

**REGULATION**

**OPEN COMPETITION**

**"MARKETING SERVICES FOR RAIL BALTICA PROJECT"**

**(IDENTIFICATION NO RBR 2017/12)**



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

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## REGULATION

### 1. GENERAL INFORMATION

- 1.1. The identification number of this open competition is No RBR 2017/12.
- 1.2. The applicable CPV codes are: 79342000-3.
- 1.3. The contracting entity is joint stock company RB Rail AS, legal address: K. Valdemāra iela 8 - 7, Riga, LV-1010, Latvia (hereinafter – **Contracting authority**).
- 1.4. The open competition is co-financed by the Latvian state and Connecting Europe Facility (CEF).
- 1.5. This open competition is organised in accordance with the Public Procurement Law of Latvia in effect on the date of publishing the contract notice.
- 1.6. The open competition regulation and all its annexes are freely available at the Internet webpage of the Contracting authority <http://railbaltica.org/en/procurements>.
- 1.7. Amendments to the open competition regulation and answers to suppliers' questions shall be published on the Contracting authority's Internet webpage <http://railbaltica.org/en/procurements>. It is the supplier's responsibility to constantly follow the information published on the webpage and to take it into consideration in its proposal.
- 1.8. Contact persons of the Contracting authority for this open competition:
  - (a) In administrative aspects of the open competition: Procurement specialist - lawyer, Elīna Saule, telephone: +371 26654433, e-mail address: [elina.saule@railbaltica.org](mailto:elina.saule@railbaltica.org), [procurement@railbaltica.org](mailto:procurement@railbaltica.org).
  - (b) In aspects concerning subject-matter of open competition: Communication and Public Affairs Manager, Ilze Rassa, telephone +371 27337767, e-mail address: [ilze.rassa@railbaltica.org](mailto:ilze.rassa@railbaltica.org), [procurement@railbaltica.org](mailto:procurement@railbaltica.org).
- 1.9. The procurement commission and the supplier exchange information in writing in English or Latvian, by sending documents by post, or by fax, electronically, or by delivering in person.
- 1.10. The supplier can request additional information regarding the Regulation. Additional information can be requested in writing, by sending it to the procurement commission by fax or by post, or electronically, or delivering in person. Additional information must be requested in a timely fashion, so that the procurement commission can give it a reply no later than 6 (six) days prior to the deadline for proposal submission. The procurement commission shall provide additional information within 5 (five) business days from the day of receipt of the request.
- 1.11. The supplier covers all expenses, which are related to the preparation of the Proposal and its submission to the Contracting authority. The submitted proposals are not returned to the Tenderer, unless specifically envisaged in the Regulations.

### 2. THE RIGHTS OF THE PROCUREMENT COMMISSION

- 2.1. The procurement commission has the right to demand at any stage of the open competition that the Tenderer submits all or part of the documents which certify Tenderer's compliance to the requirements for the selection of tenderers. The procurement commission does not demand such documents or information which is already at its disposal or is available in public data bases.

- 2.2. If the Tenderer submits document derivatives (e.g. copies), then in case of doubt about the authenticity of the submitted document derivation the procurement commission can demand that the Tenderer shows the original documents.
- 2.3. In the course of proposal assessment the procurement commission has the right to demand that the information included in the technical and financial proposal is clarified.

### **3. THE OBLIGATIONS OF THE PROCUREMENT COMMISSION**

- 3.1. The procurement commission ensures the documentation of the process of the open competition procedure.
- 3.2. The procurement commission ensures free and direct electronic access to the open competition procedure documents at the Internet webpage of the Joint-Stock Company RB Rail AS <http://railbaltica.org/en/procurements>.
- 3.3. If an interested Tenderer has in a timely fashion in writing by post or by fax, or electronically, or delivering in person, requested additional information about the requirements included in open competition procedure documents regarding the preparation and submission of the Proposal or regarding the selection of Tenderers, the procurement commission provides a response by fax or electronically (if the supplier has requested that the answer be given electronically or if it is impossible to send the response by fax) within 5 (five) business days, but not later than 6 (six) days before the deadline for submitting proposals. Simultaneously with sending this information to the supplier who had asked the question, the Contracting authority publishes this information on its Internet webpage <http://railbaltica.org/en/procurements>, where open competition procedure documents are available, indicating the question asked.
- 3.4. If the Contracting authority has amended the open competition procedure documents, it publishes this information on the Contracting authority's Internet webpage <http://railbaltica.org/en/procurements>, where open competition procedure documents are available, no later than 1 (one) day after the notification regarding the amendments has been submitted to Procurement Monitoring Bureau for publication.
- 3.5. The exchange and storage of information is carried out in such a way that all data included in the Proposals is protected and the Contracting authority can check the content of the Proposals only after the expiration of the deadline for their submission. In time between the day of the submission of Proposals till the moment of opening thereof the Contracting authority does not disclose information regarding the existence of other Proposals. In the time period of Proposal assessment till the moment of the announcement of the results the Contracting authority does not disclose information regarding the assessment process.
- 3.6. The procurement commission assesses the Tenderers and their submitted Proposals based on the Public Procurement Law, open competition procedure documents, as well as other regulatory enactments.
- 3.7. If the procurement commission determines that the information about the Tenderer, its subcontractors and persons upon whose capabilities the Tenderer is relying that is included in the submitted documents is unclear or incomplete, it demands that the Tenderer or a competent institution clarifies or expands the information included in the Proposal. The deadline for submission of the necessary information is determined in proportion to the time which is required in order to prepare and submit such information. If the procurement commission has demanded to clarify or expand upon the submitted documents, but the Tenderer has not done this in accordance with the requirements stipulated by the procurement commission, the



procurement commission is under no obligation to repeatedly demand that the information included in these documents be clarified or expanded upon.

- 3.8. The procurement commission prepares a report on the open competition procedure and publishes it on its webpage <http://railbaltica.org/en/procurements> within 5 (five) business days from day when the decision about the results of the open competition is taken.

#### **4. THE RIGHTS OF THE TENDERER**

- 4.1. The Tenderer can request and within 3 (three) business days after submitting the request receive a copy of the Proposal opening sheet, which is an Annex to the Proposal opening meeting minutes.
- 4.2. If the Contracting authority gets the necessary information about the Tenderer directly from a competent institution, through data bases or other sources, the Tenderer in question has the right to submit a statement or a different document regarding the corresponding fact, if the information obtained by the Contracting authority does not conform to the factual situation.
- 4.3. If a Tenderer believes that its rights have been violated or such violation is possible due to possible violation of the regulatory enactments of the European Union or other regulatory enactments, the Tenderer has the right to submit a complaint to the Procurement Monitoring Bureau according to the procedure stipulated in the Public Procurement Law regarding the tenderer selection requirements, technical specifications or other requirements relating to this open competition, or relating to the activities by the Contracting authority or the procurement commission during the open competition procedure.

#### **5. SUBJECT-MATTER OF THE OPEN COMPETITION**

- 5.1. The subject-matter of the open competition is marketing services for Rail Baltica project as described in Annex 2.
- 5.2. The marketing services will need to be provided in Estonia, Latvia and Lithuania.

#### **6. TENDERER**

- 6.1. The proposal can be submitted by:
- 6.1.1. A supplier, who is a legal or natural person (hereinafter – Tenderer) and who complies with the selection criteria for tenderers;
- 6.1.2. A group of suppliers (hereinafter also – Tenderer, partnership) which complies with the selection criteria for tenderers:
- (a) A group of suppliers who have formed a partnership for this particular open competition. In this case all the members of the partnership shall be listed in Annex 1 “Application”. If it will be decided to award contracting rights to such partnership, then prior to concluding the Contract the partnership shall at its discretion either enter into a partnership agreement (within the meaning of Latvian Civil Law Sections 2241-2280) and shall submit one copy of this agreement to the Contracting authority or establish a general or limited partnership (within the meaning of Latvian Commercial Law, Chapter IX and X) and notify the Contracting authority in writing.
  - (b) An established and registered partnership (a general partnership or a limited partnership, within the meaning of Latvian Commercial Law,

## 7. SELECTION CRITERIA FOR TENDERERS

### 7.1. Exclusion grounds

The contracting authority shall exclude the tenderer from further participation in the open competition in any of the following circumstances:

No	Requirement	Documents to be submitted <i>(no obligation to submit documents, unless specifically requested by the procurement commission)</i>
1.	<p>Within previous 3 (three) years before submission of the Proposal the Tenderer or a person who is the tenderer's board or council member, person with representation rights or a procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a branch, has been found guilty of or has been subjected to coercive measures for committing any of the following criminal offences by such a public prosecutor's order regarding punishment or a court judgement that has entered into force and may not be challenged and appealed:</p> <p>a) establishment, management of, involvement in a criminal organisation or in an organised group included in the criminal organisation or other criminal formation, or participation in criminal offences committed by such an organisation,</p> <p>b) bribe-taking, bribery, bribe misappropriation, intermediation in bribery, unauthorised participation in property transactions, taking of prohibited benefit, commercial bribing, unlawful claiming of benefits, accepting and providing of benefits, trading influences,</p> <p>c) fraud, misappropriation or money-laundering,</p> <p>d) terrorism, terrorism funding, calling to terrorism, terrorism threats or recruiting and training a person in performance of acts of terrorism,</p>	<ul style="list-style-type: none"> <li>- For a Tenderer and a person who is the tenderer's board or council member, person with representation rights or a procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a branch, which are registered or residing in Latvia, the Contracting authority shall verify the information itself in publicly available databases.</li> <li>- For a Tenderer and a person who is the tenderer's board or council member, person with representation rights or a procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a branch, which are registered or residing outside of Latvia the Tenderer should submit an appropriate statement from the competent authority of the country of registration or residence.</li> </ul>

	e) human trafficking, f) evasion from payment of taxes and similar payments.	
2.	It has been detected that on the last day of Proposal submission term or on the day when a decision has been made on possible granting of rights to conclude the procurement contract, the Tenderer has tax debts in Latvia or a country where it has been incorporated or is permanently residing, including debts of mandatory state social insurance contributions exceeding 150 euro in total in any of the countries.	<ul style="list-style-type: none"> <li>- For a Tenderer and a person who is the tenderer's board or council member, person with representation rights or a procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a branch, which are registered or residing in Latvia, the Contracting authority shall verify the information itself in publicly available databases.</li> <li>- For a Tenderer and a person who is the tenderer's board or council member, person with representation rights or a procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a branch, which are registered or residing outside of Latvia the Tenderer should submit an appropriate statement from the competent authority of the country of registration or residence.</li> </ul>
3.	Tenderer's insolvency proceedings have been announced, the tenderer's business activities have been suspended, the tenderer is under liquidation.	<ul style="list-style-type: none"> <li>- For a Tenderer and a person who is the tenderer's board or council member, person with representation rights or a procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a branch, which are registered or residing in Latvia, the Contracting authority shall verify the information itself in publicly available databases.</li> <li>- For a Tenderer and a person who is the tenderer's board or council member, person with representation rights or a procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a branch, which are registered or residing outside of Latvia the Tenderer should submit an appropriate statement from the competent authority of the</li> </ul>

	country of registration or residence.
<p>4. A person who drafted the procurement procedure documents (contracting authority's official or employee), procurement commission member or expert is related to the tenderer, or is interested in selection of some tenderer, and the contracting authority cannot prevent this situation by measures that cause less restrictions on tenderers. A person who drafted the procurement procedure documents (contracting authority's official or employee), procurement commission member or expert is presumed to be related to the tenderer in any of the following cases:</p> <ul style="list-style-type: none"> <li>- If he or she is a current or and ex-employee, official, shareholder, procura holder or member of a tenderer or a subcontractor which are legal persons and if such relationship with the legal person terminated within the last 24 months.</li> <li>- If he or she is the father, mother, grandmother, grandfather, child, grandchild, adoptee, adopter, brother, sister, half-brother, half-sister or spouse (hereinafter – relative) of a tenderer's or subcontractor's, which is a legal person, shareholder who owns at least 10% of the shares in a joint-stock company, shareholder in a limited liability company, procure holder or an official.</li> <li>- If he or she is a relative of a tenderer or a subcontractor which is a natural person.</li> </ul> <p>If the tenderer is a partnership, consisting of natural or legal persons, a relation to the tenderer is presumed also if a person who drafted the procurement procedure documents (contracting authority's official or employee), procurement commission member or expert is related to a member of a partnership in any of the above mentioned ways.</p>	<p>No obligation to submit documents, unless specifically requested by the procurement commission.</p>

<p>5. The tenderer has an advantage that limits competition in the procurement procedure if it or its related legal person consulted the contracting authority or otherwise was involved in preparing the open competition, and the advantage cannot be prevented by less restrictive measures, and the tenderer cannot prove that its or its related legal person's participation in preparing the procurement procedure does not restrict competition.</p>	<p>No obligation to submit documents, unless specifically requested by the procurement commission.</p>
<p>6. Within previous 12 (twelve) months before submission of the Proposal, by such a decision of a competent authority or a court judgment which has entered into force and may not be challenged and appealed, the tenderer has been found guilty of violating competition laws manifested as a horizontal cartel agreement, except for the case when the relevant authority, upon detecting violation of competition laws, has released the tenderer from a fine or has decreased the fine for cooperation within a leniency program.</p>	<ul style="list-style-type: none"> <li>- For a Tenderer and a person who is the tenderer's board or council member, person with representation rights or a procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a branch, which are registered or residing in Latvia, the Contracting authority shall verify the information itself in publicly available databases.</li> <li>- For a Tenderer and a person who is the tenderer's board or council member, person with representation rights or a procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a branch, which are registered or residing outside of Latvia the Tenderer should submit an appropriate statement from the competent authority of the country of registration or residence.</li> </ul>
<p>7. Within previous 3 (three) years before submission of the Proposal, by such a decision of a competent authority or a court judgment which has entered into force and may not be challenged and appealed, the tenderer has been found guilty of a violation manifested as employment of one or more persons which do not possess the required employment permit or if it is illegal for such persons to reside in a Member State of the European Union.</p>	<ul style="list-style-type: none"> <li>- For a Tenderer and a person who is the tenderer's board or council member, person with representation rights or a procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a branch, which are registered or residing in Latvia, the Contracting authority shall verify the information itself in publicly available databases.</li> <li>- For a Tenderer and a person who is the tenderer's board or council member, person with representation rights or a</li> </ul>

		procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a branch, which are registered or residing outside of Latvia the Tenderer should submit an appropriate statement from the competent authority of the country of registration or residence.
8.	Within previous 12 (twelve) months before submission of the Proposal, by such a decision of a competent authority or a court judgment which has entered into force and may not be challenged and appealed, the tenderer has been found guilty of a violation manifested as employment of a person without a written employment contract, by failing within the term specified in regulatory enactments to submit an informative employee declaration regarding this person, which must be submitted about persons, who start working;	<ul style="list-style-type: none"> <li>- For a Tenderer and a person who is the tenderer's board or council member, person with representation rights or a procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a branch, which are registered or residing in Latvia, the Contracting authority shall verify the information itself in publicly available databases.</li> <li>- For a Tenderer and a person who is the tenderer's board or council member, person with representation rights or a procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a branch, which are registered or residing outside of Latvia the Tenderer should submit an appropriate statement from the competent authority of the country of registration or residence.</li> </ul>
9.	The tenderer has provided false information to prove its compliance with provisions of this Section 7.1, or has not provided the required information at all.	No obligation to submit documents, unless specifically requested by the procurement commission.

## 7.2. Legal standing and suitability to pursue the professional activity

No	Requirement	Documents to be submitted
1.	The Tenderer or all members of the partnership (if the Tenderer is a partnership) must be registered in the Registry of Enterprises or Registry of Inhabitants, or an equivalent register	<ul style="list-style-type: none"> <li>- For a Tenderer which is a legal person (or a member of a partnership, a person on whose abilities a Tenderer relies, a subcontractor whose</li> </ul>

in their country of residence, if the legislation of the respective country requires registration of natural or legal persons.

share of work is equal to or exceeds 10% of the contract value) registered in Latvia the Contracting authority shall verify the information itself in publicly available databases.

- For a Tenderer which is a natural person (or a member of a partnership, a person on whose abilities a Tenderer relies, a subcontractor whose share of work is equal to or exceeds 10% of the contract value) – a copy of an identification card or passport.
- For a Tenderer (or a member of a partnership, a person on whose abilities a Tenderer relies, a subcontractor whose share of work is equal to or exceeds 10% of the contract value) which is a legal person registered abroad (with its permanent place of residence abroad) – a copy of a valid registration certificate or a similar document issued by a foreign authority in charge of the registration of legal persons in the country of their residence wherefrom at least the fact of registration, shareholders, officials and procura holders (if any) can be determined.
- If a proposal is submitted by a partnership, the Proposal shall include an agreement (or letter of intention to enter into agreement or other document that proves an intention to enter into agreement) signed by all members on the participation in the procurement, which lists responsibilities of each and every partnership members and a joint commitment to fulfil the procurement contract, and which authorises one key member to sign the proposal and other documents, to receive and issue orders on behalf of the partnership members, and

	<p>with whom all payments will be made.</p> <ul style="list-style-type: none"> <li>- If the Proposal or any other document, including any agreement, is not signed by the legal representative of the Tenderer, members of the partnership, person on whose capabilities the Tenderer relies or sub-contractors, then a document certifying the rights of the persons who have signed the Proposal or any other documents, to represent the Tenderer, a member of the partnership, a person on whose capabilities the Tenderer is relying, or a sub-contractor (powers of attorney, authorization agreements etc.) must be included.</li> </ul>
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### 7.3. Economic and financial standing

No	Requirement	Documents to be submitted
1.	<p>The Tenderer's or all members' of the partnership together (if the Tenderer is a partnership), average annual financial turnover within last 3 (three) years (2014, 2015, 2016) is not less than 100 000,00 EUR (one hundred thousand <i>euro</i>) per year.</p> <p>In the event the yearly average annual financial turnover of a limited liability member of a limited partnership (within the meaning of Latvian Commercial Law, Chapter X) exceeds its investment in the limited partnership, the average annual financial turnover shall be recognised in the amount of the investment in the limited partnership.</p> <p>In the event the Tenderer or a member of a partnership (if the Tenderer is a partnership) has operated in the market for less than 3 (three) years, the requirement shall be met during the Tenderer's actual operation period.</p>	<ul style="list-style-type: none"> <li>- Audited annual reports for fiscal years 2014, 2015, 2016 showing the turnover of the Tenderer.</li> <li>- For a limited partnership (within the meaning of Latvian Commercial Law, Chapter X) an additional document evidencing the amount of the investment by the limited liability partner (the partnership agreement or a document with a similarly binding legal effect).</li> </ul>
2.	<p>The Tenderer or all members' of the partnership together (if the Tenderer is a partnership) shall have stable financial and economic performance,</p>	<ul style="list-style-type: none"> <li>- Audited annual reports for fiscal years 2016 showing the balance and calculation that proves it.</li> </ul>



namely, in the previous audited year Tenderer's liquidity ratio (current assets divided by short-term liabilities) shall be equal to or exceed 1 and the Tenderer shall have positive equity.

#### 7.4. Technical and professional ability

No	Requirement	Documents to be submitted
1.	Within the previous 3 years (2014, 2015, 2016 including 2017 until the date of submission of the Proposal) before the date of the submission of the Proposal, has completed at least 2 (two) large (at least each 50 000,00 EUR (fifty thousand <i>euro</i> ) without VAT) marketing services, each of which was provided in at least 2 (two) countries, for a client which has offices in at least 2 (two) countries, and also has completed at least 3 (three) smaller scale (each under 50 000,00 EUR (fifty thousand <i>euro</i> ) without VAT) local marketing services for 3 (three) different clients.	- Filled in and signed Annex 5
2.	The Tenderer has main office or representative office in a capital of Estonia, Latvia or Lithuania, with the collaboration partners or representative offices in the capitals of the other 2 (two) countries.	<ul style="list-style-type: none"> <li>- A signed Tenderer's declaration in a free form with information about the addresses of the offices and the collaboration partners (if any).</li> <li>- With respect to collaboration partners (if any) a collaboration partner's signed declaration on cooperation in the execution of the contract or a cooperation agreement which should be in effect throughout the period of execution of the contract to be concluded as the result of this procurement procedure.</li> </ul>

#### 7.5. Team of key experts

No	Requirement	Documents to be submitted
1.	<p>The Tenderer should propose a team consisting of the following key experts meeting the following general criteria:</p> <ul style="list-style-type: none"> <li>- Within the previous 3 (three) years (2014, 2015, 2016 including 2017) until the date</li> </ul>	- Filled in and signed Annex 6.

	<p>of submission of the Proposal) before the date of the submission of the Proposal at least 3 (three) key experts each have participated in completion of at least 2 (two) projects in which marketing services were provided in at least 2 (two) countries.</p> <ul style="list-style-type: none"> <li>- All experts should have good knowledge of English.</li> </ul>	
2.	<p>Account manager meeting the following specific criteria:</p> <ul style="list-style-type: none"> <li>- At least bachelor's degree or equal of arts (BA).</li> <li>- At least 3 (three) years relevant experience in the advertising, marketing and project management field.</li> </ul>	<ul style="list-style-type: none"> <li>- Filled in and signed Annex 6.</li> <li>- A copy of a diploma proving relevant level of education.</li> </ul>
3.	<p>Art director meeting the following specific criteria:</p> <ul style="list-style-type: none"> <li>- At least 5 (five) years relevant experience in the advertising or marketing field.</li> </ul>	<ul style="list-style-type: none"> <li>- Filled in and signed Annex 6.</li> </ul>
4.	<p>Copywriter meeting the following specific criteria:</p> <ul style="list-style-type: none"> <li>- At least a bachelor's degree or equal in journalism, marketing or other field where the expert has obtained education on drafting texts and copyrights.</li> <li>- At least 3 (three) years relevant experience in the advertising and marketing field.</li> <li>- Excellent knowledge of English, proven by participating in at least 2 (two) projects in which marketing services were provided in at least 2 (two) countries as a copywriter with the main work language English, that is drafting the necessary marketing documents in English, i.e., brochure, infographic - animated graphic drawing with text, branded template for Facebook company account with text etc.</li> </ul>	<ul style="list-style-type: none"> <li>- Filled in and signed Annex 6.</li> <li>- A copy of a diploma proving relevant level of education.</li> </ul>

5.	<p>Web developer meeting the following specific criteria:</p> <ul style="list-style-type: none"> <li>- At least bachelor's degree or equal in information technology-related educational programs.</li> <li>- At least 3 (three) years' experience as a web developer.</li> <li>- Sound knowledge and experience in Wordpress platform.</li> </ul>	<ul style="list-style-type: none"> <li>- Filled in and signed Annex 6.</li> <li>- A copy of a diploma proving relevant level of education.</li> </ul>
6.	<p>Web designer meeting the following specific criteria:</p> <ul style="list-style-type: none"> <li>- At least 5 (five) years' experience as a web designer in the advertising or marketing field.</li> </ul>	<ul style="list-style-type: none"> <li>- Filled in and signed Annex 6.</li> </ul>

7.6. Notices and other documents, which are issued by Latvian competent institutions, are accepted and recognized by the procurement commission, if they are issued no earlier than 1 (one) month prior to the date of opening of the Proposals. Notices and other documents, which are issued by foreign competent institutions, are accepted and recognized by the procurement commission, if they are issued no earlier than 6 (six) month prior to the date of opening of Proposals.

7.7. If the documents, with which a Tenderer registered or permanently residing abroad can certify its compliance with the requirements of Section 7.1, are not issued or these documents are insufficient, such documents can be replaced with an oath or, if the regulatory enactments of the country in question do not allow for an oath, - with a certification by the Tenderer or by another person mentioned in Section 7.1 before a competent executive governmental or judicial institution, a sworn notary or a competent organization of a corresponding industry in their country of registration (permanent residence).

7.8. If the Tenderer complies with any of the exclusion grounds mention in Section 7.1 (except tax debts), the Tenderer indicates this fact in Annex No 1.

7.9. The Tenderer, in order to certify that it complies with the selection criteria for Tenderers, may submit the European single procurement document as initial proof. This document must be submitted in paper format, and for each person upon whose capabilities the Tenderer relies, and for each of their indicated subcontractors, the share of whose work is equal to or exceeds 10 % (ten per cent) of the value of the Contract, but if the Tenderer is a partnership – for each member thereof. In order to fill in the European single procedure document the Tenderer uses the "ESPD.xml" file at the Internet webpage <https://ec.europa.eu/growth/tools-databases/espd/filter?lang=lv#>.

## 8. RELIANCE ON THE CAPABILITIES OF OTHER PERSONS

8.1. For the fulfilment of the specific contract, in order to comply with the selection requirements for the Tenderers relating to the economic and financial standing and technical and professional ability (including regarding the team of key experts), the Tenderer may rely upon the capabilities of other persons, regardless of the legal nature of their mutual relationship. In this case:

- 8.1.1. The Tenderer indicates in the Proposal all persons upon whose capabilities it relies by filling in the table which is attached as Annex 3 and proves to the Contracting authority that the Tenderer shall have available all the necessary resources for the fulfilment of the contract, by submitting a signed confirmation or agreement on cooperation and/or passing of resources to the Tenderer between such persons and the Tenderer. The confirmations and agreements on cooperation and passing of resources can be replaced by the Tenderer with any other type of documents with which the Tenderer is able to prove that the necessary resources will be available to the Tenderer and will be used during the term of fulfilment of the contract.
- 8.1.2. Documents on cooperation and passing of resources have to be sufficient to prove to the Contracting authority that the Tenderer will have the ability to fulfil the contract, as well as that during the validity of the contract the Tenderer will in fact use the resources of such person upon whose capabilities the Tenderer relies.
- 8.1.3. The Contracting authority require joint liability for the execution of the Contract between the tenderer and a person on whose capabilities the Tenderer is relying.
- 8.2. The Contracting authority shall evaluate the person, on whose capabilities the Tenderer to whom the rights to conclude the Contract should be assigned is relying. In case such person will comply with any of the exclusion grounds which are mentioned in Section 7.1. (1) to 7.1. (8) , the Contracting authority shall request the Tenderer to change such person. If the Tenderer shall not submit documents about another person which complies with the selection criteria within 10 (ten) business days from the date when the request was issued or sent to the Tender, the Contracting authority shall exclude such Tenderer from further participation in the open competition.

## **9. SUBCONTRACTING**

- 9.1. The Tenderer shall indicate in the Proposal all subcontractors of the Tenderer by filling in the table which is attached as Annex 4.
- 9.2. The Contracting authority shall evaluate the subcontractor, whose share of work is equal to or exceeds 10% of the Contract price, of the Tenderer to whom the rights to conclude the Contract should be assigned. In case such subcontractor will comply with any of the exclusion grounds which are mentioned in Section 7.1 (2) to 7.1 (8) , the Contracting authority shall request the Tenderer to change such subcontractor. If the Tenderer shall not submit documents about another subcontractor which complies with the selection criteria within 10 (ten) business days from the date when the request was issued or sent to the Tender, the Contracting authority shall exclude such Tenderer from further participation in the open competition.

## **10. PROPOSAL (BID) SECURITY**

- 10.1. The Tenderer along with the Proposal shall submit a proposal (bid) security in the amount of **1 000,00 EUR** (one thousand *euro*) (hereinafter – Security) which should be valid 90 (ninety) days from the day of opening of the Proposal.
- 10.2. The Security may be:
  - 10.2.1. A bank guarantee;
  - 10.2.2. An insurance policy.
- 10.3. The bank guarantee must comply with the following requirements:
  - 10.3.1. The guarantor must pledge to pay the Contracting authority the sum of the Security in cases stipulated in Section 10.7.
  - 10.3.2. The guarantee must be in force for the term stipulated in Section 10.6;

- 10.3.3. The guarantee must be irrevocable;
- 10.3.4. The Contracting authority shall not be obliged to demand the Security from the Tenderer prior to submitting the request to the guarantor;
- 10.3.5. The Uniform Rules for Demand Guaranties, ICC Publication No.758, issued by the International Chamber of Commerce (ICC), are applicable to the guarantee, but in matters which are not regulated by the aforementioned International Chamber of Commerce (ICC) Rules, the regulatory enactments of the Republic of Latvia are applicable to the guarantee. Claims and disputes in relation to this guarantee shall be examined in the court of the Republic of Latvia, in accordance with the laws of the Republic of Latvia.
- 10.4. The insurance policy must comply with the following requirements:
  - 10.4.1. The insurer must pledge to pay the Company the sum of the Security in cases stipulated in Section 10.7.
  - 10.4.2. The insurance policy must be in force for the term stipulated in Section 10.6 and be subject to realization from the opening of the Proposal, that is, the insurance premium must be paid by the moment of submitting the Proposal, which is proved by a payment certificate enclosed to the Proposal;
  - 10.4.3. The insurance policy must pledge to pay the Contracting authority the sum of the Security in cases stipulated in Section 10.7.
  - 10.4.4. The insurance policy must be irrevocable;
  - 10.4.5. The Contracting authority shall not be obliged to demand the Security from the Tenderer prior to submitting the request to the insurer;
  - 10.4.6. Claims and disputes in relation to this insurance policy shall be examined in the court of the Republic of Latvia in accordance with the laws of the Republic of Latvia.
- 10.5. If the Tenderer is a partnership, then the Security must be formalized in such a way that it applies to all the members of the Tenderer (the name of the Tenderer in the Security must be the same as the name of the Tenderer in the proposal).
- 10.6. The Security shall be in force for the shortest of the terms listed below:
  - 10.6.1. the term of validity of the Security stipulated in Section 10.1;
  - 10.6.2. until the Contract is concluded.
- 10.7. Upon request of the Contracting authority the Security giver shall pay the sum of the Security to the Contracting authority, if:
  - 10.7.1. the Tenderer revokes its Proposal while the Security is in force,
  - 10.7.2. The selected Tenderer fails to submit necessary documents and requested contract performance security,
  - 10.7.3. the Tenderer, whose Proposal is selected in accordance with the contract award criteria, does not sign the Contract in the term stipulated by the Contracting authority.
- 10.8. After the Security shall lose its force it shall be returned to the Tenderer subject to a request by the Tenderer.
- 11. FINANCIAL PROPOSAL**
  - 11.1. The Financial proposal shall be submitted as part of Annex 1.
  - 11.2. The proposed contract price shall be determined in euro without value added tax (hereinafter – VAT).

- 11.3. The proposed contract price is to be calculated and indicated with an accuracy of 2 (two) decimal places after comma. If more than 2 (two) decimal places after comma are indicated, then only the first two decimal places will be taken into account.
- 11.4. The proposed contract price shall include all taxes, fees and payments, and all costs related to the fulfilment of the specific work that can be reasonably estimated, except VAT, including but not limited to:
  - 11.4.1. Visits to the Contracting authority (cost of business trips and time of consultants),
  - 11.4.2. Field research,
  - 11.4.3. Purchase of external materials and researches,
  - 11.4.4. Purchase of external experts if applicable.
- 11.5. The prices are fixed for all the term of the fulfilment of the Contract and are not recalculated, except in cases stipulated in the Contract (if any).

## **12. TECHNICAL PROPOSAL**

- 12.1. As a Technical proposal the Tenderers should submit the result of execution of the creative task in accordance with Annex No 2.

## **13. CONTENTS AND FORM OF THE PROPOSAL**

- 13.1. The documents shall be included in the proposal in the following order (hereinafter – **Proposal**):
  - 13.1.1. Separately from other documents: the original document of the Security.
  - 13.1.2. Title page with title “Proposal for the open competition “Marketing services for Rail Baltica project” No RBR 2017/12”, name, address and contact information of the Tenderer;
  - 13.1.3. The table of contents with page numeration.
  - 13.1.4. Application (financial proposal) in accordance with Annex No. 1.
  - 13.1.5. Information and documents confirming compliance of the Tenderer with the selection criteria for the Tenderers, or the corresponding European single procurement documents.
  - 13.1.6. Information and documents relating to entities on whose capabilities the Tenderer is relying, or the corresponding European single procurement documents.
  - 13.1.7. Information and documents relating to subcontractors and/or or the corresponding European single procurement documents.
  - 13.1.8. Technical proposal prepared in accordance with Section 12.
- 13.2. The Tenderer is not permitted to submit variants of the Proposal. If variants of the Proposal shall be submitted, the Proposal will not be reviewed.
- 13.3. The Tenderer may submit a Proposal only for the whole subject matter of the open competition in total.
- 13.4. The Tenderer shall submit a Proposal sewn or bound together, the loose ends of the ribbon fixed so that they cannot be opened without damaging the fixation, upon which the Tenderer must confirm with a signature the number of pages contained in the Proposal.
- 13.5. The Proposal must be submitted in written form in English or Latvian.
- 13.6. The Tenderer shall submit 1 (one) signed Original, 1 (one) Copy and a digital format (USB format files being in MS Office format or PDF format) copy of the Proposal.

- 13.7. The Proposal may contain original documents or their derivatives (e.g. copies). In the proposal or in reply to a request of the procurement commission the Tenderer shall submit only such original documents which have legal force. In order for the document to gain legal force it has to be issued and formatted in accordance with the Law on Legal Force of Documents, but public documents issued abroad shall be formatted and legalized in accordance with the requirements of the Document Legalization Law. When submitting the Proposal, the Tenderer has the right to certify the correctness of all submitted documents' derivatives and translations with one certification.
- 13.8. The Proposal must be signed by a person who is legally representing the Tenderer or is authorized to represent the Tenderer in this open competition procedure.
- 13.9. The Tenderer shall submit Proposal in a glued up envelope, on which it shall be indicated: ""Proposal for the open competition "Marketing services for Rail Baltica project" No RBR 2017/12". Do not open until 31 May, 2017, 11:00 o'clock". And the address: To the RB Rail AS, K. Valdemāra iela 8 - 7, Riga, LV-1010. The name, address and telephone number of the Tenderer shall be specified on the envelope.
- 13.10. The Proposal shall be valid for 90 (ninety) days from the day of opening (deadline for submission) of the Proposal.

#### **14. SUBMISSION OF A PROPOSAL**

- 14.1. Proposal (documents referred to in the Section 11) shall be submitted personally, by courier or registered mail to the RB Rail AS, K. Valdemāra iela 8 - 7, Riga, LV-1010, Latvia by 31 May, 2017 till 11:00 o'clock.
- 14.2. The Tenderer may recall or amend its submitted Proposal before the expiry of the deadline for the submission of Proposals. In case of amendments, the Tenderer has to clearly indicate on the Proposal that the Proposal is amended by indicating: "AMENDMENTS" in addition to the information mentioned in Section 13.9.
- 14.3. Proposals submitted after the expiry of the deadline for the submission of Proposals shall not be reviewed.

#### **15. OPENING OF PROPOSALS**

- 15.1. The opening of Proposals takes place during an open meeting of the procurement commission at 11:00 o'clock on 31 May, 2017 at RB Rail AS, K. Valdemāra iela 8 - 7, Riga, LV-1010.
- 15.2. The Proposals are opened in order of their submission, by naming the Tenderer, the time of Proposal submission, the proposed price and other information that characterizes the Proposal, as well as making sure of the presence of documents proving the Security. At the request of a meeting participant the procurement commission shows that part of the Proposal where the offered price is indicated, making sure that information which is not generally available is not disclosed.
- 15.3. The information announced at the Proposal opening meeting is written down in the Proposal opening sheet, which is signed by the present members of the procurement commission. The copy of the Proposal opening sheet is issued to Tenderers' representatives upon their request.

#### **16. VERIFICATION OF TECHNICAL PROPOSAL**

- 16.1. The Procurement commission verifies whether the submitted Technical proposals comply with the requirements stipulated in Section 12 and selects for further evaluation the compliant Technical proposals.

## **17. VERIFICATION OF FINANCIAL PROPOSALS**

- 17.1. The procurement commission verifies whether Tenderers have completed Annex 1 "Application" in accordance with the requirements.
- 17.2. The procurement commission verifies whether there are any arithmetical errors, whether an abnormally low Proposal has been received, as well as assesses and compares the contract prices proposed.
- 17.3. The procurement commission informs the Tenderer whose mathematical errors have been corrected about the correction of mathematical errors and the corrected financial proposal.
- 17.4. When evaluating the financial proposal, the procurement commission takes corrections into account.
- 17.5. The procurement commission has the right to demand that the Tenderer explains the calculation upon which the financial proposal is based and other related aspects in order to ascertain the objectivity of the financial proposal and whether an abnormally low Proposal has been submitted.
- 17.6. The procurement commission further evaluates the compliant Proposals which have not been declared as abnormally low proposals.

## **18. CONTRACT AWARD CRITERIA**

- 18.1. The Proposal selection criterion is the most economically advantageous proposal, according to the evaluation methodology described in this Section below.
- 18.2. The economically most advantageous proposal shall be the Proposal which will receive the highest sum of scores for the following criteria:

<b>Evaluation criteria:</b>	<b>Points:</b>
<b>Financial proposal</b> , which will be evaluated in accordance with Section 18.5.	50
<b>Quality of the Technical proposal</b> , which will be evaluated in accordance with Section 18.6.	50
<b>Total</b>	<b>100</b>

- 18.3. The procurement commission shall sum up the points obtained by each Tenderer and the Contract shall be awarded to the Tenderer whose Proposal obtains the highest score.
- 18.4. In case several Tenderers will obtain equal number of points, the procurement commission shall award the right to conclude the contract to the Tenderer which will obtain higher score for its financial proposal. If also this score will be equal then the procurement commission shall award the right to conclude the contract to the Tenderer which submitted its Proposal first.
- 18.5. Evaluation of the Financial proposal**
- 18.5.1. The procurement commission shall evaluate the following sub-criteria of the financial proposal:
- (a) Proposed hourly rate for each key expert in accordance with Section 2(a) of the financial proposal. The maximum amount of points for this sub-criterion is 20 points. The procurement commission shall evaluate the



proposed hourly rate for each key expert separately. In order to obtain the points which shall be awarded to the particular Tenderer, the procurement commission shall sum up all points for all key experts obtained by the particular Tenderer.

- (b) Proposed total cost for examples of marketing materials in accordance with Section 2(a) of the financial proposal. The maximum amount of points for this sub-criterion is 10 points.
- (c) Proposed monthly fee for web hosting and maintenance in accordance with Section 2(b) of the financial proposal. The maximum amount of points for this sub-criterion is 10 points.
- (d) Proposed price per hour for web site visual and functionality development in accordance with Section 2(b) of the financial proposal. The maximum amount of points for this sub-criterion is 10 points. The procurement commission shall evaluate the total of the proposed prices per hour for web design and web development.

18.5.2. The procurement commission shall award the maximum available points for each sub-criteria to the financial proposal with the lowest proposed rate/cost/price in each sub-criteria. Other financial proposals shall receive score in each sub-criteria in accordance with the following formula:

$$\text{points} = \frac{\text{lowest proposed rate/cost/price}}{\text{Tenderer's proposed rate/cost/price}} \times \text{maximum points for sub – criterion}$$

18.5.3. The procurement commission shall obtain the final score for each financial proposal by summing up all points obtained by the particular financial proposal and dividing the sum with the number of financial proposals which were evaluated.

## 18.6. Evaluation of the quality of the Technical proposal

18.6.1. Quality of the Technical proposal will be evaluated by comparing the Technical proposals on a scale of 10-50 according to the following criteria:

Criteria	Points
<b>Incomplete and incomprehensible infographic which does not comply with EU visibility requirements or Rail Baltica visual guidelines.</b>  The Technical proposal does not include all information required to be included in accordance with Annex 2 “Technical specification”, it does not comply with the visibility requirements of the European Union or Rail Baltica visual guidelines referred to in Annex 2 “Technical specification” and the information in the infographic is difficult to comprehend by an average educated reader with little knowledge about the Rail Baltica project.	Awarded with 5 points
<b>Incomplete and incomprehensible infographic which complies with EU visibility requirements or Rail Baltica visual guidelines.</b>  The Technical proposal does not include all information required to be included in accordance with Annex 2 “Technical specification”, the information in the infographic is difficult to comprehend by an average educated reader with little knowledge about the Rail Baltica project, but it complies with the visibility requirements of the European Union or Rail Baltica visual guidelines referred to in Annex 2 “Technical specification”.	Awarded with 10 points
<b>Complete but incomprehensible infographic which does not comply with EU visibility requirements or Rail Baltica visual guidelines.</b>	Awarded with 15 points

Criteria	Points
The Technical proposal includes all information required to be included in accordance with Annex 2 "Technical specification", it does not comply with the visibility requirements of the European Union or Rail Baltica visual guidelines referred to in Annex 2 "Technical specification" and the information in the infographic is difficult to comprehend by an average educated reader with little knowledge about the Rail Baltica project.	
<b>Incomplete but comprehensible infographic which does not comply with EU visibility requirements or Rail Baltica visual guidelines.</b>	Awarded with 20 points
The Technical proposal does not include all information required to be included in accordance with Annex 2 "Technical specification", it does not comply with the visibility requirements of the European Union or Rail Baltica visual guidelines referred to in Annex 2 "Technical specification", but the information in the infographic is easy to comprehend by an average educated reader with little knowledge about the Rail Baltica project.	
<b>Complete but incomprehensible infographic which complies with EU visibility requirements or Rail Baltica visual guidelines.</b>	Awarded with 25 points
The Technical proposal includes all information required to be included in accordance with Annex 2 "Technical specification" and it complies with the visibility requirements of the European Union or Rail Baltica visual guidelines referred to in Annex 2 "Technical specification", but the information in the infographic is difficult to comprehend by an average educated reader with little knowledge about the Rail Baltica project.	
<b>Incomplete but comprehensible infographic which complies with EU visibility requirements or Rail Baltica visual guidelines.</b>	Awarded with 30 points
The Technical proposal does not include all information required to be included in accordance with Annex 2 "Technical specification", but the information in the infographic is easy to comprehend by an average educated reader with little knowledge about the Rail Baltica project, and it complies with the visibility requirements of the European Union or Rail Baltica visual guidelines referred to in Annex 2 "Technical specification".	
<b>Complete and comprehensible infographic which does not comply with EU visibility requirements or Rail Baltica visual guidelines.</b>	Awarded with 40 points
The Technical proposal includes all information required to be included in accordance with Annex 2 "Technical specification" and the information in the infographic is easy to comprehend by an average educated reader with little knowledge about the Rail Baltica project, but it does not comply with the visibility requirements of the European Union or Rail Baltica visual guidelines referred to in Annex 2 "Technical specification".	
<b>Complete and comprehensible infographic which complies with EU visibility requirements and Rail Baltica visual guidelines.</b>	Awarded with 50 points
The Technical proposal includes all information required to be included in accordance with Annex 2 "Technical specification", it complies with the visibility requirements of the European Union and Rail Baltica visual guidelines referred to in Annex 2 "Technical specification" and the information in the infographic is easy to comprehend by an average educated reader with little knowledge about the Rail Baltica project.	

- 18.6.2. The procurement commission shall obtain the final score for each Technical proposal by summing up all points awarded by each member of the procurement commission individually for the particular Technical proposal and dividing the sum with the number of members of the procurement commission which evaluated Technical proposals.
- 19. TENDERER CHECK PRIOR TO MAKING THE DECISION REGARDING THE CONCLUSION OF THE CONTRACT**
- 19.1. Prior to making the decision about assigning rights to conclude the Contract, the procurement commission performs a check regarding the existence of grounds for exclusion of tenderers for Tenderers, members of a partnership (if the Tenderer is a partnership), persons on whose capabilities the Tenderer is relying and subcontractors whose share of work is equal to or exceeds 10% of the Contract value.
- 19.2. If, in accordance with the information published on the day of the last data update in a public database, on the last day of proposal submission or on the day when the decision regarding the possible assignment of rights to conclude a Contract is made, the Tenderer, member of a partnership (if the Tenderer is a partnership), a subcontractor whose share of work is equal to or exceeds 10% of the Contract price or a person on whose capabilities the Tenderer is relying have tax debts, including state mandatory insurance contributions debts, the total sum of which exceeds 150 euro, the procurement commission informs the Tenderer and sets a deadline – 10 days from the day of issuing or receiving information – for the submission of a certificate evidencing absence of tax debt or decision to prolong the deadline or postpone payment of the tax, an agreement on payment of the tax or other objective evidence proving absence of a tax debt.
- 19.3. If the Tenderer fails to submit required evidence about itself before the deadline, the procurement commission excludes the Tenderer from participation in the open competition.
- 19.4. Change of persons upon whose capabilities the Tenderer is relying or subcontractors whose share of work is equal to or exceeds 10% of the Contract price is performed in accordance with Sections 8.2 and 9.2 respectively.
- 19.5. In the event the Tenderer or partnership member (if the Tenderer is a partnership) fails to comply with requirements stipulated in Section 7.1 and has indicated this in the Proposal, upon request by the procurement commission it submits an explanation about the implemented measures in order to restore reliability and prevent occurrences of the same or similar violations in future, as well as attaches evidence which proves the implemented measures, such as but not limited to evidence about compensating damages, on cooperation with investigating authorities, implemented technical, organisational or personnel measures, an assessment of a competent authority regarding the sufficiency of the implemented measures etc. The procurement commission assesses such information. If the procurement commission deems the measures taken to be sufficient for the restoration of reliability and the prevention of similar cases in the future, it makes the decision not to exclude the Tenderer from participation in the open competition. If the measures taken are insufficient, the procurement commission makes the decision to exclude the Tenderer from further participation in the open competition procedure. If the Tenderer, within the indicated time, does not submit the requested information, the procurement commission excludes the Tenderer from participation in the open competition.

- 20. DECISION MAKING, ANNOUNCEMENT OF RESULTS AND ENTERING INTO A CONTRACT**
- 20.1. The procurement commission selects the Tenderers in accordance with the set selection criteria for Tenderers, verifies the compliance of the Proposals with the requirements stipulated in the Regulation and chooses the Proposal in accordance with the contract award criteria as described in Section 18. The Tenderer whose Proposal shall receive the best score shall be selected.
- 20.2. Within 3 (three) business days from the date of decision about the open competition results the procurement commission informs all the Tenderers about the decision made by sending the information by post, by fax or electronically, using a secure e-signature and keeping the evidence of the date and mode of sending the information. The procurement commission announces the name of the chosen Tenderer, indicating:
- 20.2.1. To the refused Tenderer the reasons for refusing its Proposal;
- 20.2.2. To the Tenderer who has submitted an eligible Proposal, the characterization of the chosen proposal and the relative advantages;
- 20.2.3. The deadline by which the Tenderer may submit a complaint to the Procurement Monitoring Bureau regarding violations of the public procurement procedure.
- 20.3. If only 1 (one) Tenderer complies with all the Tenderer selection requirements, the procurement commission prepares and includes in the open competition procedure report a justification of the fact that the set requirements for tenderer selection are objective and commensurate. If the procurement commission cannot justify that the set requirements for tenderer selection are objective and commensurate, it makes the decision to terminate the public procurement procedure.
- 20.4. If the public procurement procedure is terminated, the procurement commission within 3 (three) business days simultaneously informs all Tenderers about all the reasons because of which the open competition procedure is terminated, and informs about the deadline within which a Tenderer may submit an application regarding the violations of the public procurement procedure to the Procurement Monitoring Bureau.
- 20.5. The procurement commission, when informing of the results, has the right not to disclose specific information, if it may infringe upon public interests or if the Tenderer's legal commercial interests or the conditions of competition would be violated.
- 20.6. As soon as possible, but not later than within 5 (five) business days from day when the decision about the results of the open competition is taken, the procurement commission prepares a report on the open competition procedure and publishes it on its webpage <http://railbaltica.org/en/procurements>.
- 20.7. The selected Tenderer upon receiving the notification about the open competition results must:
- 20.7.1. within 5 (five) business days submit cooperation or partnership agreement if required pursuant to requirements under Section 6.1.2;
- 20.7.2. within 10 (ten) days from receiving the invitation, to sign the Contract.
- 20.8. The Contract is concluded on the basis of the Tenderer's Proposal and in accordance with Annex 7.
- 20.9. The procurement commission has the right to choose the next most economically advantageous Proposal, if the Tenderer in the time stipulated by the Regulation:
- 20.9.1. Refuses to conclude a partnership contract in the cases and deadlines defined by the Regulation, or in the cases and deadlines defined by the Regulation does not submit

a copy of the partnership contract or does not inform of the founding of a partnership company;

- 20.9.2. Refuses to conclude the Contract or does not submit a signed Contract.
- 20.10. In such a case the procurement commission is entitled to terminate this open competition without selecting any Proposal, or to select the Proposal with the next best score. For either of these decisions a written decision must be made.
- 20.11. Prior to making the decision regarding the conclusion of the contract with the next Tenderer, the procurement commission assesses whether the next Tenderer is one market participant together with the initially selected Tenderer. If the next selected Tenderer is found to be one market participant together with the initially selected Tenderer, the procurement commission makes a decision to terminate the open competition without selecting any Proposal. If the next chosen Tenderer also refuses to conclude the contract or does not submit a signed public procurement contract within the deadline set by the procurement commission, the procurement commission makes the decision to terminate the open competition without selecting any Proposal.

**ANNEX NO 1: APPLICATION**

[form of the Tenderer's company]

\_\_\_\_ 2017

No \_\_\_\_\_

**APPLICATION FOR PARTICIPATION IN THE OPEN COMPETITION  
"MARKETING SERVICES FOR RAIL BALTICA PROJECT", NO RBR 2017/12**

Tenderer [*name of the Tenderer or members of the partnership*], reg. No. [*registration No of the Tenderer or members of the partnership*], represented by [*name, last name and position of the representative of the Tenderer*], by submitting this application:

1. Confirms participation in the open competition "Marketing services for Rail Baltica project" No RBR 2017/12.
2. Proposes to deliver services in accordance with the Technical specification and this Proposal for the following prices (excluding VAT):

**(a) Hourly rates and examples of marketing materials:**

Item:	Account Manager (EUR, excluding VAT)	Art Director (EUR, excluding VAT)	Copywriter (English) (EUR, excluding VAT)	Artist/Designer (EUR, excluding VAT)	Total (EUR, excluding VAT)
Rate per hour					N/A

Item:	Account Manager (EUR, excluding VAT)	Art Director (EUR, excluding VAT)	Copywriter (English) (EUR, excluding VAT)	Artist/Designer (EUR, excluding VAT)	Total (EUR, excluding VAT)
Brochure – A4, 6 pages, all colours. Text (250 words) and visual material (cost)					
Infographic – animated graphical drawing with text, in colors, A4 (cost)					
Branded template for Facebook company account with text, in colors (cost)					
<b>Total:</b>					

**(b) Web related costs:**

Item	Cost
Hosting and maintenance cost (fixed monthly cost)	

Item	Cost
Web site Wordpress platform visual and functionality development (price per hour based on estimate usage 8h a month): <ul style="list-style-type: none"><li>- Web design</li><li>- Web development</li></ul>	
	<b>Total:</b>

3. (If applicable): Informs that the following persons comply with the following exclusion grounds:

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

4. Confirms that the Regulation is clear and understandable, that it does not have any objections and complaints and that in the case of granting the right to enter into a contract it shall fulfil all conditions of the Regulation as well as enter into a procurement contract in accordance with the draft contract enclosed with the Regulation.
5. Confirms the period of validity of its Proposal for 90 (ninety) days from the day of opening of the Proposal.
6. Guarantees that all information and documents provided are true.

**We meet the criteria of (*please mark*):**

☐ a small                      ☐ medium                      ☐ other

sized enterprise<sup>1</sup> as defined in the Article 2 of the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprise;<sup>2</sup>

\_\_\_\_\_  
Date: [date of signing]

Name: [name of the representative of the Tenderer]

Position: [position of the representative of the Tenderer]

<sup>1</sup> The information on the size of the Candidate is used solely for statistical purposes and are not in any way whatsoever used in the evaluation of the Candidates and their Requests to participate.

<sup>2</sup> Available here - [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2003.124.01.0036.01.ENG&toc=OJ:L:2003:124:TOC](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2003.124.01.0036.01.ENG&toc=OJ:L:2003:124:TOC)

## **ANNEX NO 2: TECHNICAL SPECIFICATION**

### **Company:**

RB Rail AS is a Joint Venture of Estonia, Latvia and Lithuania national Holding Companies and acts as a main coordinator for the project Rail Baltica. It is registered in Riga according to Commercial law of Latvia. Main business of the company is design, construction and marketing (including branding) of the new railway line – Rail Baltica.

### **Project:**

Following the regain of independence of the Baltic States in the 90s of the past century, an idea about connecting the Baltic States to “the heart of Europe” was born. The idea intended to renew direct connection to the railway network of Europe by building a new European standard 1435 mm gauge railway in the Baltic States and connecting such metropolises as Tallinn – Riga – Kaunas – Vilnius – Warsaw – Berlin and prolonging the route to other European cities up to Venice in the future. Indirectly this route includes also Finland, since the planning incorporates an idea to build an underwater tunnel, which could connect Tallinn and Helsinki by train.

### **Procurement aim:**

Rail Baltica is decade’s most important infrastructure construction project for Baltic countries and EU with enormous potential impact on people and businesses in Baltics and Europe. It is also extremely complicated project involving many shareholders and numerous stakeholders with conflicting interests. Thus one visual look and voice for this project is paramount for strengthening the One Baltic Voice communication.

The main aim of this tender is to find the vendor being ready to produce the concepts, designs and layouts of visual, including digital communications materials in order to strengthen the project Rail Baltica brand in line with its visual guidelines.

### **Procurement subject: marketing services**

1. Works of design and technical layout design for information and communications materials, banners, infographics, animated infographics, exhibition stand, branded templates for social media, corporate presentations etc.
2. Creative works
3. Development of the official documentation templates according to the Rail Baltica corporate guidelines
4. Web applications for social media needs and other web digital products
5. Hosting service for the WordPress based web site. Uptime should be at least 99.95% measured monthly
6. Maintenance of the web site – monitoring of new update availability and installation of the updates for operation system, web server, database including updates for WordPress platform;
7. Web site visual and functionality development according to customer needs;
8. Other marketing related services

### **Creative task:**

The creative task is to prepare an infographic using the visual guidelines of Rail Baltica (<http://railbaltica.org/about-rail-baltica/visual-guidelines/>) and taking into consideration the



EU visibility requirements (<https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos>). The task is to creatively present the material in comprehensive and easily comprehensible.

#### Information to be used to show on the infographic:

##### Rail Baltica: Progress in 2016

Last year was significant in moving forward activities related to the planning phase of the implementation of the Rail Baltica project. It is foreseen that project managers will conclude this phase of the project at the end of 2017.

Ms. Baiba Rubesa, CEO and Chairperson of the central coordination unit of the project, RB Rail AS, explained that 2016 was **the year of fulfilling obligations and dividing responsibility between the parties involved in the project.**

- In 2016, the Inter-beneficiary Agreement was signed, defining the management of the Connecting Europe Facility (CEF) funding. The Agreement sets out the procedure by which the joint venture receives European Union funding and distributes it amongst the beneficiaries (the Ministries of three countries), as well as defining the reporting procedures for the use of the funding.
- After long and detailed discussions among three Beneficiaries, implementing bodies and the joint venture, the Agreement on the Rail Baltica Contracting scheme was also signed, defining project related procurement orders and roles.
- Additionally, the second Grant Agreement was signed with the Innovation and Networks Executive Agency (INEA) on November 18, 2016, totaling 225 million euros for the construction of the Rail Baltica fast conventional railway. The total value of the CEF investment in the project comes to 633 million euros, which is 82% of total eligible costs.
- Additionally, the preparation of the new Cost Benefit Analysis of the project started last year, which will be completed by April 2017. Also, determination of the technical parameters of the railway line commenced and preparations for the Consolidated Preliminary Technical Design for the whole route was launched last year. In order to ensure co-financing by the EU, an application was prepared for the 2016 CEF Transport Call for Proposals. RB Rail AS submitted this application on February 6, 2017.

#### What progress was made nationally in the three Baltic countries?

##### Estonia:

- The **Strategic Environmental Impact Assessment (SEA)** and **Environmental Impact Assessment (EIA)** and county planning processes for the Estonian section of the railway line are in their final stages. Development consent is expected in Q2 2017.
- A **Preliminary design** for the Estonian section of the railway line has been completed in the southern part of Estonia. Full completion of the preliminary design is expected in Q1 2018.

##### Latvia:

- The **Environmental Impact Assessment (EIA)** and **spatial planning** processes for the Latvian section of the railway line were completed in 2016. Development consent was provided by the Government of the Republic of Latvia in August 2016. The Government also approved the project's status as that of an 'object of national interest'.
- A **Preliminary design** for the Latvian section of the railway line was completed in 2016.
- An **international sketch design competition** for the most complicated element of infrastructure in Latvia (the central multi-modal public transport hub in Riga and the Rail Baltica railway bridge) was carried out in 2016.

#### **Lithuania:**

- The **Environmental Impact Assessment (EIA)** and **spatial planning** processes for the railway section Kaunas–Lithuania/Latvia border were completed in 2016. Development consent was provided by the Environmental Protection Agency (acting under the Ministry of the Environment) and the Government of the Republic of Lithuania in January 2017.

### ANNEX NO 3: ENTITIES ON WHOSE CAPABILITIES THE TENDERER RELIES

No	Name	Description of the capabilities
1		
2		
n+1		

\_\_\_\_\_  
Date: *[date of signing]*

Name: *[name of the representative of the Tenderer]*

Position: *[position of the representative of the Tenderer]*

## ANNEX NO 4: SUBCONTRACTORS

No	Name of the sub-contractor	Sub-contracted tasks		
		Description of the sub-contracted task	Amount, EUR (without VAT)	% from the proposed price
<b>I</b>	<b>Total amount of the sub-contracted tasks is equal to or exceeds 10% from the proposed contract price</b>			
1				
2				
n+1				
		<b>Total:</b>		
<b>II</b>	<b>Total amount of the sub-contracted tasks is smaller than 10% from the proposed contract price</b>			
1				
2				
n+1				
		<b>Total:</b>		
		<b>Total (I+II)</b>		

Date: *[date of signing]*

Name: *[name of the representative of the Tenderer]*

Position: *[position of the representative of the Tenderer]*

## ANNEX NO 5: EXPERIENCE OF TENDERER

No	Description of the services which characterize the required experience	Date of completion of the services	Contract price (thousand EUR*, excl. VAT)	Contracting authority	Contact information for references
1.					
2.					
n+1					

\_\_\_\_\_  
Date: *[date of signing]*

Name: *[name of the representative of the Tenderer]*

Position: *[position of the representative of the Tenderer]*

\* If the value of the contract is in another currency than euro, for the purposes of this proposal it should be recalculated in euro in accordance with the currency exchange rate published by the European Central Bank on the date of signing of this document.

## ANNEX NO 6: EXPERIENCE OF KEY EXPERT

No	<div style="display: flex; justify-content: space-between;"> <div style="width: 35%; border-bottom: 1px solid black;"></div> <div style="width: 60%; border-bottom: 1px solid black;"></div> </div>			
	Expert's role in team	Name, Surname		
1.	Education (Educational institution)	Period of studies (month/year – month/year)	Obtained degree (-s)	
1.1.				
...				
	Professional experience:			
2.	Employer, Project, Contracting authority	Period of employment or participation in the project (month/year – month/year)	Description of the responsibilities according to contract	Description of project (implementation period, scope, value of the project*, total eligible costs*, funding source, etc.) Contact information for references
2.1.				
2.2.				
n+1				

I confirm that I have consented that my candidature is proposed in the open competition "Marketing services for Rail Baltica project", No RBR 2017/12. I confirm that in case the Tenderer [*name of the tenderer or members of the partnership*] will conclude the contract as the result of the open competition, I will participate in the execution of the contract.

\_\_\_\_\_  
Date: [*date of signing*]  
Name: [*name of the expert*]

## ANNEX NO 7: DRAFT CONTRACT

to the Open Competition  
"Marketing services for Rail Baltica project"  
Identification No RBR 2017/12

### AGREEMENT

This Marketing Services Agreement ("**Agreement**") is entered into in Riga, on [date] [month] 2017 ("**Effective Date**") by and between:

**RB Rail AS**, registration number: 40103845025, having its registered address at K. Valdemāra iela 8-7, Riga, LV-1010, Latvia ("**Company**"), represented by [name] [surname], the [position] and [name] [surname], the [position], and [name] [surname], the [position] acting on the basis of the Articles of Association,

and

[**company name of the Contractor**], registration number [number], having its registered address at [address] ("**Contractor**"), represented by [name] [surname], the [position], acting on the basis of [document],

each individually referred to as the "Party" and collectively referred to as the "Parties".

#### WHEREAS:

- (A) the Company is implementing the European standard track width project Rail Baltica, within the scope of which the Company needs marketing services;
- (B) The Company has organised the open competition "Marketing Services for Rail Baltica project" (identification No RBR 2017/12) ("**Procurement**") in which the Contractor's procurement proposal ("**Proposal**") was selected as the winning bid;
- (C) Procurement is co-financed by the Company and Connecting Europe Facility (CEF).

**NOW, THEREFORE**, the Parties hereby enter in to this agreement ("**Agreement**") on the following terms and conditions:

#### 1. SUBJECT OF THE AGREEMENT

- 1.1. The Company assigns and the Contractor undertakes to provide the marketing services, in accordance with Proposal for the Procurement and Agreement ("**Services**"), whereas the Company undertakes to pay for the Services provided by the Contractor in accordance with the Agreement.
- 1.2. The Services include but are not limited to:
  - 1.2.1. works of design and technical layout design for information and communications materials, banners, infographics, animated infographics, exhibition stand, branded templates for social media, corporate presentations etc.;
  - 1.2.2. creative works;
  - 1.2.3. development of the official documentation templates according to the Rail Baltica corporate guidelines;
  - 1.2.4. web applications for social media needs and other web digital products;

- 1.2.5. hosting service for the WordPress based web site. Uptime should be at least 99.95% measured monthly;
- 1.2.6. maintenance of the web site – monitoring of new update availability and installation of the updates for operation system, web server, database including updates for WordPress platform;
- 1.2.7. web site visual and functionality development according to the Company's needs.
- 1.3. The Contractor provides Services in accordance with the requests of the Company in the amount necessary for the Company. The Company is not obliged within the duration of the Agreement to order all the Services stipulated in Section 1.2 of the Agreement.
- 1.4. The Procurement Regulation and Contractor's Proposal shall form integral part of the Agreement.
- 1.5. The Services shall be provided in the Latvian and English language.
- 1.6. The Agreement contains the following Annexes:
  - 1.6.1. Annex A, the list of key experts;
  - 1.6.2. Annex B, Proposal's financial proposal;
  - 1.6.3. Annex C, Rail Baltica Visual Guidelines.
- 1.7. The Annexes listed in Section 1.6 of this Agreement shall form an integral part of the Agreement and are incorporated herein by reference as if set out at length in the Agreement.
- 1.8. In the event of any inconsistency between the terms of this Agreement and any of the Annexes, the text of this Agreement shall take precedence over any term set forth in any of the Annexes. In the event of any inconsistency between the terms of any of the Annexes, the terms of the Proposal shall prevail.

## 2. PROVISION OF SERVICES

- 2.1. The Contractor shall provide the Services on the basis of separate work tasks communicated by the Company to the electronic mail address of the Contractors liaison person.
- 2.2. The Contractor shall perform the work tasks of the Company within the deadlines and in the volumes approved by the Parties.
- 2.3. The persons involved in the performance of the Agreement on the Contractor's part whose qualification has been evaluated and accepted by the Company within the Procurement may be replaced with other persons only with prior consent of the Company. The Company is entitled to object to such replacement if the qualification of such person is not equal or better to the qualification of the replaceable person (*change of personnel and Sub-Contractors involved in Agreement implementation in compliance with the provisions of Article 62 of Public Procurement Law*).
- 2.4. Company's liaison person that is authorized in the name of the Company to submit the requests for the Services, as well as approve of the work tasks to be given within the scope of the Services and communicate between the Parties is [position], [name] [surname, phone [phone number], e-mail: [e-mail address].
- 2.5. Contractor's liaison person that is authorized to confirm the receipt of the request for the Services, agree to the terms and conditions for the provision of the Services and transfer the provided Services to the Customer is [position], [name] [surname, phone [phone number], e-mail: [e-mail address].
- 2.6. During the absence of the Parties' liaison persons their duties shall be carried out by other respectively qualified employees of the Parties.
- 2.7. The Contractor shall prepare by the 5<sup>th</sup> date of the current month and submit to the Company the delivery and acceptance act signed on its part in respect of the Services provided in the previous month.



- 2.8. The Company shall review the delivery and acceptance act not later than within 5 (five) business days as of the receipt thereof and sign the delivery and acceptance act thereby confirming the compliance of the Services rendered with the Agreement and requirements of the Company, or raise reasonable objections in respect to the Services rendered. The objections thereto must be expressed in a written form and communicated by electronic mail to the Contractor's liaison person.
- 2.9. The delivery and acceptance act signed on the part of the Company shall serve as a basis for issuing invoice by the Contractor for the Services rendered in the previous month.

### 3. TECHNICAL SERVICES

- 3.1. The Technical Services include, but are not limited to, services of photographer, translation, production of advertising materials and other services necessary to provide the Services and to duly perform the Agreement.
- 3.2. In case if the Contractor is organising the provision of the Technical Services, costs related to the Technical Services shall be agreed between the Parties' liaison persons in a written form by electronic mail and approved by the Company prior to the provision of these services ("**Costs of Technical Services**"). The Company is entitled to engage and remunerate the providers of the Technical Services itself while coordinating such engagement with the Contractor.

### 4. FEE AND PAYMENT

- 4.1. For the hosting and maintenance of the web site [www.railbaltica.org](http://www.railbaltica.org), the Company shall pay to the Contractor ("**Web Fee**") [amount] EUR ([amount] *euro* and [amount] cents), excluding value added tax ("**VAT**") per month.
- 4.2. For the Services (except Services referred to in Section 4.1.) rendered and accepted in the manner and within the terms provided for in the Agreement, the Company shall pay to the Contractor according to the hourly rate as described in Proposal (hereinafter, "**Fee**"), i.e.:
- 4.2.1. Account manager: [amount] EUR ([amount] *euro* and [amount] cents) per hour, excluding VAT;
- 4.2.2. Art Director: [amount] EUR ([amount] *euro* and [amount] cents) per hour, excluding VAT;
- 4.2.3. Copywriter (English): [amount] EUR ([amount] *euro* and [amount] cents) per hour, excluding VAT;
- 4.2.4. Artist / Designer: [amount] EUR ([amount] *euro* and [amount] cents) per hour, excluding VAT;
- 4.2.5. Web site visual and functionality development fee: [amount] EUR ([amount] *euro* and [amount] cents) per hour, excluding VAT.
- 4.3. The Fee shall be calculated in accordance with the actual time which the employees of the Contractor work on Services. The minimum time unit for the purposes of calculating the Fee is 0,1h (6 minutes). The Fee includes payment for any and all expenses incurred by the Contractor in the course of provision of the Services and due performance of the Agreement, except for the Costs of Technical Services referred to in Section 3.2.
- 4.4. Total amount of the Agreement excluding VAT is **64 200 EUR** (sixty-four thousand two hundred *euro* 00 cents).
- 4.5. In addition to the Fee and Web Fee, the Company shall compensate the Contractor the Costs of Technical Services in their actual amount.
- 4.6. The Contractor shall substantiate the amount of the Costs of Technical Services by submitting to the Company the copies of the source documents submitted by the providers of the Technical Services (invoices, delivery notes and other documents).
- 4.7. The Company shall make the payment set in Section 4.1 and 4.2 of the Agreement once a calendar month for the Services provided in the previous calendar months within 30 (thirty)

days after signed delivery and acceptance act and receipt of the invoice from the Contractor by transfer of the payment to the bank account.

## **5. THE TERMS OF PROVISION OF SERVICES**

- 5.1. The Contractor provides the Services to the Company in accordance with each particular request of the Company.
- 5.2. The Company orders Services by making a request to the Contractor, indicating necessary Services and providing information, which is necessary for the provision of the Services.
- 5.3. The Contractor provides Services in accordance with its knowledge and experience and perform all necessary actions in order to provide the requested Services.
- 5.4. The Company orders Services by sending a request to the Contractor by sending the request to the electronic mail address of the Contractor stated in Section 2.5 of the Agreement and defining the scope of the necessary Services. After the receipt of the request, the Company and the Contractor agree on terms and conditions of provision of the requested Services.
- 5.5. The Contractor shall confirm the receipt of the request by sending a reply to the electronic address of the Company stated in Section 2.4 of the Agreement.
- 5.6. Hosting service and maintenance of the web site [www.railbaltica.org](http://www.railbaltica.org) (including but not limited to monitoring of new update availability and installation of the updates for operation system, web server, database including updates for WordPress platform, backup of the web site) shall be done based on day-to-day bases without any additional request or order from the Company.

## **6. INTELLECTUAL PROPERTY RIGHTS**

- 6.1. Unless agreed otherwise in writing between the Parties, all copyright and other intellectual property rights (except personal copyrights of an author) to all materials created within the scope of the Services including all improvements and derivatives thereof and modifications thereto shall be exclusively owned by the Company. The material author's property rights include, but are not limited to, the rights to communicate the materials mentioned above to the public, publish, distribute, reproduce, translate or modify them. The Company is entitled to use the materials created within the scope of the Services in any manner and an unlimited number of times in Latvia, Lithuania, Estonia and other countries. The Contractor may not assign, transfer, sell, license, sublicense or grant any right in or to the all materials created within the scope of the Services and any related documentation to any other person or entity. For the avoidance of any doubt, the Contractor shall be deemed to have granted the Company the right to use any materials deliverable to the Company under this Agreement (including all data contained in such materials) for whatever purpose.
- 6.2. The Contractor confirms that in the course of provision of the Services, the Contractor will ensure that the rights of the copyright holders are respected and there will be no infringements of any copyrights. If necessary, the Contractor shall obtain all the necessary permits, consents and licences for the use of the work protected by the intellectual property rights.
- 6.3. The Contractor agrees that the costs of all the necessary permits, consents, licences etc., if any such will be incurred in relation to provision of the Services and due performance of the Agreement, are included in the Fee and/or Web Fee.
- 6.4. This Agreement does not transfer or convey to the Contractor or any third party any right, title or interest in or to any of the Company's property.

## **7. RIGHTS AND OBLIGATIONS OF THE PARTIES**

- 7.1. Rights and Obligations of the Company:

- 7.1.1. to adhere to the provisions of the Agreement;
- 7.1.2. to a reasonable extent supply the Contractor with information, as well as provide answers to the Contractor's questions required for provision of the Services;
- 7.1.3. to accept the Services duly provided by the Contractor pursuant to the Agreement and pay for them;
- 7.1.4. refuse to accept the Services if the Company discovers that the Services or part of the Services are provided in a bad quality, incompletely or not in accordance with the terms of the Agreement;
- 7.1.5. request the Contractor to remove free of charge and within the term defined by the Company the defects and incompliances that are discovered in the provided Services;
- 7.1.6. to control at his own expense the performance of the Agreement, engaging professionals and experts, if necessary.
- 7.2. Rights and obligations of the Contractor:
  - 7.2.1. to adhere to the provisions of the Agreement;
  - 7.2.2. to provide Services using its professional skills, timely and autonomously, in a good quality and with such accuracy that one can expect from a decent and proper Contractor;
  - 7.2.3. to comply with Rail Baltica Visual Guidelines (Annex C to the Agreement) and EU Visibility Requirements;
  - 7.2.4. to cooperate with the Company, its shareholders and third parties;
  - 7.2.5. to independently request, receive and assess information required for provision of the Services.
- 7.3. Parties shall immediately notify the other Party in writing on any circumstances occurring irrespective of their action and hindering provision of the Services according to deadlines and procedure set in the Agreement.

## **8. LIABILITY**

- 8.1. If the Contractor fails to deliver the Services by the Parties' approved deadlines as provided for in the Agreement, and the Contractor's delay has not occurred due to the Company's fault, the Contractor shall pay the Company a contractual penalty in the amount of EUR 150 for each day of delay, but not exceeding in total 10% of the Fee for the Services rendered in the relevant month. The Company is entitled to withhold from the payment the contractual penalties accrued.
- 8.2. For failure to make payments when due under the Agreement, the Company shall pay to the Contractor a contractual penalty amounting to 0.05 % (zero point zero five per cent) of the outstanding amount for each day delayed, but not exceeding 10% of the sum of the delayed payment.
- 8.3. Payment of the contractual penalty shall not release the Parties from performance of obligations.
- 8.4. The Parties are reciprocally liable for the breaches of obligations and damages caused to the other Party. The Party that is liable for the breach of the contractual obligations shall pay damages to the other Party.

## **9. FORCE MAJEURE**

- 9.1. None of the Parties will be considered in breach of the Agreement to the extent that any fulfilment of obligations under the Agreement is prevented or becomes impossible due to the event of force majeure, which neither of the Parties was able to prevent by any reasonable measure available to it. Force majeure is natural disasters, war and any type of war operations,

siege, epidemic and other circumstances of extraordinary character beyond the reasonable control by the Parties that the Parties could not foresee during fulfilment of the Contract.

- 9.2. The force majeure clause shall apply also to the changes in legislative regulations and existing rules that may delay or make the provision of the Services impossible.
- 9.3. The Party that refers to the force majeure shall without delay and within the shortest possible time notify to the other Party in writing the force majeure circumstances. The other party has the right to request the certified statement of the competent authority that proves and characterizes the notified force majeure circumstances.
- 9.4. In case the fulfilment of the obligations of the Agreement becomes impossible due to the force majeure circumstances for more than 30 (thirty) days, the Parties has the right to withdraw from the Agreement. In this case the Contractor shall transfer to the Company the completed Services and the Company shall pay for them.

## **10. CONFIDENTIALITY**

- 10.1. The Parties agree that any information ("Information") obtained in the course of fulfilment of the Agreement, incl. but not limited to information obtained by one Party on the other Party, ideas, methods and work techniques of Parties, as well as information obtained by the Contractor in the course of performance of work from the third parties will be considered as confidential.
- 10.2. The Parties undertake not to disclose without a prior written consent of the other Party any Information obtained in the course of fulfilment of the Agreement, save for the cases referred to in Section 10.4 of the Agreement. This provision shall be applicable during the validity of the Agreement, and shall remain effective also after the expiration or termination of the Agreement.
- 10.3. The Parties undertake to provide Information to their employees only to the extent required for provision of the Services and due performance of the Agreement. The Contractor ensures that its employees or other persons involved in the provision of the Services respect the provisions of confidentiality defined in the Agreement. The Contractor shall be fully responsible for the damages caused to the Company due to the reveal of the Information to the third persons, disregarding whether the Information was revealed by the Contractor itself, its employees or by other persons involved in the provision of the Services.
- 10.4. The disclosure of the Information will not be considered a breach of the Agreement if it is revealed due to the legislative requirements and in accordance with the provisions of the normative enactments or EU legislation.
- 10.5. The Party which itself or through its engaged persons is in breach of the confidentiality obligation, shall compensate direct losses incurred by the other Party.

## **11. VISIBILITY REQUIREMENTS**

- 11.1. The Contractor is obliged to comply with the following visibility requirements:
  - 11.1.1.1. Any reports, brochures, other documents or information connected with Services which the Contractor produces and submits to the Company, any other third person or makes publicly available must include the following:
  - 11.1.1.2. a funding statement stating that Services is the recipient of the funding from the CEF: "Rail Baltica is co-financed by the European Union's Connecting Europe Facility";
  - 11.1.1.3. (for printed materials) a disclaimer releasing the European Union from any liability in terms of the content of the dissemination materials: "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." This disclaimer in all European Union official languages can

be seen at the website: <https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos>;

11.1.1.4. the European Union flag.

11.1.1.5. Requirements set in Sections 11.1.1.2 and 11.1.1.4 can be fulfilled by using the following logo:



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

If the Contractor shall use this logo, the Contractor shall ensure that elements of the logo will not be separated (the logo will be used as one whole unit) and enough free space around the logo shall be ensured;

11.1.1.6. The Contractor is obliged to comply with the latest visibility requirements set by the European Union. For that purpose the Firm shall follow the changes in the visibility requirements on its own. On the date of conclusion of this Agreement the visibility requirements are published on the following website: <https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos>.

## **12. VALIDITY OF THE AGREEMENT AND TERMINATION**

- 12.1. The Agreement shall enter into force upon its signing by the both Parties and shall remain in force for one year until [date] 2018 or until the Parties fully complete their contractual obligations, whichever occurs earlier.
- 12.2. Each of the Parties has the right to terminate the Agreement giving a written notice to the other Party one months in advance. The Contractor in that case shall complete all the Services already requested by the Company.
- 12.3. The Company is entitled to unilaterally terminate the Agreement having notified the Contractor in writing 10 (ten) days in advance in one of the following cases:
  - 12.3.1. the Contractor misses deadlines set by the Parties for provision of the Services under the Agreement by more than 5 (five) days;
  - 12.3.2. the Contractor is in breach of other contractual obligations or liabilities, and the Contractor has not eliminated the breach within 5 (five) days from receipt of respective written notice from the Company;
  - 12.3.3. the Contractor has been declared insolvent, legal protection process or liquidation of the Contractor has been initiated.
- 12.4. In case of early termination of the Agreement the Parties shall draft and mutually sign a special deed on actually provided volume and value of Services. The Company shall approve the Services to the extent completed and compliant with the Agreement. The Company shall pay to the Contractor for the Services provided on the basis of duly drafted and mutually signed deed. The Company is entitled to withhold from the payment the contractual penalties accrued. In the case referred to in this clause above the Parties shall settle mutual payments within 10 (ten) days from signing of the deed.

## **13. DISPUTE RESOLUTION**

- 13.1. Any disagreements arising between the Parties concerning performance of the liabilities as per the Agreement shall be resolved by way of mutual negotiations. The agreement reached shall be documented in writing.
- 13.2. If no agreement is reached during 30 (thirty) days period, the dispute shall be settled in the court of the Republic of Latvia according to the procedure set by the normative enactments of the Republic of Latvia.

## 14. FINAL PROVISIONS

- 14.1. If the final day of a time period referred to in this Agreement is Saturday, Sunday or a holiday prescribed by law, the following working day shall be considered the final day of the time period.
- 14.2. The Agreement can be amended in compliance with the provisions of Article 61 of the Public Procurement Law. Amendments and supplements to the Agreement shall be valid only when they have been prepared in writing and signed by the Parties; they shall be enclosed to this Agreement and become an integral part of it. If any of the provisions of the Agreement become void, it shall not affect other provisions of the Agreement.
- 14.3. The Parties shall timely notify the changes of billing details, legal addresses or representatives.
- 14.4. Rights and obligations not covered by this Agreement are regulated according laws of the Republic of Latvia.
- 14.5. The Agreement has been signed in two identical copies, one copy for the Company and the other for the Contractor.

## 15. DETAILS OF THE PARTIES

### Company:

**RB Rail AS**

Uniform registration No. 40103845025

address: K.Valdemāra iela 8-7

Riga, LV-1010

Account details:

bank:

SWIFT code:

Account number

### Contractor:

Uniform registration No.

address:

Account details:

bank:

SWIFT code:

Account number

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Baiba A. Rubesa

Chairperson of the Management Board

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[name] [surname]

[position]

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Kaspars Rokens

Member of the Management Board

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Deniss Muraško

Member of the Management Board