasonable detail all Defects which remain unremedied, or reason(s) for refusal to issue the Final Acceptance Note. The date of the Final Acceptance Note shall constitute the "Final Acceptance Date" with respect to the Service. The Principal shall not unreasonably withhold or delay issuance of a Final Acceptance Note.

Section IX INTELLECTUAL PROPERTY RIGHTS

9.1 *Proprietary Rights.* All Documentation forming part of the Deliverables developed under this Agreement is and shall become the property of the Principal at the moment of creation regardless of whether the Service or Deliverable is produced or finally accepted. It is acknowledged and agreed by the Parties that the Principal shall be permitted to reproduce the drawings and schemes and distribute the prints in connection with the use or disposition of the Documentation without any approval of the Service Provider and without incurring obligation to pay any royalties or additional compensation whatsoever to the Service Provider.

9.2 *Intellectual Property in Documentation.* The Service Provider represents and warrants that it owns all Intellectual Property required for the purposes of completing its obligations under this Agreement and in all Documentation deliverable by or on behalf of the Service Provider under this Agreement and that, to the extent any Intellectual Property in any Documentation is not owned by the Service Provider, it has obtained all requisite consents from owner(s) of all Intellectual Property in the Documentation to fulfil all of the obligations undertaken by the Service Provider under this Agreement and has fully discharged all obligations with respect to payment of any royalties or fees.

9.3 *Transfer of Ownership to Principal.* The Principal shall acquire legal title to and ownership in the Intellectual Property in all Documentation deliverable to the Principal under this Agreement as of the

moment of delivery by the Service Provider to the Principal of the Provisional Completion Note, together with the Deliverable and Documentation and information forming part of the Deliverable, in accordance with Clause 8.4 of this Agreement; provided, however, that the Principal has paid the Fee or other consideration payable under the terms of this Agreement with respect to the relevant part of the Service or Deliverable. For the avoidance of any doubt, such title and ownership shall confer upon the Principal, without limitation, each of the following:

- (a) the right to reproduce the Documentation and information, or any part thereof, and distribute copies of the Documentation and information or any part thereof;
- (b) the right to modify, amend and supplement the Documentation and information, or any part thereof;
- (c) the right to licence the Documentation and information, or any part thereof, for use by others; and
- (d) the right to transfer ownership in the Documentation and information, or any part thereof, to others.

9.4 *Grant of Limited License to Service Provider.* Upon acceptance by the Principal of any Deliverable and Documentation forming part of any Deliverable in accordance with Clause 8.5, 8.6 and 8.7 the Principal shall be deemed to have granted the Service Provider an irrevocable and exclusive licence to reproduce, modify and distribute copies of any Documentation forming part of any Deliverable for the purposes of the Service and the Project, subject to the following restrictions:

- (a) the license shall apply during the term of this Agreement only;
- (b) the permitted use shall only cover the right to reproduce, modify and distribute the Documentation and information, or any part thereof, for the purposes of performing, implementing or modifying the Service; and
- (c) the Documentation and information, or any part thereof, shall not, without the prior consent by the Principal, be distributed or communicated to any third party for purposes other than those permitted in accordance with this Clause 9.4.

The license in accordance with this Clause 9.4 shall be deemed to have been granted to the Service Provider as of the Completion Date.

9.5 *No Additional Royalty.* It is acknowledged and agreed by the Parties that consideration for the transfer of ownership in the Intellectual Property shall be forming part of the Fee and no additional royalty, fee or other consideration of any kind shall be payable by the Principal to the Service Provider or to any third party in consideration of the transfer of ownership in the Intellectual Property in any Documentation.

9.6 *No Infringement.* The Service Provider represents and warrants to the Principal that no Documentation and information deliverable to the Principal under the terms of this Agreement will infringe any existing Intellectual Property of any third party. In the event any of the representations or warranties contained in this *Section IX INTELLECTUAL PROPERTY RIGHTS* prove to be untrue or inaccurate, the Service Provider undertakes, at its own cost and expense, to defend and settle any claim raised by any third party alleging infringement of Intellectual Property in the Documentation and information. The foregoing undertaking by the Service Provider shall apply subject to the following conditions:

- (a) the Principal shall notify the Service Provider, without undue delay, of any third-party claim alleging infringement of any Intellectual Property in any Documentation and information;
- (b) the Principal refrains from admitting liability under any third-party claim or acting on the account of such claim without prior approval by the Service Provider; and
- (c) the exclusive control over any legal proceeding or settlement related any third-party claim shall be exercised by the Service Provider; provided, however, that the Principal shall render the Service Provider all reasonable assistance toward such proceeding or settlement, at the cost and expense of the Service Provider.

9.7 *Infringement Proceedings.* In the event the Principal is a party to legal proceedings involving allegations of infringement of any Intellectual Property in the Documentation of any third party, the Service Provider shall keep the Principal fully informed of all aspects relevant to the legal proceedings and the Principal shall have the right, at its own cost, to be represented in the legal proceedings by separate counsel. In the event the Service Provider fails to act against claims alleging infringement of any Intellectual Property in the Documentation and information of any third party within reasonable time but, in any event, within twenty (20) days of having been notified of such claims, the Principal shall have the right to assume legal defence against claims alleging infringement of Intellectual Property and shall

be entitled to reimbursement by the Service Provider of reasonable costs and expenses incurred toward such defence.

- 9.8 *Continued Use.* In the event a court of competent jurisdiction resolves in a binding judgment that the Documentation and information, or any part thereof, infringe Intellectual Property of any third party, the Service Provider shall, at its own cost and expense, procure for the Principal the right of continued use of the Documentation and information, or part thereof infringing Intellectual Property of a third party.
- 9.9 *License in Intellectual Property of the Service Provider.* The Service Provider hereby grants the Principal an irrevocable and non-exclusive license to use, reproduce, modify and/or enhance any Intellectual Property of the Service Provider, provided and to the extent Intellectual Property of the Service Provider is used by the Principal for the purposes of the Railway and/or the Project. It is agreed and acknowledged by the Parties that the license fee for the grant of license in accordance with this Clause 9.9 forms part of the Fee and such license shall continue to be valid irrespective of expiration of this Agreement following completion of the Service or termination of this Agreement for any reason.
- 9.10 *Obligation to Procure Intellectual Property Rights.* Where the Service Provider is not the legal owner of any relevant Intellectual Property of the Service Provider, the Service Provider shall use reasonable endeavours to procure for the Principal the rights specified in accordance with Clause 9.8.
- 9.11 *Obligation to Indemnify with Respect to Uses Other Than for the Purpose.* The Principal shall defend and indemnify the Service Provider from and against any and all Damages and Costs arising from the use by the Principal of any Intellectual Property of the Service Provider other than for the purposes of the Railway and/or the Project.
- 9.12 *Indemnification by the Service Provider.* The Service Provider shall defend and indemnify the Principal from and against any and all Damages arising from the use by the Principal of any Intellectual Property of the Service Provider, to the extent use by the Principal is within the scope of the license granted to the Principal in accordance with Clause 9.9.
- 9.13 *Certain Rights of Service Provider.* The Service Provider shall have the right to include photographic or artistic representations of the design of the Project among the Service Provider's promotional and professional materials after obtaining prior written approval from the Principal. The Service Provider shall be given reasonable access to the completed Project to make such representations. However, the Service Provider's materials shall not include the Principal's confidential or proprietary information regardless of whether or not the Principal has previously advised the Service Provider in writing of the specific information considered by the Principal to be confidential or proprietary. These materials also shall not contain any information or data that shall be used in accordance to any conditions and requirements set forth by the Principal or other entity; in this case the Service Provider shall comply with such conditions and requirements.

Section X TERMINATION AND SUSPENSION

- 10.1 *Termination for Material Breach or Bankruptcy.* Subject to the provisions of Clause 10.2, either Party shall be entitled to terminate this Agreement upon giving a written notice of termination to the other Party in the event of material breach by the other Party of any of its obligations under this Agreement. The written notice of termination shall contain an itemized description of the breach. For the purposes of this Clause 10.1 an event of material breach shall include any of the following:
- (a) commitment by a Party of any persistent or material breach of this Agreement (which shall include failure to pay an amount of at least EUR 5,000 due to the other Party or perform any part of the Service valued at least EUR 5,000);
 - (b) failure by the Service Provider to duly address any of the matters raised in the second Objection Notice given by the Principal in accordance with Clause 8.6;
 - (c) failure by any Deliverable to conform to any of the material requirements to such Deliverable contained in *Annex B: Technical Specification* and/or *Annex C: Schedule of Service*, provided that such failure is not capable of being remedied during the Cure Period, within the term specified in the Objection Notice or within the Corrective Period;
 - (d) failure by the Principal to make any payment to the Service Provider in accordance with this Agreement within at least fourteen (15) Working Days from the date of payment falling due;
 - (e) any of the representations or warranties given by either Party under Clause 5.1 or any of the representations or warranties given by the Service Provider under Clause 5.2 proving to be untrue; or

- (f) breach by the Service Provider of any of the representations or warranties contained in Clause 9.6 of the undertaking contained in Clause 9.10.
- 10.2. *Corrective Period.* In the event of breach: (i) by the Service Provider of its obligation under this Agreement, the Principal shall allow the Service Provider twenty four (24) hours, if the Principal did not set otherwise for corrective action or submission of a corrective action plan; (ii) by the Principal of its obligations under this Agreement, the Service Provider shall allow the Principal fourteen (14) days for corrective action or submission of a corrective action plan (the "Corrective Period"). The Corrective Period shall be counted from the date of receipt by the breaching Party of a written notice of breach. Should no satisfactory corrective action be taken, or acceptable corrective action plan provided by the breaching Party, the non-breaching Party shall have the right to terminate the Agreement. It is acknowledged and agreed by the Parties that the provisions of this Clause 10.2 shall not apply with respect to any of the events enumerated in accordance with Clause 10.6. In addition, and for the avoidance of any doubt, the application of the Corrective Period under this Clause 10.2 shall be without prejudice to and shall not relieve either Party from the obligation to pay any contractual penalty in accordance with the provisions of Clause 11.2 or to pay Damages incurred by the other Party in accordance with the provisions of Clause 11.3 of this Agreement.
- 10.3. *Alteration Not Material Breach.* It is agreed and acknowledged by the Parties that, for the purposes of Clause 10.1, no Alteration agreed by the Parties shall constitute a "material breach", provided that such Alteration is objectively justified and indispensable to attain objectives of the Project, is carried out in accordance with applicable Public Procurement Law of the Republic of Latvia and relates to any of the following matters:
- (a) modification of the terms and conditions of this Agreement in a manner altering the terms and conditions set forth in documents forming part of the Procurement Procedure, provided that necessity of such modification is due to no fault of the Service Provider; or
 - (b) substitution of a supplier or Approved Sub-Contractor selected during the Procurement Procedure with another supplier or Sub-Contractor in accordance with applicable Public Procurement Law of the Republic of Latvia.
- 10.4. *Right to Terminate Immediately.* Notwithstanding anything to the contrary contained in this Agreement, a Party may terminate this Agreement immediately upon giving the other Party a written notice of termination explaining, in reasonable detail, the reason for termination upon occurrence of any of the following:
- (a) breach by the other Party of Clause 17.3;
 - (b) an event of Force Majeure has been continuing during more than sixty (60) days;
 - (c) the other Party had passed a resolution for winding-up (other than in order to amalgamate or reconstruct);
 - (d) breach by the Service Provider any of the confidentiality undertakings contained in *Section XIII CONFIDENTIALITY*;
 - (e) the other Party is unable to pay its debts and has presented a petition for voluntary bankruptcy;
 - (f) the other Party had a bankruptcy order issued against it;
 - (g) liquidation, insolvency or legal protection proceedings have been initiated with respect to the other Party or the other Party is declared insolvent;
 - (h) the occurrence of any event analogous to the events enumerated under Clauses 10.4(e)-(g) under the law of any jurisdiction to which the other Party's assets and undertaking are subject.
- 10.5. *Principal's Right to Terminate Immediately.* The Principal may terminate this Agreement immediately upon giving the other Party a written notice of termination explaining, in reasonable detail, the reason for termination, if:
- (a) CEF Co-financing for further financing of the Service are not available to the Principal fully or partly;
In such a case, the Principal shall pay the Service Provider the fees in respect of the Service provided under this Agreement up to the date of the notification of the termination of this Agreement and the Principal is not obliged to pay contractual or any other penalty or damages to the Service Provider.
 - (a) it is not possible to execute the Agreement due to the application of international or national sanctions, or European Union or North Atlantic Treaty Organization applied sanctions significantly affecting interests of financial or capital market.

- 10.6 *Termination according to Public Procurement Law.* The Agreement can be immediately terminated upon giving the other Party a written notice of termination explaining, in reasonable detail, the reason for termination upon occurrence of any of the provisions mentioned in the Section 64 of the Public Procurement Law. In such a case, the Principal shall pay the Service Provider the fees in respect of the Works and Service provided under this Agreement up to the date of the notification of the termination of this Agreement and the Principal is not obliged to pay contractual or any other penalty or damages to the Service Provider.
- 10.7 *Right to Advance to Completion.* In the event the Service Provider fails to fulfil any of its obligations or fails to cure any breach in accordance with Clause 10.2, and the Agreement is terminated by the Principal, the Principal may advance the Service to completion by employing the services of other professional service supplier(s) or by other means available to the Principal. The Service Provider shall be liable to the Principal for any and all additional costs incurred due to failure by the Service Provider to perform. The rights and remedies available to the Principal set forth in accordance with this Clause 10.7 shall be in addition to any and all other rights and remedies available under Applicable Law.
- 10.8 *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 3.3, 3.4, 8.3, 9.5, 9.6, 9.7, 9.8, 9.9, 9.11, 9.12, 10.9, 11.1, 11.2, 11.3, 11.5, 11.6, 11.7, 17.3, 17.8, 17.9 and *Section XIII CONFIDENTIALITY, Section XIV RIGHT TO AUDIT, Section XV ON-THE-SPOT-VISITS and Section XVI GOVERNING LAW AND RESOLUTION OF DISPUTES* which shall survive the termination or expiry of this Agreement and continue in full force and effect along with any other Clauses of or Annexes hereof which are necessary to give effect to the clauses specifically identified in this Clause 10.8(b).
- 10.9 *Partial Acceptance.* Notwithstanding anything in this Agreement to the contrary including, without limitation, the provisions of Clauses 8.4, 8.5, 8.6 and 8.7 and in the event of termination of this Agreement, the Principal shall have the right, in the sole discretion of the Principal, to partially accept any Works, part of Works or any Service or part of the Service delivered to the Principal under this Agreement (the "Right of Partial Acceptance"). The Principal shall notify the Service Provider of its intention to exercise the Right of Partial Acceptance in the termination notice given in accordance with Clause 10.1 or Clause 10.4 of this Agreement, specifying, in reasonable detail, the Works, part of Works or part of the Service which the Principal would like to partially accept. In the event of receipt of such notice, the Service Provider shall reasonably cooperate with the Principal in order to ascertain transfer to the Principal of ownership in the result(s) of such Works, part of Works or part of the Service and determination of the amount of consideration payable by the Principal.
- 10.10 *Principal's Obligation to Pay.* Subject to the provisions of Clause 10.9 and except in the event of termination by the Principal occurring as a result of violation by the Service Provider of Clause 11.2, and/or termination by the Principal according to Clause 10.5 and/or 10.6 in the event this Agreement is terminated for any reason prior to completion of the Service, the Principal shall have an obligation to pay the Service Provider the following:
- (a) the Costs incurred by the Service Provider up to the date of termination; and
 - (b) except where termination is due to negligence of the Service Provider, due to the application of international sanctions, breach by the Service Provider, insolvency of the Service Provider or a Force Majeure Event under *Section XII FORCE MAJEURE*:
 - (i) an amount equal to the costs reasonably and properly incurred by the Service Provider as a result of or in connection with such termination; and
 - (ii) such additional amount as is required to put the Service Provider in the same after-tax position (taking into account the amount of any relief, allowance, deduction, set-off or credit relating to tax available to the Service Provider in respect of the payment received) as it would have been in if the payment had not been a taxable receipt in the hands of the Service Provider.
- 10.11 *No Obligation to Pay Costs Incurred Prior to Acceptance.* Notwithstanding anything set forth in this Agreement to the contrary including, without limitation, under Clause 10.9, the Principal shall have no obligation to pay any of the Costs incurred by the Service Provider with respect to any Works or the Service (or part of any Works or the Service) not deemed as having been accepted by the Principal in accordance with Clauses 8.4, 8.5, 8.6 and 8.7 of this Agreement.

- 10.12 *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 Applicable Law.

Section XI LIABILITY

- 11.1 *Liability of the Parties.* The Service Provider shall be liable to compensate Damages incurred by the Principal arising out of or in connection with this Agreement and pay contractual penalty set forth in accordance with Clause 11.2 if a breach of any of the obligations of the Service Provider under this Agreement is established against the Service Provider. The Principal shall be liable to pay the contractual penalty set forth in accordance with Clause 11.2 if a breach of payment obligations of the Principal under this Agreement is established against the Principal.
- 11.2 *Contractual Penalty.* In the event of failure by the Service Provider to meet any Service Milestone and/or supply any Deliverable, the Service Provider shall be liable to pay to the Principal a penalty of zero point five percent (0.5%) of the amount of total the Fee payable under this Agreement with respect to the relevant Service period for each day of delay starting from the first delayed day with meeting any of the Due Dates and/or supplying any of the Deliverables set forth in accordance with *Annex C: Schedule of Service* provided, however, that the total amount of penalty payable by the Service Provider under this Clause 11.2 for the relevant Works, as specified according to Annex C: *Schedule of Service* shall not exceed ten percent (10%) of the total amount of the Fee payable in consideration of such Works and Service. In the event of failure by the Principal to pay any amount in accordance with Clause 18.1, the Principal shall be liable to pay the Service Provider a penalty of zero point one percent (0.1%) of the amount of the amount invoiced for each day of delay with meeting the payment obligation; provided, however, that the total amount of penalty payable by the Principal under this Clause 11.2 shall not exceed ten percent (10%) of the total amount remaining unpaid under the relevant invoice.
- 11.3 *Compensation for Damages.* Notwithstanding of and without prejudice to any contractual penalty payable in accordance with Clause 11.2 and subject to the provisions of Clause 11.5 in the event it is established that either Party is liable to the other Party with respect to any breach of its respective obligations under this Agreement, the liable Party shall compensate the other Party for any Damages incurred as a result of such breach, subject to the following terms:
- (a) the amount of compensation shall be limited to the amount of reasonably foreseeable Damages suffered as a result of the breach(es), but not otherwise; and
 - (b) if either Party is considered to be liable jointly with third parties to the other, the proportion of compensation payable by the liable Party shall be limited to that proportion of liability which is attributable to the breach by the liable Party.
- 11.4 *Attribution of Damages.* Any Damages suffered by either Party shall, for the purposes of Clause 11.3, 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.
- 11.5 *Limitation of Liability.* Notwithstanding anything to the contrary set forth in this Agreement, in no circumstances shall the Service Provider or Principal be liable to one another for any loss of production, loss of profit, loss of revenue, loss of contract, liability incurred under other agreements (with the exception of costs paid by the Principal to Service Providers appointed by the Principal in relation to the Service or the Project) or any indirect or consequential loss arising out of or in connection with this Agreement. The Service Provider's total liability for the Works carried out under this Agreement shall in no circumstances exceed 500 000 EUR (five hundred thousand euros).
- 11.6 *Liability Cap.* Subject to the provisions of Clause 11.7 the maximum aggregate liability of each Party to the other Party for any reason arising under, or in connection with, this Agreement or the Project including but not limited to breach of the Agreement, or for breach of Applicable Law shall not exceed an amount equal to 500 000 EUR (five hundred thousand euros). Notwithstanding the above limitation, where, in respect of the same event, a Party recovers any amount of money under an insurance policy, it shall immediately pay such amounts to the other Party. Each Party shall use reasonable endeavours to make such recovery under any insurance policy (which shall include an obligation to make and diligently pursue a claim but shall not include an obligation upon the Party to take legal action).
- 11.7 *Non-Applicability of Liability Cap.* The provisions of Clause 11.6 shall not apply to Damages incurred by either Party as a result of:
- (a) any liability in respect of death or personal injury resulting from a negligent act or omission or breach of statutory duty by the liable Party or any employee of the liable Party;

- (b) the fraud, fraudulent misrepresentation, reckless misconduct or gross negligence of the liable Party or, in the case of the Service Provider, any Approved Sub-Contractor of the Service Provider; and/or
 - (c) infringement of any Intellectual Property of a third party.
- 11.8 *Insurance Against Liability.* The Service Provider shall:
- (a) insure against its commercial liability under Clause 11.2 and/or Clause 11.3;
 - (b) insure against public/third party liability (Professional risk indemnity insurance).
- 11.9 *Obligation to Effect Insurance.* The Service Provider undertakes to effect such insurance with an insurer and on terms and conditions acceptable to the Principal. The limit of Professional risk indemnity insurance liability (Clause 11.8) for the insurance coverable shall be no less than 300 000,00 EUR (three hundred thousand euros zero cents) per claim/occurrence during the whole period of performance of the Agreement and with extended reporting period of five (5) years. The costs of such insurance shall be at the expense of the Service Provider.
- 11.10 *Insurance Certificate.* Before entering into the Agreement, the Service Provider shall provide certificate from its insurer or broker stating that the insurance required under this *Section XI LIABILITY* are in full force and effect. The Service Provider shall maintain it in force as long as it is necessary to accomplish any obligations according to this Agreement. In addition, the Service Provider shall provide not less than thirty (30) days prior written notice to the Principal of any cancellation or material reduction in the insurance. The Service Provider is obliged to submit to the Principal a copy of a renewed insurance certificate or a new insurance certificate including the provisions set in Clause 11.8 within five (5) Working Days before the date of expiry of the previous insurance certificate.

Section XII FORCE MAJEURE

- 12.1 *Effects of Force Majeure.* Subject to the requirements set forth in accordance with Clauses 12.2 and 12.3, each Party shall be relieved from liability for non-performance of its obligations under this Agreement (other than any obligation to pay) to the extent that the Party is not able to perform such obligations due to a Force Majeure Event.
- 12.2 *Action on Becoming Aware of Force Majeure.* Each Party shall at all times, following the occurrence of a Force Majeure Event:
- (a) take reasonable steps to prevent and mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the Force Majeure Event as soon as practicable and use reasonable 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 12.1.
- 12.3 *Notification Requirements.* Upon the occurrence of a Force Majeure Event, the affected Party shall notify the other Party as soon as reasonably practicable and in any event within five (5) Working Days of it becoming aware of the relevant Force Majeure Event. Such notification shall give sufficient details to identify the particular event claimed to be a Force Majeure Event and shall contain detailed information relating to the failure to perform (or delay in performing), including the date of occurrence of the Force Majeure Event, the effect of the Force Majeure Event on the ability of the affected Party to perform, the action being taken in accordance with Clause 12.2(a) and an estimate of the period of time required to overcome the Force Majeure Event. The affected Party shall provide the other Party with any further information it receives or becomes aware of which relates to the Force Majeure Event and provide an update on the estimate of the period of time required to overcome its effects.
- 12.4 *Notification of Resumed Performance.* The affected Party shall notify the other Party as soon as practicable once the performance of its affected obligations can be resumed (performance to continue on the terms existing immediately prior to the occurrence of the Force Majeure Event).
- 12.5 *Mitigation of Effects of Force Majeure.* As soon as practicable after the notification specified pursuant to Clause 12.3, the Parties shall use reasonable endeavours to agree appropriate terms or modifications to the Service to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.

Section XIII CONFIDENTIALITY

- 13.1 *Confidential Information.* “Confidential Information” means, in relation to the Principal, all information of a confidential nature relating to the Principal and its affiliates which is supplied by the Principal (whether before or after the date of this Agreement) to the Service Provider, either in writing, orally or in any other form and includes all analyses, compilations, notes, studies, computer files, memoranda and other documents and information which contain or otherwise reflect or are derived from such information, but excludes information which:
- (a) the Principal confirms in writing is not required to be treated as confidential; or
 - (b) the Service Provider can show that the Confidential Information was in its possession or known to it (by being in its use or being recorded in its files or computers or other recording media) prior to receipt from the Principal and was not previously acquired by the Service Provider from the Principal under an obligation of confidence; or
 - (c) was developed by or for the Service Provider at any time independently of this Agreement.
- 13.2 *Undertakings with Respect to Confidential Information.* Subject to Clauses 13.1 and 13.3, the Service Provider shall:
- (a) at all times keep confidential all Confidential Information received by it and shall not disclose such Confidential Information to any other Person; and
 - (b) procure that its affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any Person any Confidential Information except with the prior written consent of the Party to which such Confidential Information relates.
- 13.3 *Permitted Disclosure.* Notwithstanding anything to the contrary set forth in accordance with Clauses 13.1 and 13.2, the Service Provider shall, without the prior written consent of the Principal, be entitled to disclose Confidential Information:
- (a) that is reasonably required by the Service Provider in the performance of its obligations pursuant to this Agreement, including the disclosure of any Confidential Information to any employee, Service Provider, agent, officer, Sub-Contractor (of any tier) or adviser to the extent necessary to enable the Service Provider to perform its obligations under this Agreement;
 - (b) to enable a determination to be made pursuant to *Section XVI GOVERNING LAW AND RESOLUTION OF DISPUTES*;
 - (c) to its lenders or their professional advisers, any rating agencies, or its insurance advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
 - (d) to the extent required by Applicable Law or pursuant to an order of any court of competent jurisdiction, any parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law;
 - (e) to register or record any Necessary Consents and to affect any property registration that may be required;
 - (f) in order to fulfil its license obligations or assist in the planning or execution of other maintenance, renewal or enhancement projects; or
 - (g) to the extent Confidential Information has become available to the public other than as a result of any breach of an obligation of confidence; provided that any such disclosure is made in good faith.
- 13.4 *Obligation of Confidentiality Pertinent to Recipients of Confidential Information.* Whenever disclosure is permitted to be made pursuant to Clauses 13.3(a) or (c), the Service Provider shall require that the recipient of Confidential Information be subject to the same obligation of confidentiality as that contained in this Agreement.
- 13.5 *Certain Obligations on Termination of Agreement.* If this Agreement is terminated for whatsoever reason, the Service Provider shall have an obligation to do all of the following:
- (a) return to the Principal all of the Confidential Information then within the possession or control of the Service Provider; or
 - (b) destroy such Confidential Information using a secure and confidential method of destruction.
- 13.6 *No Press Release by Service Provider.* Save as required by Applicable Law, the Service Provider shall not issue any press release in relation to the matters contemplated under this Agreement without the prior

written consent of the Principal (such consent not to be unreasonably withheld or delayed) as to both the content and the timing of the issue of the press release.

- 13.7 *Right to Publish.* For the avoidance of any doubt, the Principal and any of the Beneficiaries and Implementing Bodies shall have the right to publish any of the documents, information or data provided by the Service Provider to the Principal during provision of the Service.
- 13.8 *Remedies.* The Parties acknowledge and agree that a breach of the provisions of this *Section XIII CONFIDENTIALITY* may cause the owner of Confidential Information to suffer irreparable Damages that could not be adequately remedied by an action at law. Accordingly, the Service Provider agrees that the owner of Confidential Information that is disclosed in breach of Clauses 13.2, 13.4 or 13.6 may be entitled to specific performance of those provisions to enjoin a breach or attempted breach thereof and to any other remedy, including, inter alia, damages and injunctive relief, awarded by a court of competent jurisdiction.

Section XIV RIGHT TO AUDIT

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

Section XV ON-THE-SPOT-VISITS

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

Union law for the protection of the financial interests of the European Union against fraud and other irregularities. Where appropriate, OLAF findings may lead to criminal prosecution under national law.

Section XVI GOVERNING LAW AND RESOLUTION OF DISPUTES

- 16.1 *Governing Law.* This Agreement shall be governed by and construed in accordance with law of the Republic of Latvia.
- 16.2 *Resolution by Amicable Means.* The Parties shall first attempt to settle any dispute, controversy or claim arising out of or relating to this Agreement through good faith debate, discussion, and negotiating prior to submitting them to mediation, arbitration, or other legal proceeding.
- 16.3 *Venue for Resolution of Disputes.* Should the Parties fail to agree by means of amicable negotiations within the time period of two (2) months from the date of serving of the respective written complaint to the other Party, the Parties shall submit all their disputes arising out of or in connection with this Agreement to the exclusive jurisdiction of the courts of the Republic of Latvia. The Parties hereby represent and warrant that the English language is understandable for both Parties in accordance with Article 8(1)(a) of the Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) and repealing Council Regulation (EC) No 1348/2000.

Section XVII MISCELLANEOUS PROVISIONS

- 17.1 *Capacity.* Each Party warrants to the other Party that it has full power to enter into and perform this Agreement, and the person signing this Agreement on its behalf has been duly authorized and empowered to enter into such agreement. Each Party further acknowledges that it has read this Agreement, understands it and agrees to be bound by it.
- 17.2 *Assignability.* The Service Provider shall not without the prior written consent of the Principal assign any of the rights or benefits from the Agreement, provided that the consent by the Principal shall not be unreasonably withheld or delayed. Neither Party shall assign any of the obligations under the Agreement without the prior written consent of the other Party; provided, however, that the Principal shall be entitled, at any time, to assign any of the rights under this Agreement to any of the Beneficiaries or Implementing Bodies without consent of the Service Provider.
- 17.3 *Conflict of Interest, Corruption and Fraud.* Notwithstanding any penalties that may be enforced against the Service Provider under Applicable Law, or the laws of other jurisdiction(s), the Service Provider shall be deemed to have committed a breach under this Agreement and the Principal shall be entitled to terminate this Agreement immediately and without any regard to the provisions of Clause 3.15, if it is shown that the Service Provider is guilty of:
- (a) offering, giving, receiving or soliciting anything of value with a view to influencing the behaviour or action of anyone, whether a public official or otherwise, directly or indirectly in the selection process or in the conduct of the Agreement; or
 - (b) misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Principal, including the use of collusive practices intended to stifle or reduce the benefits of free and open competition.
- 17.4 *Notices.* All notices and other communications made or required to be given pursuant to this Agreement shall be in writing and shall be deemed given if delivered personally or by facsimile transmission (if receipt is confirmed by the facsimile operator of the recipient), or delivered by overnight courier service, or mailed by registered or certified mail (return receipt requested), postage prepaid, to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice):
- (a) to the Principal: Kr. Valdemāra iela 8-7,
Rīga, LV-1010,
Latvia
 - (b) to the Service Provider: Rāvāla pst 4,
Tallinn 10142,
Estonia.
- 17.5 *Changes in Address.* Either Party shall be entitled to change its address for purposes of the Clause 17.4 by notice to the other Party. A notice of a change of address shall be effective only upon receipt thereof.
- 17.6 *Damages Covered by Insurance.* To the extent Damages are covered by insurance, the Principal and the Service Provider waive all rights against each other and against the Service Providers, consultants,

agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance current as of the date of this Agreement.

- 17.7 *Relationship of the Parties.* The relationship between the Service Provider to the Principal under this Agreement is that of independent Service Providers. The Service Provider (or the Service Provider's Sub-Contractors) is not an employee of the Principal, is not carrying out the regular business of the Principal and is not subject to the same employment regulations as are applicable to employees of the Principal. Each of the Parties shall be solely and entirely responsible for their own acts and the acts of their employees. No benefits, special considerations, or employer/employee-type provisions are provided by the Principal to the Service Provider, the Service Provider's employees, or the Service Provider's consultants, or the employees of such consultants.
- 17.8 *Severability.* If any provision of this Agreement shall be held to be illegal, invalid, void or unenforceable under Applicable Laws, the legality, validity and enforceability of the remainder of this Agreement shall not be affected, and the legality, validity and enforceability of the whole of this Agreement shall not be affected.
- 17.9 *Successors and Assigns.* The Principal and the Service Provider each bind themselves, their successors, legal representatives, and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect to all covenants of this Agreement. Neither Party shall assign or transfer its respective interest in the Agreement without written consent of the other Party.
- 17.10 *Waivers.* No waiver by either Party of any default by the other Party in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default, irrespective of the character of such default. No failure or delay by either Party in exercising any of its rights, power or privileges under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise by that Party of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege.
- 17.11 *Amendments and Variations.* No amendment to or variation of this Agreement shall be effective unless made in writing and signed by duly authorized representatives of both Parties. The Agreement can be amended in compliance with the provisions of Section 61 of the Public Procurement Law of the Republic of Latvia.
- 17.12 *Entire Agreement.* This Agreement, and the Annexes hereto, constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes and extinguishes all and any prior drafts, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.
- 17.13 *Execution.* This Agreement may be executed in two counterparts to be held by each Party which counterparts, taken together, shall constitute one and the same instrument.

Section XVIII FEE AND PAYMENT

- 18.1 *Fee.* In consideration of provision of the Service, the Service Provider is entitled to receive a Fee in the total amount set forth in accordance with *Annex C: Schedule of Service* which shall be split into separate instalments and be payable by the Principal to the Service Provider according to the schedule set forth in *Annex C: Schedule of Service* and pursuant to Clause 8.4 of the Agreement. It is acknowledged and agreed by the Parties that the Fee shall include all Costs and expenses incurred by the Service Provider and Approved Sub-Contractors toward performing and successfully completing the Agreement. The Fee specified in accordance with this Clause excludes value added tax that will be charged at the rate applicable in accordance with Applicable Law at the time of invoicing.
- 18.2 *Invoicing.* According to *Annex C: Schedule of Service* and following each Completion Date and/or Final Acceptance Date, provided that the Principal has accepted/approved the particular Deliverable of the Service which the invoice related to, the Service Provider shall deliver to the Principal an invoice specifying the amount of the Fee payable and the period of time with respect to which the Fee is payable. In the event the Principal objects to payment of any amount claimed by the Service Provider in the invoice, notice in the form chosen by the Principal to this effect shall be given by the Principal to the Service Provider not later than five (5) days before the Due Date for payment under this Clause 18.2. This notice of objection shall state the amount to be withheld, the grounds for withholding the payment and the basis on which that amount is calculated. Unless such notice of objection is made by the Principal, the amount to be paid is that stated in the invoice which shall become due and payable in accordance with this Agreement. For the avoidance of any doubt, the Principal shall not be required to pay any amount under this Agreement with respect to any part of the Service that has not been accepted by the Principal in accordance with Clauses 8.4, 8.5, 8.6 and 8.7 of this Agreement.

- 18.3 *Payment.* Subject to the provisions of Clause 18.1, the Principal reserves the rights to make the payments to the Service Provider with set-off, retention, counterclaim, abatement or other deduction of any kind that arises from this Agreement and from the obligations of the Service Provider provided herein (i.e. in cases of accrued contractual penalty amounts, in case if the Principal haven't received residence certificate as stipulated in this Agreement, etc.). If the Principal uses the right to make the payments to the Service Provider with set-off, retention, counterclaim, abatement or other deduction of any kind, then the Principal so notifies to the Service Provider no later than on the date of the respective payment stating the amount, the grounds and the basis on the Principal uses its right to set-off, retention, counterclaim, abatement or other deduction or other right. Invoices shall be paid within thirty (30) days after the date of issue of the invoice. For the avoidance of any doubt, the Principal shall not be required to pay any amount with respect to any invoice in the absence of a Provisional Completion Note duly signed by the Principal or, with respect to the final payment of the Fee to be effected under this Agreement, the Final Acceptance Note duly signed by the both Parties, taking into account that the Service shall be accepted by the Principal in accordance with Clauses 8.4, 8.5, 8.6 and 8.7 of this Agreement.
- 18.4 *Costs and Commissions.* Each Party shall bear its own costs, fees, commissions and expenses incurred in connection with the transfer of any funds under this Agreement to the other Party.
- 18.5 *Compliance with Tax Obligations in Estonia.* It is acknowledged and agreed by the Parties that the Fee shall include all taxes and duties payable by the Service Provider in the consequence of provision of the Service, except value added tax (the "VAT"). The Service Provider shall, at the sole cost and expense of the Service Provider, comply with the obligation to pay all taxes and duties relevant to the provision of the Service in Estonia and in accordance with Applicable Law of Estonia. In addition, the Service Provider shall assume all risks associated with the payment or obligation to pay such taxes and duties, if any. The Service Provider assumes all risks associated with the possible increase in the amount of the Fee arising as a result of the obligation of having to pay any such taxes or duties.
- 18.6 *Invoice.* The Service Provider's invoices shall contain the following Service Provider's details and details about the Agreement:

Service Provider	Ernst & Young Baltic AS
Registration No	10877299
VAT payer's No or indication that the Service Provider is not a VAT payer	EE100770654
The Principal's VAT No	LV40103845025
Legal address (street, house, area, country, postcode)	Rävala pst 4, Tallinn 10142, Estonia
Name of Bank (legal name)	[CONFIDENTIAL]
Bank SWIFT Code	[CONFIDENTIAL]
IBAN	[CONFIDENTIAL]
	For provided services according to the Service Agreement for Rail Baltica Railway No 8/2019-22 (CEF Contract No INEA/CEF/TRAN/M2014/1045990 Activity No A34, CEF Contract No INEA/CEF/TRAN/M2015/1129482 Activity No B18, CEF Contract No INEA/CEF/TRAN/M2016/1360716 Activity No C09), Contract Manager: Anita Püka

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

Signed by:

For and on behalf of the Principal:

For and on behalf of the Service Provider:

Signature:

Signature:

Name, title: Timo Riihimäki
Chairperson of the Management Board

Name, title: Silje Sander,
Associate Partner

Signature:

Name, title: Kaspars Rokens
Management Board Member

Bank details:
AS "Luminor bank"
SWIFT: NDEALV2X
IBAN: LV73NDEA0000084270995

Bank details:
[CONFIDENTIAL]

Annex A: Definitions and common terms

The following capitalized terms shall be ascribed the following meaning for the purposes of the Agreement:

- (a) "Agreement", this Agreement, together with all Annexes thereto.
- (b) "Alteration", any material change to the *Annex B: Technical specification, Annex C: Schedule of Service or Due Date* which is not the result of the ordinary process of developing the scope and detail of the Project.
- (c) "Alteration Request", as defined in accordance with Clause 2.4 of the Agreement.
- (d) "Applicable Law" or "Law", any legislative act, regulation, decree, order, ordinance, statute, treaty, directive, judgment, or other legislative measure. For the avoidance of any doubt, these terms shall include any legislative act or directive relevant to public procurement.
- (e) "Approved Staff", any person or organization listed pursuant to *Annex D: List of Approved Sub-Contractors and Staff*, which is in a contractual relationship with the Service Provider to provide a part of the Service.
- (f) "Approved Sub-Contractor", any person or organisation listed pursuant to *Annex D: List of Approved Sub-Contractors and Staff*, which is in a contractual relationship with the Service Provider to provide a part of the Service.
- (g) "Completion Acceptance Note", as defined in accordance with Clause 8.4, as appropriate.
- (h) "Completion Date", as defined in accordance with Clause 8.5 and 8.6, as appropriate.
- (i) "Confidential Information", as defined in accordance with Clause 13.1 of the Agreement.
- (j) "Costs", direct costs reasonably incurred in relation to the Project. Specifically, the Cost shall include any of the following:
 - (i) costs of all materials and supplies forming part of the Service, including transportation and storage expenses (discounts for cash or prompt payments will not reduce these costs);
 - (ii) salaries for personnel in the direct employ of the Service Provider in the performance of the Service or relating to the Service;
 - (iii) salaries of the Service Provider's employees for the time that they spend in connection with the Service;
 - (iv) payments to Service Provider, Sub-Contractors for Works relating to the Service;
 - (v) costs of all employee benefits and taxes for items such as social security and other benefits for the labour and employees;
 - (vi) costs, including transportation and maintenance, of equipment and hand tools not owned by workmen employed by the Service Provider which are employed or consumed toward the Service;
 - (vii) payments for rental charges for machinery, equipment, facilities and tools used in connection with the Service, and payments for installations, repairs, replacements, dismantling, removal, lubrication, transportation and delivery of those rental items;
 - (viii) other transportation costs incurred in connection with the Service;
 - (ix) that portion attributable to this Agreement of premiums for insurance that is required by this Agreement (if applicable) or by law to be obtained or maintained by the Service Provider;
- (x) sales, use, gross receipts or other taxes related to the Service, imposed by any governmental authority, to the extent that the Service Provider is responsible for such taxes;
- (xi) costs of long-distance telephone calls, telephone service at the site and postage relating to the Service;
- (xii) costs of any data processing services used in connection with the performance of the Work required under this Agreement; and
- (xiii) costs associated with any alteration as to which the Service Provider is entitled to payment hereunder;
- (xiv) losses and expenses, not compensated by insurance, sustained by the Service Provider in connection with the Works under this Agreement (if applicable), provided they resulted from causes other than the fault or neglect of the Service Provider.

- (k) "Corrective Period", as defined in accordance with Clause 10.2.
- (l) "Cure Period", as defined in accordance with Clause 8.3.
- (m) "Damages", any cost, claim, damage, demand, loss, expense or liability incurred by the relevant Party or Person.
- (n) "Defect", a part of the Service which is not in accordance with *Annex B: Technical Specification*, Applicable Law or Good Industry Practice.
- (o) "Defects Date", a date specified in accordance with *Annex C: Schedule of Service* by which the Principal or the Service Provider is obliged to notify about each Defect in the Service.
- (p) "Deliverable", any information, notes, material, drawings (including drawings in 3D model), records, computer files, documents and/or other information or items which the Service Provider is required to deliver to the Principal as part of the Service, as further specified pursuant to *Annex C: Schedule of Service*.
- (q) "Documentation", all records, correspondence, and computer files of the Service Provider, its employees, engineers, and consultants pertaining to the Project.
- (r) "Due Date", the date for delivery of one or more Deliverables, as set out in the *Annex B: Technical Specification*, *Annex C: Schedule of Service* and applicable law.
- (s) "Effective Date", as first above specified in the Preamble to this Agreement.
- (t) "EUR" and "euro", the official currency of the eurozone, officially known as the euro area.
- (u) "Fee", as specified in accordance with *Annex C: Schedule of Service*.
- (v) "Final Acceptance Date", as defined in accordance with Clause 8.7.
- (w) "Final Acceptance Note", as described in accordance with Clause 8.7.
- (x) "Force Majeure Event", any of the following events:
 - (i) an act of the public enemy or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;
 - (ii) an act of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;
 - (iii) a natural disaster or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);
 - (iv) nuclear, chemical or biological contamination;
 - (v) pressure waves caused by devices travelling at supersonic speeds;
 - (vi) discovery of fossils, antiquities or unexploded bombs; and/or
 - (vii) strike, lockout or other industrial action other than involving the Service Provider or the Principal.
- (y) "Good Industry Practice", in relation to the performance of any activity to which this standard is applied, the exercise of that degree of skill, diligence, prudence and foresight as would reasonably be expected to be exercised by a properly qualified and competent person engaged in carrying out Works or services of a similar size, nature, scope, type and complexity, complying with Applicable Law, applicable Standards and published codes of practice.
- (z) "Intellectual Property", all intellectual property rights in any part of the world in respect of any documentation or information provided by the Service Provider to the Principal, including any patent, patent application, trade mark, trade mark application, registered design, registered design application, utility model, trade name, discovery, invention, process, formula, specification, copyright (including all neighbouring rights, rights in computer software and database and topography rights), know how or unregistered design right.
- (aa) "Intellectual Property of the Service Provider", all Intellectual Property owned or licensed to the Service Provider with a right to sub-license.
- (bb) "Necessary Consents", all approvals, permissions, consents, licenses, certificates, registrations and authorizations (whether statutory or otherwise), which may be required from time to time for the purposes of carrying out the Project.
- (cc) "Mandatory Alteration", any Alteration necessitated by:
 - (i) any specific change in Law; and/or

- (ii) any Change in Standards for safety reasons.
- (dd) "Objection Notice", as defined in accordance with Clause 8.5.
- (ee) "Party" and "Parties", the Principal and the Service Provider and include their respective successors in title, permitted assigns and permitted transferees.
- (ff) "Person" shall include any person, company, body corporate, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the foregoing.
- (ee) "Principal", the company RB Rail AS, as further specified in the Preamble of this Agreement, which employs the services of the Service Provider, and legal successors to the Service Provider and permitted assignees of the Service Provider.
- (gg) "Project", development of a 1435 mm standard gauge railway line in the Rail Baltica (RB) corridor through Estonia, Latvia and Lithuania aimed at eliminating the technical bottleneck due to the gauge differences (1,520 mm vs. the EU standard of 1,435 mm).
- (hh) "Provisional Acceptance Note", as defined in accordance with Clause 8.5.
- (ii) "Provisional Completion Note", as defined in accordance with Clause 8.4.
- (jj) "Railway", a new fast conventional double track electrified railway line according TSI INF P2-F1 criteria and European standard gauge (1435 mm) on the Route.
- (kk) "Residence Certificate", a certificate mentioned in Clause 5.2(i).
- (ll) "Right of Partial Acceptance", as defined in accordance with Clause 10.9.
- (mm) "Service" Services mentioned in the *Annex B: Technical Specification* and this Agreement.
- (nn) "Service Provider", the company Ernst & Young Baltic AS, as further specified in the Preamble of this Agreement, which is employed by the Principal as an independent professional Service Provider to perform the Service, and legal successors to the Principal and permitted assignees of the Principal.
- (oo) "Standards", CEF Standards and Grant Agreement Standards;
- (pp) "VAT", value added tax;
- (qq) "Working Day", any day (other than Saturday or Sunday) on which banks in the Republic of Latvia are open for conduct of business.
- (rr) "Works", all incidental works, steps and actions performed by the Service Provider for the attainment of the objectives of the Service.

Annex B: Technical Specification

TECHNICAL SPECIFICATION FOR THE OPEN PROCEDURE
"TAX ADVISORY AND REPORTING SERVICES FOR RB RAIL AS IN 2019-2020"
(ID NO. RBR 2018/31)

PART NO. 1 "Tax compliance and reporting services for RB Rail AS Estonia branch"



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

Riga
2019

1. Introduction to Rail Baltica

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

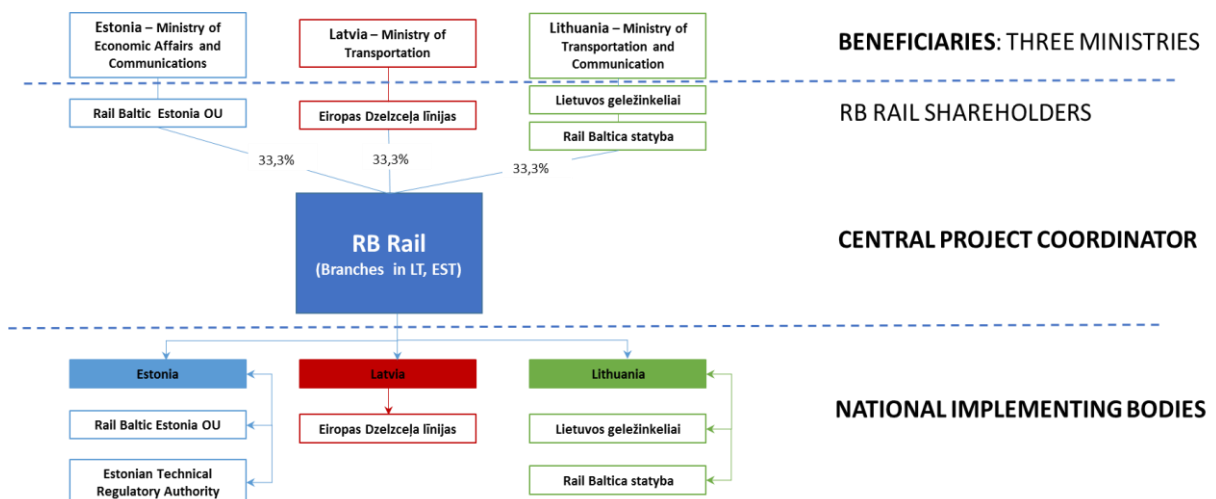
The ambitions of the Rail Baltica Global project (Global Project) are:

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

Rail Baltica is already designed to become a part of the EU TEN-T North Sea – Baltic Core Network Corridor, which links Europe’s largest ports of Rotterdam, Hamburg and Antwerp – through the Netherlands, Belgium, Germany and Poland – with the three Baltic States, further connecting to Finland via the Gulf of Finland short sea shipping connections with a future fixed link possibility between Tallinn and Helsinki. Further northbound extension of this corridor shall pave the way for future connectivity also with the emerging Arctic corridor, especially in light of the lucrative prospects of the alternative Northern Circle maritime route development between Europe and Asia. Furthermore, the North Sea – Baltic Corridor crosses with the Baltic-Adriatic Corridor in Warsaw, paving the way for new supply chain development between the Baltic and Adriatic seas, connecting the Baltics with the hitherto inadequately accessible Southern European markets. In a similar fashion, Rail Baltica shall strengthen the synergies between North-South and West-East freight flows, creating new transshipment and logistics development opportunities along the Europe and Asia overland trade routes. The new Rail Baltica infrastructure would, therefore, not only put the Baltics firmly on the European rail logistics map, but also create massive opportunities for value creation along this infrastructure with such secondary economic benefits as commercial property development, revitalization of dilapidated urban areas, private spin-off investment, new business formation, technology transfer and innovation, tourism development and other catalytic effects. Rail Baltica aims to promote these effects from the early stages of the Global Project, learning from the key global success stories and benchmarks in this regard.

The Contracting authority RB Rail AS (RBR) was established by the Republics of Estonia, Latvia and Lithuania, via state-owned holding companies, to coordinate the development and construction of the fast-conventional standard gauge railway line on the North Sea – Baltic TEN-T Core Network Corridor (Rail Baltica II) linking three Baltic states with Poland and the rest of the EU.

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



RBR together with governments of Estonia, Latvia and Lithuania (represented by the ministries in charge of transport policy) have applied for the CEF co-financing in 2015, 2016 and 2017 (three applications in total). The applications were successful and INEA grants are available to support the Global Project expenses.

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

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

2. Framework of assignment

The Contractor shall provide tax compliance and reporting services for RB Rail AS Estonia branch in accordance with this Technical specification (hereinafter – Services).

In December 2016 RBR established its registered branch in Estonia (RB Rail AS Eesti filiaal). The main functions of the branch are coordination of project activities within the territory of Estonia, communication with national implementing bodies and beneficiaries, as well as general public.

Branch is not independent project management unit as it is fully integrated in the overall RBR organization and project activities by common management, workplan and administrative procedures. Branch employs local technical experts who are involved in the national RBR activities, and also contribute to global project development on a pan-Baltic scale. Employees of the branch have matrix reporting lines to functional managers who may be employed in the head office or another branch as well as their branch manager.

Starting from 1 January 2018 accounting for RBR transactions is organized in its own Accounting department, which is part of RBR Finance department reporting to CFO. Accounting department staff consists of two accountants: Accounting manager and Senior accountant.

Tax reporting and other reporting for branch to local authorities in Estonia is outsourced to external consultants. They advise RBR accountants about changes in national tax legislation, application of taxes to specific transactions, and examine and approve accuracy of payroll calculations before their execution. External consultants submit tax declarations to local tax authorities in local language and act as first contact points for local tax authorities on behalf of RBR in Estonia.

Accounting records of RBR, including branch in Estonia, are maintained electronically in the ERP System Microsoft Dynamics Navision 2017 (hereinafter - NAV).

Payroll calculations for employees of Estonia branch are performed in MS Excel to enable data exchange and verification process involving external consultants. The resulting salary and tax calculations are booked in NAV as part of the period closing procedure.

3. CONTENT OF ASSIGNMENT

Estonia		
Task	Current scope	Expected scope in 2019 -2020
1. Monthly tasks		
1.1. Payroll and tax compliance	14 (fourteen) branch employees, including non-resident employees. Fixed monthly salaries payable once a month. Revue calculations prepared in Excel by Contracting authority's accountants. Contractor must make and explain any adjustments, if adjustments	Number of branch employees expected to increase gradually up to 26 (twenty-six) employees.

	are necessary. Contractor must prepare and submit declarations on behalf of Contracting authority.	
	Preparation and submission of tax declarations for 3 (three) Members of the Board of Contracting authority for whom social insurance is paid in Estonia based on A1 certificates.	3-4 (three to four) Members of the Board.
1.2. Value added tax (VAT) compliance	Preparation and filling the VAT returns of the branch based on list of transactions and scanned images of invoices. 2-5 (two to five) purchase invoices per month (domestic). No sales invoices with output VAT so far - input VAT is deducted in preparation to provide project management services to Estonian implementation organizations / beneficiaries.	Number of invoices may double. If Contracting authority's stakeholders will not conclude agreement on purchase of services from RBR, the Contracting authority may stop deducting input VAT in 2019.
1.3. Corporate income tax (CIT) compliance	Preparation and submission of monthly declarations - fringe benefits and representation costs, based on invoices and expense reports of employees - list of transactions, scanned documents when necessary.	Number of transactions to review may increase in line with headcount.
<p>Monthly tasks include:</p> <ul style="list-style-type: none"> • Information on applicable tax and labour legislation and changes therein (Informing the Contracting authority on all relevant taxation and documentation rules applicable to RBR transactions in Estonia, labour law requirements, business travel per diems and other relevant legislation); • Communications interface with local tax authorities (Acting as the first point of contact for tax authorities on behalf of Contracting authority, assisting in communication when necessary). 		
2. Annual tasks		
2.1. Annual report	Review of branch trial balance, profit and loss (PL) statement and balance sheet for the year, as well as narrative in management report. Translation of documents into Estonian and submitting to authorities.	Unchanged.
2.2. Annual CIT declaration (if required)	No such declarations were necessary for year 2017.	If required.

2.3. Annual VAT declaration (if required)		
3. Unplanned tasks²	Unforeseen tasks exceeding the agreed scope (maximum by 10% from contract price).	To be paid per hour.

4. Service contract management

4.1. Contractor's obligations

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

4.1.2. The Contractor undertakes to effect such insurance with an insurer and on terms and conditions acceptable to the Contracting authority. The limit of Professional risk indemnity insurance liability for the insurance coverable shall be no less than 300 000,00 EUR (three hundred thousand euros zero cents) per claim/occurrence during the whole period of performance of the Procurement Contract and with extended reporting period of 5 (five) years. The costs of such insurance shall be at the expense of the Contractor.

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

4.1.4. The Contractor shall be responsible for ensuring that its experts included in Contract are available throughout the Service provision period.

4.1.5. The Contractor must keep records and other supporting documentation (original supporting documents) as evidence that the assignments are performed correctly, and the expenses related to provision of Services were actually incurred. Documentation must be available for review upon the request of Contracting authority.

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

4.1.7. The Contractor shall ensure that its team members (experts etc.) involved in Service provision are adequately supported and equipped. Costs for administration of service contract and office operation including telecommunication costs shall be included.

4.2. Provision of Services

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

4.2.2. The Contractor shall carry out the tasks, prepare and provide all documents, reports and any other information material required for the provision of the Services.

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

4.3. Confidentiality, independence and absence of conflict of interest

4.3.1. The Contractor is expected to ensure that its contractual and professional obligations in particular with regard to confidentiality, independence and absence of conflict of interests are well understood and upheld throughout and after Services provision.

²Please see the Section 6.4 of the Regulations.

4.3.2. During the provision of Services, the Contractor shall provide independent view based on its expertise, education and experience.

4.4. Miscellaneous

4.4.1. Communication with Contracting authority under Contract (e.g. information, requests, submissions, formal notifications, etc.) must be carried out in English.

4.4.2. Communication channels: e-mail, Skype, telecommunications etc.

4.4.3. All written materials shall meet the highest standards and technical terminology proficiency. If requested by the Contracting authority, the Contractor shall engage professional proofreading Services at its own expense.

4.4.4. Contractor shall include any travel expenses (if any arise) in proposed contract price. Contracting authority won't additionally reimburse any travel expenses incurred by Contractor during the provision of Services.

4.4.5. Contracting authority is deemed as the administrative instance and will be responsible for making the principal decisions.

4.5. Deliverables and deadlines

4.5.1. Services shall be delivered by the Contractor according to the following deadlines:

No.	Tasks	Deadline	Terms of Cooperation
1	Monthly tasks	31.12.2020.	<p>Contractor declares changes in employment status to tax authorities within 24 (twenty-four) hours (on working days) from receiving information from Contracting authority by e-mail or not later than submission deadline.</p> <p>Salaries for current month are paid on the last working day of the month. Contractor reviews and corrects draft payroll calculation within 24 (twenty-four) hours (on working days) after receiving it from Contracting authority by e-mail.</p> <p>Contracting authority will send invoices and expense claims for previous month to Contractor on the 6th working day of the following month, but not later than the previous working day before the reporting deadline.</p> <p>Contractor provides to Contracting authority information related to changes in relevant legal acts and rules at least 1 (one) month before their enactment.</p> <p>Contractor passes requests and information from Estonian tax authorities to Contracting authority within 24 (twenty-four) hours (on working days). Contractor forwards replies or information to tax authorities within 24 (twenty-four) hours of receiving it from Contracting authority (on working days).</p> <p>Contracting authority provides replies to questions, additional information requested by Contractor and approves draft tax returns within 24 (twenty-four) hours (on working days), not later than by the end of the working day on submission deadline.</p>
2	Annual tasks	31.03.2021.	<p>Contracting authority provides to Contractor a draft annual report for Estonia branch by 28 February of the following year. Draft annual report should be ready for submission to authorities before 31 March. Contractor sends the final report to Contracting authority for approval by 15 March.</p> <p>Contractor submits annual tax declarations (if required) to tax authorities before annual tax declaration deadlines, and</p>

			information requested from Contracting authority at least 2 (two) weeks before the submission deadline.
3	Unplanned tasks	In accordance with Contract amendments	Scope and timing agreed separately in each case.

4.5.2. Contracting authority will accept Services only if it is provided fully in good and enough quality and covers full scope defined in Technical specification.

Annex C: Schedule of Service

“Fee” a Fee in the amount of EUR 30 600,00 (thirty thousand six hundred euros zero cents), excluding VAT.

1. Service Start Date: Agreement signature date.
2. Schedule of payment of Fee: after delivery of the following Deliverables and acceptance by signing of the Provisional Acceptance Note or Final Acceptance Note the Principal shall pay following amount of the Fee:

No	Deliverable	Due Date ³	Defects Date (days after submission of particular Deliverable)	Cure period
1.	Monthly tasks	According to law of the Republic of Estonia	14 calendar days	24 hours during the next Working Day if the Principal did not set otherwise
2.	Annual tasks	According to law of the Republic of Estonia	14 calendar days	24 hours during the next Working Day if the Principal did not set otherwise
3.	Unplanned tasks	Agreed separately in each case	Timing agreed separately in each case	Timing agreed separately in each case

Payment Schedule:

No	Deliverable	Time	Amount (EUR), excl. VAT
1.	Monthly tasks		
1.1	Payroll and tax compliance	After acceptance	[CONFIDENTIAL]
1.2	Value added tax (VAT) compliance	After acceptance	[CONFIDENTIAL]
1.3	Corporate income tax (CIT) compliance	After acceptance	[CONFIDENTIAL]
2.	Annual tasks	After acceptance	[CONFIDENTIAL]
3.	Unplanned tasks	After acceptance	Agreed separately in each case Hourly rate: [CONFIDENTIAL] EUR/h (excl.VAT)

3. The Principal will accept all tasks as describe in Clauses 8.4 and 8.7 only if they will be provided fully in good and enough quality and covers full scope defined in *Annex B: Technical Specification*.
4. The Principal may provide comments or remarks to Monthly Tasks, Annual Tasks and Unplanned Tasks after signing of the Acceptance Note. In such situations the Service Provider shall implement and/or consider mentioned comments and remarks until the Due Date set by the Principal.

³ In accordance with Clause 4.5.1 of the Annex B (*Technical Specification*).

Annex D: List of Approved Sub-Contractors and Staff

List of key personnel

Position	Name and surname of the expert	Contact information
Supervisor/ manager	[CONFIDENTIAL]	[CONFIDENTIAL]
Consultant	[CONFIDENTIAL]	[CONFIDENTIAL]
Consultant	[CONFIDENTIAL]	[CONFIDENTIAL]

Annex E: Form of Provisional Completion Note

No [INSERT NUMBER]

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

Location: [INSERT LOCATION]

For:

RB Rail AS

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

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

In this Provisional Completion Note, unless the context requires otherwise, all Definitions shall have the meaning ascribed to such terms in accordance with the [INSERT AGREEMENT DATE IN THE FORM OF SERVICE AGREEMENT NO INSERT AGREEMENT NUMBER] (the "Agreement") and *Annex A: Definitions and common terms* of the Agreement.

Whereas:

- (A) the Principal and the Service Provider have entered into the Agreement;
- (B) Clause 8.4 of the Agreement stipulates that upon meeting a Service Milestone or producing a Deliverable constituting all or an identifiable part of the *Annex B: Technical specification*, the Service Provider shall issue to the Principal a Provisional Completion Note substantially in the form of *Annex E: Form of Provisional Completion Note* of the Agreement;
- (C) a Service Milestone has been met or a Deliverable has been completed. [PLEASE SPECIFY ONE OR BOTH AS BELOW].

The following Service Milestone(s) has/have been met on [INSERT DATE IN THE FORM OF 1 JANUARY 2019], as specified in accordance with the *Annex B: Technical Specification* of the Agreement:

[DESCRIBE IN REASONABLE DETAIL THE SERVICE MILESTONE ATTAINED. INSERT N/A, IF NO SERVICE MILESTONE HAS BEEN ATTAINED]

The following Deliverable(s) has/have been completed on [INSERT DATE IN THE FORM OF 1 JANUARY 2018] and are attached to this Provisional Completion Note:

[INSERT NAME OF THE DELIVERABLE. INSERT N/A, IF NO DELIVERABLES HAVE BEEN COMPLETED]

As stipulated in Clause 8.5 of the Agreement, in the event the Principal objects to the issue of the Provisional Completion Note, the Principal shall give a written notice to the Service Provider setting out in reasonable detail Defects or reasons for the objection (the "Objection Notice") within fourteen (14) days following receipt of the Provisional Completion Note.

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

Signature:

[INSERT NAME, SURNAME
INSERT POSITION
INSERT COMPANY NAME]

Annex F: Form of Provisional Acceptance Note

No [INSERT NUMBER]

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

Location: [INSERT LOCATION]

For: [•] (the "Service Provider")

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

In this Provisional Acceptance Note, unless the context requires otherwise, all Definitions shall have the meaning ascribed to such terms in accordance with the [INSERT AGREEMENT DATE] Agreement on [INSERT AGREEMENT NAME] No [INSERT AGREEMENT NUMBER] (the "Agreement") and *Annex A: Definitions and common terms* of the Agreement.

Whereas:

- (A) the Principal and the Service Provider have entered into the Agreement;
- (B) the following Service Milestone(s) has been met and the following Deliverable(s) have been supplied to the Principal:
 - (i) [PLEASE IDENTIFY MILESTONE]
 - (ii) [PLEASE IDENTIFY DELIVERABLE]
- (C) any and all Defects have been averted or no Objection Notices have been issued;
- (D) as stipulated by Clause 8.5 of the Agreement, in the event no reasons for objection to the Provisional Completion Note exist, the Principal shall issue, within reasonable time following receipt of the Provisional Completion Note, a provisional acceptance note in the form of *Annex F: Form of Provisional Acceptance Note* (the "Provisional Acceptance Note").

The Principal is satisfied with the result of any and all achieved Deliverables completed and submitted and, in accordance with Clause 8.5 of the Agreement, the Principal accepts the part of the Service performed as of the date of this Provisional Acceptance Note.

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

Signatures:

[INSERT NAME, SURNAME]

INSERT POSITION

INSERT COMPANY NAME]

Annex G: Form of Final Acceptance Note

No [INSERT NUMBER]

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

Location: [INSERT LOCATION]

For: [•] (the "Service Provider")

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

In this Final Acceptance Note, unless the context requires otherwise, all Definitions shall have the meaning ascribed to such terms in accordance with the Agreement on [INSERT NAME] No [INSERT AGREEMENT NUMBER] dated [INSERT DATE] (the "Agreement") and *Annex A: Definitions and common terms* of the Agreement.

Whereas:

- (A) the Principal and the Service Provider have entered into the Agreement;
- (B) one or more Deliverables have been completed;
- (C) any and all Defects have been averted or no Objection Notices have been issued;
- (D) as stipulated by Clause 8.7 of the Agreement, final acceptance shall be evidenced by means of the Principal issuing and both Parties attaching their signature to the Final Acceptance Note substantially in the form of *Annex G: Form of Final Acceptance Note* (the "Final Acceptance Note");

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

The Service Provider and the Principal confirm at the moment of signing this Final Acceptance Note that they do not have any material or other claims in connection with the Agreement (incl. but not limited to additional claims for Fee, contracting penalties, travel expenses, claims related to intellectual property, etc.).

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

Signatures:

[INSERT NAME, SURNAME

INSERT POSITION]

RB Rail AS

Principal

Annex H: Representatives

[CONFIDENTIAL]

Annex I: Service Provider's Proposal

[CONFIDENTIAL]

Annex J: Declaration of Service Provider

I, the undersigned duly authorised representative, on behalf of Ernst & Young Baltic AS undertake:

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

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

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

Silje Sander, Associate Partner, 1 April 2019