

**REGULATION**

**OPEN COMPETITION**

**"LEGAL SERVICES"**

**(IDENTIFICATION NO RBR 2017/20)**



**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 2017/20.
- 1.2. The applicable CPV code is: 79100000-5 (Legal services).
- 1.3. The contracting entity is joint stock company RB Rail AS, legal address: K. Valdemara Street 8 - 7, Riga LV-1010, Latvia (hereinafter – **Contracting authority**).
- 1.4. The open competition is co-financed by the Contracting Authority and Connecting Europe Facility (CEF).
- 1.5. The estimated contract value for the Services of Procurement Part 1 of the subject matter shall not exceed 360 000,00 EUR (three hundred sixty thousand *euros*) and for the Services of the Procurement Part 2 of the subject matter is 40 000,00 EUR (forty thousand *euros*), excluding value added tax (hereinafter – **VAT**).
- 1.6. This open competition is organised in accordance with the Public Procurement Law of Latvia in effect on the date of publishing the contract notice.
- 1.7. The open competition regulation and all its annexes (hereinafter – **“Regulations”**) (are freely available at the Internet webpage of the Contracting authority <http://railbaltica.org/tenders/>).
- 1.8. Amendments to the Regulation and answers to suppliers’ questions shall be published on the Contracting authority's Internet webpage <http://railbaltica.org/tenders/>. It is the supplier’s responsibility to constantly follow the information published on the webpage and to take it into consideration in its proposal.
- 1.9. Contact persons of the Contracting authority for this open competition:
  - (a) In administrative aspects of the open competition: Procurement Specialist - Lawyer Elina Saule, telephone: +371 266 544 33, 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 Procurement: Senior Lawyer Baiba Zauere, e-mail address: [baiba.zauere@railbaltica.org](mailto:baiba.zauere@railbaltica.org).
- 1.10. The procurement commission and the supplier exchange information in writing in English by sending documents by post, electronically, or by delivering in person.
- 1.11. The supplier can request additional information regarding the Regulation. Additional information can be requested in writing, by sending it to the procurement commission 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.

- 1.12. 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 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 included information 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/tenders/>.
- 3.3. If an interested Tenderer has in a timely fashion in writing by post 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 electronically within 5 (five) business days, but not later than 6 (six) days before the deadline for submitting proposals. Simultaneously with sending this information to the supplier who had asked the question, the Contracting authority publishes this information on its Internet webpage <http://railbaltica.org/tenders/>, 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/tenders/>, 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. During 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/tenders/> 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 Latvian 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. Through open competition the Contracting authority intends to establish a list of experienced legal advisors (law firms or legal persons) (hereinafter – **Panel law firms**) having required

qualification and experience in particular Service lines (as defined in Section 2 of Terms of Reference (Annex 3)) (hereinafter – **Service lines**) who could be called on-demand basis to provide independent professional legal services on various legal matters in Estonia, Latvia and Lithuania throughout the implementation of Rail Baltica project.

5.2. Subject matter is divided in 2 (two) parts each part contains list of services described in Section 2 of Annex 3:

No	Subject-matter	CPV code
Part 1	Legal services for Service lines indicated in Section 2 of Terms of Reference (Annex No 3)	79100000-5
Part 2	Legal services for Service line – Company Secretary indicated in Section 2 of Terms of Reference (Annex No 3)	79100000-5

5.3. The delivery of the services will take place in Latvia.

5.4. Period of provision of services: 24 (months) after commencement date.

5.5. The Tenderer can submit proposal for the entire volume of the procurement or for any separate part of procurement indicated in Section 5.2 of the Regulation. Maximum Framework agreement contractors signed for Procurement Part 1 will be 3 (three). For Procurement Part 2 the Contract will be signed with 1 (one) contractor.

5.6. The Tenderer is not permitted to submit variants of the Proposal. If variants of the Proposal shall be submitted, the Proposal will not be reviewed.

## 6. TENDERER

6.1. The proposal can be submitted by:

6.1.1. A supplier, who is a law firm or legal person (hereinafter – Tenderer) and complies with the selection criteria for tenderers;

6.1.2. A group of suppliers (hereinafter also – Tenderer, partnership) who 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, Chapter IX and X) (hereinafter also – Tenderer) which complies with the selection criteria for tenderers.

## 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>	<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>

No	Requirement	Documents to be submitted <i>(no obligation to submit documents, unless specifically requested by the procurement commission)</i>
	<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> <p>e) human trafficking,</p> <p>f) evasion from payment of taxes and similar payments.</p>	
2.	<p>It has been detected that on the last day of Proposal submission term or on the day when a decision has been made on possible granting of rights to conclude the 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.</p>	<ul style="list-style-type: none"> <li>- For a Tenderer which are registered or residing in Latvia, the Contracting authority shall verify the information itself in publicly available databases.</li> <li>- For a Tenderer 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.	<p>Tenderer's insolvency proceedings have been announced, the Tenderer's business activities have been suspended, the Tenderer is under liquidation.</p>	<ul style="list-style-type: none"> <li>- For a Tenderer which are registered or residing in Latvia, the Contracting authority shall verify the information itself in publicly available databases.</li> <li>- For a Tenderer 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>
4.	<p>A person who drafted the procurement procedure documents (the Contracting authority's official or employee), procurement commission member or expert is related to the Tenderer, or is interested in selection of some</p>	<p>No obligation to submit documents, unless specifically requested by the procurement commission.</p>



No	Requirement	Documents to be submitted ( <i>no obligation to submit documents, unless specifically requested by the procurement commission</i> )
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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 (the 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:

- If he or she is a current or and ex-employee, official, shareholder, procure 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.
- 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.
- If he or she is a relative of a tenderer or a subcontractor which is a natural person.

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 (the 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.

No	Requirement	Documents to be submitted <i>(no obligation to submit documents, unless specifically requested by the procurement commission)</i>
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.	No obligation to submit documents, unless specifically requested by the procurement commission.
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.	<ul style="list-style-type: none"> <li>- For a Tenderer which are registered or residing in Latvia, the Contracting authority shall verify the information itself in publicly available databases.</li> <li>- For a Tenderer 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>
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.	<ul style="list-style-type: none"> <li>- For a Tenderer which are registered or residing in Latvia, the Contracting authority shall verify the information itself in publicly available databases.</li> <li>- For a Tenderer 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>
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	<ul style="list-style-type: none"> <li>- For a Tenderer which are registered or residing in Latvia, the Contracting</li> </ul>

No	Requirement	Documents to be submitted ( <i>no obligation to submit documents, unless specifically requested by the procurement commission</i> )
	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.	<p>authority shall verify the information itself in publicly available databases.</p> <ul style="list-style-type: none"> <li>- For a Tenderer 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 qualification criteria, 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, licensed or certified in accordance with its country of residence laws and regulations in field of subject-matter.	<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 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.</li> <li>- For a Tenderer which is a law firms registered in the Latvian Collegium of Sworn Advocates or in other institution – a copy of a decision of registration or a similar document issued by responsible institution in charge of the registration of law firms wherefrom at least the fact of registration, partners, officials and procura holders (if any) can be determined.</li> <li>- 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</li> </ul>

No	Requirement	Documents to be submitted
		<p>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.</p> <ul style="list-style-type: none"> <li>- If a proposals is submitted by a partnership, the Proposal shall include an agreement (or letter of 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 with whom all payments will be made.</li> </ul>
2.	<p>The representative of the Tenderer, or a member of a partnership, or a person on whose abilities a Tenderer relies, who has signed documents contained in the proposal, has the right of signature, i.e., it is an official having the right of signature or a person authorized by the Tenderer.</p>	<ul style="list-style-type: none"> <li>- A document confirming the right of signature (representation) of the representative of the Tenderer, or a member of a partnership, or a person on whose abilities a Tenderer relies, who signs the proposal. For a Tenderer which is a legal person (or a member of a partnership), a person on whose abilities a Tenderer relies, registered in Latvia the Contracting authority shall verify the information itself in publicly available databases.</li> <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-</li> </ul>

No	Requirement	Documents to be submitted
		<p>contractor (powers of attorney, authorization agreements etc.) must be included.</p> <ul style="list-style-type: none"> <li>- If the Tenderer, or a member of a partnership, or a person on whose abilities a Tenderer relies, submits a power of attorney (original or a copy certified by the Tenderer) there shall be additionally submitted documents confirming that the issuer of the power of attorney has the right of signature (representation) of the Tenderer.</li> </ul>

### 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 500 000,00 EUR (five hundred thousand euros) excluding VAT per year (<i>relevant for Procurement Part 1</i>) and is not less than 40 000,00 EUR (forty thousand euros) excluding VAT per year (<i>relevant for Procurement Part 2</i>), and is not less than 540 000,00 EUR (five hundred forty thousand euros) excluding VAT per year (<i>relevant if Tenderer submit Proposals for both Procurement Parts</i>)</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)</p>	<ul style="list-style-type: none"> <li>- Audited yearly reports for fiscal years 2014, 2015, 2016 or other document 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> <li>- For law firms (within the meaning of Advocacy Law of the Republic of Latvia Section 116) profit-loss statement for fiscal years 2014, 2015, 2106.</li> </ul>

	has operated in the market for less than 3 (three) years, the requirement shall be met during the Tenderer's actual operation period.	
2.	the Tenderer shall have a valid professional risk indemnity insurance with limit of liability in the amount of at least 1 000 000,00 EUR (one million <i>euro</i> ) for any insurance claim and in the aggregate for the policy period.	- A copy of a valid professional indemnity insurance policy.

#### 7.4. Technical and professional ability (team of experts)

No	Requirement	Documents to be submitted
1.	The Tenderer should propose a team consisting of key experts as stated in Section 3.1 of the Terms of Reference (Annex No 3). Experts can hold several roles. Every proposed expert has to meet minimal qualification requirements of particular Service line, where he/she is proposed as stated in Section 3.1 of the Terms of Reference (Annex No 3).	<ul style="list-style-type: none"> <li>- information about each expert for a Service line, filled in Expert's application (Annex No 2).</li> <li>- In case one expert is proposed as an expert for more than one Service line, then separate Expert's application (Annex No 2) with complete set of required documents including requested information for each Service line shall be submitted for such expert.</li> </ul>
2.	Every expert is expected to have a very good English language skills (at least C1 Level – based on Common European Framework of Reference for Languages <sup>1</sup> ) in communication, presentation, negotiation and report writing.	- self-declared information about each experts' language skills in (Annex No 2) and signed by the relevant expert.
3.	All experts should have a Master's degree (or equivalent) in law.	- Filled in Expert's application (Annex No 2).

<sup>1</sup> see <http://europass.cedefop.europa.eu/resources/european-language-levels-cefr>

No	Requirement	Documents to be submitted
		- A copy of a diploma proving relevant level of education.

- 7.5. Notices and other documents, except diploma providing relevant level of education, 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, except diploma providing relevant level of education, 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.
- 7.6. If the documents, certifying foreign Tenderer's 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(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).
- 7.7. If the Tenderer complies with any of the exclusion grounds mentioned in Section 7.1 (except tax debts), the Tenderer indicates this fact in Annex No 1.
- 7.8. 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 Framework agreement or 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 in the Tender application (Annex No 1) and proves to the Contracting authority that the Tenderer shall have available all the necessary resources for the fulfilment of the contracts under the Framework agreement or 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 contracts under the Framework agreement or 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 contracts under the Framework agreement or Contract, as well as that during the validity of the Framework agreement or Contract the Tenderer will in fact use the resources of such person upon whose capabilities the Tenderer relies.
- 8.1.3. The Contracting authority requires joint liability for the execution of the contracts under the Framework agreement or 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 Framework agreement or Contract should be assigned is relying. In case such person will fall under 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 and indicate the experts involved by each such subcontractor fulfilling the form under Section 5 of the Tenderer's Application (Annex No 1).
- 9.2. The Contracting authority shall evaluate the subcontractor, whose share of work is equal to or exceeds 10% of the amount of the Framework agreement or the Contract price, of the Tenderer to whom the rights to conclude the Framework agreement or 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 will 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 not submit a proposal (bid) security.

## **11. FINANCIAL PROPOSAL**

- 11.1. The Financial proposal shall be submitted as part of Annex No 1:



- 11.1.1. For **Procurement Part 1**: Tenderer shall specify one blended hourly rate as remuneration for provided services on all Service lines.
- 11.1.2. For **Procurement Part 2**: The proposed fixed contract price per month shall be set.
- 11.2. The proposed blended hourly rate and contract price shall be set in *euro* without VAT.
- 11.3. The proposed blended hourly rate and 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 blended hourly rate and contract price shall include all taxes, fees and payments, and all costs related to the fulfilment of the legal services that can be reasonably estimated, except VAT, including but not limited to:
  - 11.4.1. visits to the Contracting authority (cost of business trips, time of consultants and daily allowance) (except costs to be reimbursed as specified in Section 4 of the Terms of Reference (Annex No 3)),
  - 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 the whole term of the fulfilment of the Framework agreement and/or Contract and are not recalculated, except in cases stipulated in the Framework agreement or in the Contract (if any).

## **12. TECHNICAL PROPOSAL**

### ***Procurement Part 1***

- 12.1. As a Technical proposal for Procurement Part 1 the Tenderers shall submit the analysis of the case study and the proposal for effectiveness of legal service provisions to the Contracting authority in accordance with Terms of Reference (Annex No 3).

### ***Procurement Part 2***

- 12.2. A Technical proposal for Procurement Part 2 shall not be submitted.

## **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. Title page with title “Proposal for the open competition “Legal Services” No RBR 2017/20”, name, address and contact information of the Tenderer;
  - 13.1.2. The table of contents with page numeration.
  - 13.1.3. Application (financial proposal) in accordance with Annex No 1.

- 13.1.4. Information and documents confirming compliance of the Tenderer with the selection criteria for the Tenderers, or the corresponding European single procurement documents.
- 13.1.5. Information and documents relating to entities on whose capabilities the Tenderer is relying, or the corresponding European single procurement documents.
- 13.1.6. Information and documents relating to subcontractors and/or or the corresponding European single procurement documents.
- 13.1.7. For **Procurement Part 1**: Technical proposal prepared in accordance with Section 12.
- 13.1.8. Tenderer's offered expert Applications (in the order as listed in application for participation in open competition) – Experts' application form(s) (Annex No 2) separately for every expert and for every Service line signed by the proposed expert, accompanied with copies of higher education diplomas issued according to the legislation of the country of expert's origin.
- 13.2. The Tenderer is allowed to include in the Proposal one expert for each country (Latvia, Lithuania and Estonia) for each Service line for **Procurement Part 1** and one expert for Latvia for **Procurement Part 2**. Tenderer has a right to offer the same expert for several Service lines.
- 13.3. 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.
- 13.4. The Proposal must be submitted in written form in English. Upon request by the procurement commission the Tenderer shall provide a translation in Latvian within the deadline requested by the procurement commission.
- 13.5. The Tenderer shall submit 1 (one) signed Original, 1 (one) Copy and a digital format (USB containing files in MS Office format or PDF format) copy of the Proposal.
- 13.6. 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 Latvian Law on Legal Force of Documents, but public documents issued abroad shall be formatted and legalized in accordance with the requirements of the Latvian 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.
- 13.7. 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.
- 13.8. The Tenderer shall submit Proposal in a glued up envelope, on which it shall be indicated:  
  
"Proposal for the open competition "Legal Services" No RBR 2017/20".

"Do not open until 14 August 2017 at 11:00 o'clock".

"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.

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

14.1. Proposal (documents referred to Section 13) shall be submitted personally, by courier or registered mail to the RB Rail AS, K. Valdemāra iela 8 - 7, Riga, LV-1010, Latvia by 14 August 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 13.8.

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 14 August 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 Procurement Parts they are proposed for, their hourly rate for Procurement Part 1 and/or the proposed price for Procurement Part 2 and other information that characterizes the Proposal.

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 PROPOSALS**

16.1. The procurement commission analyses Proposals of the Tenderers and selects only those, in which meet all qualification requirements.

16.2. For *Procurement Part 1* only: The Procurement commission verifies whether the submitted Technical proposals according to the requirements stipulated in Terms of Reference (Annex No 3) and selects for further evaluation the compliant Technical proposals.

16.3. 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 blended rates and the contract prices proposed.

- 16.4. The procurement commission informs the Tenderer whose mathematical errors have been corrected about the correction of mathematical errors and the corrected financial proposal.
- 16.5. When evaluating the financial proposal, the procurement commission takes corrections into account.
- 16.6. 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.
- 16.7. The procurement commission further evaluates the compliant Proposals which have not been declared as abnormally low proposals.

**17. CONTRACT AWARD CRITERIA**

- 17.1. The Proposal selection criterion:
  - 17.1.1. for *Procurement Part 1* only: is the most economically advantageous proposal, according to the evaluation methodology described in this Section below;
  - 17.1.2. for *Procurement Part 2* only: is the most economically advantageous proposal with lowest price.

***Procurement Part 1***

- 17.2. The economically most advantageous proposal shall be the Proposal which will receive the highest sum of scores for the following criteria:

Evaluation criteria:		Points:
17.2.1.	<b>Quality of the Technical proposal</b> , which will be evaluated in accordance with Section 17.9 and 17.10:	
	(i) Effectiveness of legal service provisions to the Contracting authority	20
	(ii) Case study	10
17.2.2.	<b>Financial proposal</b> , which will be evaluated in accordance with Section 17.11	40
17.2.3.	<b>Quality of the proposed experts (experts' experience) above minimum qualification</b> , which will be evaluated in accordance with Section 17.12	30
	<b>Total</b>	<b>100</b>

- 17.3. The procedure described below is applied for the Proposals of those Tenderers who have been acknowledged eligible during the Tenderers' selection and whose all experts included in the Proposals have been acknowledged as meeting minimal qualification requirements defined for corresponding Service line experts applying for, and blended hourly rate and/or contract price of proposal has not been acknowledged as abnormally low.

- 17.4. Every expert shall be evaluated based in his/her experience. For every particular Service line separate evaluation shall be implemented by carrying out experience evaluation.
- 17.5. The procurement commission shall sum up the points obtained by each Tenderer in Procurement Part 1 and the Framework agreement shall be awarded to the 3 (three) Tenderers whose Proposal obtains the highest score.
- 17.6. In case several Tenderers will obtain equal number of points, the procurement commission shall award the right to conclude the Framework agreement 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 Framework Agreement to the Tenderer which submitted its Proposal first.

**Procurement Part 2**

- 17.7. The procurement commission shall award the Contract in Procurement Part 2 for the Tenderer whose Proposal has been acknowledged eligible during the Tenderers' selection and whose expert included in the Proposal has been acknowledged as meeting minimal qualification requirements defined for corresponding Service line, and whose Proposal has been with the lowest price.
- 17.8. In case several Tenderers has equal financial proposal, the procurement commission shall award the right to conclude the Contract to the Tenderer which submitted its Proposal first.

**Evaluation of the proposal for Procurement Part 1**

- 17.9. **Quality of the proposals for effectiveness of legal service provisions to the Contracting authority (hereinafter – Proposal for effectiveness) will be evaluated by comparing the proposals for effectiveness of legal service provisions according to the following criteria:**

No	Criteria	Points
1	<p><b>Outstanding level of detail</b></p> <p>The contents of the Proposal for effectiveness conforms with the Technical Specification, detailed, very well structured and advanced description of methods of improvement of effectiveness of the Contracting authority work, the description of proposed methods of effectiveness offers several types (more than three) of efficiency improvements, which has been clearly and comprehensively described, the Tenderer has proved his previous experience by clearly and detailed description of his previous experience in improving all above mentioned methods of effectiveness.</p>	20
2	<p><b>High level of detail</b></p> <p>The contents of the Proposal for effectiveness conforms with the Technical Specification, detailed, but not well structured and basic description of methods of effectiveness has been provided, the description of proposed methods of effectiveness offers some types (up to three) of efficiency improvements, which has been clearly and comprehensively described,</p>	10

No	Criteria	Points
	the Tenderer has proved his previous experience by clearly and detailed description of his previous experience in improving some of above mentioned methods of effectiveness.	
3	<b>Low level of details</b>  The contents of the Proposal for effectiveness do not conform or partly conform with the Technical Specification, detailed and structured methods of effectiveness, only basic description of methods of effectiveness is provided, the description of proposed methods of effectiveness offers less than two types of efficiency improvements, which has not been clearly and comprehensively described, the Tenderer has not proved his previous experience in improving some of above mentioned methods of effectiveness.	5

17.9.1. The procurement commission shall award the Proposal with one step lower sum of points, if some of mentioned criteria in one criterium is not fulfilled.

17.9.2. The procurement commission shall obtain the final score for each Technical proposal in this criterion by summing up all points obtained by the particular Technical proposal in this criterion and dividing the sum with the number of members of the procurement commission which participated in the evaluation of the Technical proposals. The result shall be used as the points for the particular Technical proposal for the purposes of Section 17.35.

17.10. **Quality of the case study will be evaluated by comparing the case study analysis according to the following criteria:**

Criteria	Points
<b>Outstanding level of detail</b>  The Tenderer has offered very well structured and detailed solutions, the solution is based on legal acts and case law.	10
<b>High level of detail</b>  The Tenderer has provided structured, but not sufficiently detailed solutions, the solution is based on some legal acts, and it exceeds required length.	5
<b>Low level of details</b>  The Tenderer has provided solutions which are not sufficiently clear, without legal bases and it exceeds required length.	2

17.10.1. The procurement commission shall award the case study analysis with one step lower sum of points, if some of mentioned criteria in one criterium is not fulfilled.

17.10.2. The procurement commission shall obtain the final score for each case study analysis in this criterion by summing up all points obtained by the particular case study analysis in this criterion

and dividing the sum with the number of members of the procurement commission which participated in the evaluation of the case study analysis. The result shall be used as the points for the particular case study analysis for the purposes of Section 17.5.

**17.11. Evaluation of the Financial proposal for Procurement Part 1**

17.11.1. The procurement commission shall award the maximum available points for the Financial proposal to the Financial proposal with the lowest proposed price (blended hourly rate).

17.11.2. Other Financial proposals shall receive score in accordance with the following formula:

$$points = \frac{\text{lowest proposed price from the compliant proposals}}{\text{Tenderer's proposed price}} \times 40$$

**17.12. Evaluation of the quality of the proposed team of experts for Procurement Part 1**

17.12.1. Only the following experience, which exceeds the minimum experience which is requested in Section 7.4 and Section 3.1 of the Terms of Reference (Annex No 3), shall be awarded with points according to the following sub-criteria and methodology:

- (a) Maximum Experience score one expert can receive is 6 points;
- (b) Maximum Experience score all experts from one proposal can receive are 30 points;
- (c) All information regarding experience of the experts shall be evaluated and scores shall be given based on their qualification and experience in a particular Service line experts applied;
- (d) For every particular experience in an additional completed project (what exceeds the qualification requirements) additional points shall be added to the overall Experience score according to the following methodology:

Criteria	Points
for expert's experience in every additional completed project satisfying the minimal qualification requirements set in a column "Project experience" for a corresponding Service line as stated in the Table of Section 3.1. of the Terms of Reference (Annex No 3).	3

17.2The procurement commission shall obtain the final score for each Technical proposal in this criterion by summing up all points obtained by the particular Technical proposal in this criterion and dividing the sum with the number of members of the procurement commission which participated in the evaluation of the Technical proposals. The result shall be used as the points for the particular Technical proposal for the purposes of Section 17.5.

## 18. CHECKING FOR TENDERER PRIOR TO MAKING THE DECISION REGARDING THE CONCLUSION OF THE CONTRACT

- 18.1. Prior to making the decision about assigning rights to conclude the Framework agreement or Contract, the procurement commission performs a check regarding the existence of grounds for exclusion 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.
- 18.2. 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 Framework Agreement or 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 Framework agreement or 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.
- 18.3. 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.
- 18.4. Change of persons upon whose capabilities the Tenderer is relying or subcontractors whose share of work is equal to or exceeds 10% of the Framework agreement or Contract price is performed in accordance with Sections 8.2 and 9.2 respectively.
- 18.5. 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.

## **19. DECISION MAKING, ANNOUNCEMENT OF RESULTS AND ENTERING INTO A CONTRACT**

- 19.1. 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 17. The 3 (three) Tenderers whose Proposals shall receive the best score shall be selected for Procurement Part 1 and one Tenderer whose Proposal shall receive the best score shall be selected for Procurement Part 2.
- 19.2. Within 3 (three) business days from the date of decision about the open competition results in the relevant part of procurement, the procurement commission informs all the Tenderers about the decision made by sending the information by post or electronically and keeping the evidence of the date and mode of sending the information. The procurement commission announces the name of the chosen Tenderer/-s, indicating:
  - 19.2.1. to the refused Tenderer the reasons for refusing its Proposal;
  - 19.2.2. to the Tenderer who has submitted an eligible Proposal, the characterization of the chosen proposal/-s and the relative advantages;
  - 19.2.3. the deadline by which the Tenderer may submit a complaint to the Procurement Monitoring Bureau regarding violations of the public procurement procedure.
- 19.3. If only 1 (one) Tenderer complies with all the Tenderer selection requirements for any of parts, 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 in relevant part.
- 19.4. If the public procurement procedure is terminated partly or in total, the procurement commission within 3 (three) business days simultaneously informs all Tenderers about all the reasons why the open competition procedure partly or in total 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.
- 19.5. 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.

- 19.6. 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/tenders>.
- 19.7. The selected Tenderer upon receiving the notification about the open competition results must:
- 19.7.1. within 5 (five) business days submit cooperation or partnership agreement if required pursuant to requirements under Section 6.1.2;
- 19.7.2. within 10 (ten) days from receiving the invitation, to sign the Framework agreement and/or Contract.
- 19.8. The Framework agreement and/or Contract is concluded on the basis of the Tenderer's Proposal and in accordance with Annex No 4.1 and/or Annex No 4.2.
- 19.9. The procurement commission has the right to choose the next most economically advantageous Proposal, if the Tenderer in the time stipulated by the Regulation:
- 19.9.1. 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;
- 19.9.2. refuses to conclude the Framework agreement and/or Contract or does not submit a signed Framework agreement and/or Contract.
- 19.10. 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.
- 19.11. prior to making the decision regarding the conclusion of the Framework agreement and/or 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 Framework agreement and/or Contract or does not submit a signed Framework agreement and/or Contract within the deadline set by the procurement commission, the procurement commission makes the decision to terminate the open competition without selecting any Proposal.

## 20. ANNEXES

Annex No 1 – Tenderer's application forms on 4 pages;

Annex No 2 – Expert’s application form 4 pages;

Annex No 3 – Terms of Reference on 5 pages;

Annex No 4 – Draft Framework agreement on 16 pages;

Annex No 5 – Draft Contract on 17 pages.

**ANNEX NO 1.A: APPLICATION FOR PROCUREMENT PART 1**

[form of the Tenderer's company]

\_\_\_\_\_2017

No \_\_\_\_\_

**APPLICATION FOR PARTICIPATION IN THE PART 1 OF THE OPEN COMPETITION  
"LEGAL SERVICES", NO RBR 2017/20**

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 "Legal Services" No RBR 2017/20.
2. Offers following experts to deliver services in accordance with the conditions specified in Terms of Reference and Framework agreement for the Service lines (as indicated in the Section 2.1.1-2.1.4 of the Technical specification) and this Proposal for the following hourly rate (excluding VAT):

\_\_\_\_\_ EUR/h

Service line	Expert	Country	Name of the expert
Public procurement	Public procurement expert	Latvia	
		Estonia	
		Lithuania	
Competition Law and State Aid	Competition law and State Aid expert	Latvia	
		Estonia	
		Lithuania	
Construction, Real Estate and Environment	Construction law, real estate law and environment law expert	Latvia	
		Estonia	
		Lithuania	
Commercial and Corporate Services	Commercial law expert	Latvia	
		Estonia	
		Lithuania	

	Employment law expert	Latvia	
		Estonia	
		Lithuania	

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. declares that for the purposes of qualifying for the open competition we rely on the capabilities of the following entities:

No	Name, registration number and registered address of the entity	Capabilities on which the Tenderer relies
1.		
2.		
3.		

5. declares that during the execution of the Framework agreement we will have sub-contractors as stated below and confirm that the list is complete:

No	Name of the sub-contractor, registration number and registered address	Sub-contracted tasks				
		Description of the part of the Services to be performed by Subcontractor	Service line, country	Name of expert	Amount, EUR (without VAT)	% from the proposed price

I	<p>Total amount of the sub-contracted tasks is equal to or exceeds 10% from the proposed contract price</p>
1	
2	
n+1	
<b>Total:</b>	
II	<p>Total amount of the sub-contracted tasks is smaller than 10% from the proposed contract price</p>
1	
2	
n+1	
<b>Total:</b>	
<b>Total (I+II)</b>	

6. 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 Framework agreement it shall fulfil all conditions of the Regulation as well as enter into a Framework agreement in accordance with the draft Framework agreement enclosed with the Regulation.
7. Confirms the period of validity of its Proposal for 90 (ninety) days from the day of opening of the Proposal.
8. Guarantees that all information and documents provided are true.
9. **We meet the criteria of (*please mark*):**

a small                       medium                       other

sized enterprise<sup>2</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>3</sup>

---

Date: [*date of signing*]

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

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

---

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

3 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 1.B: APPLICATION FOR PROCUREMENT PART 2**

[form of the Tenderer's company]

\_\_\_\_\_ 2017

No \_\_\_\_\_

**APPLICATION FOR PARTICIPATION IN THE PART 2 OF THE OPEN COMPETITION  
"LEGAL SERVICES", NO RBR 2017/20**

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 "Legal Services" No RBR 2017/20.
2. Offers following expert to deliver services in accordance with the conditions specified in Terms of Reference and Contract for the Service line (as indicated in the Section 2.1.5 of the Technical specification) and this Proposal for the following price (excluding VAT):

\_\_\_\_\_ EUR/month

Service line	Name of the expert
Company Secretary	

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. declares that for the purposes of qualifying for the open competition we rely on the capabilities of the following entities:



No	Name, registration number and registered address of the entity	Capabilities on which the Tenderer relies
1.		
2.		
3.		

5. declares that during the execution of the Contract we will have sub-contractors as stated below and confirm that the list is complete:

No	Name of the sub-contractor, registration number and registered address	Sub-contracted tasks			
		Description of the part of the Services to be performed by Subcontractor	Name of expert	Amount, EUR (without VAT)	% from the proposed price
I	<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>					
II	<b>Total amount of the sub-contracted tasks is smaller</b>				

than 10% from the proposed contract price
1
2
n+1
<b>Total:</b>
<b>Total (I+II)</b>

6. 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.
7. Confirms the period of validity of its Proposal for 90 (ninety) days from the day of opening of the Proposal.
8. Guarantees that all information and documents provided are true.
9. **We meet the criteria of (*please mark*):**

a small                       medium                       other

sized enterprise<sup>4</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>5</sup>

---

Date: [date of signing]

Name: [name of the representative of the Tenderer]

Position: [position of the representative of the Tenderer]

---

<sup>4</sup> The information on the size of the Tenderer is used solely for statistical purposes and is not in any way whatsoever used in the evaluation of the Tenderer or the Proposal.

<sup>5</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: EXPERT'S APPLICATION**

[form of the Tenderer's company]

\_\_\_\_\_2017

No \_\_\_\_\_

**EXPERT'S APPLICATION**

**TO PARTICIPATE IN THE PROCUREMENT Id . No RBR 2017/20**

**"LEGAL SERVICES"**

**FOR THE SERVICE LINE<sup>6</sup>**

\_\_\_\_\_  
Title of the Service line

\_\_\_\_\_  
Country

Name of Expert:	
Date of Birth:	
Residence address	
Education	
Obtained degree	
Personal contact information (phone and e-mail)	

\_\_\_\_\_  
<sup>6</sup> Separate expert's application for every country of every Service line shall be prepared.

**Professional experience within 5 years:**

No	Employing organization	Employment period (start – finish dates, month/year – month/year)	Positions held	Activities / Tasks performed
1.				
2.				
3.				

**English language skills<sup>7</sup>:**

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

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

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<sup>7</sup> Language skill level is based on Common European Framework of Reference for Languages (see <http://europass.cedefop.europa.eu/resources/european-language-levels-cefr>)

**Project experience<sup>8</sup>:**

	Start / end date of the project;	Contracting authority (or Client) and contact details (phone, email), e.g. project manager in charge and contact information for references (phone, email)	Position in the project and description of the role and responsibilities, man-months worked for the projects, e.g. relevant experience related to the particular Service line	Total value of the project (thousands of EUR <sup>9</sup> , excluding VAT)
No.	Title of the project, location (country, place)	Period of participation in the project (month/year – month/year)		
1. <sup>10</sup>				
2.				
3.				
4.				
5.				

<sup>8</sup> List of projects (max. 5) as well as positions therein **must** be related only to a particular Service line an expert is applying for.

<sup>9</sup> \*If value is in different currency than EUR, the Tenderer shall recalculate the price in EUR in accordance with the currency exchange rate of the European Central Bank on the day of signing the Proposal

<sup>10</sup> Up to 5 projects which Tenderer considers in line with project experience requirements shall be indicated in the table, Procurement commission will evaluate only first five projects if more projects will be provided.

Certification:

I, the undersigned, certify that to the best of my knowledge and belief, the data provided herein correctly describe myself, my qualifications, and my experience.

I, the undersigned, confirm that my skills and experience are fully sufficient to provide services set in the Regulations, I agree to be proposed as an expert by the Tenderer in this procurement in case the Framework agreement / Contract will be concluded with the Tenderer.

Annexes (diplomas, etc.):

1) \_\_\_\_\_

2) \_\_\_\_\_

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

Name: *[name of the expert]*

**ANNEX NO 3: TERMS OF REFERENCE**

**TERMS OF REFERENCE  
(TECHNICAL SPECIFICATION)**

**FOR OPEN COMPETITION**

**“LEGAL SERVICES”**



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

Riga, 2017

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## 1. INTRODUCTION

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

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

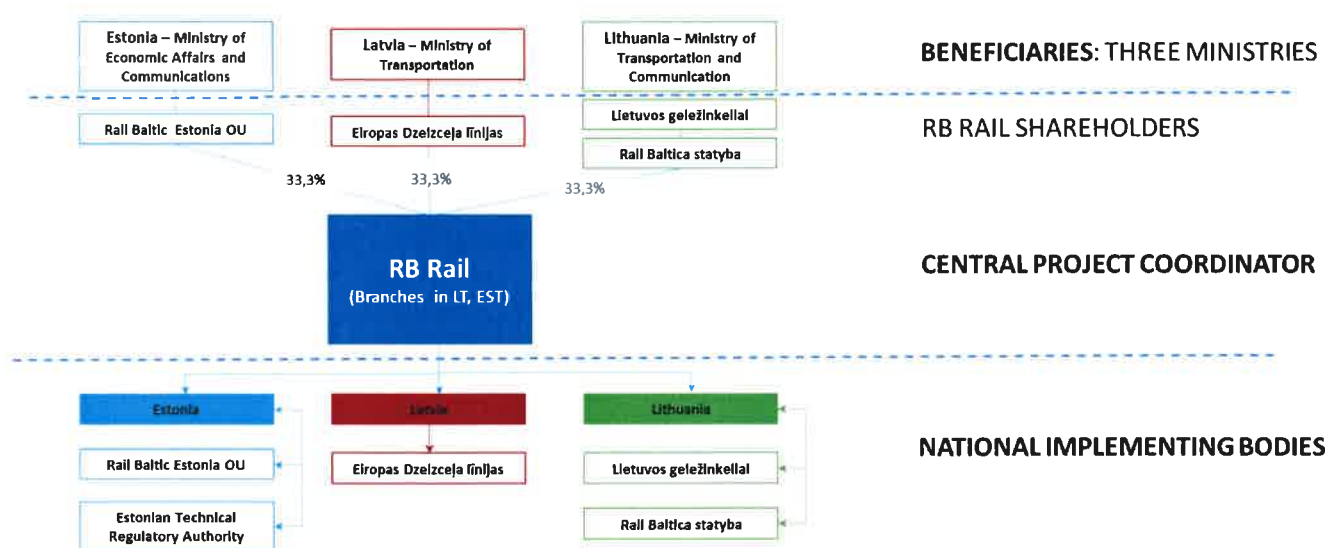
- to become a powerful catalyst for sustainable economic growth in the Baltic States;
- to set a new standard of passenger and freight mobility;
- to ensure a new economic corridor will emerge;
- sustainable employment and educational opportunities;
- an environmentally sustainable infrastructure;
-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

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

The Contracting authority RB Rail AS (RBR) was established by the Republics of Estonia, Latvia and Lithuania, via state-owned holding companies, to coordinate the development and construction of the fast-conventional standard gauge railway line on the North Sea – Baltic TEN-T Core Network Corridor (Rail Baltica II) linking three Baltic states with Poland and the rest of the EU. The main technical parameters shall correspond to traffic code P2-F1 as per INF TSI (Commission Regulation 1299/2014/EU) and shall have the following main technical parameters:

- double track, design speed on the main track 240 km/h, design speed on side tracks minimum 100 km/h;
- axle load 22.5 t;
- distance between track centres at least 4.20 m on the main tracks;
- distance between two sided passing loops approximately 50 km and crossovers approximately 25 km but staged according to a train traffic forecast;
- all pedestrian, road and 1520mm rail crossings only as above or below grade crossings (segregated grade crossings), fencing and noise barriers where needed;
- ERTMS Level 2 with possible update to the newest version;
- communications system GSM-R with a view to accommodate the new generation railway communications standard;
- electrification 2x25 kV AC;
- length of freight trains 740m, but for spatial planning and track geometry design a length of 1050m shall be used;
- length of passenger trains 200m, but for spatial planning and track geometry design a length of 400m shall be used;
- height of passenger platforms 550mm;
- maintenance road, where necessary, shall be on one side of the tracks with gravel 3.5m wide

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



RBR together with governments of Estonia, Latvia and Lithuania (represented by the ministries in charge of transport policy) have applied for the CEF co-financing in 2015, 2016 and 2017 (three applications in total). The first two applications were successful and INEA grants are available to support the Global Project expenses with up to 85% of co-financing in amount of 633 mln EUR.

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

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

## 2. SUPPORT FROM EXPERTS

2.1. The Contracting authority is seeking to establish a list of experienced legal advisors (“Panel of law firms”) to provide legal services to the Contracting authority on various legal matters in Estonia, Latvia and Lithuania. All legal services are to be delivered in English as a primary language and in Latvian. Please see below a detailed list of services required by service lines (“Service lines”):

No	Service line	Description of the services
<b>Procurement Part 1</b>		
1	<b>Commercial and Corporate</b>	<ul style="list-style-type: none"> <li>- Advising on company formation, winding-up/dissolution and liquidation</li> <li>- Advising on disposals, mergers and reorganizations</li> <li>- Advising on management buyouts and leveraged buyouts</li> <li>- Advising on joint ventures and partnership related issues</li> <li>- Corporate governance</li> <li>- Advising on the responsibilities of the Management Board</li> <li>- Due Diligence</li> <li>- Commercial and corporate dispute resolution</li> <li>- Employment contracts</li> <li>- Collective agreements and Trade unions</li> <li>- Executive compensation and benefits</li> <li>- Outsourcing</li> <li>- Labour dispute resolution</li> <li>- Employment of foreign nationals</li> </ul>
2	<b>Construction, Real Estate and Environment</b>	<ul style="list-style-type: none"> <li>- Advising on construction project development and detailed planning</li> <li>- Advising on construction contracts</li> <li>- Construction supervision</li> </ul>

		<ul style="list-style-type: none"> <li>- Advising on real estate matters</li> <li>- Advising on planning, zoning and building rights</li> <li>- Advising on regulatory compliance</li> <li>- Advising on commercial lease</li> <li>- Advising on mortgages and other encumbrances</li> <li>- Real estate Due Diligence</li> <li>- Advising on legal compliance with environment law</li> <li>- Construction, real estate and environment dispute resolution</li> </ul>
3	<b>Public procurement</b>	<ul style="list-style-type: none"> <li>- Project structuring</li> <li>- Organizing public procurement procedures</li> <li>- Drafting procurement bylaws (regulations, terms of reference and contracts)</li> <li>- Analysing collateral structures</li> <li>- Advising and representation of procuring entities</li> <li>- Advising and representation of the Contracting authority</li> <li>- Assistance with organizing public procurement procedures</li> <li>- Public procurement disputes</li> </ul>
4	<b>Competition Law and State Aid</b>	<ul style="list-style-type: none"> <li>- Advising on horizontal and vertical agreements</li> <li>- Advising on abuse of dominance</li> <li>- Advising on compliance</li> <li>- Advising on State Aid</li> <li>- Competition dispute resolution</li> </ul>

## Procurement Part 2

5	<b>Company Secretarial Services</b>	<ul style="list-style-type: none"><li>- Assisting the chairman of the Supervisory Board<sup>11</sup> in preparing agenda of Supervisory Board meetings and supporting documents</li><li>- Convening, attending and drafting of all minutes of Supervisory Board, and general meetings of shareholders, as well as organising approval and signing of minutes; providing extracts of minutes</li><li>- Maintaining an appropriate registry of Supervisory Board decisions</li><li>- Registering or filing of relevant Supervisory Board decisions with appropriate state, municipal or private institutions, submission of such decisions for execution to addressees of decisions</li><li>- Drafting of annual compliance reports and maintenance of statutory records</li><li>- Advising on issues included in the agenda of Supervisory Board meetings and general meetings of shareholders; providing necessary support for Supervisory Board members</li><li>- Providing other services according to internal regulations of the Contracting authority</li></ul>
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### 3. EXPERTS FOR SERVICE LINES

3.1. The entrusted assignments shall be carried out by experts from Latvia, Estonia and Lithuania who comply with the qualifications stipulated in Section 7.4 of the Open Competition Regulation and the requirements listed in the table below<sup>12</sup>. The Tenderer shall ensure the availability of at least the following experts in each of the given Service lines:

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<sup>11</sup> Hereafter RB Rail AS Supervisory Board

<sup>12</sup> Tenderer shall indicate one expert from each country (Latvia, Lithuania, Estonia) in each Service line, except Service Line "Company Secretarial Services" for which Tenderer shall indicate one expert.

No	Service line <sup>13</sup>	Minimal qualification requirements for the experts	
		Professional experience <sup>14</sup>	Project experience <sup>15</sup>
<b>Procurement Part 1</b>			
1.	<b>Commercial and Corporate</b>		
1.1	<i>commercial law expert</i>	3 years within the period of last 5 years as senior lawyer or higher	3 large-scale projects <sup>16</sup> within last 5 years
1.2	<i>employment law expert</i>	3 years within the period of last 5 years as senior lawyer or higher	3 large-scale projects <sup>17</sup> within last 5 years
2.	<b>Construction, Real Estate and Environment</b>	3 years within the period of last 5 years as senior lawyer or higher	3 large-scale projects <sup>18</sup> within last 5 years
3.	<b>Public procurement</b>	3 years within the period of last 5 years as senior lawyer or higher	3 large-scale projects <sup>19</sup> within last 5 years

<sup>13</sup> Full title of a Service line shall be used for all qualification requirements.

<sup>14</sup> Minimal expert's professional experience period is specified as a requirement. By submitting a Proposal, the Tenderer confirms that expert has the required professional experience.

<sup>15</sup> Name of the projects where the expert has participated as an expert of a corresponding Service line during the specified period. Participation of the expert in a project means full responsibility (any kind of assisting role shall not be considered as sufficient to satisfy project experience requirements) throughout the full project implementation period on important matters directly related to a Service line the expert is applying for. The Contracting authority reserves the right to request copies of documentation of the particular project proving the expert's role in a project and the responsibilities covered.

<sup>16</sup> "Large-scale project" should meet one of the following criteria: (i) the Tenderer has provided daily services on commercial and corporate issues for a period of no less than one year for a joint stock company and the annual turnover of the client at the moment of the services equal or higher than EUR 100,000, excluding VAT, or (ii) the Tenderer has provided cross-border services for commercial and/or corporate issues, and the legal fees for the provided services were equal to or higher than EUR 10 000, excluding VAT .

<sup>17</sup> "Large-scale project" should meet one of following criteria: (i) the Tenderer has provided daily employment law advice to 3 companies for no less than a one year period, and legal fees for the provided services were equal to or higher than EUR 10 000, excluding VAT (yearly) or (ii) the Tenderer has provided legal services in cases of company formation, winding-up and liquidation, company disposals, mergers and reorganizations with employment part and the legal fees for the provided services together were equal to or higher than EUR 50 000, excluding VAT.

<sup>18</sup> "Large-scale project" should meet both following criteria: (i) client is an international company or a national entity and the annual turnover of the client at the moment of the services equal or higher than EUR 250,000, excluding VAT or client is a state, a state authority, a municipality and (ii) legal fees for the provided services in this project were equal or higher than EUR 20 000, excluding VAT.

<sup>19</sup>"Large-scale project" should meet one of the following criteria: (i) preparing procurement documentation for a tender according to Latvian Public Procurement Law and a procurement contract price for such procurement must be equal or higher than EUR 750,000, excluding VAT, and tender should be finished and procurement contract should be signed; (ii) the Tenderer has represented the client (the tenderer or the Contracting authority) in the public procurement procedure regarding public procurement with estimated contract price equal or higher

4.	<b>Competition Law and State Aid</b>	3 years within the period of last 5 years as senior lawyer or higher	3 large-scale projects <sup>20</sup> within last 5 years
<b>Procurement Part 2</b>			
5.	<b>Company Secretarial Services</b>	3 years within the period of last 5 years as senior lawyer or higher	Providing daily corporate law advice for at least 3 companies for at least a year <sup>21</sup> or Company Secretarial services for 1 company <sup>22</sup> for no less than a year within last 5 years

3.2. The Tenderer is not allowed to change its experts during the execution of the procurement contract without the prior written approval of the Contracting authority. The Contracting authority is only allowed to grant an approval for such a change if the new expert meets all the same qualification criteria as the expert to be substituted.

3.3. The Contracting authority reserves the right to request the Tenderer to replace a team member in case of any of the following reasons:

3.3.1. repeated careless performance of duties;

3.3.2. incompetence or negligence;

3.3.3. non-fulfilment of obligations or duties stipulated in the Framework agreement or the Contract;

3.3.4. poor knowledge of English language (unsatisfactory presentation, writing skills in English);

3.3.5. termination of employment relations or cooperation agreement with the Tenderer.

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than 250 000 EUR, excluding VAT, and legal fees for the provided services were equal or higher than 10 000 EUR, excluding VAT.

<sup>20</sup> "Large-scale project" is a project, which meets the following criteria: (i) client is an international company or a national entity with a turnover equal or higher than EUR 250,000, excluding VAT, in the financial year, during which services were provided and (ii) client carries out cross-border business, or (iii) client is a state, a state authority, a municipality or a state capital entity and (together with any of the above mentioned) (iv) the project involved cross-border services for competition and/or state aid issues and (v) project value (including but not limited to the value of the competition law/state aid services) was equal or higher than 10 000 EUR, excluding VAT.

<sup>21</sup> At least one of the companies shall be a joint stock company or a state capital company registered in Republic of Latvia with a turnover equal or higher than EUR 250,000, excluding VAT, in the financial year, during which services were provided.

<sup>22</sup> The company shall be a joint stock company or a state capital company registered in Republic of Latvia.



3.4. Failure of the Tenderer to propose another expert with equivalent or better qualifications might lead to the termination of the Framework agreement or the Contract.

#### 4. REIMBURSEMENT OF TRAVEL EXPENSES

4.1. In case The Contracting authority for the implementation of a particular Assignment order requires an expert to travel from his/her place of residence or Tenderer's office (whatever is applicable) for more than 200 km one way, The Contracting authority shall reimburse incurred travel<sup>23</sup> expenses and pay for accommodation (only when the implementation of an assignment requires overnight stay and the hotel will be chosen by the Contracting authority):

4.1.1. for *Procurement Part 1* for every Expert included in a particular Assignment order.

4.1.2. for *Procurement Part 2* for an expert – Company Secretary, for participating in the Supervisory Board meetings.

4.2. For the implementation of a particular Assignment order where traveling is included, the Expert shall ensure average level economical travel and accommodation expenses.

4.3. The following travel expenses are subject to reimbursement:

4.3.1. Bus travel - for a distance of less than 400 km one way;

4.3.2. Second-class rail travel - for a distance of less than 400 km one way;

4.3.3. Economy class air travel - for a distance of more than 400 km one way;

4.3.4. A travel expense (a return ticket) shall not exceed 500 EUR. Travel expense exceeding 500 EUR on return ticket will be reimbursed at 500 EUR max.

4.4. The Contracting authority does not cover other expenditure, including but not limited to daily allowance, meals, local transport, sundry expenses, as well as accident insurance.

#### 5. OBLIGATIONS OF TENDERER AND EXPERTS INCLUDED IN THE PROPOSAL

5.1. By accepting to be included in the Proposals, each expert confirms his/her availability and intention to perform the necessary occasional, short-term assignments defined by the Contracting authority in a fully professional manner.

5.2. Tenderers (including their corresponding experts) shall remain fully responsible for the results of their services after the completion of an assignment. Any additional expenses arisen due to the correction of the unacceptable results shall be covered solely by the Tenderer concerned. On reasonable grounds the Contracting authority reserves the right to request a particular Tenderer (including their corresponding Experts) to correct the results of its services regardless of whether it is necessary during the implementation of a particular assignment or after it was completed and approved.

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<sup>23</sup> The point of departure shall be limited to the location in Europe.

5.3. During the provision of the services Tenderer is not allowed to appoint another expert (even included in the Proposal's another Service line) to implement a particular assignment.

5.4. If the Contracting authority finds (at any time of procurement process or during the implementation of the Framework agreement and/or Contract) that provided information on education, experience on a particular expert is false, the concerned expert shall be eliminated from the procurement process or from the Framework agreement and/or the Contract and must be replaced in accordance with Framework agreement and/or Contract and Public Procurement Law (whatever is applicable).

5.5. The Tenderer is obliged to ensure a valid professional risk indemnity insurance agreement with limit of liability in the amount of at least 1 000 000,00 EUR (one million euro) for any insurance claim covering all period of validity of the Framework Agreement or the Contract.

## **6. CONFIDENTIALITY, INDEPENDENCE AND ABSENCE OF CONFLICT OF INTEREST**

6.1. All Tenderers (including their corresponding experts) are expected to ensure that their contractual and professional obligations in particular with regard to confidentiality, independence and absence of conflict of interests are well understood and upheld throughout and after the implementation of any assignment.

6.2. Experts shall remain independent from any activities of other parties, companies, or organisations whatsoever directly acting against the Contracting authority (including but not limited to litigation and procedures for examination of complaints according to the Public Procurement Law) and shall avoid any legally binding relations or any other kind of relations with such parties.

## **7. DURATION OF THE CONTRACT**

7.1. The Framework agreement and the Contract at present is expected to enter into force in the third quarter of 2017. The Contract term will have following conditions:

7.1.1. the Framework agreement shall be signed for 24 months from the commencement date or until the maximum contract amount is reached. The volume of work under Framework agreement is not precisely predictable and cannot be quantified reliably.

7.1.2. the Contract shall be signed for a duration of 24 months.

7.1.3. the Contracting authority reserves the right to terminate the Framework agreement or the Contract at any time in the event of a Tenderers' failure to meet the obligations of legal services and legal services quality stated in order form and generally expected for ready to use documents or when services of the Tenderer are no longer required.

## **8. RANKING AND AWARD OF ASSIGNMENTS**

### ***Procurement Part 1***

8.1. The contracts offered will be multiple framework agreements. After completion of the tender, the Contracting authority may choose a maximum of 3 (three) Tenderers to the Panel of law firms that will be offered

to sign a standard Framework agreement. A list of the Tenderers will be drawn up in descending order according to the marks obtained on the basis of award criteria.

8.2. The shortlisted Tenderers (Panel of law firms) will not have an exclusive right to provide legal services to the Company under the Framework agreement. The Company reserves the right either to hold a mini-competition between the selected Tenderers or to award a assignment directly to a selected Tenderer.

8.3. In case of direct award, the Contracting authority shall invite one Tenderer to implement an assignment by sending an Assignment order (as specified in Draft Framework agreement - Annex No 4.1).

8.4. If the invited Tenderer does not reply within one business day, the Contracting authority may offer the work to the other Tenderer from Panel of law firms.

8.5. In case of mini-competition, the Contracting authority shall invite (by sending an Assignment order as specified in Draft Framework agreement - Annex No 4.1) all Tenderers to participate in a mini-competition and provide proposals for the implementation of a particular assignment. The most economically advantageous proposal shall be selected to implement the assignment.

8.6. The Contracting authority will regularly review the quality of delivered assignments and the cooperation with the Tenderers. Please see Section "Quality Requirements of the Completed Assignments". In cases mentioned in "Quality Requirements of the Completed Assignments", the Contracting authority reserves the right to not invite a Tenderer to participate in a mini-competition or do not award a assignment directly. This is done to ensure a high degree of quality and consistency.

8.7. The selection between the direct award or conduct of mini-competition shall remain within the discretion of the Contracting authority considering the specifics and urgency of a particular assignment to be implemented.

### ***Procurement Part 2***

8.8. The contract offered will be a procurement contract with one Tenderer. Upon the end of the tender, the Contracting authority may choose one or no Tenderer that will be offered to sign a Contract.

## **9. QUALITY REQUIREMENTS OF THE COMPLETED ASSIGNMENTS**

9.1. All completed and delivered assignments must be of such quality as to require no further correction by the Contracting authority. The Tenderer must ensure, inter alia, that all specific instructions from the Contracting authority are followed, that the assignment is complete, accurate and consistent and that the agreed deadline is respected scrupulously. Each assignment may be assessed by the Contracting authority. This assessment in no way diminishes the Tenderer's obligation to ensure that all assignments can be used as sent, without any further revision or correction by the Contracting authority.

### ***Procurement Part 1***

9.2. The Contracting authority shall measure all completed assignments for Procurement Part 1 by using following Key Performance Indicators:

9.2.1. **QUALITY** if the quality of the assignment is assessed as being of an:

- (a) high standard (+3),
- (b) good standards (+2),
- (c) poor standard (+1);

**9.2.2. DEADLINES:**

- (a) clearly set timescale for fulfilment of assignment by Tenderer and the agreed deadline is respected scrupulously by Tenderer (+3),
- (b) the timescale for fulfilment of assignment is not clearly set by Tenderer and/or agreed deadline is not respected by Tenderer (+1);

**9.2.3. COOPERATION** if cooperation is:

- (a) very good (+3),
- (b) good, but not in all matters (+2),
- (c) poor cooperation (+1).

(when evaluating the cooperation matters following issues could be taken into account - timely response as set in Section 9.1 of the Terms of Reference and in the Assignment order (as specified in Draft Framework agreement - Annex No 4.1), Tenders understanding of the assignment, timely submission of the Assignment order and/or invoices to the Contracting authority);

9.2.4. The Contracting authority shall calculate the final score for each assignment by summing up all points obtained for the particular assignment and dividing the sum with 3 (three). The Contracting authority records the resulting KPI. If a Tenderer receives twice 2,5 points or less, the Contracting authority has rights not to invite the Tenderer to the next 3 (three) mini-competitions and/or not to award next 3 (three) direct assignments (in total for 3 (three) assignments).

**10. EFFECTIVENESS OF LEGAL SERVICE DELIVERY TO THE CONTRACTING AUTHORITY**

***Procurement Part 1***

10.1. The Tenderer that submits a Proposal for Procurement Part 1 shall prepare a Proposal for free of charge improvements of effectiveness of legal service provisions to the Contracting authority, innovation in Service delivering and cooperation between the Tenderer and the Contracting Authority. Length of a Proposal shall not exceed one A4 page, font size: 11 pt.

10.2. The Tenderer's proposal shall include the following information:

10.2.1. Work with other panel firms: A recommendation of how the Tenderer will work with other Panel law firms for the benefit of The Contracting authority.

10.2.2. Cooperation with the Contracting authority:

(a) A description of how the Tenderer will share best practice (including, but not limited to training (seminars), know-how transfer, procedure efficiency) with the Contracting authority. Examples of previous cooperation with clients where the Tenderer shared best practice.

(b) Suggestion how the Tenderer envisages a partnership with the Contracting authority. Please refer to previous experience.

(c) Description of past successes and learnings from collaboration with clients and how it increased effectiveness of the Contracting authority.

## 11. CASE STUDY

### *Procurement Part 1*

11.1. The Tenderer that submits a Proposal for Procurement Part 1 shall prepare a short and high-level legal opinion regarding the legal issue mention below. The case study shall be based on EU legislations, EU case law and national (Latvian, Estonian and Lithuanian) legislation. Length of an analysis shall not exceed one A4 page, font size 11 pt.

#### **Facts:**

1. RB Rail AS is a public limited company registered in Latvia with the following shareholders:
  - 1) The owner of 33.33333% of shares is Estonian limited liability company (OÜ) Rail Baltic Estonia (RBE), whose 100% of shares belong to the Ministry of Economics and Communications of the Republic of Estonia (**MinEST**);
  - 2) The owner of 33.33333% of shares is Latvian limited liability company Eiropas dzelzceļa līnijas (EDzL), whose 100% of shares belong to the Ministry of Transport of the Republic of Latvia (**MinLAT**);
  - 3) The owner of 33.33333% of shares is Lithuanian limited liability company (UAB) Rail Baltica statyba (RBS), whose 100% of shares belong to public limited company Lietuvos geležinkeliai owned by the Republic of Lithuania (**MinLIT**).
2. Under the Shareholders' Agreement the tasks of RB Rail AS include Rail Baltica project supervision and centralised management, organisation of centralised procurement, implementing development measures, management of contracts and coordination of legal issues.
3. So far RB Rail AS operations are funded by shareholders' investments in RB Rail AS equity, but construction of *Rail Baltic* (and the related research and other services) is financed by funds of the Connecting Europe Facility granted by the European Union (presently approximately 85%), the remaining share is co-funded by Estonia, Latvia and Lithuania respectively.
4. Agreement concluded between RB Rail AS, MinLIT, MinEST and MinLAT (**IB Agreement**) states that:

"1. The Parties agree that for the purposes of this Agreement the concept of conflict of interest shall additionally include:

(a) A Party or an Implementing Body (RBS, EDzL and RBE) shall be in a conflict of interest situation with a supplier in any situation where a Party or an Implementing Body, their shareholder, member, member of the Management Board or Supervisory Board, or a person having the right to represent the candidate or

tenderer in activities related to a subsidiary, a blood relative to the second degree or spouse or the first degree relative through marriage of any of the mentioned persons, or procurator or authorised person is:

(i) the supplier or the supplier's sub-contractor;

(ii) the beneficial owner, shareholder, member, member of the Management Board of the Supervisory Board, procurator or authorised person of the supplier or the supplier's sub-contractor;

2. The Parties shall not procure goods, works or services from suppliers with which they are in a conflict of interest situation and shall also ensure that the Implementing Bodies do not procure goods, services and works from such suppliers, unless:

(a) The particular supplier provides the respective services on the basis of exclusive rights which derive from a law;

(b) The contract is for procurement or lease of a land plot, existing building or structure or another immovable property or procurement of other rights in respect to such immovable property; (c) It is a public contract between entities within the public sector in the meaning of Article 12 of Directive 2014/24/EU Of The European Parliament And Of The Council Of 26 February 2014 On Public Procurement And Repealing Directive 2004/18/EC or a contract between contracting authorities in the meaning of Article 28, contract awarded to an affiliated undertaking in the meaning of Article 29 or a contract awarded to a joint venture or to a contracting entity forming part of a joint venture in the meaning of Article 30 of Directive 2014/25/EU Of The European Parliament And Of The Council Of 26 February 2014 On Procurement By Entities Operating In The Water, Energy, Transport And Postal Services Sectors And Repealing Directive 2004/ 17/EC."

5. RB Rail AS provides services only for RBS, EDzL and RBE.

6. In order to finance future operations of RB Rail AS, MinLIT, MinEST and MinLAT explore the option to buy from RB Rail AS management services which RB Rail AS should provide to Ministries according to Grant Agreements, Shareholders Agreement and other agreements concluded between the Ministries and/or RBS, EDzL and RBE and RB Rail AS.

***Question to be answered:***

Whether the use of „*in-house exceptions*“ provided for in national legislation and EU procurement directives, specifically for the purpose of signing contracts on an “at arms-length” (for profit) basis, would be in line with public procurement national legislation in Latvia, Lithuania and Estonia, as well as with EU procurement directives and mentioned IB Agreement terms.

**ANNEX NO 4.1: DRAFT CONTRACT FOR PART 1**

**FRAMEWORK AGREEMENT**

**ON**

**LEGAL SERVICES**

**between**

**RB Rail AS**

**and**

**[•]**

**No 8/2017-[•]**

**Dated [•] [•] 2017**

**FRAMEWORK AGREEMENT NO [●]**  
**FOR THE PROVISION OF LEGAL SERVICES**

Riga [●]

Contract registration number

CEF<sup>24</sup> Agreement No INEA/CEF/TRAN/M201[●]/[●]

[●]

This Framework agreement ( "Agreement") between:

**RB Rail AS** (a joint stock company registered in the Latvian Commercial Register, uniform registration No 40103845025, legal address at K.Valdemāra iela 8-7, Riga, LV 1010, Latvia ("Client"), represented by Chairperson of the Management Board Ms Baiba Anda Rubesa, Management Board Member [●], Management Board Member [●], Management Board Member [●] acting on the basis of the Company's Statutes, on the one side

**and**

(1) [●], registration No [●], legal address at [●] ("Firm"), represented by [●] acting on the basis of [●], on the other side, ("Service Provider")

who are collectively referred to as the "Parties" and separately – as "Party".

WHEREAS:

- (A) Core business of the Client is design, construction and marketing (including branding) of the new fast conventional double track electrified railway line with the maximum design speed of 240 km/h and European standard gauge (1435 mm) on the route from Tallinn through Pärnu Riga Panevezys Kaunas to Lithuanian Polish Border ("Project") financed under the auspices of Connecting Europe Facility ("CEF").
- (B) On [date] [month] 2017 the Client has announced an open competition entitled "Legal Services" (Identification No. RBR 2017/20) ("Procurement").

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<sup>24</sup> Grant Agreement under the Connecting Europe Facility (CEF) -Transport Sector Agreement No INEA/CEF/TRAN/M201[●]/[●]



- (C) On [date] [month] 2017 the Service Provider submitted proposal in response to the tender announced by the Company for Procurement Part 1 (“**Proposal**”) and committed to provide the legal services.
- (D) In the Procurement 2 (two) of other providers („**Other Providers**“) and the Service Provider (hereinafter jointly referred as **Service Providers**) proposals were selected for entering into framework agreement for Open Competition Part 1 “Legal services”;
- (E) This Framework agreement is co-financed from the Connecting Europe Facility (CEF), CEF<sup>25</sup> Agreement No INEA/CEF/TRAN/M201[●]/[●], Action No [●],
- (2) NOW, THEREFORE, the Parties hereby enter into this Framework agreement (“**Agreement**“) on the following terms and conditions:

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<sup>25</sup> Grant Agreement under the Connecting Europe Facility (CEF) -Transport Sector Agreement No INEA/CEF/TRAN/M201[●]/[●]

## 1. SUBJECT OF THE AGREEMENT

- 1.1. This Agreement sets out the rights and obligations, terms and conditions that apply to the Parties of the Agreement where the Service Provider (definition "Service Provider" applies also to Expert unless it is specified otherwise) is contracted by the Client to provide legal services for the Client for the successful implementation of the Rail Baltica project.
- 1.2. The range of legal services to be provided by the Service Provider to the Client is described in Annex 3 of the Procurement (Annex A of this Agreement) and includes, but is not limited to, counselling, preparation of documents, litigation, representation and training ( **Legal Services**). The procedure for the provision of Legal Services is provided in Clause 3 of this Agreement.
- 1.3. The purpose of the Agreement is to define the terms and conditions under which the Service Provider shall provide Legal Services to the Client **on-demand** basis. The Agreement is framework-based and does not impose an obligation on the Client to appoint the Service Provider to provide services and does not guarantee any exclusive right to the Service Provider to provide Legal Services to the Client. This Agreement entitles the Service Provider to participate in mini-competitions and/or to be awarded the provision of the assignment directly by the Client at the full discretion of the latter. The Service Provider is solely responsible for its costs and expenses incurred in connection with participation in the mini-competitions.
- 1.4. For every assignment, a separate assignment order (based on Draft for Assignment order included in Annex C of this Agreement) ("**Assignment order**") shall be issued by the Client and confirmed by the Service Provider.
- 1.5. The Service Provider shall provide services only on basis of a confirmed Assignment Order, the conditions thereof become binding on both parties: the Service Provider and the Client.
- 1.6. If the Service Provider refuses or fails to duly complete the assignment after the Assignment order has been confirmed between the Parties, the Service Provider is obligated to pay a contractual penalty to the Client at the Client's request of the amount corresponding to the double (2x) of the total sum of the legal fee according to the Assignment order.
- 1.7. All Assignment orders and this Agreement shall form a single agreement between the Parties. The provisions of this Agreement constitute an integral part of each Assignment order. In the event of any inconsistency between the provisions of this Agreement and Assignment order, the Assignment order shall prevail.

## 2. FRAMEWORK AGREEMENT VALUE AND PERIOD

- 2.1. The Framework agreements with Service Providers are on-demand based with no fixed work-load and/or fixed overall value.
- 2.2. The total allocated amount for the procurement of Legal Services for all Framework agreements concluded as a result of the Procurement is: 360 000 EUR (three hundred sixty thousand *euros*).

- 2.3. However, this does not bind the Client to purchase legal services through the Framework agreement for the estimated amount.
- 2.4. The Agreement period is 24 months starting from the Commencement date.
- 2.5. The Agreement terminates after Agreement period expires or until the maximum Agreement amount is reached and after the all Assignment orders are fully completed by the Service Provider and approved by the Client.

### **3. APPOINTMENT OF AN ASSIGNMENT**

- 3.1. In order to receive legal services the Client shall select the Service Provider and conclude an Assignment order. The Assignment shall be allocated through a direct award to the Service Provider or by conducting a mini-competition between all Service Providers.
- 3.2. The selection between the direct award or conduction of mini-competition shall remain within the discretion of the Client considering the specifics, urgency, nature and complexity of the particular assignment to be implemented and the budget for the likely legal fees for providing the particular assignment, other interests of the Client, etc.

#### **3.3. Direct award**

- 3.3.1. The Client invites the Service Provider to implement an assignment by sending an Assignment order;
- 3.3.2. After receiving an invitation, as soon as possible but not later than within the 1 (one) business day the Service Provider shall respond by stating its Expert's availability to implement the assignment. In case the Service Provider rejects the invitation or fails to respond within the required time period, the Client reserves the right to invite another Service Provider. In case of a Conflict of Interests (Clause 16), the Service Provider is obligated to notify the Client immediately about its Conflict of Interests and refrain from providing the particular assignment;
- 3.3.3. After the corresponding Assignment order is accepted by the Service Provider, the conditions set in the Assignment order become binding upon the Parties.

#### **3.4. Mini-competition**

- 3.4.1. The Client invites all Service Providers to implement an assignment by sending an Assignment order specifying the task, interests of the Client, timeline, and other information it deems relevant;
- 3.4.2. The Service Provider is prohibited from participating in the mini-competition in case of Conflict of Interests (Clause 16);
- 3.4.3. After receiving such invitation, within 1 (one) business day or the latest by the deadline specified in Assignment order the Service Provider shall respond by sending its proposal to implement an assignment. Failing to respond to the invitation within the required time period shall be considered as rejection to participate in a mini-competition;

- 3.4.4. Mini-competition proposals received from all Service Providers are evaluated and ranked. The most economically advantageous proposal shall be awarded for the implementation of an assignment;
- 3.4.5. The Client will choose the winner(s) of the mini-competition for the provision of the particular assignment by comparing the proposals based on the following criteria (listed in no particular order and containing no specific value):
- (a) amount of legal fees and time necessary for providing the particular assignment;
  - (b) credibility and experience of the Service Provider and its staff for providing the particular assignment, including Expert legal knowledge and know-how in specific fields of law applicable;
  - (c) potential quality of providing the particular assignment by the Service Provider, taking into account among others the potential workload to be invested for the provision of the particular assignment;
  - (d) cooperation experience with the provider in previous provision of Legal Services based on KPI mentioned in the Section 9 of Terms of reference / Technical specification of the Procurement (Annex A) ("**Terms of Reference**").
- 3.4.6. The Client shall inform all Service Providers on the results of the mini-competition ;
- 3.4.7. The Service Provider with most economically advantageous proposal shall be invited to sign the Assignment order. After this invitation to implement an assignment (including corresponding Assignment order) is accepted by the Service Provider, the conditions set in the Assignment order and the proposal of mini-competition become binding upon the Parties. The Service Provider first signs the Assignment order.
- 3.5. The Assignment order shall include details of the Legal Services to be carried out by the Service Provider (as specified in Draft Assignment order - Annex No. 3), i.e. required Service line, estimated workload, starting date, deadline etc.
- 3.6. The Client reserves the right not to directly award the Service Provider with Assignment order nor to invite the Service Provider to participate in a mini-competition based on results of KPI. The Client will regularly review the quality of completed assignment and the cooperation with the Service Provider according to Section 9 of the Terms of Reference. The Client shall not invite the Service Provider to the next 3 (three) mini-competitions and/or shall not award next 3 (three) direct tasks, if the conditions stipulated in Section 9 of the Terms of Reference occur.
- 3.7. The Service Provider has a right to reject Client's invitation to implement an assignment only in exceptional cases related to the availability involved Experts, or when the Service Provider envisages that the implementation of a particular Assignment order would result in a conflict with requirements set in the Framework agreement, or in case of a Conflict of Interests (Clause 16). The decision of the Service Provider to reject the Client's invitation to implement an assignment shall be provided in writing by stating the actual reasons for such decision.

3.8. The Service Provider has the right to request reasonable explanatory information from the Client regarding the specifics of provision of an assignment via email. If the Client finds it necessary to respond, the Client has the right to disclose information provided to the Service Provider also to Other Providers.

#### **4. PERFORMANCE OF THE AGREEMENT**

4.1. The Service Provider must perform the Agreement in compliance with its provisions, the instructions given by the Client, under the specific terms agreed in an Assignment order and all legal obligations applicable under EU, international and national law.

4.2. The Service Provider and the Expert providing the Legal Services to the Client must comply with the relevant professional diligence and applicable legislation governing the activities of legal advisers (in case of attorneys, in addition to the respective bar association rules and related regulations) and the provision of Legal Services must be of consistently high quality that is necessary to achieve the purpose of the particular Assignment order agreed between the Parties in particular Assignment order.

4.3. The Service Provider shall, within reason and in the scope of Legal Services, endeavour to carry out all activities that would reasonably assist and aid the Client, always act in the best interests of the Client and use its best endeavours to engage all legal means reasonably available in achieving the result of the particular assignment specified in the particular Assignment order.

4.4. The Client shall deliver to the Service Provider relevant essential information necessary for the provision of Legal Services. The Client understands that the proper provision of Legal Services requires the Client to give to the Service Provider all the information relevant to the particular assignment, and to inform the Service Provider of any changes to that information.

4.5. The Client shall provide the Service Provider or Service Provider's nominated legal advisers (Experts) with a respective power of attorney at the request of the Service Provider, if necessary for providing the particular assignment.

4.6. The Client shall have the final and exclusive right in the negotiations, terms, decisions, agreements, etc. and in any and all matters related to Legal Services, including but not limited to the final right to decide whether or not to conclude any agreement(s), litigate, submit documents etc.

4.7. The Service Provider shall provide the Client with all and any information and documentation in its possession or control relating to the Legal Services provided to the Client. The Service Provider shall return original documents to the Client immediately at the Client's request.

- 4.8. The Service Provider shall carry out the tasks, prepare and provide all documents, reports, minutes of the meetings and any other information material (i.e. provide Deliverables<sup>26</sup>) specified in an Assignment order.
- 4.9. The Client reserves the right to ask the Service Provider (or its corresponding Expert) to provide intermediate results (deliverables) of an Assignment order in short notice, in order to check the progress of the implementation of an Assignment order. The Service Provider (or its corresponding Expert) shall provide the Client with the information, status of the progress including proof thereof, such as intermediate documentation, reports, etc. within the short notice period. This confirmation does not imply the implementation of any additional assignments (reports etc.), but confirms progress of the implementation of the Assignment order. Failing to do so within the short notice period or by providing information that shows that the assignment will not be completed within specified time in the Assignment order, the Client reserves the right to cancel the implementation of the Assignment order and to proceed with the procedures for terminating the Agreement.
- 4.10. As a part of the Deliverables, the Service Provider shall prepare information material in a fully comprehensive and understandable<sup>27</sup> way, by providing explicit and full source details (initial information, evidences etc.) used for the analysis and provision of Deliverables.
- 4.11. The Client shall have no responsibility over any content of Deliverables provided by the Service Provider.
- 4.12. Approval by the Client of the Deliverables of the corresponding Assignment order shall not mean the approval of the outcome results (reports, agreements, procedural documents, summary, advice, decisions etc.) delivered by the Service Provider. Service Provider shall bear full responsibility of the Deliverables provided.

## 5. RIGHTS AND OBLIGATIONS

- 5.1. The Service Provider shall be responsible for the availability of its Experts implementing particular Assignment orders.
- 5.2. The Service Provider shall be responsible for ensuring that its Experts included in the Agreement fulfil the requirements thereof as long as it comes to Experts' responsibility.
- 5.3. The Service Provider shall remain fully responsible for the results (including Client's losses incurred due to such results) of its services after the completion of an Assignment order. Any additional expenses arisen due to the correction of unacceptable outcome results shall be covered solely by the Service Provider. The Client reserves the right to request the Service Provider to correct the results of

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<sup>26</sup> Definition "Deliverables" shall include all tasks (including, but not limiting to, actions and information material, agreements, procedural and other documents) to be carried out by the Service provider in order to fully implement the corresponding Assignment order.

<sup>27</sup> The information provided in the Deliverables shall be understandable to the average-level lawyer or manager with no particular experience in a specific topic concerned.

its services regardless whether it is necessary during the implementation of an Assignment order or after it was completed and approved.

- 5.4. No subcontracting in any kind or form is allowed for implantation of an Assignment order. Only the Expert specified in an Assignment order is allowed to implement the tasks defined therein.
- 5.5. The Service Provider must keep records and other supporting documentation (original supporting documents) as evidence that the Assignment order is correctly performed and the expenses were actually incurred. These must be available for review upon the Client's request.
- 5.6. The Client is obliged to pay for the services of the Service Provider in accordance with the Assignment order and based on the approved Deliverables of the Service Provider pursuant to the payment request.
- 5.7. The Service Provider is obliged to ensure a valid professional risk indemnity insurance agreement with limit of liability in the amount of at least 1 000 000,00 EUR (one million *euro*) for any insurance claim covering all period of validity of the Agreement. The Service Provider is obliged to submit to the Client a copy of a renewed insurance agreement or a new insurance agreement including the above-mentioned provisions within five (5) working days before the date of expiry of the previous insurance agreement

## **6. PAYMENTS**

- 6.1. Service Provider must make a request for payment to obtain its remuneration for services and reimbursement of expenses agreed in the Agreement. After acceptance of Deliverables by the Client, the Service Provider must submit the invoice within 30 calendar days or at another time agreed between the Parties in the Assignment order.
- 6.2. Invoices should be sent to the e-mail [invoices@railbaltica.org](mailto:invoices@railbaltica.org) and should include the following details about the Agreement: Identification number RBR 2017/20, and name of the contact person Ģirts Rūda.
- 6.3. The Client shall make the payment after 15 (fifteen) days from the date on which the Client receives properly prepared payment request (invoice) on the accepted Deliverable.
- 6.4. The Client may suspend the payment at any time if:
  - 6.4.1. the Deliverable is not accepted by the Client;
  - 6.4.2. invoice supporting documents are missing;
  - 6.4.3. the invoice is incorrect;
  - 6.4.4. the Client has to make further checks to verify details of invoice.
- 6.5. The Client shall reject the invoice (parts of) if it does not fulfil the conditions of the Agreement and particular Assignment order.

- 6.6. The Client may reduce the fee if the Service Provider is in breach of any of its other obligations under the Agreement (including unsatisfactory implementation of any Assignment orders). The Client must formally notify the Service Provider of its intention, include the reasons why, and invite the Service Provider to submit any observations within 15 days of receiving notification. If the Client does not accept these observations, it will formally notify confirmation of the rejection or reduction.
- 6.7. Payments are subject to the Client's approval of Deliverable(s) and of the invoice(s). Approval does not mean recognition of compliance, authenticity, completeness or correctness of content.
- 6.8. The Client may at any point suspend the payment deadline, if an invoice cannot be processed because it does not comply with the Agreement's provisions. The Client must formally notify the Service Provider of the suspension and the reasons for it. After the condition for suspending the payment deadline is mitigated, the suspension will be lifted — and the remaining payment period will resume.
- 6.9. If the payment deadline has been suspended due to the non-compliance with the Agreement's conditions and the Service Provider fails to rectify the outcome of the corresponding Assignment order within the reasonable period of time, the Client may also terminate the Agreement.
- 6.10. In the event of failure by the Service Provider to meet any deadline and/or supply any Deliverable by the date stipulated in the particular Assignment order, the amount of fee payable by the Client to the Service Provider under the corresponding Assignment order with respect to the relevant time period shall be reduced by 0.1 % of the amount of such fee for each day of delay.
- 6.11. Payments will be made in euros.
- 6.12. The Client shall pay the amounts shown on the invoice by bank transfer to the bank account of the Service Provider. Each Party bears its own bank charges.
- 6.13. The legal fees described in Proposal (Annex B of this Agreement) and in the Assignment order are exclusive of VAT. The VAT treatment for the supply of Legal Services under an Assignment order shall be determined pursuant to the VAT laws of the jurisdiction where a taxable transaction for the VAT purposes is deemed to take place. If VAT is payable on any contractual amounts, the Client shall pay to the Service Provider an amount equal to the VAT at the rate applicable from time to time, provided that such amount shall only be required to be paid after the Service Provider provides the Client with a valid VAT invoice in relation to that amount. Each Party shall, on request, provide the other Party with any additional VAT invoices or other documentation required for VAT purposes.

## **7. LEGAL FEES**

- 7.1. The Service Provider shall act as an independent contractor on its own cost and for its own account and the Client shall not be obliged to pay to the Service Provider any royalties or fees other than the fees and/or rates expressly agreed upon in the Assignment order or to compensate any other kind of costs or expenses of the Service Provider. The Client shall remunerate to the Service Provider the fees and costs stated in the Assignment order.



7.2. The applicable legal fees of the Service Provider are included in the Proposal. The legal fees offered by the Service Provider in mini-competitions or directly at the request of the Client for providing a particular Assignment may not be higher than the legal fees offered by the Service Provider in the Proposal and the offered fees are final. If the Service Provider is in breach of the previous sentence, the Client refuses the Service Provider's proposal for providing of an assignment.

## **8. REIMBURSEMENT OF TRAVEL EXPENSES**

8.1. The Client shall reimburse the travel expenses incurred by the Service Provider during the provision of services only in the following cases:

8.1.1. travel expenses are indicated and agreed in the corresponding Assignment order;

8.1.2. travel expenses incurred for the implementation of the corresponding Assignment order;

8.1.3. travel expenses are justified by documents.

8.2. In case the Principal for the implementation of a particular Assignment order requires the Expert to travel from his/her place of residence or Service Provider's office (whatever is applicable) for more than 200 km one way, the Client shall reimburse incurred travel<sup>28</sup> expenses for the Expert included in a particular Assignment order.

8.3. For the implementation of a particular Assignment order where traveling is included, Expert shall ensure average level economical travel and accommodation expenses. The Client reserves the right to choose the accommodation.

8.4. The following travel expenses are subject to reimbursement:

8.4.1. Bus travel expenses if distance of less than 400 km one-way;

8.4.2. Second-class rail travel expenses if distance of less than 400 km one-way;

8.4.3. Economy class air travel expenses if distance of more than 400 km one-way;

8.4.4. A travel expense (a return ticket) shall not exceed 500 EUR. Travel expense exceeding 500 EUR on return ticket will be reimbursed at 500 EUR max.

## **9. OWNERSHIP AND USE OF THE RESULTS (INCLUDING INTELLECTUAL PROPERTY RIGHTS)**

9.1. The Client will fully and irrevocably acquire the ownership of the results under this Agreement including any rights in any of the results listed in this Agreement, including copyright and other intellectual or industrial property rights, and all technological solutions and information contained therein, produced in performance of the Agreement.

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<sup>28</sup> The point of departure shall be limited to the location in Europe.

- 9.2. The Client will acquire all rights and obligations in this Clause 5 from the moment the Deliverables (results) are delivered by the Service Provider and are not limited in time and will be valid after the expiry of the Agreement and/or the individual Assignment order.
- 9.3. The copyright fee has been included in the legal fee (Clause 7). The transfer of copyright shall also remain valid if the Agreement is prematurely terminated for any reason and/or terminated without the complete delivery of the Deliverables.
- 9.4. The Client has the right to publish material submitted by the Service Provider without the Service Provider's permission, as well as to require the Service Provider to change it, to redo it, to divide it into parts. If the Service Provider and the Client cannot agree on the execution of this work, the Client is entitled to involve another Service Provider in carrying out the said task.
- 9.5. The Service Provider shall undertake to ensure that the Services, the execution of Services or the use of the any of the Deliverables not violate the rights, including copyright, of third persons.
- 9.6. If the Services, the execution of the Services or the use of the Deliverables or other deliverables produced while rendering the Services violate the rights of third persons, the Service Provider shall be liable for the violation. The Service Provider shall be obliged to compensate the damage caused to third persons and satisfy any claims for the compensation of damage filed against the Client by third persons.

## **10. ON-THE-SPOT VISITS**

- 10.1. By virtue of Council Regulation (Euratom, EC) No 2185/961 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EU) No 883/20132 of the European Parliament and the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF), OLAF may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by Union law for the protection of the financial interests of the Union against fraud and other irregularities. Where appropriate, OLAF findings may lead to criminal prosecution under national law.
- 10.2. By giving a written notice 5 (five) business days in advance, but in case of an unannounced check without an advance notice, the Client may carry out independent on-the-spot visits to the sites and premises where the activities implemented within the Agreement are or were carried out.
- 10.3. On-the-spot visits may be carried out either directly by the authorised staff of the Client or by any other outside body authorised to do so on behalf of the Client. Information provided in the framework of on-the-spot visits shall be treated on confidential basis. The Client shall ensure that any outside body authorised shall be bound by the confidentiality obligation.
- 10.4. The Service Provider shall ensure that the performer of the on-the-spot visit or any other outside body authorised has access to all the information and documents, including information and documents in electronic format, which is requested by the authorised staff of the performer of the on-the-spot visit or any other outside body authorised for the performance of an on-the-spot visit and which relates to

the implementation of the Agreement, as well as shall allow the authorised staff of the performer of the on-the-spot visit or any other outside body authorised copying of the information and documents, with due respect to the confidentiality obligation.

## **11. AMENDING THE AGREEMENT; TERMINATION OF THE AGREEMENT**

- 11.1. The Agreement can be amended in compliance with the provisions of Article 61 of the Public Procurement Law including but not limited to the provisions of point 5 of Section 2 of Article 61.
- 11.2. If after the conclusion of the Agreement amendments are made to the existing laws and regulations and in consequence the costs of Service Provider's Legal Services increase or decrease and when a prior warning has been given, then, after a mutual agreement by the Parties, the Fee is amended.
- 11.3. Amendments to the Agreement are proposed by the Party who sees a need for the amendments by submitting a justification for the proposal of amendments.
- 11.4. 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.
- 11.5. When deciding on amending the Agreement, compliance with Public Procurement Law of the Republic of Latvia, Procurement and requirements under its Regulation must be ensured.
- 11.6. This Agreement may be terminated by a Party by giving the other Party sixty (60) days prior written notice of termination ("**Regular Termination**"). In the event of Regular Termination, the Agreement shall remain legally binding on the Parties until, but only in respect of, all rights and obligations already created or existing prior to the date of the Regular Termination are fully performed by both Parties.
- 11.7. The Client reserves the right to terminate the Agreement within 10 (ten) business days after sending a written notice to the Service Provider due to the following reasons:
  - 11.7.1. The Service Provider has committed substantial errors, irregularities or fraud, or is in serious breach of its obligations under the procurement procedure or under the Agreement, including false declarations and obligations relating;
  - 11.7.2. The Service Provider breaches conditions of the Agreement and does not cure the breach within 20 (twenty) business days of written notice of same;
  - 11.7.3. Service Provider and/or its Expert poorly performs his/her tasks defined in the corresponding Assignment order.
- 11.8. The Parties reserve the right to terminate the Agreement at any time after sending a written notice if:
  - 11.8.1. the Client fails to make a payment where such failure has not been eliminated within thirty (30) calendar days after receipt of a written notice of failure to pay from the Service Provider;
  - 11.8.2. a Party is dissolved, declares bankruptcy, becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;

- 11.8.3. a breach of confidentiality (Clause 15) occurs;
- 11.8.4. a breach of obligation to avoid Conflict of Interests (Clause 16) occurs;
- 11.8.5.** The Service Provider fails to submit a valid professional risk indemnity insurance agreement within a time mentioned in Clause 5.7.
- 11.9. The Client reserves the right to terminate the Agreement if services of the Service Provider are no longer required or the Service Provider has not participated in the last 3 (three) mini-competitions or has rejected the last 3 (three) Client's invitation to implement an assignment without the pleas mentioned in Clause 3.7.
- 11.10. The Client reserves the right to terminate a particular Assignment order if the services specified thereof are no longer required. In such a case, the costs incurred by the Service Provider up to the notification of the termination of an Assignment order are subject to the reimbursement by the Client.
- 11.11. If the Client has unilaterally terminated the Agreement due to non-fulfilment of the obligations undertaken in the Agreement by the Service Provider, the Client has the right to disqualify the Service Provider from participation in any tenders organized by the Client during 12 (twelve) months from the date of the termination of the Agreement.

## **12. FORCE MAJEURE**

- 12.1. 'Force majeure' means any situation or event that:
  - 12.1.1. prevents either Party from fulfilling their obligations under the Agreement;
  - 12.1.2. was unforeseeable, exceptional and beyond the Parties' control;
  - 12.1.3. was not due to error or negligence on their part; and
  - 12.1.4. proves to be inevitable in spite of exercising due diligence.
- 12.2. A force majeure must be immediately and formally notified to the other Party.
- 12.3. Notification must include details of the situation's nature, likely duration and expected effects.
- 12.4. The Party faced with a force majeure will not be held in breach of its Agreement obligations if the force majeure has prevented it from fulfilling them.

## **13. COMMUNICATION BETWEEN THE PARTIES**

- 13.1. Communication under the Agreement (e.g. information, requests, submissions, formal notifications, etc.) must:
  - 13.1.1. be carried out in English;
  - 13.1.2. be carried out between the contact persons specified in the corresponding Assignment order;
  - 13.1.3. be made in writing (including electronic form); and

- 13.1.4. bear the Agreement's and Assignment order's number.
- 13.2. During the implementation of the Assignment order, the communication via e-mail shall be executed between the persons indicated in the corresponding Assignment order. Additionally, all copies of those e-mail messages shall be sent also to Parties' e-mail addresses specified in the Agreement.
- 13.3. Communications by e-mail are deemed made when they are sent by the sending Party and receipt is confirmed by the receiving Party, unless the sending Party receives a message of non-delivery. Sending Party is responsible to get the confirmation that a message (with all its contents) sent via e-mail was received.
- 13.4. Assignment orders, notices, declarations and invoices shall be deemed received:
- 13.4.1. if delivered by hand, on the first business day following the delivery day;
- 13.4.2. if sent by post, on the fifth (5<sup>th</sup>) business day after the date of posting;
- 13.5. if sent by email and received "out of office reply" or similar on the day of sending if sent before 17:00 on a business day, or otherwise at 09:00 on the first business day following such sending (Latvian time applies)
- 13.6. 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.
- 13.7. The Parties agree that information may be exchanged electronically over the internet.

#### **14. EXPERT CHANGE**

- 14.1. Only in exceptional cases Experts included in the Agreement can be replaced and by signing an amendment to the Agreement.
- 14.2. The proposed Expert's qualifications must be equivalent to or higher than those of the replaced Expert. The qualifications must be proven by submitting the same qualification documents/information as for the selected Expert within the procurement process.
- 14.3. The Client reserves the right to request the Service Provider to replace an Expert in case of any of the following reasons:
- 14.3.1. repeated careless performance of duties;
- 14.3.2. incompetence or negligence;
- 14.3.3. non-fulfilment of obligations or duties stipulated in the Agreement;
- 14.3.4. poor knowledge of English language (unsatisfactory presentation, writing skills in English);
- 14.3.5. termination of employment relations or cooperation agreement with the Service Provider.

14.4. Failing of the Service Provider to propose another Expert with equivalent or better qualifications within 10 (ten) business days period might lead to the termination of the Agreement by the Client according to the procedure set in Clause 11.8.

14.5. The Client shall approve or reject the replacement of an Expert as soon as possible, but no later than within 5 (five) business days after the receipt of all information and documents necessary for a decision in accordance with the provisions in this Agreement.

## 15. CONFIDENTIALITY

15.1. Each Party undertakes to keep confidential the terms and conditions of the Agreement and Assignment order(s) and not to use or disclose any and all information of any kind or nature whatsoever, whether written or oral or whatsoever form, including, but not limited to, financial information, trade secrets, customer lists, any and all information and documents related to the negotiations and the subsequent performance of the Agreement between the Parties, which is not known to the general public ("**Confidential Information**").

15.2. The Service Provider and Experts (including but not limited to attorneys) of the Service Provider shall maintain confidentiality of the fact that the Client has requested the Service Provider to provide Legal Services as well as of the information that has become known to the Service Provider in the provision of Legal Services. The Service Provider shall use the Confidential Information only for the provision of the Legal Services agreed between the Parties in the Assignment order or to perform its other obligations under the Agreement and to restrict disclosure of the Confidential Information solely to those representatives who have to know the Confidential Information in order to carry out the Legal Services or perform Service Provider's obligations under the Agreement.

15.3. A Party has the right to disclose Confidential Information only if it is explicitly required to do so by law or pursuant to any order of court or other competent authority or tribunal or if such disclosure has been agreed by the other Party in writing.

15.4. The Client reserves the right to request the Service Provider and/or Expert to sign a confidentiality agreement for the implementation of a particular Assignment order.

15.5. The confidentiality obligation shall not expire in time.

15.6. If the Service Provider violates its confidentiality obligation, then it shall be liable to pay to the Client a contractual penalty in the amount corresponding to thrice (3x) the total sum of legal fee according to the Assignment orders if the breach took place in relation with the performance of the assignment, but not less than 10 000 EUR (ten thousand euros) for each breach of such obligation.

## 16. SERVICE PROVIDER AND EXPERTS' INDEPENDENCE AND ABSENCE OF CONFLICT OF INTEREST

16.1. If the Service Provider provides or will provide legal services to any person whose interests are or probably will be in conflict with the interests of the Client in relation with providing the assignment (in the past, in the present and in the foreseeable future) to the Client, or in case of any circumstances,

which harm or may harm the possibility of the Service Provider to act solely in the interests of the Client ("**Conflict of Interests**"), the Service Provider has the obligation to refrain from providing the assignment to the Client. For example, if the assignment involves the drafting of documentation for a procurement, the Service Provider would have to refrain from providing the assignment to the Client if the Service Provider provides or probably will provide legal services to persons that have an interest in that procurement.

- 16.2. As part of the obligation of the Service Provider to avoid Conflict of Interest, the Service Provider must also refrain from providing legal services to any person whose interests are or probably will be in conflict with the interests of the Client in relation with providing the Assignment (in the past, in the present and in the foreseeable future) to the Client. For example, if the assignment provided by the Service Provider involves the drafting of documentation for a procurement, the Service Provider would have to refrain from providing the legal services to persons that have an interest in that procurement.
- 16.3. The Service Provider immediately has to notify the Client before taking up any assignments, if there can be doubts whether such are permissible pursuant to the obligation to avoid Conflict of Interests set forth in this Agreement. In case of doubt, the Client has the right to decide whether a Conflict of Interests situation occurs or not.
- 16.4. If the Service Provider violates its obligation to avoid Conflict of Interests or fails to comply with it, it shall be liable to pay to the Client a contractual penalty in the amount corresponding to thrice (3x) the total sum of legal fee according to the Assignment order if the breach took place in relation with the performance of the assignment, but not less than 10 000 EUR (ten thousand *euros*) for each breach of such obligation.

## **17. VISIBILITY REQUIREMENTS**

- 17.1. The Service Provider is obliged to comply with the following visibility requirements:
- 17.1.1. Any reports, brochures, other documents or information connected with Deliverables which the Service Provider produces and submits to the Client or makes publicly available must include the following:
- (i) a funding statement stating that the Client is the recipient of the funding from the CEF: "Rail Baltica is co-financed by the European Union's Connecting Europe Facility";
  - (ii) (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>;
  - (iii) the European Union flag.
- 17.1.2. Requirements set in Clauses 17.1.1(i) - 17.1.1(iii) can be fulfilled by using the following logo:



## Co-financed by the European Union

### Connecting Europe Facility

If the Service Provider shall use this logo, the Service Provider 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;

- 17.1.3. The Service Provider is obliged to comply with the latest visibility requirements set by the European Union. For that purpose, the Service Provider 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>.

## 18. TECHNICAL, LEGAL AND FINANCIAL CHECKS AND AUDITS

- 18.1. By giving a written notice 5 (five) working days in advance, but in case of an unannounced check or audit without an advance notice, the Client may carry out technical, legal and financial checks and audits in relation to the implementation of the Contract.
- 18.2. Checks and audits may be carried out either directly by the authorized staff of the Client or by any other outside body authorised to do so on Client's behalf.
- 18.3. Information and documents obtained in the framework of checks or audits shall be treated on a confidential basis. Client shall ensure that its staff and any outside body authorised by the Client be bound by the confidentiality obligation.
- 18.4. The Service Provider shall sure that the performer of the check or audit or any other outside body authorised has access to all the information and documents, including information in electronic format, which is requested by the performer of the check or audit or any other outside body authorised for the performance of the check or audit and which relates to the implementation of the contract, as well as shall allow the performer of the check or audit or any other outside body authorised by it copying of the information and documents with due respect to the confidentiality obligation.

## 19. GOVERNING LAW; RESOLUTION OF DISPUTES

- 19.1. The rights of the Parties hereto and the validity, interpretation and implementation of this Agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of Latvia. In the event of any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach, termination or invalidity hereof or thereof, the disputing Party shall provide written notice thereof to the other Party. The Parties shall attempt in the first instance to resolve such dispute through amicable consultations.
- 19.2. When any dispute occurs, and is the subject of amicable consultations, the Parties shall continue to exercise their remaining respective rights, and fulfil their remaining respective obligations, under this Agreement.



19.3. If the dispute is not resolved by amicable consultation within thirty (30) days after notice of a dispute is given by a Party, then any Party may submit the dispute for final resolution by a competent court of the Republic of Latvia.

## 20. MISCELLANEOUS

20.1. The Agreement is done in two copies in English.

20.2. The payment of any contractual penalty hereunder shall not relieve either Party from the responsibility to perform any of the obligations of such Party set forth in the Agreement or deriving from the applicable law.

20.3. Any amendments to the Agreement shall be valid if made in writing and signed by the respective authorized persons of both Parties. Any amendments must not make changes to the Agreement that might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers participated in this procurement.

20.4. If at any time, any clause of the Agreement becomes illegal, invalid or unenforceable, in any respect, under the applicable law, neither the legality, validity nor enforceability of the remaining provisions of the Agreement shall in any way be affected or impaired thereby. The Parties shall, in good faith, utilize their best efforts to replace any illegal, invalid or unenforceable clause with such that is legal, valid and enforceable and comes as close as possible to the invalid clause as regards its economic intent.

20.5. The Client cannot be held liable for any damage caused or sustained by the Service Provider or a third party during or as a consequence of performing the Agreement, except in the event of the Client's wilful misconduct or gross negligence.

20.6. 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 order of precedence of the text of such Annexes (including any calculation) shall be established according to the sequence of listing in Clause 21.

20.7. The Agreement is concluded in 2 (two) copies, one for each, all having the same legal effect.

## 21. ANNEXES

*(to be added after procurement results)*

Annex A – Terms of Reference/Technical specification of the Procurement on [●] pages;

Annex B – Tenderers' Proposal on [●] pages;

Annex C– Draft Assignment order on [●] pages;

Annex D – Service Provider's declaration on [●] pages.

SIGNATURES

For the Service Provider:

For the Client:

**ANNEX C: ASSIGNMENT ORDER**

**ASSIGNMENT ORDER (CONTRACT) NO. [●]**

**Date [●]**

**FOR THE PROVISION OF LEGAL SERVICES**

This Assignment order has been entered into pursuant to the Framework Agreement No [●], for the provision of legal services between

**RB Rail AS**, a company organized and existing under the laws of Republic of Latvia, registry code 40103845025, registered address Krišjāņa Valdemāra iela 8-7, Rīga LV-1010, Republic of Latvia ( the **Client**), represented by [position] [name], and

a company [●] organized and existing under the laws of [country], registry code [●], registered address [●] ( **Service Provider**), represented by [position] [name],

for providing of the Assignment order by the Service Provider to the Client on the following conditions:

1. Name of the Expert to implement Assignment order: [●]
2. Assignment order is covered in the following Service line: [●]
3. Description of the Assignment order and the desired result: [●].
4. Form/output of the deliverables: [●].
5. Timeline/deadline for implementing the Assignment order: [●].
6. Contact person(s) for the Client: [●].
7. Contact person(s) for the Service Provider: [●].
8. Work load (in hours) and sum of fee in total (exclusive of VAT) for implementing legal services of Assignment order: [●].
9. Out-of-pocket costs: [●].
10. Reimbursement of additional expenses: [●].
11. Payment: According to the Framework Agreement for Legal services.
12. No Conflict of Interest: Service Provider and Expert appointed to implement Assignment order confirms having no Conflict of Interests in the meaning of the requirements specified in Section 16 of the Agreement for the provision of legal services regarding the above described Assignment order.
13. Governance: This Assignment order supplements, forms part of and is subject to the Agreement for the provision of legal services. All provisions contained in the Agreement thereof govern this Assignment order. In the event of any inconsistency between the provisions of the Agreement for the provision of legal services and this Assignment order, this Assignment order shall prevail.
14. Other terms: [●].

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**RB Rail AS**

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**[Service Provider]**

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**[Expert]**

## ANNEX D: SERVICE PROVIDER'S DECLARATION

I, the undersigned duly authorised representative, on behalf of [*name of the Service Provider*] undertake:

1. To respect the freely-exercised right of workers, without distinction, to organize, further and defend their interests and to bargain collectively, as well as to protect those workers from any action or other form of discrimination related to the exercise of their right to organize, to carry out trade union activities and to bargain collectively;
2. Not to use forced or compulsory labour in all its forms, including but not limited to not employ people against their own free will, nor to require people to lodge 'deposits' or identity papers upon commencing employment;
3. Not to employ: (a) children below 14 years of age or, if higher than that age, the minimum age of employment permitted by the law of the country or countries where the performance, in whole or in part, of a contract takes place, or the age of the end of compulsory schooling in that country or countries, whichever is higher; and (b) persons under the age of 18 for work that, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of such persons;
4. To ensure equality of opportunity and treatment in respect of employment and occupation without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin and such other ground as may be recognized under the national law of the country or countries where the performance, in whole or in part, of a contract takes place;
5. To ensure the payment of wages in legal fashion, at regular intervals no longer than one month, in full and directly to the workers concerned; to keep an appropriate record of such payments. Deductions from wages will be conducted only under conditions and to the extent prescribed by the applicable law, regulations or collective Contract, and the workers concerned shall be informed of such deductions at the time of each payment. The wages, hours of work and other conditions of work shall be not less favourable than the best conditions prevailing locally (i.e., as contained in: (i) collective Contracts covering a substantial proportion of employers and workers; (ii) arbitration awards; or (iii) applicable laws or regulations), for work of the same character performed in the trade or industry concerned in the area where work is carried out;
6. To ensure, so far as is reasonably practicable, that: (a) the workplaces, machinery, equipment and processes under their control are safe and without risk to health; (b) the chemical, physical and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken; and (c) where necessary, adequate protective clothing and protective equipment are provided to prevent, so far as is reasonably practicable, risk of accidents or of adverse effects to health;
7. To support and respect the protection of internationally proclaimed human rights and not to become complicit in human rights abuses;
8. To create and maintain an environment that treats all employees with dignity and respect and will not use any threats of violence, sexual exploitation or abuse, verbal or psychological harassment or abuse. No harsh or inhumane treatment coercion or corporal punishment of any kind is tolerated, nor is there to be the threat of any such treatment;

9. To have an effective environmental policy and to comply with existing legislation and regulations regarding the protection of the environment; wherever possible support a precautionary approach to environmental matters, undertake initiatives to promote greater environmental responsibility and encourage the diffusion of environmentally friendly technologies implementing sound life-cycle practices;
10. To identify and manage chemical and other materials posing a hazard if released to the environment to ensure their safe handling, movement, storage, recycling or reuse and disposal;
11. To monitor, control and treat as required prior to discharge or disposal wastewater and solid waste generated from operations, industrial processes and sanitation facilities;
12. To characterize, monitor, control and treat as required prior to discharge or disposal air emissions of volatile organic chemicals, aerosols, corrosives, particulates, ozone depleting chemicals and combustion by-products generated from operations;
13. To reduce or eliminate at the source or by practices, such as modifying production, maintenance and facility processes, materials substitution, conservation, recycling and re-using materials, waste of all types, including water and energy;
14. To adhere to the highest standards of moral and ethical conduct, to respect local laws and not engage in any form of corrupt practices, including but not limited to extortion, fraud, or bribery;
15. To disclose (a) any situation that may appear as a conflict of interest, such as but not limited to: where a Service Provider or an undertaking related to the Service Provider has advised a Beneficiary or Implementing Body or has otherwise been involved in the preparation of the procurement procedure; and (b) if any Beneficiaries' or Implementing Bodies' official, professional under contract with Beneficiary or Implementing Body or sub-contractor may have a direct or indirect interest of any kind in the Service Provider's business or any kind of economic ties with the Service Provider;
16. Not to offer any benefit such as free goods or services, employment or sales opportunity to a Beneficiary's and Implementing Body's staff member in order to facilitate the Service Providers' business with Beneficiaries or Implementing Bodies;
17. Within a period set in the applicable national legislation following separation from service or award of a contract, as the case may be, to refrain from offering employment to any Beneficiaries' and Implementing Bodies' staff in service and former Beneficiaries' and Implementing Bodies' staff members who participated in the procurement process and to whom a legal restriction to receive material benefits from or be employed by a Service Provider which participated in a procurement procedure or restrictions with similar effect applies;
18. To promote the adoption of the principles set forth in this Service Provider's Declaration by my potential business partners and promote the implementation of the principles set forth in this document towards own Service Providers;
19. Not procure goods, works and services from other Service Providers:
  - a. Who, or its member of the Management Board or the Supervisory Board or procurator of such Service Provider, or a person having the right to represent such Service Provider in activities related to a subsidiary, has been

found guilty in any of the following criminal offences by a such punishment prescription of prosecutor or a judgement of a court that has entered into effect and is non-disputable and not subject to appeal:

- i. bribetaking, bribery, bribe misappropriation, intermediation in bribery, taking of prohibited benefit or commercial bribing;
  - ii. fraud, misappropriation or laundering;
  - iii. evading payment of taxes and payments equivalent thereto,
  - iv. terrorism, financing of terrorism, invitation to terrorism, terrorism threats or recruiting and training of a person for performance of terror acts;
- b. who, by such a decision of a competent authority or a judgment of a court which has entered into effect and has become non-disputable and not subject to appeal, has been found guilty of an infringement of employment rights which means:
- i. employment of such one or more citizens or nationals of countries, which are not citizens or nationals of the European Union Member States, if they reside in the territory of the European Union Member States illegally;
  - ii. employment of one person without entering into a written employment contract, not submitting an informative declaration regarding employees in respect of such person within a time period laid down in the laws and regulations, which is to be submitted regarding persons who commence work;
- c. who, by such a decision of a competent authority or a judgment of a court which has entered into effect and has become non-disputable and not subject to appeal, has been found guilty of infringement of competition rights manifested as a vertical Contract aimed at restricting the opportunity of a purchaser to determine the resale price, or horizontal cartel Contract, except for the case when the relevant authority, upon determining infringement of competition rights, has released the candidate or tenderer from a fine or reduced fine within the framework of the co-operation leniency programme;
- d. whose insolvency proceedings have been announced (except the case where a bailout or similar set of measures is applied within insolvency proceedings oriented towards prevention of possible bankruptcy and restoration of solvency of the debtor, in which case I shall evaluate the possibility of such Service Provider to participate in the tender), economic activity of such Service Provider has been suspended or discontinued, proceedings regarding bankruptcy of such Service Provider have been initiated or such Service Provider will be liquidated;
- e. who has tax debts in the country where the procurement is organised or a country where such Service Provider is registered or permanently residing, including debts of State social insurance contributions, in total exceeding an amount which is common threshold in public procurements in the respective country.

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[signature] [name, last name] [position] [date]

**ANNEX NO 4.2: DRAFT CONTRACT FOR PART 2**

**CONTRACT  
ON  
LEGAL SERVICES**

**between**

**RB Rail AS**

**and**

**[•]**

**No 8/2017-[•]**

**Dated [•] [•] 2017**

CONTRACT NO [●]

FOR THE PROVISION OF LEGAL SERVICES

Riga [●]

Contract registration number

CEF<sup>29</sup> Contract No INEA/CEF/TRAN/M201[●]/[●]

[●]

This contract ("Contract") between:

RB Rail AS (a joint stock company registered in the Latvian Commercial Register uniform registration No 40103845025, legal address at K.Valdemāra iela 8-7, Riga, LV 1010, Latvia ("Client"), represented by Chairperson of the Management Board Ms Baiba Anda Rubesa, Management Board Member [●], Management Board Member [●], Management Board Member [●] acting on the basis of the Company's Statutes, on the one side

and

[●], registration No [●], legal address at [●], represented by [●] acting on the basis of [●], on the other side, ("Service Provider")

who are collectively referred to as the "Parties" and separately – as "Party".

WHEREAS:

- (A) Core business of the Client is design, construction and marketing (including branding) of the new fast conventional double track electrified railway line with the maximum design speed of 240 km/h and European standard gauge (1435 mm) on the route from Tallinn through Pärnu Riga Panevezys Kaunas to Lithuanian Polish Border ("Project") financed under the auspices of Connecting Europe Facility ("CEF").
- (B) On [date] [month] 2017 the Client has announced an open competition entitled "Legal Services" (Identification No. RBR 2017/20) ("Procurement").
- (C) On [date] [month] 2017 the Service Provider submitted proposal in response to the tender announced by the Company for Procurement Part 2 ("Proposal") and committed to provide the legal services.

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<sup>29</sup> Grant Agreement under the Connecting Europe Facility (CEF) -Transport Sector Agreement No INEA/CEF/TRAN/M201[●]/[●]

(D) in the Procurement the Service Provider Proposal was selected for entering into Contract for Open Competition Part 2 "Legal services";

(E) This Contract is co-financed from the Connecting Europe Facility (CEF), CEF<sup>30</sup> Contract No INEA/CEF/TRAN/M201[●]/[●], Action No [●],

NOW, THEREFORE, the Parties hereby enter into this contract ("**Contract**") on the following terms and conditions:

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<sup>30</sup> Grant Agreement under the Connecting Europe Facility (CEF) -Transport Sector Agreement No INEA/CEF/TRAN/M201[●]/[●]



## 1. SUBJECT OF THE CONTRACT

- 1.1. The Client hereby orders the Service Provider and the Service Provider hereby undertakes to provide to the Client the Company Secretary Services ("Legal Services") conforming to the following requirements and specifications:
  - 1.1.1.the specifications and requirements contained in the Technical Specification of Procurement Regulations of Annex A to this Contract;
  - 1.1.2.the terms and conditions contained in the Proposal of Annex B to this Contract;
  - 1.1.3.applicable requirements and recommendations of the European Union;
  - 1.1.4.applicable legislative acts of the Republic of Latvia;
  - 1.1.5.the Client's Statutes, regulations, guidelines and policies, and
  - 1.1.6.specific instructions of the Client.
- 1.2. The purpose of the Contract is to define the terms and conditions under which the Service Provider shall provide legal services to the Client.
- 1.3. The Service Provider shall be obliged to perform the Legal Services through following personnel: [●] ("Expert"). The Service Provider shall not be entitled to change this person without the prior written consent of the Client.
- 1.4. If the Service Provider fails to duly provide Legal Services, the Service Provider is obligated to pay a contractual penalty to the Client at the Client's request in the amount corresponding to twice (2x) the total sum of monthly fee for Legal Services.

## 2. CONTRACT VALUE AND PERIOD

- 2.1. As compensation for the providing the Legal Services, the Client shall pay the Service Provider fixed monthly fee EUR ([amount] euro and [amount] cents) ("Fee") comprising the following:
  - 2.1.1.a service fee in the amount of EUR ([amount] euro and [amount] cents); and
  - 2.1.2.value added tax at the rate of 21% amounting to EUR ([amount] euro and [amount] cents).
- 2.2. The Contract period is 24 months starting from the Commencement date.
- 2.3. Contract terminates after Contract period expires.

## 3. PERFORMANCE OF THE CONTRACT

- 3.1. The Service Provider must perform the Contract in compliance with its provisions, the instructions given by the Client, under all legal obligations applicable under EU and national law.
- 3.2. The Service Provider and the Expert providing the Legal Services to the Client must comply with the relevant professional diligence and applicable legislation governing the activities of legal advisers (in case of

attorneys, in addition to the respective bar association rules and related regulations) and the provision of Legal Services must be of consistently high quality.

- 3.3. The Service Provider shall, within reason and in the scope of Legal Services, endeavour to carry out all activities that would reasonably assist and aid the Client, always act in the best interests of the Client and use its best endeavours to engage all legal means reasonably available.
- 3.4. The Client shall deliver to the Service Provider relevant essential information necessary for the provision of Legal Services. The Client understands that the proper provision of Legal Services requires the Client to inform the Service Provider of any changes to that information.
- 3.5. The Client shall provide the Service Provider or Service Provider's nominated legal adviser (Expert) with a respective power of attorney at the request of the Service Provider, if necessary for providing the Legal Services.
- 3.6. The Client shall have the final and exclusive right in the negotiations, terms, decisions, agreements etc. and in any and all matters related to Legal Services, including but not limited to the final right to decide whether or not to conclude any agreement(s), litigate, submit documents etc.
- 3.7. The Service Provider shall provide the Client with all and any information and documentation in its possession or control relating to the Legal Services provided to the Client. The Service Provider shall return original documents to the Client immediately at the Client's request.
- 3.8. The Service Provider shall carry out the tasks, prepare and provide all documents, reports, minutes of the meetings and any other information material (i.e. provide Deliverables<sup>31</sup>) specified in Annex A of this Contract.
- 3.9. The Client reserves the right to ask the Service Provider or Expert to provide an intermediate result of Deliverables in short notice, in order to check the progress of the providing of Legal Services. The Service Provider or Expert shall provide the Client with the information, status of the progress including proof thereof, such as intermediate documentation, reports, etc. within the short notice period.
- 3.10. As a part of the Deliverables, the Service Provider shall prepare information material in a fully comprehensive and understandable<sup>32</sup> way, by providing explicit and full source details (initial information, evidences etc.) used for the analysis and provision of Deliverables.
- 3.11. The Client shall have no responsibility over any content of Deliverables provided by the Service Provider.
- 3.12. Approval by the Client of the Deliverables shall not mean the approval of the outcome results (reports, agreements, procedural documents, summary, advice, decisions etc.) delivered by the Service Provider. Service Provider shall bear full responsibility of the Deliverables provided by it.

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<sup>31</sup> Definition "Deliverables" shall include all tasks (including, but not limiting to, actions and information material, agreements, Supervisory Board meetings' minutes, Shareholders meetings' minutes, procedural and other documents) to be carried out by the Service Provider in order to fully implement the Legal Services.

<sup>32</sup> The information provided in the Deliverables shall be understandable to the average-level lawyer or manager with no particular experience in a specific topic concerned.

#### 4. RIGHTS AND OBLIGATIONS

- 4.1. The Service Provider shall be responsible for the availability of the Expert implementing Legal Services.
- 4.2. The Service Provider shall be responsible for ensuring that the Expert included in the Contract fulfil the requirements thereof as long as it comes to Expert's responsibility.
- 4.3. The Service Provider shall remain fully responsible for the results (including Client's losses incurred due to such results) of its services after the completion of Legal Services. Any additional expenses arisen due to the correction of unacceptable outcome results shall be covered solely by the Service Provider. The Client reserves the right to request the Service Provider to correct the results of its services.
- 4.4. The Service Provider must keep records and other supporting documentation (original supporting documents) as evidence that the Contract is correctly performed and the expenses were actually incurred. These must be available for review upon the Client's request.
- 4.5. The Client is obliged to pay for the services of the Service Provider in accordance with the rules of this Contract.
- 4.6. The Service Provider is obliged to ensure a valid professional risk indemnity insurance agreement with limit of liability in the amount of at least 1 000 000,00 EUR (one million *euro*) for any insurance claim covering all period of validity of the Contract. The Service Provider is obliged to submit to the Client a copy of a renewed insurance agreement or a new insurance agreement including the above-mentioned provisions within five (5) working days before the date of expiry of the previous insurance agreement.

#### 5. PAYMENTS

- 5.1. Service Provider must make a request for payment to obtain its remuneration for provided Legal services and reimbursement of expenses agreed in the Contract. The Service Provider must submit the invoice for the previous months based on the fee referred to in Clause 2.1 no later than the fifth day of the following month.
- 5.2. Invoices should be sent to the e-mail [invoices@railbaltica.org](mailto:invoices@railbaltica.org) and should include the following details about the Contract: Identification number RBR 2017/20, and name of the contact person Ģirts Rūda.
- 5.3. The Client shall make the payment after 15 (fifteen) days from the date on which the Client receives properly prepared payment request (invoice).
- 5.4. The Client may suspend the payment at any time if:
  - 5.4.1. the Deliverable is not accepted by the Client;
  - 5.4.2. invoice supporting documents are missing;
  - 5.4.3. the invoice is incorrect;
  - 5.4.4. the Client has to make further checks to verify details of invoice.
- 5.5. The Client shall reject the invoice (parts of) if it does not fulfil the conditions of the Contract.

- 5.6. The Client may reduce the fee if the Service Provider is in breach of any of its other obligations under the Contract. The Client must formally notify the Service Provider of its intention, include the reasons why, and invite the Service Provider to submit any observations within 15 days of receiving notification. If the Client does not accept these observations, it will formally notify confirmation of the rejection or reduction.
- 5.7. Payments are subject to the Client's approval of Deliverable(s) and of the invoice(s).
- 5.8. The Client may at any point suspend the payment deadline, if an invoice cannot be processed because it does not comply with the Contract's provisions. The Client must formally notify the Service Provider of the suspension and the reasons for it. After the condition for suspending the payment deadline is mitigated, the suspension will be lifted — and the remaining payment period will resume.
- 5.9. If the payment deadline has been suspended due to the non-compliance with the Contract's conditions and the Service Provider fails to rectify it within the reasonable period of time, the Client may also terminate the Contract.
- 5.10. Payments will be made in *euros*.
- 5.11. The Client shall pay the amounts shown on the invoice by bank transfer to the bank account of the Service Provider. Each Party bears its own bank charges.
- 5.12. The fees described in Clause 2.1 of this Contract are exclusive of VAT. The VAT treatment for the supply of Legal Services shall be determined pursuant to the VAT laws of the jurisdiction where a taxable transaction for the VAT purposes is deemed to take place. If VAT is payable on any contractual amounts, the Client shall pay to the Service Provider an amount equal to the VAT at the rate applicable from time to time, provided that such amount shall only be required to be paid after the Service Provider provides the Client with a valid VAT invoice in relation to that amount. Each Party shall, on request, provide the other Party with any additional VAT invoices or other documentation required for VAT purposes.

## **6. REIMBURSEMENT OF TRAVEL EXPENSES**

- 6.1. The Client shall reimburse the travel expenses incurred by the Service Provider during the provision of services only in the following cases:
- 6.1.1. travel expenses are indicated in invoice and agreed with the Client;
  - 6.1.2. travel expenses incurred for an Expert – Company Secretary, for participating in the Supervisory Board meetings;
  - 6.1.3. travel expenses are justified by documents.
- 6.2. In case the Principal for the participation in the Supervisory Board's meeting requires the Expert to travel from his/her place of residence or Service Provider's office (whatever is applicable) for more than 200 km one way, the Client shall reimburse incurred travel<sup>33</sup> expenses for the Expert - Company Secretary.

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<sup>33</sup> The point of departure shall be limited to the location in Europe.

6.3. The Expert shall ensure average level economical travel and accommodation expenses. The Client reserves the right to choose the accommodation.

6.4. The following travel expenses are subject to reimbursement:

6.4.1. Bus travel expenses, if distance of less than 400 km one-way;

6.4.2. Second-class rail travel expenses, if distance of less than 400 km one-way;

6.4.3. Economy class air travel expenses, if distance of more than 400 km one-way;

6.4.4. A travel expense (a return ticket) shall not exceed 500 EUR. Travel expense exceeding 500 EUR on return ticket will be reimbursed at 500 EUR max.

## **7. OWNERSHIP AND USE OF THE RESULTS (INCLUDING INTELLECTUAL PROPERTY RIGHTS)**

7.1. The Client will fully and irrevocably acquire the ownership of the results under this Contract including any rights in any of the results listed in this Contract, including copyright and other intellectual or industrial property rights, and all technological solutions and information contained therein, produced in performance of the Contract.

7.2. The Client will acquire all rights and obligations in this Clause 4 from the moment the Deliverables (results) are delivered by the Service Provider and are not limited in time and will be valid after the expiry of the Contract.

7.3. The copyright fee has been included in the fee (Clause 2.1). The transfer of copyright shall also remain valid if the Contract is prematurely terminated for any reason and/or terminated without the complete delivery of the Deliverables.

7.4. The Client has the right to publish material submitted by the Service Provider without the Service Provider's permission, as well as to require the Service Provider to change it, to redo it, to divide it into parts. If the Service Provider and the Client cannot agree on the execution of this work, the Client is entitled to involve another Service Provider in carrying out the said task.

7.5. The Service Provider shall undertake to ensure that the Services, the execution of Services or the use of the any of the Deliverables not violate the rights, including copyright, of third persons.

7.6. If the Services, the execution of the Services or the use of the Deliverables or other deliverables produced while rendering the Services violate the rights of third persons, the Service Provider shall be liable for the violation. The Service Provider shall be obliged to compensate the damage caused to third persons and satisfy any claims for the compensation of damage filed against the Client by third persons.

## **8. ON-THE-SPOT VISITS**

8.1. By virtue of Council Regulation (Euratom, EC) No 2185/961 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EU) No 883/20132 of the European Parliament and the Council of 11 September 2013 concerning investigations conducted by the European

Anti-Fraud Office (OLAF), OLAF may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by Union law for the protection of the financial interests of the Union against fraud and other irregularities. Where appropriate, OLAF findings may lead to criminal prosecution under national law.

- 8.2. By giving a written notice 5 (five) business days in advance, but in case of an unannounced check without an advance notice, the Client may carry out independent on-the-spot visits to the sites and premises where the activities implemented within the Contract are or were carried out.
- 8.3. On-the-spot visits may be carried out either directly by the authorised staff of the Client or by any other outside body authorised to do so on behalf of the Client. Information provided in the framework of on-the-spot visits shall be treated on confidential basis. The Client shall ensure that any outside body authorised shall be bound by the confidentiality obligation.
- 8.4. The Service Provider shall ensure that the performer of the on-the-spot visit or any other outside body authorised has access to all the information and documents, including information and documents in electronic format, which is requested by the authorised staff of the performer of the on-the-spot visit or any other outside body authorised for the performance of an on-the-spot visit and which relates to the implementation of the Contract, as well as shall allow the authorised staff of the performer of the on-the-spot visit or any other outside body authorised copying of the information and documents, with due respect to the confidentiality obligation.

## **9. AMENDING THE CONTRACT; TERMINATION OF THE CONTRACT**

- 9.1. The Contract can be amended in compliance with the provisions of Article 61 of the Public Procurement Law including but not limited to the provisions of point 5 of Section 2 of Article 61.
- 9.2. If after the conclusion of the Contract amendments are made to the existing laws and regulations and in consequence the costs of Service Provider's Legal Services increase or decrease and when a prior warning has been given, then, after a mutual agreement by the Parties, the Fee is amended.
- 9.3. Amendments to the Contract are proposed by the Party who sees a need for the amendments by submitting a justification for the proposal of amendments.
- 9.4. Amendments and supplements to the Contract shall be valid only when they have been prepared in writing and signed by the Parties; they shall be enclosed to this Contract and become an integral part of it.
- 9.5. When deciding on amending the Contract, compliance with Public Procurement Law of the Republic of Latvia, Procurement and requirements under its Regulation must be ensured.
- 9.6. This Contract may be terminated by a Party by giving the other Party sixty (60) days prior written notice of termination ("**Regular Termination**"). In the event of Regular Termination, the Contract shall remain legally binding on the Parties until, but only in respect of, all rights and obligations already created or existing prior to the date of the Regular Termination are fully performed by both Parties.
- 9.7. The Client reserves the right to terminate the Contract within 10 (ten) business days after sending a written notice to the Service Provider due to the following reasons:

- 9.7.1. The Service Provider has committed substantial errors, irregularities or fraud, or is in serious breach of its obligations under the procurement procedure or under the Contract, including false declarations and obligations relating;
- 9.7.2. The Service Provider breaches conditions of the Contract and does not cure the breach within 20 (twenty) business days of written notice of same;
- 9.7.3. Service Provider and/or its Expert poorly performs his/her tasks defined in the Contract.
- 9.8. The Parties reserve the right to terminate the Contract at any time after sending a written notice:
- 9.8.1. the Client fails to make a payment where such failure has not been eliminated within thirty (30) calendar days after receipt of a written notice of failure to pay from the Service Provider;
- 9.8.2. a Party is dissolved, declares bankruptcy, becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- 9.8.3. a breach of confidentiality (Clause 13) occurs;
- 9.8.4. a breach of obligation to avoid Conflict of Interests (Clause 14) occurs;
- 9.8.5. the Service Provider fails to submit a valid professional risk indemnity insurance agreement within a time mentioned in Clause 4.6.
- 9.9. The Client reserves the right to terminate the Contract for the reasons when services of the Service Provider are no longer required.
- 9.10. If the Client has unilaterally terminated the Contract due to non-fulfilment of the obligations undertaken in the Contract by the Service Provider, the Client has the right within 12 (twelve) months from the date of the termination of the Contract to disqualify the Service Provider from participation in any tenders organized by the Client.

## **10. FORCE MAJEURE**

- 10.1. 'Force majeure' means any situation or event that:
- 10.1.1. prevents either Party from fulfilling their obligations under the Contract;
- 10.1.2. was unforeseeable, exceptional and beyond the Parties' control;
- 10.1.3. was not due to error or negligence on their part; and
- 10.1.4. proves to be inevitable in spite of exercising due diligence.
- 10.2. A force majeure must be immediately and formally notified to the other Party.
- 10.3. Notification must include details of the situation's nature, likely duration and expected effects.
- 10.4. The Party faced with a force majeure will not be held in breach of its Contract obligations if the force majeure has prevented it from fulfilling them.

## **11. COMMUNICATION BETWEEN THE PARTIES**

11.1. Communication under the Contract (e.g. information, requests, submissions, formal notifications, etc.) must:

- 11.1.1. be carried out in English;
- 11.1.2. be made in writing (including electronic form); and
- 11.1.3. bear the Contract's number.

11.2. Communications by e-mail are deemed made when they are sent by the sending Party and receipt is confirmed by the receiving Party, unless the sending Party receives a message of non-delivery. Sending Party is responsible to get the confirmation that a message (with all its contents) sent via e-mail was received.

11.3. Assignment orders, notices, declarations and invoices shall be deemed received:

- 11.3.1. if delivered by hand, on the first business day following the delivery day;
- 11.3.2. if sent by post, on the fifth (5<sup>th</sup>) business day after the date of posting;

11.4. if sent by email and provided that no "out of office reply" or similar has been returned on the day of sending if sent before 17:00 on a business day, or otherwise at 09:00 hours on the first business day following such sending (Latvian time applies)

11.5. If the final day of a time period referred to in this Contract is Saturday, Sunday or a holiday prescribed by law, the following working day shall be considered the final day of the time period.

11.6. The Parties agree that information may be exchanged electronically over the internet.

## **12. EXPERT CHANGE**

12.1. Only in exceptional cases Expert included in the Contract can be replaced by signing an amendment to the Contract.

12.2. The proposed Expert's qualifications must be equivalent or better than the replaced Expert proving it by submitting the same qualification documents/information as for the selected Expert within the procurement process.

12.3. The Client reserves the right to request the Service Provider to replace an Expert in case of any of the following reasons:

- 12.3.1. repeated careless performance of duties;
- 12.3.2. incompetence or negligence;
- 12.3.3. non-fulfilment of obligations or duties stipulated in the Contract;
- 12.3.4. poor knowledge of English language (unsatisfactory presentation, writing skills in English);



12.3.5. termination of employment relations or cooperation agreement with the Service Provider.

12.4. Failing of the Service Provider to propose another Expert with equivalent or better qualifications within 10 (ten) business days period might lead to the termination of the Contract by the Client according to the procedure set in Clause 9.8.

12.5. The Client shall approve or reject the replacement of an Expert as soon as possible, but no later than within 5 (five) business days after the receipt of all information and documents necessary for a decision in accordance with the provisions in this Contract.

### **13. CONFIDENTIALITY**

13.1. Each Party undertakes to keep confidential the terms and conditions of the Contract and not to use or disclose any and all information of any kind or nature whatsoever, whether written or oral or whatsoever form, including, but not limited to, financial information, trade secrets, customer lists, any and all information and documents related to the negotiations and the subsequent performance of the Contract between the Parties, which is not known to the general public ("**Confidential Information**").

13.2. The Service Provider and Expert (including but not limited to attorneys) of the Service Provider shall maintain confidentiality of the fact that the Client has requested the Service Provider to provide Legal Services as well as of the information that has become known to the Service Provider in the provision of Legal Services. The Service Provider shall use the Confidential Information only for the provision of the Legal Services or to perform its other obligations under the Contract and to restrict disclosure of the Confidential Information solely to those representatives who have to know the Confidential Information in order to carry out the Legal Services or perform Service Provider's obligations under the Contract.

13.3. A Party has the right to disclose Confidential Information only if it is explicitly required to do so by law or pursuant to any order of court or other competent authority or tribunal or if such disclosure has been agreed by the other Party in writing.

13.4. The Client reserves the right to request the Service Provider and/or Expert to sign a confidentiality agreement for the implementation of the Contract.

13.5. The confidentiality obligation shall not expire in time.

13.6. If the Service Provider violates its confidentiality obligation, then it shall be liable to pay to the Client a contractual penalty in the amount of 10 000 EUR (ten thousand *euros*) for each breach of such obligation.

### **14. SERVICE PROVIDER AND EXPERT'S INDEPENDENCE AND ABSENCE OF CONFLICT OF INTEREST**

14.1. If the Service Provider provides or will provide legal services to any person whose interests are or probably will be in conflict with the interests of the Client in relation with providing the Legal Services (in the past, in the present and in the foreseeable future) to the Client, or in case of any circumstances, which harm or may harm the possibility of the Service Provider to act solely in the interests of the Client ("**Conflict of Interests**"), the Service Provider has the obligation to refrain from providing the Legal Services to the Client.

- 14.2. As part of the obligation of the Service Provider to avoid Conflict of Interest, the Service Provider must also refrain from providing legal services to any person whose interests are or probably will be in conflict with the interests of the Client in relation with providing the Legal Services (in the past, in the present and in the foreseeable future) to the Client.
- 14.3. The Service Provider has to immediately notify the Client before taking up any assignments, if there can be doubts whether such are permissible pursuant to the obligation to avoid Conflict of Interests set forth in this Contract. In case of doubt, the Client has the right to decide whether a Conflict of Interests situation occurs or not.
- 14.4. If the Service Provider violates its obligation to avoid Conflict of Interests or fails to comply with it, it shall be liable to pay to the Client a contractual penalty in the amount up to thrice (3x) the total sum of Fee according to the Contract, but not less than 10 000 EUR (ten thousand *euros*) for each breach of such obligation. The Client provides an exact amount of a contractual penalty based on the seriousness of the breach of Conflict of Interests.

## 15. VISIBILITY REQUIREMENTS

15.1. The Service Provider is obliged to comply with the following visibility requirements:

15.1.1. Any reports, brochures, other documents or information connected with Deliverables which the Service Provider produces and submits to the Client or makes publicly available must include the following:

- (i) a funding statement stating that the Client is the recipient of the funding from the CEF: "Rail Baltica is co-financed by the European Union's Connecting Europe Facility";
- (ii) (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>;
- (iii) the European Union flag.

15.1.2. Requirements set in Clauses 17.1.1(i) - 17.1.1(iii) can be fulfilled by using the following logo:



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

If the Service Provider shall use this logo, the Service Provider 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;

15.1.3. The Service Provider is obliged to comply with the latest visibility requirements set by the European Union. For that purpose, the Service Provider shall follow the changes in the visibility requirements on its own. On the date of conclusion of this Contract 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>.

## **16. TECHNICAL, LEGAL AND FINANCIAL CHECKS AND AUDITS**

16.1. By giving a written notice 5 (five) working days in advance, but in case of an unannounced check or audit without an advance notice, the Client may carry out technical, legal and financial checks and audits in relation to the implementation of the Contract.

16.2. Checks and audits may be carried out either directly by the authorized staff of the Client or by any other outside body authorised to do so on Client's behalf.

16.3. Information and documents obtained in the framework of checks or audits shall be treated on a confidential basis. Client shall ensure that its staff and any outside body authorised by the Client be bound by the confidentiality obligation.

16.4. Service Provider shall provide to the performer of the check or audit or any other outside body authorised access to all the information and documents, including information in electronic format, which is requested by the performer of the check or audit or any other outside body authorised for the performance of the check or audit and which relates to the implementation of the Contract, as well as shall allow the performer of the check or audit or any other outside body authorised by it copying of the information and documents with due respect to the confidentiality obligation.

## **17. GOVERNING LAW; RESOLUTION OF DISPUTES**

17.1. The rights of the Parties hereto and the validity, interpretation and implementation of this Contract shall be governed by and construed and interpreted in accordance with the laws of the Republic of Latvia. In the event of any dispute, controversy, or claim arising out of or relating to this Contract, or the breach, termination or invalidity hereof or thereof, the disputing Party shall provide written notice thereof to the other Party. The Parties shall attempt in the first instance to resolve such dispute through amicable consultations.

17.2. When any dispute occurs, and is the subject of amicable consultations, the Parties shall continue to exercise their remaining respective rights, and fulfil their remaining respective obligations, under this Contract.

17.3. If the dispute is not resolved by amicable consultation within thirty (30) days after notice of a dispute is given by a Party, then any Party may submit the dispute for final resolution by a competent court of the Republic of Latvia.

## **18. MISCELLANEOUS**

18.1. The Contract is done in two copies in English.

- 18.2. The payment of any contractual penalty hereunder shall not relieve either Party from the responsibility to perform any of the obligations of such Party set forth in the Contract or deriving from the applicable law.
- 18.3. Any amendments to the Contract shall be valid if made in writing and signed by the respective authorized persons of both Parties. Any amendments must not make changes to the Contract that might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers participated in this procurement.
- 18.4. If at any time, any clause of the Contract becomes illegal, invalid or unenforceable, in any respect, under the applicable law, neither the legality, validity nor enforceability of the remaining provisions of the Contract shall in any way be affected or impaired thereby. The Parties shall, in good faith, utilize their best efforts to replace any illegal, invalid or unenforceable clause with such that is legal, valid and enforceable and comes as close as possible to the invalid clause as regards its economic intent.
- 18.5. The Client cannot be held liable for any damage caused or sustained by the Service Provider or a third party during or as a consequence of performing the Contract, except in the event of the Client's wilful misconduct or gross negligence.
- 18.6. In the event of any inconsistency between the terms of this Contract and any of the Annexes, the text of this Contract 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 order of precedence of the text of such Annexes (including any calculation) shall be established according to the sequence of listing in Clause 19 of the Contract.
- 18.7. The Contract is concluded in 2 (two) copies, one for each, all having the same legal effect.

## 19. ANNEXES

*(to be added after procurement results)*

Annex A – Terms of Reference/Technical specification of the Procurement on [●] pages;

Annex B – Tenderers' Proposal on [●] pages;

Annex C – Service Provider's declaration on [●] pages.

## SIGNATURES

For the Service Provider:

For the Client:

## ANNEX C: SERVICE PROVIDER'S DECLARATION

I, the undersigned duly authorised representative, on behalf of [*name of the Service Provider*] undertake:

20. To respect the freely-exercised right of workers, without distinction, to organize, further and defend their interests and to bargain collectively, as well as to protect those workers from any action or other form of discrimination related to the exercise of their right to organize, to carry out trade union activities and to bargain collectively;
21. Not to use forced or compulsory labour in all its forms, including but not limited to not employ people against their own free will, nor to require people to lodge 'deposits' or identity papers upon commencing employment;
22. Not to employ: (a) children below 14 years of age or, if higher than that age, the minimum age of employment permitted by the law of the country or countries where the performance, in whole or in part, of a contract takes place, or the age of the end of compulsory schooling in that country or countries, whichever is higher; and (b) persons under the age of 18 for work that, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of such persons;
23. To ensure equality of opportunity and treatment in respect of employment and occupation without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin and such other ground as may be recognized under the national law of the country or countries where the performance, in whole or in part, of a contract takes place;
24. To ensure the payment of wages in legal fashion, at regular intervals no longer than one month, in full and directly to the workers concerned; to keep an appropriate record of such payments. Deductions from wages will be conducted only under conditions and to the extent prescribed by the applicable law, regulations or collective Contract, and the workers concerned shall be informed of such deductions at the time of each payment. The wages, hours of work and other conditions of work shall be not less favourable than the best conditions prevailing locally (i.e., as contained in: (i) collective Contracts covering a substantial proportion of employers and workers; (ii) arbitration awards; or (iii) applicable laws or regulations), for work of the same character performed in the trade or industry concerned in the area where work is carried out;
25. To ensure, so far as is reasonably practicable, that: (a) the workplaces, machinery, equipment and processes under their control are safe and without risk to health; (b) the chemical, physical and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken; and (c) where necessary, adequate protective clothing and protective equipment are provided to prevent, so far as is reasonably practicable, risk of accidents or of adverse effects to health;
26. To support and respect the protection of internationally proclaimed human rights and not to become complicit in human rights abuses;
27. To create and maintain an environment that treats all employees with dignity and respect and will not use any threats of violence, sexual exploitation or abuse, verbal or psychological harassment or abuse. No harsh or inhumane treatment coercion or corporal punishment of any kind is tolerated, nor is there to be the threat of any such treatment;

28. To have an effective environmental policy and to comply with existing legislation and regulations regarding the protection of the environment; wherever possible support a precautionary approach to environmental matters, undertake initiatives to promote greater environmental responsibility and encourage the diffusion of environmentally friendly technologies implementing sound life-cycle practices;
29. To identify and manage chemical and other materials posing a hazard if released to the environment to ensure their safe handling, movement, storage, recycling or reuse and disposal;
30. To monitor, control and treat as required prior to discharge or disposal wastewater and solid waste generated from operations, industrial processes and sanitation facilities;
31. To characterize, monitor, control and treat as required prior to discharge or disposal air emissions of volatile organic chemicals, aerosols, corrosives, particulates, ozone depleting chemicals and combustion by-products generated from operations;
32. To reduce or eliminate at the source or by practices, such as modifying production, maintenance and facility processes, materials substitution, conservation, recycling and re-using materials, waste of all types, including water and energy;
33. To adhere to the highest standards of moral and ethical conduct, to respect local laws and not engage in any form of corrupt practices, including but not limited to extortion, fraud, or bribery;
34. To disclose (a) any situation that may appear as a conflict of interest, such as but not limited to: where a Service Provider or an undertaking related to the Service Provider has advised a Beneficiary or Implementing Body or has otherwise been involved in the preparation of the procurement procedure; and (b) if any Beneficiaries' or Implementing Bodies' official, professional under contract with Beneficiary or Implementing Body or sub-contractor may have a direct or indirect interest of any kind in the Service Provider's business or any kind of economic ties with the Service Provider;
35. Not to offer any benefit such as free goods or services, employment or sales opportunity to a Beneficiary's and Implementing Body's staff member in order to facilitate the Service Providers' business with Beneficiaries or Implementing Bodies;
36. Within a period set in the applicable national legislation following separation from service or award of a contract, as the case may be, to refrain from offering employment to any Beneficiaries' and Implementing Bodies' staff in service and former Beneficiaries' and Implementing Bodies' staff members who participated in the procurement process and to whom a legal restriction to receive material benefits from or be employed by a Service Provider which participated in a procurement procedure or restrictions with similar effect applies;
37. To promote the adoption of the principles set forth in this Service Provider's Declaration by my potential business partners and promote the implementation of the principles set forth in this document towards own Service Providers;
38. Not procure goods, works and services from other Service Providers;

- a. Who, or its member of the Management Board or the Supervisory Board or procurator of such Service Provider, or a person having the right to represent such Service Provider in activities related to a subsidiary, has been found guilty in any of the following criminal offences by a such punishment prescription of prosecutor or a judgement of a court that has entered into effect and is non-disputable and not subject to appeal:
  - i. bribetaking, bribery, bribe misappropriation, intermediation in bribery, taking of prohibited benefit or commercial bribing;
  - ii. fraud, misappropriation or laundering;
  - iii. evading payment of taxes and payments equivalent thereto,
  - iv. terrorism, financing of terrorism, invitation to terrorism, terrorism threats or recruiting and training of a person for performance of terror acts;
- b. who, by such a decision of a competent authority or a judgment of a court which has entered into effect and has become non-disputable and not subject to appeal, has been found guilty of an infringement of employment rights which means:
  - i. employment of such one or more citizens or nationals of countries, which are not citizens or nationals of the European Union Member States, if they reside in the territory of the European Union Member States illegally;
  - ii. employment of one person without entering into a written employment contract, not submitting an informative declaration regarding employees in respect of such person within a time period laid down in the laws and regulations, which is to be submitted regarding persons who commence work;
- c. who, by such a decision of a competent authority or a judgment of a court which has entered into effect and has become non-disputable and not subject to appeal, has been found guilty of infringement of competition rights manifested as a vertical Contract aimed at restricting the opportunity of a purchaser to determine the resale price, or horizontal cartel Contract, except for the case when the relevant authority, upon determining infringement of competition rights, has released the candidate or tenderer from a fine or reduced fine within the framework of the co-operation leniency programme;
- d. whose insolvency proceedings have been announced (except the case where a bailout or similar set of measures is applied within insolvency proceedings oriented towards prevention of possible bankruptcy and restoration of solvency of the debtor, in which case I shall evaluate the possibility of such Service Provider to participate in the tender), economic activity of such Service Provider has been suspended or discontinued, proceedings regarding bankruptcy of such Service Provider have been initiated or such Service Provider will be liquidated;
- e. who has tax debts in the country where the procurement is organised or a country where such Service Provider is registered or permanently residing, including debts of State social insurance contributions, in total exceeding an amount which is common threshold in public procurements in the respective country.

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[signature] [name, last name] [position] [date]