

# REGULATIONS

FOR OPEN COMPETITION

**"TAX ADVISORY AND REPORTING SERVICES FOR RB RAIL AS  
IN 2019-2020"**

(IDENTIFICATION NO RBR 2018/31)



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

Riga

2019

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## 1. ABBREVIATIONS AND TERMS

- 1.1. **Common procurement vocabulary (CPV)** – a nomenclature approved by the European Union, which is applied in public procurement procedures;
- 1.2. **Contract** - signed agreement between Contracting authority and a Contractor to provide services defined in this agreement;
- 1.3. **Contracting authority** (also, the Contracting entity) - the joint stock company RB Rail AS, registration number 40103845025, legal address: Kr. Valdemāra iela 8-7, Riga, LV-1010, Latvia;
- 1.4. **Contractor** - service provider awarded the right to enter into the Contract in Open competition to provide services in accordance with requirements stipulated in Regulations and Contract;
- 1.5. **Identification number** – designation, which includes the abbreviation of the name of the Contracting authority (the first capital letters), the relevant year and the procurement sequence number in ascending order (RBR 2018/31);
- 1.6. **Open competition** (also, the Procurement) - a procurement procedure “Tax advisory and reporting services for RB Rail AS in 2019-2020” (identification number: RBR 2018/31) in which all interested Suppliers are entitled to submit their Proposals;
- 1.7. **Procurement commission** – commission which composition has been established by the joint stock company RB Rail AS, order No 11/2018-71 dated 6 December 2018, issued by the Management Board of joint stock company RB Rail AS;
- 1.8. **Proposal** - documentation package the Tenderer submits to participate in the Open competition;
- 1.9. **Regulations** – regulations of the Open competition “Tax advisory and reporting services for RB Rail AS in 2019-2020” (identification number: RBR 2018/31), as well as all the enclosed annexes;
- 1.10. **Supplier** – a natural person or a legal person, a group or association of such persons in any combination thereof, which offers to perform works, supply products or provide services accordingly;
- 1.11. **Tenderer** – a Supplier which has submitted a Proposal.

## 2. GENERAL INFORMATION

- 2.1. The identification number of the Open Competition is No RBR 2018/31.
- 2.2. The Contracting entity is joint stock company RB Rail AS, legal address: Kr. Valdemāra iela 8-7, Riga, LV-1010, Latvia (hereinafter – Contracting authority).
- 2.3. The Open competition is co-financed by the Contracting authority and Connecting Europe Facility (CEF).
- 2.4. The subject-matter of the Open competition has been divided in 3 (three) parts:

No	Subject-matter	CPV codes
Part No. 1	Tax compliance and reporting services for RB Rail AS Estonia branch.	Main: 79222000-6 (Tax-return preparation services)

No	Subject-matter	CPV codes
		Additional: 79221000-9 (Tax consultancy services)
Part No. 2	Tax compliance and reporting services for RB Rail AS Lithuania branch.	Main: 79222000-6 (Tax-return preparation services) Additional: 79221000-9 (Tax consultancy services)
Part No. 3	On-demand tax advisory services covering all taxes and duties in Estonia, Latvia and Lithuania.	79221000-9 (Tax consultancy services)

- 2.5. The Tenderer can submit a Proposal for the entire volume of the Procurement or for any separate part indicated in Section 2.4 of the Regulations.
- 2.6. 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.
- 2.7. The estimated value of the contract is:
  - 2.7.1. for the Procurement Part No. 1 "Tax compliance and reporting services for RB Rail AS Estonia branch" - 40 000,00 EUR (forty thousand euros zero cents), excluding value added tax (hereinafter – VAT);
  - 2.7.2. for the Procurement Part No. 2 "Tax compliance and reporting services for RB Rail AS Lithuania branch" - 40 000,00 EUR (forty thousand euros zero cents), excluding VAT;
  - 2.7.3. for the Procurement Part No. 3 "On-demand tax advisory services covering all taxes and duties in Estonia, Latvia and Lithuania" – 50 000,00 EUR (fifty thousand euros zero cents), excluding VAT.
- 2.8. Open competition is organized in accordance with the Public Procurement Law of Latvia in effect on the date of publishing the contract notice.
- 2.9. Open competition is carried out using E-Tenders system which is subsystem of the Electronic Procurement System (<https://www.eis.gov.lv/EKEIS/Supplier>).
- 2.10. The Regulations is freely available in Contracting authority's profile in the E-Tenders system at webpage <https://www.eis.gov.lv/EKEIS/Supplier> and the webpage of the Contracting authority <http://railbaltica.org/tenders/>.
- 2.11. Amendments to the Regulations and answers to Suppliers' questions shall be published on the E-Tenders system's webpage <https://www.eis.gov.lv/EKEIS/Supplier> and the Contracting authority's webpage <http://railbaltica.org/tenders/>. It is the Supplier's responsibility to constantly follow the information published on the webpages and to take it into consideration in preparation of its Proposal.
- 2.12. Contact persons of the Contracting authority for Open competition is Procurement specialist - lawyer, Vineta Kļaviņa, telephone: +371 29352018, e-mail address: [Vineta.Klavina@railbaltica.org](mailto:Vineta.Klavina@railbaltica.org).
- 2.13. The exchange of information between the Procurement commission and the Supplier shall be in writing (by sending documents electronically via e-mail or using E-Tenders system) in English (if information is submitted in Latvian, it shall be accompanied by a translation into English).

- 2.14. If the Supplier does not have access to the E-Tenders system, the Supplier shall follow the guidance for obtaining access to the system available on the Contracting authority's website at <http://www.railbaltica.org/procurement/e-procurement-system/>.
- 2.15. The Supplier can request additional information regarding the Regulations. Additional information can be requested in writing via the E-Tendering system or (in case the Supplier does not yet have access to the system) by sending it to the Procurement commission electronically via e-mail (see Section 2.12 of the Regulations). Any additional information must be requested in a timely fashion, so that the Procurement commission can reply on time - no later than 6 (six) days prior to the deadline of the Proposal submission. The Procurement commission shall provide response within 5 (five) business days from the day of receipt of the request from the Supplier.
- 2.16. The Supplier covers all expenses, which are related to the preparation of the Proposal and its submission to the Contracting authority. Under no circumstances will the Contracting authority be liable for compensation of any costs and damages related to the preparation and submission of the Proposal (including, *inter alia*, costs associated with any site visits) or the Supplier's participation in the Procurement exercise.

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

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

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

- 4.1. The Procurement commission ensures the documenting the process of the Open competition procedure.
- 4.2. The Procurement commission ensures free and direct electronic access to the Open competition documents in Contracting authority's profile at the E-Tenders system's webpage <https://www.eis.gov.lv/EKEIS/Supplier> and at the webpage of the Contracting authority <http://railbaltica.org/tenders/>.

- 4.3. If an interested Supplier has in a timely fashion in writing by post, or electronically (including via E-Tenders system), or delivering in person requested additional information about the requirements included in Open competition documents regarding the preparation and submission of the Proposal or regarding the selection of Tenderers, the Procurement commission provides a response electronically within 5 (five) business days, but not later than 6 (six) days before the deadline for submitting Proposals. Simultaneously with sending this information to the Supplier who had asked the question, the Contracting authority publishes this information in Contracting authority's profile on the E-Tenders system's webpage <https://www.eis.gov.lv/EKEIS/Supplier> and on its webpage <http://railbaltica.org/tenders/> where Open competition documents are available, indicating the question asked.
- 4.4. If the Contracting authority has amended the Open competition documents, it publishes this information in Contracting authority's profile on the E-Tenders system's webpage <https://www.eis.gov.lv/EKEIS/Supplier> and on the Contracting authority's webpage <http://railbaltica.org/tenders/> where Open competition documents are available no later than 1 (one) day after the notification regarding the amendments has been submitted to Procurement Monitoring Bureau for publication. If Supplier wishes to receive relevant updates/notifications by email regarding the Procurement exercise (e.g. when amendments to the procurement package documentation are published), Supplier shall register as an interested supplier on the E-Tenders system for the particular Procurement exercise accordingly.
- 4.5. The exchange and storage of information is carried out in such a way that all data included in the Proposals is protected and the Contracting authority can check the content of the Proposals only after the expiration of the deadline for their submission. During the time from the deadline of submission of Proposals until the opening of the Proposals the Contracting authority does not disclose any information regarding the existence of other Proposals therefore. During the time of Proposal assessment, the Contracting authority does not disclose any information regarding the assessment process until the announcement of the results.
- 4.6. The Procurement commission assesses the Tenderers and their Proposals based on the Public Procurement Law, Open competition documents, as well as other applicable regulatory enactments.
- 4.7. The Procurement commission prepares a report on the Open competition and publishes it in Contracting authority's profile on the E-Tenders system's webpage <https://www.eis.gov.lv/EKEIS/Supplier> and on the Contracting authority's webpage <http://railbaltica.org/tenders/> within 5 (five) business days from the day when the decision about the results of the Open competition is made.

## **5. THE RIGHTS OF THE TENDERER**

- 5.1. The Tenderer has the right to submit Tenderer's Electronic Procurement System registration documents (if the Tenderer is not registered in Electronic Procurement System) in State Regional Development Agency (please see information here <http://www.railbaltica.org/procurement/e-procurement-system/>).
- 5.2. The Tenderer can request and within 3 (three) business days after submitting the request receive a copy of the Proposal opening sheet which is an annex to the Proposal opening session minutes.
- 5.3. If the Contracting authority gets the necessary information about the Tenderer directly from a competent institution, through data bases or other sources and the Tenderer's submitted information differs from information obtained by the Contracting authority, the Tenderer in question has the right to submit evidence to prove the correctness of the information the Tenderer

has submitted, if the information obtained by the Contracting authority does not conform to the factual situation.

- 5.4. If a Tenderer believes that its rights have been violated or such violation is possible due to possible violation of the regulatory enactments of the European Union or other regulatory enactments, the Tenderer has the right to submit a complaint to the Procurement Monitoring Bureau according to the procedure stipulated in the Section 68 of Public Procurement Law regarding the Tenderer selection requirements, Technical specification or other requirements relating to Open competition, or relating to the activities by the Contracting authority or the Procurement commission during the Open competition.

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

- 6.1. The subject-matter of the Procurement is a provision of tax advisory and reporting services for RB Rail AS in Estonia, Latvia and Lithuania in accordance with Technical specifications (Annex No. 1, Annex No. 2 and Annex No. 3) (hereinafter – Services).
- 6.2. The delivery of the Services will take place:
  - 6.2.1. In Part No. 1 - in Estonia;
  - 6.2.2. In Part No. 2 – in Lithuania;
  - 6.2.3. In Part No. 3 – in Estonia, Latvia and Lithuania.
- 6.3. Period of provision of Services:
  - 6.3.1. For Part No. 1 – till 31 March 2021;
  - 6.3.2. For Part No. 2 - till 31 March 2021;
  - 6.3.3. For Part No. 3 – till 31 December 2020.
- 6.4. If unplanned additional tasks will arise during the provision of services within Procurement Contract for Part No. 1 or Part No. 2, the parties will have rights to amend the Procurement Contract in accordance with Section 61 (including Paragraph 5) of the Public Procurement Law of the Republic of Latvia and the Contracting authority will pay for unplanned additional services in accordance with the blended hourly rate specified in the Tenderer's financial offer for unplanned tasks.

## **7. TENDERER**

- 7.1. The Proposal can be submitted by:
  - 7.1.1. A Supplier who is a legal or natural person (hereinafter – the Tenderer) which offers on the market to perform works, supply products or provide services accordingly and who complies with the selection criteria for Tenderers;
  - 7.1.2. A group of Suppliers (hereinafter also – the Tenderer, partnership) which offer on the market to perform works, supply products or provide services accordingly and who complies with the selection criteria for Tenderers:
    - 7.1.2.1. A group of Suppliers who have formed a partnership for Open competition. In this case all the members of the partnership shall be listed in Annex No. 4 "Application for participating in the Open procedure". 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;

- 7.1.2.2. An established and registered partnership (a general partnership or a limited partnership within the meaning of Latvian Commercial Law, Chapter IX and X) which complies with the selection criteria for Tenderers.

## 8. SELECTION CRITERIA FOR TENDERERS

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

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

No	Requirement	Documents to be submitted (unless documents are specifically requested by the Procurement commission, no obligation to submit any)
8.1.1.	<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 authorized to represent the Tenderer in operations in relation to a branch, has been found guilty of or has been subjected to coercive measures for committing any of the following criminal offences by such a public prosecutor’s order regarding punishment or a court judgement that has entered into force and may not be challenged and appealed:</p> <p>a) establishment, management of, involvement in a criminal organization or in an organized group included in the criminal organization or other criminal formation, or participation in criminal offences committed by such an organization,</p> <p>b) bribe-taking, bribery, bribe misappropriation, intermediation in bribery, unauthorized participation in property transactions, taking of prohibited benefit, commercial bribing, unlawful claiming of benefits, accepting or providing of benefits, trading influences,</p> <p>c) fraud, misappropriation or money-laundering,</p>	<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 authorized 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 who is registered in Latvia 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 authorized to represent the Tenderer in operations in relation to a branch is registered or residing outside of Latvia, the Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence.</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 authorized to represent the Tenderer in operations in relation to a branch, which are registered or</li> </ul>



No	Requirement	Documents to be submitted (unless documents are specifically requested by the Procurement commission, no obligation to submit any)
	d) terrorism, terrorism funding, creation or organization of a terrorist group, traveling for terrorist purposes, justification of terrorism, calling to terrorism, terrorism threats or recruiting or training a person in performance of acts of terrorism,  e) human trafficking,  f) evasion from payment of taxes or similar payments.	residing outside of Latvia the Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence.
8.1.2.	It has been detected that on the last day of Proposal submission term or on the day when a decision has been made on possible granting of rights to conclude the Procurement Contract, the Tenderer has tax debts in Latvia or a country where it has been incorporated or is permanently residing, including debts of mandatory state social insurance contributions, exceeding 150 euro in total in any of the countries.	<ul style="list-style-type: none"> <li>- For a Tenderer which is registered or residing in Latvia, the Contracting authority shall verify the information itself in publicly available databases.</li> <li>- For a Tenderer which is registered or residing outside of Latvia the Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence.</li> </ul>
8.1.3.	Tenderer's insolvency proceedings have been announced, the Tenderer's business activities have been suspended, the Tenderer is under liquidation.	<ul style="list-style-type: none"> <li>- For a Tenderer which is registered or residing in Latvia, the Contracting authority shall verify the information itself in publicly available databases.</li> <li>- For a Tenderer which is registered or residing outside of Latvia, the Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence.</li> </ul>
8.1.4.	In case a person who drafted the Procurement procedure documents (Contracting authority's official or employee), Procurement commission member or expert is related to the Tenderer, or is interested in selection of some Tenderer, and the Contracting authority cannot prevent/resolve this situation by measures that cause less restrictions on Tenderers (such a Tenderer shall be excluded from the Procurement procedure). A person who drafted the Procurement procedure	No obligation to submit documents, unless specifically requested by the Procurement commission.

No	Requirement	Documents to be submitted (unless documents are specifically requested by the Procurement commission, no obligation to submit any)
	<p>documents (Contracting authority's official or employee), Procurement commission member or expert is presumed to be related to the Tenderer in any of the following cases:</p> <ul style="list-style-type: none"> <li>- If he or she is a current or and ex-employee, official, shareholder, procura holder or member of a Tenderer or a subcontractor which are legal persons and if such relationship with the legal person terminated within the last 24 (twenty-four) months;</li> <li>- If he or she is the father, mother, grandmother, grandfather, child, grandchild, adoptee, adopter, brother, sister, half-brother, half-sister or spouse (hereinafter – relative) of a Tenderer's or subcontractor's, which is a legal person, shareholder who owns at least 10% of the shares in a joint-stock company, shareholder in a limited liability company, procure holder or an official;</li> <li>- or if he or she is a relative of a Tenderer or a subcontractor which is a natural person.</li> </ul> <p>If the Tenderer is a partnership, consisting of natural or legal persons, a relation to the Tenderer is presumed also if a person who drafted the Procurement procedure documents (Contracting authority's official or employee), Procurement commission member or expert is related to a member of a partnership in any of the above-mentioned ways.</p>	
8.1.5.	<p>The Tenderer has an advantage that limits competition in the Procurement procedure if it or its related legal person consulted the Contracting authority or the Tenderer was otherwise 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</p>	<p>No obligation to submit documents, unless specifically requested by the Procurement commission.</p>

No	Requirement	Documents to be submitted (unless documents are specifically requested by the Procurement commission, no obligation to submit any)
	<p>preparing the Procurement procedure does not restrict competition.</p>	
8.1.6.	<p>Within previous 12 (twelve) months before submission of the Proposal, by such a decision of a competent authority or a court judgment which has entered into force and may not be challenged and appealed, the Tenderer has been found guilty of violating competition laws manifested as a horizontal cartel agreement, except for the case when the relevant authority, upon detecting violation of competition laws, has released the Tenderer from a fine or has decreased the fine for cooperation within a leniency program.</p>	<ul style="list-style-type: none"> <li>- For a Tenderer which is registered or residing in Latvia, the Contracting authority shall verify the information itself in publicly available databases.</li> <li>- For a Tenderer which is registered or residing outside of Latvia, the Tenderer shall submit an appropriate evidence from the competent authority of the country of registration or residence regarding the (non)existence of such exclusion grounds.</li> </ul>
8.1.7.	<p>Within previous 3 (three) years before submission of the Proposal, by such a decision of a competent authority or a court judgment which has entered into force and may not be challenged and appealed, the Tenderer has been found guilty of a violation manifested as employment of one or more persons which do not possess the required employment permit or if it is illegal for such persons to reside in a Member State of the European Union.</p>	<ul style="list-style-type: none"> <li>- For a Tenderer which is registered or residing in Latvia, the Contracting authority shall verify the information itself in publicly available databases.</li> <li>- For a Tenderer which is registered or residing outside of Latvia, the Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence regarding the (non)existence of such exclusion grounds.</li> </ul>
8.1.8.	<p>Within previous 12 (twelve) months before submission of the Proposal, by such a decision of a competent authority or a court judgment which has entered into force and may not be challenged and appealed, the Tenderer has been found guilty of a violation manifested as employment of a person without a written employment contract, by failing within the term specified in regulatory enactments to submit an informative employee declaration regarding this person, which must be submitted about persons who start working.</p>	<ul style="list-style-type: none"> <li>- For a Tenderer which is registered or residing in Latvia, the Contracting authority shall verify the information itself in publicly available databases.</li> <li>- For a Tenderer which is registered or residing outside of Latvia, the Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence regarding the (non) existence of such exclusion grounds.</li> </ul>

No	Requirement	Documents to be submitted (unless documents are specifically requested by the Procurement commission, no obligation to submit any)
8.1.9.	The Tenderer has provided false information to prove its compliance with provisions of Section 8.1 or qualification criteria or has not provided the required information at all.	No obligation to submit documents, unless specifically requested by the Procurement commission.
8.1.10.	The Tenderer is offshore <sup>1</sup> legal entity or association of persons.	<ul style="list-style-type: none"> <li>- For a Tenderer which is registered in Latvia, the Contracting authority shall verify the information itself by using the information system laid down by the Cabinet of Ministers, obtaining information from the Enterprise register.</li> <li>- For a Tenderer which is registered outside of Latvia, the Tenderer shall submit a copy of a valid registration certificate or a similar document issued by a competent authority, wherefrom at least the fact of registration country of the Tenderer can be determined.</li> </ul>
8.1.11.	The owner or keeper of more than 25 percent of share capital (share) of a Tenderer which is registered in Latvia, is offshore legal entity or association of persons.	<p>For a Tenderer which is registered in Latvia:</p> <ul style="list-style-type: none"> <li>• the Contracting authority shall verify the information itself in publicly available databases. If information about the Tenderer isn't available, Tenderer shall submit self – declaration which approves fact that there are no owners or keepers of more than 25 percent of share capital (share) of a Tenderer which are registered offshore.</li> </ul>

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<sup>1</sup> With the assignment of definition "**Offshore**" here and for all references to "Offshore" Procurement commission understands: low tax or tax-free country or territory in accordance with Corporate income tax law of the Republic of Latvia except Member Dates of EEA (European Economic Area) or its territories, Member States of the World Trade Organization Agreement on State Treaties or territories and such countries and territories with which European Union and Republic of Latvia has international agreements for open market in public procurement area.

No	Requirement	Documents to be submitted (unless documents are specifically requested by the Procurement commission, no obligation to submit any)
		<ul style="list-style-type: none"> <li>• if the Tenderer is a joint stock company, Tenderer additionally shall submit self – declaration which approves fact that there are no owners or keepers of more than 25 percent of share capital (share) of a Tenderer which are registered offshore.</li> </ul>
8.1.12.	Anyone of subcontractors indicated by the Tenderer whose estimated value of the works or services to be provided is 10% of the total value of the public works, services or supply contract or person on whose capacity Tenderer is relying is a registered offshore company (legal person) or offshore association of persons.	<ul style="list-style-type: none"> <li>- For a subcontractors or person on whose capacity Tenderer is relying, which is registered in Latvia, the Contracting authority shall verify the information itself in publicly available databases.</li> <li>- For a subcontractors or person on whose capacity Tenderer is relying, which is a legal person registered abroad (with its permanent place of residence abroad) the Tenderer shall submit 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.</li> </ul>
8.1.13.	International or national sanctions or substantial sanctions by the European Union or the North Atlantic Treaty Organization Member State affecting the interests of the financial and capital market has been imposed to the Tenderer or a person who is the Tenderers board or council member, person with representation rights or a procura holder, or a person who is authorized to represent the Tenderer in operations in relation to a branch and such sanctions can affect the execution of the Contract.	No obligation to submit documents, unless specifically requested by the Procurement commission.

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

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

No	Requirement	Documents to be submitted
		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 capacity the Tenderer is relying, or a sub-contractor (powers of attorney, authorization agreements etc.) must be included.
8.2.2.	The representative of the Tenderer, or a member of a partnership, or a person on whose capacity 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.	<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 capacity a Tenderer relies, who signs the Proposal. For a Tenderer (or a member of a partnership), a person on whose capacity a Tenderer relies, which is a legal person registered in Latvia the Contracting authority shall verify the information itself in publicly available databases.</li> <li>- If the Tenderer (or a member of a partnership), or a person on whose capacity 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>

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

No	Requirement	Documents to be submitted
8.3.1.	<p><u>If the Tenderer submits a Proposal for one part of the Procurement only</u>, the Tenderer's or all members of the partnership together (if the Tenderer is a partnership and confirms the average financial turnover jointly), average financial turnover within the last 3 (three) financial years (2016, 2017, 2018) is not less than 80 000 EUR (eighty thousand euros) per year.</p> <p><u>If the Tenderer submits a Proposal for two parts of the Procurement</u>,</p>	<ul style="list-style-type: none"> <li>- Filled and signed Annex No. 5 "Confirmation of Tenderer's financial standing".</li> <li>- Audited or self-approved (if the audited annual report is not required by the law of the country of residence of the Tenderer) annual reports for financial years 2016, 2017, 2018, showing the turnover of the Tenderer or each member of the partnership on whose capacity the Tenderer is relying to certify its financial and economic performance and who will be financially responsible for the fulfilment of the Contract/-s (if the Tenderer is a partnership), or other entity on whose capacity the Tenderer is relying to certify its financial and economic performance</li> </ul>

No	Requirement	Documents to be submitted
	<p>the Tenderer's or all members of the partnership together (if the Tenderer is a partnership and confirms the average financial turnover jointly), average financial turnover within the last 3 (three) financial years (2016, 2017, 2018) is not less than 160 000 EUR (one hundred sixty thousand euros) per year.</p> <p><u>If the Tenderer submits a Proposal for all parts of the Procurement</u>, the Tenderer's or all members of the partnership together (if the Tenderer is a partnership and confirms the average financial turnover jointly), average financial turnover within the last 3 (three) financial years (2016, 2017, 2018) is not less than 260 000 EUR (two hundred sixty thousand euros) per year.</p> <p>In the event the 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 financial turnover shall be recognized in the amount of the investment in the limited partnership.</p> <p>In the event the Tenderer or a member of a partnership (if the Tenderer is a partnership) has operated in the market for less than 3 (three) financial years, the requirement shall be met during the Tenderer's actual operation period.</p>	<p>and who will be financially responsible for the fulfilment of the Contract/-s.</p> <ul style="list-style-type: none"> <li>- If annual report for financial year 2018 is not available yet, Tenderer has to submit other documents showing the annual financial turnover and values for of the Tenderer for the financial year 2018.</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>- If the previous 3 (three) reporting years of the Tenderer differ from the years specified in this Section 8.3.1 of the Regulations (2016, 2017, 2018), the financial turnover necessary must be indicated for the Tenderer's previous 3 (three) reporting years.</li> <li>- If the Proposal is submitted by a partnership, the Tenderer shall indicate the member of the partnership on whose capacity the Tenderer is relying to certify its financial and economic performance and who will be financially and economically responsible for fulfilment of the Contract/-s including this information in the agreement of cooperation (or letter of intention to enter into agreement) stipulated in Section 8.2.1 of the Regulations.</li> <li>- If the Tenderer is relying on any other entities' capacity to certify its financial and economic performance and who will be financially and economically responsible for the fulfilment of the Contract, the Tenderer along with the Proposal submits confirmation or agreement on cooperation and/or passing of resources to the Tenderer, signed between such entity and the Tenderer (please see the Section 9 of the Regulations for detailed information).</li> </ul>
8.3.2.	<p>The Tenderer and each member of the partnership (if the Tenderer is a partnership) on whose capacity the Tenderer is relying to</p>	<ul style="list-style-type: none"> <li>- Filled and signed Annex No. 5 "Confirmation of Tenderer's financial standing".</li> <li>- Audited or self-approved (if the audited annual report is not required by the law of the country</li> </ul>



No	Requirement	Documents to be submitted
	<p>certify it's financial and economic performance and who will be financially and economically responsible for the fulfilment of the Contract/-s and other entity on whose capacity the Tenderer is relying to certify it's financial and economic performance and who will be financially and economically responsible for the fulfilment of the Contract/-s, shall have stable financial and economic performance, namely, in the last financial year 2018 liquidity ratio (current assets divided by short-term liabilities) shall be equal to or exceed 1 (one) and shall have positive equity.</p>	<p>of residence of the Tenderer) annual report for financial year 2018, showing the balance and calculation that proves liquidity ratio and positive equity.</p> <ul style="list-style-type: none"> <li>- If annual report for financial year 2018 is not available yet, Tenderer has to submit other documents showing the annual financial turnover and values for of the Tenderer for the financial year 2018.</li> <li>- If the Tenderer is a partnership, it indicates each member of the partnership on whose capacity it relies to certify its financial and economic performance and who will be financially and economically responsible for the fulfilment of the Contract/-s, including this information in the agreement of cooperation or letter of intention to enter into agreement or in any other similar document, signed by all parties involved and submits it along with the Proposal (please see Section 9 of the Regulations for detailed information).</li> <li>- If the Tenderer is relying on any other entity's capacity to certify its financial and economic performance and who will be financially and economically responsible for the fulfilment of the Contract/-s, the Tenderer along with the Proposal submits confirmation or agreement on cooperation and/or passing of resources to the Tenderer, signed between such entity and the Tenderer (please see Section 9 of the Regulations for detailed information).</li> </ul>
8.3.3.	<p><u>If the Tenderer submits a Proposal for first part of the Procurement</u>, the Tenderer or at least one member of the partnership (if the Tenderer is a partnership) shall have a valid professional risk indemnity insurance with limit of liability in the amount of at least 300 000,00 EUR (three hundred thousand euros zero cents) for any insurance claim and in the aggregate for the policy period during whole term of performance of the Procurement</p>	<ul style="list-style-type: none"> <li>- Documentation that proves its possession of a valid insurance certificate (with amount according to Section 8.3.3 of the Regulations), or a written statement of an insurance institution specifying that in case the Tenderer is awarded the Contract, the insurance institution will issue the insurance certificate (with amount according to Section 8.3.3 of the Regulations).</li> </ul>

No	Requirement	Documents to be submitted
	<p>Contract and with extended reporting period of 5 (five) years.</p> <p><u>If the Tenderer submits a Proposal for second part of the Procurement</u>, the Tenderer or at least one member of the partnership (if the Tenderer is a partnership) shall have a valid professional risk indemnity insurance with limit of liability in the amount of at least 300 000,00 EUR (three hundred thousand euros zero cents) for any insurance claim and in the aggregate for the policy period during whole term of performance of the Procurement Contract and with extended reporting period of 5 (five) years.</p> <p><u>If the Tenderer submits a Proposal for third part of the Procurement</u>, the Tenderer or at least one member of the partnership (if the Tenderer is a partnership) 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 euros zero cents) for any insurance claim and in the aggregate for the policy period during whole term of performance of the Procurement Contract and with extended reporting period of 5 (five) years.</p>	

#### 8.4. Technical and professional ability

##### 8.4.1. REQUIREMENTS FOR THE PART NO. 1

No	Requirement	Documents to be submitted
8.4.1.1.	In the past 3 (three) years (2016, 2017 and 2018) until the submission date of the Proposal Tenderer has provided regular tax compliance and reporting services to at	- Filled and signed Annex No. 6 "Description of the Tenderer's experience", where the Tenderer's experience is clearly specified.

No	Requirement	Documents to be submitted
	least 5 (five) Clients - local entities of international groups in Estonia - for the minimum period of 3 (three) consecutive months for each.	
8.4.1.2.	In the past 3 (three) years (2016, 2017 and 2018) until the submission date of the Proposal Tenderer has provided tax compliance and reporting services, including annual reporting in Estonia to at least 1 (one) branch of a foreign company.	- Filled and signed Annex No. 6 "Description of the Tenderer's experience", where the Tenderer's experience is clearly specified.
8.4.1.3.	In the past 3 (three) years (2016, 2017 and 2018) until the submission date of the Proposal Tenderer has provided payroll compliance services in Estonia to at least 3 (three) foreign companies with number of employees exceeding 10 (ten).	- Filled and signed Annex No. 6 "Description of the Tenderer's experience", where the Tenderer's experience is clearly specified.
8.4.1.4.	The Tenderer should propose a team consisting of the following key experts:	
8.4.1.4.1.	<b>Supervisor/manager*</b> meeting the following requirements:	
	(a) Master's degree or equivalent <sup>2</sup> in Accounting, Financial management, Law, Business administration or Economics.	- Filled in Annex No. 7 "Description of the Expert's experience" and signed by the Supervisor/manager. - A certified copy of diploma proving relevant level of education.
	(b) At least 5 (five) years' experience in tax advisory and reporting services in Estonia.	- Filled in Annex No. 7 "Description of the Expert's experience" and signed by the Supervisor/manager.
	(c) English language skills (at least B <sub>2</sub> Level - based on Common European Framework of Reference for Languages <sup>3</sup> ) in communication, presentation, negotiation and report writing.	- Self-declared information about language skills filled in Annex No. 7 "Description of the Expert's experience" and signed by the Supervisor/manager.

<sup>2</sup> Here and for all references of required education: minimal education degree of an expert is specified as a requirement. By submitting a Proposal, Tenderer is obligated to provide necessary information and evidence confirming that expert's education (specialisation) is directly linked to the professional profile of the corresponding key expert for which an expert is applying for.

<sup>3</sup> See <http://europass.cedefop.europa.eu/resources/european-language-levels-cefr>

No	Requirement	Documents to be submitted
8.4.1.4.2.	<b>At least 2 (two) Consultants*</b> each meeting the following requirements:	
	(a) Bachelor's degree or equivalent <sup>4</sup> in Accounting, Financial management, Law, Business administration or Economics.	<ul style="list-style-type: none"> <li>- Filled in Annex No. 7 "Description of the Expert's experience" and signed by the Consultant.</li> <li>- A certified copy of diploma proving relevant level of education.</li> </ul>
	(b) Experience in tax advisory and reporting services to at least 5 (five) Clients in Estonia within the last 3 (three) years (2016, 2017 and 2018) until the submission date of the Proposal.	<ul style="list-style-type: none"> <li>- Filled in Annex No. 7 "Description of the Expert's experience" and signed by the Consultant.</li> </ul>
	(c) English language skills (at least B <sub>2</sub> Level - based on Common European Framework of Reference for Languages <sup>5</sup> ) in communication, presentation, negotiation and report writing.	<ul style="list-style-type: none"> <li>- Self-declared information about language skills filled in Annex No. 7 "Description of the Expert's experience" and signed by the Consultant.</li> </ul>

\* One of the Consultants may serve Supervisor's/ manager's role, if the Consultant meets qualification requirements of both positions (Section 8.4.1.4.1 and Section 8.4.1.4.2 of the Regulations).

#### 8.4.2. REQUIREMENTS FOR THE PART NO. 2

No	Requirement	Documents to be submitted
8.4.2.1.	In the past 3 (three) years (2016, 2017 and 2018) until the submission date of the Proposal Tenderer has provided regular tax compliance and reporting services to at least 5 (five) Clients - local entities of international groups in Lithuania - for the minimum period of 3 (three) consecutive months for each.	<ul style="list-style-type: none"> <li>- Filled and signed Annex No. 6 "Description of the Tenderer's experience", where the Tenderer's experience is clearly specified.</li> </ul>
8.4.2.2.	In the past 3 (three) years (2016, 2017 and 2018) until the submission date of the Proposal Tenderer has provided tax compliance and reporting services, including annual tax reporting in Lithuania,	<ul style="list-style-type: none"> <li>- Filled and signed Annex No. 6 "Description of the Tenderer's experience", where the Tenderer's experience is clearly specified.</li> </ul>

<sup>4</sup> Here and for all references of required education: minimal education degree of an expert is specified as a requirement. By submitting a Proposal, Tenderer is obligated to provide necessary information and evidence confirming that expert's education (specialisation) is directly linked to the professional profile of the corresponding key expert for which an expert is applying for.

<sup>5</sup> See <http://europass.cedefop.europa.eu/resources/european-language-levels-cefr>

No	Requirement	Documents to be submitted
	to at least 1 (one) branch of a foreign company.	
8.4.2.3.	In the past 3 (three) years (2016, 2017 and 2018) until the submission date of the Proposal Tenderer has provided payroll compliance services in Lithuania to at least 3 (three) foreign companies with number of employees exceeding 10 (ten).	<ul style="list-style-type: none"> <li>- Filled and signed Annex No. 6 "Description of the Tenderer's experience", where the Tenderer's experience is clearly specified.</li> </ul>
	The Tenderer should propose a team consisting of the following key experts:	
8.4.2.4.1.	<b>Supervisor/manager*</b> meeting the following requirements:	
	(a) Master's degree or equivalent <sup>6</sup> in Accounting, Financial management, Law, Business administration or Economics.	<ul style="list-style-type: none"> <li>- Filled in Annex No. 7 "Description of the Expert's experience" and signed by the Supervisor/manager.</li> <li>- A certified copy of diploma proving relevant level of education.</li> </ul>
	(b) At least 5 (five) years' experience in tax advisory and reporting services in Lithuania.	<ul style="list-style-type: none"> <li>- Filled in Annex No. 7 "Description of the Expert's experience" and signed by the Supervisor/manager.</li> </ul>
	(c) English language skills (at least B <sub>2</sub> Level - based on Common European Framework of Reference for Languages <sup>7</sup> ) in communication, presentation, negotiation and report writing.	<ul style="list-style-type: none"> <li>- Self-declared information about language skills filled in Annex No. 7 "Description of the Expert's experience" and signed by the Supervisor/manager.</li> </ul>
8.4.2.4.2.	<b>At least 2 (two) Consultants*</b> each meeting the following requirements:	
	(a) Bachelor's degree or equivalent <sup>8</sup> in Accounting, Financial management, Law, Business administration or Economics.	<ul style="list-style-type: none"> <li>- Filled in Annex No. 7 "Description of the Expert's experience" and signed by the Consultant.</li> <li>- A certified copy of diploma proving relevant level of education.</li> </ul>

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

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

<sup>8</sup> Here and for all references of required education: minimal education degree of an expert is specified as a requirement. By submitting a Proposal, Tenderer is obligated to provide necessary information and evidence confirming that expert's education (specialisation) is directly linked to the professional profile of the corresponding key expert for which an expert is applying for.

No	Requirement	Documents to be submitted
	(b) Experience in tax advisory and reporting services to at least 5 (five) Clients in Lithuania within the last 3 (three) years (2016, 2017 and 2018) until the submission date of the Proposal.	- Filled in Annex No. 7 "Description of the Expert's experience" and signed by the Consultant.
	(c) English language skills (at least B <sub>2</sub> Level - based on Common European Framework of Reference for Languages <sup>9</sup> ) in communication, presentation, negotiation and report writing.	- Self-declared information about language skills filled in Annex No. 7 "Description of the Expert's experience" and signed by the Consultant.

\* One of the Consultants may serve Supervisor's/ manager's role, if the Consultant meets qualification requirements of both positions (Section 8.4.2.4.1 and Section 8.4.2.4.2 of the Regulations).

#### 8.4.3. REQUIREMENTS FOR THE PART NO. 3

No	Requirement	Documents to be submitted
8.4.3.1.	Within the period of previous 3 (three) years (2016, 2017 and 2018) until the submission date of the Proposal Tenderer has provided tax advisory services to at least 5 (five) Clients from any of the Baltic States, who's annual net turnover at the moment of provision of tax advisory services was equal or higher than 1 000 000,00 EUR (one million euros zero cents).	- Filled and signed Annex No. 6 "Description of the Tenderer's experience", where the Tenderer's experience is clearly specified. - In case of doubts, regarding Client's annual net turnover at the moment of provision of tax advisory services, Procurement commission may ask the Tenderer to provide documents, that confirm that Client corresponds to the requirements stipulated in the Section 8.4.3.1 of the Regulations.
8.4.3.2.	Within the period of previous 3 (three) years (2016, 2017 and 2018) until the submission date of the Proposal Tenderer has provided tax advisory services to at least 1 (one) Client whose business is related to public infrastructure construction or management.	Filled and signed Annex No. 6 "Description of the Tenderer's experience", where the Tenderer's experience is clearly specified.
8.4.3.3.	The Tenderer should propose a team consisting of the following key experts:	
8.4.3.3.1.	<b>At least 1 (one) VAT expert</b> meeting the following requirements:	

<sup>9</sup> See <http://europass.cedefop.europa.eu/resources/european-language-levels-cefr>

No	Requirement	Documents to be submitted
	(a) Master's degree or equivalent <sup>10</sup> in Accounting, Financial management, Law or Business administration.	<ul style="list-style-type: none"> <li>- Filled in Annex No. 7 "Description of the Expert's experience" and signed by the VAT expert.</li> <li>- A certified copy of diploma proving relevant level of education.</li> </ul>
	(b) Within the period of previous 5 (five) years (2014, 2015, 2016, 2017 and 2018) until the submission date of the Proposal expert has taken part as a VAT expert in representing Client's interests in at least 1 (one) case in any court of Latvia and assisted Client in at least 1 (one) dispute with State Revenue Service of Latvia regarding VAT.	<ul style="list-style-type: none"> <li>- Filled in Annex No. 7 "Description of the Expert's experience"* and signed by the VAT expert.</li> </ul> <p><i>*To follow confidentiality requirements, Client information in Annex No.7 can be left blank.</i></p>
	(c) English language skills (at least B <sub>2</sub> Level – based on Common European Framework of Reference for Languages <sup>11</sup> ) in communication, presentation, negotiation and report writing.	<ul style="list-style-type: none"> <li>- Self-declared information about language skills filled in Annex No. 7 "Description of the Expert's experience" and signed by the VAT expert.</li> </ul>
8.4.3.3.2.	<b>At least 1 (one) Direct taxation expert</b> meeting the following requirements:	
	(a) Master's degree or equivalent <sup>12</sup> in Accounting, Financial management, Law, Business administration or Economics	<ul style="list-style-type: none"> <li>- Filled in Annex No. 7 "Description of the Expert's experience" and signed by the Direct taxation expert.</li> <li>- A certified copy of diploma proving relevant level of education.</li> </ul>
	(b) Within the period of previous 3 (three) years (2016, 2017 and 2018) until the submission date of the Proposal expert as Direct taxation specialist has provided consulting services related to income taxes, involving preparation of transfer pricing documentation for	<ul style="list-style-type: none"> <li>- Filled in Annex No. 7 "Description of the Expert's experience" and signed by the Direct taxation expert.</li> <li>- In case of doubts, regarding Client's annual net turnover at the moment of provision of services, Procurement commission may ask the Tenderer to provide documents, that</li> </ul>

<sup>10</sup> Here and for all references of required education: minimal education degree of an expert is specified as a requirement. By submitting a Proposal, Tenderer is obligated to provide necessary information and evidence confirming that expert's education (specialisation) is directly linked to the professional profile of the corresponding key expert for which an expert is applying for.

<sup>11</sup> See <http://europass.cedefop.europa.eu/resources/european-language-levels-cefr>

<sup>12</sup> Here and for all references of required education: minimal education degree of an expert is specified as a requirement. By submitting a Proposal, Tenderer is obligated to provide necessary information and evidence confirming that expert's education (specialisation) is directly linked to the professional profile of the corresponding key expert for which an expert is applying for.

No	Requirement	Documents to be submitted
	<p>cross-border services in accordance with local legal acts of each Baltic state* - Estonia, Latvia, Lithuania – for a Client, who's annual net turnover at the moment of provision of consulting services was equal or higher than 1 000 000,00 EUR (one million euros zero cents).</p> <p><i>* If Tenderer proposes more than one Direct taxation expert, all proposed experts together should cover experience of all mentioned countries – Estonia, Latvia, Lithuania.</i></p>	<p>confirm that Client corresponds to the requirements stipulated in the Section 8.4.3.2.2 (b) of the Regulations.</p>
	<p>(c) Within the period of previous 5 (five) years (2014, 2015, 2016, 2017 and 2018) until the submission date of the Proposal expert has taken a part as a direct taxation expert in representing Clients interests in at least 1 (one) case in any court of Latvia and assisted Client in at least 1 (one) dispute with State Revenue Service of Latvia.</p>	<p>- Filled in Annex No. 7 "Description of the Expert's experience"* and signed by the Direct taxation expert.</p> <p><i>*To follow confidentiality requirements, Client information in Annex No.7 can be left blank.</i></p>
	<p>(d) English language skills (at least B<sub>2</sub> Level - based on Common European Framework of Reference for Languages<sup>13</sup>) in communication, presentation, negotiation and report writing.</p>	<p>- Self-declared information about language skills filled in Annex No. 7 "Description of the Expert's experience" and signed by the Direct taxation expert.</p>

8.5. Information, provided in the Proposal to prove the compliance with above-mentioned requirements for Economic and financial standing (Section 8.3 of the Regulations), Technical and professional ability (Section 8.4 of the Regulations) shall be clear and understandable without any additional analysis or external proof of the submitted information. The Contracting authority shall not be obliged to use additional sources of information to decide regarding Tenderer's compliance with the qualification requirements. The Tenderer shall remain fully responsible for the provision of sufficiently detailed information in the Proposal required to confirm clearly the compliance with qualification requirements set in the Regulations.

8.6. Notices and other documents which are issued by Latvian competent institutions are accepted and recognized by the Procurement commission, if they are issued no earlier than 1 (one) month prior to the date of submission of particular notices and documents. Notices and other documents 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

<sup>13</sup> See <http://europass.cedefop.europa.eu/resources/european-language-levels-cefr>



submission of notices and documents, if the issuer of the notice or document has not set shorter period of validity.

- 8.7. If the documents with which a Tenderer registered or permanently residing abroad can certify its compliance with the requirements of Section 8.1 of the Regulations are not issued or these documents are insufficient, such documents can be replaced with an oath or, if the regulatory enactments of the country in question do not allow for an oath, - with a certification by the Tenderer or by another person mentioned in Section 8.1 of the Regulations before a competent executive governmental or judicial institution, a sworn notary or a competent organization of a corresponding industry in their country of registration (permanent residence). Regarding all documents submitted based on an oath given under law (e.g. sworn-statements, declarations on oath etc.), the Tenderer must provide (indicate) legal grounds to law or enactment in accordance with such statements or declarations on oath have been given.
- 8.8. If the Tenderer complies with any of the exclusion grounds mentioned in Section 8.1 of the Regulations (except Section 8.1.2, 8.1.10 – 8.1.13 of the Regulations), the Tenderer indicates this fact in Annex No. 4 "Application for participating in the Open procedure".
- 8.9. The Tenderer, to certify that it complies with the selection criteria for Tenderers, may submit the European single procurement document (ESPD) as initial proof. This document must be submitted electronically and for each person upon whose capacity the Tenderer relies to certify its compliance with the requirements stipulated in the Regulations, and for each of their indicated subcontractors, the share of whose work is equal to or exceeds 10 % (ten percent) of the value of the Contract, but if the Tenderer is a partnership – for each member thereof. To fill in the European single procedure document the Tenderer uses the "ESPD.xml" file at the Internet webpage <https://ec.europa.eu/tools/espdp/filter?lang=en>.

## **9. RELIANCE ON THE CAPACITY OF OTHER PERSONS**

- 9.1. For the fulfilment of the specific contract, to comply with the selection requirements for the Tenderers relating to the economic and financial standing and technical and professional capacity, the Tenderer may rely on the capacity of other persons, regardless of the legal nature of their mutual relationship. In this case:
  - 9.1.1. The Tenderer indicates in the Proposal all persons on whose capacity it relies by filling in the table which is attached as Annex No. 8 "A list of other entities on whose capacity Tenderer relies" and proves to the Contracting authority that the Tenderer shall have available all the necessary resources for the fulfilment of the Contract by submitting a signed confirmation or agreement on cooperation and/or passing of resources to the Tenderer between such persons and the Tenderer. The confirmations and agreements on cooperation and passing of resources can be replaced by the Tenderer with any other type of documents with which the Tenderer is able to prove that the necessary resources will be available to the Tenderer and will be used during the term of fulfilment of the Contract.
  - 9.1.2. Documents on cooperation and passing of resources must be sufficient to prove to the Contracting authority that the Tenderer will have the ability to fulfil the Contract, as well as that during the validity of the Contract the Tenderer will in fact use the resources of such person upon whose capacity the Tenderer relies.
  - 9.1.3. The Contracting authority shall require joint and several liabilities for the execution of the Contract between the:

- 9.1.3.1. Tenderer and a person on whose capacity the Tenderer is relying to certify its financial and economic performance and who will be financially and economically responsible for fulfilment of the Contract/-s;
    - 9.1.3.2. Each member of the partnership (if the Tenderer is a partnership) on whose capacity the Tenderer is relying and who will be financially and economically responsible for fulfilment of the Contract/-s.
  - 9.2. The Contracting authority shall evaluate the person on whose capacity the Tenderer to whom the rights to conclude the Contract should be assigned is relying according to Section 8.1.1 - 8.1.8 and Section 8.1.12 - 8.1.13 of the Regulations. In case such person will comply with any of the exclusion grounds which are mentioned in Section 8.1.1 - 8.1.8, 8.1.12 and 8.1.13 of the Regulations 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.

## **10. SUBCONTRACTING**

- 10.1. The Tenderer shall indicate in the Proposal all subcontractors of the Tenderer by filling in the table which is attached as Annex No. 9 "A list of subcontractors".
- 10.2. The Contracting authority shall evaluate the subcontractor of the Tenderer to whom the rights to conclude the Contract should be assigned according to Sections 8.1.2 - 8.1.8 and Sections 8.1.12 to 8.1.13 of the Regulations. In case such subcontractor whose share of services is equal to or exceeds 10% of the Contract price, will comply with any of the exclusion grounds which are mentioned in Section 8.1.2 - 8.1.8, 8.1.12 and Section 8.1.13 of the Regulations, the Contracting authority shall request the Tenderer to change such subcontractor. If the Tenderer shall not submit documents about another subcontractor which complies with the selection criteria within 10 (ten) business days from the date when the request was issued or sent to the Tender, the Contracting authority shall exclude such Tenderer from further participation in the Open competition.

## **11. FINANCIAL PROPOSAL**

- 11.1. The Financial proposal shall be submitted as part of Annex No. 10 for each Part of Open competition (Part No. 1, Part No. 2 and Part No. 3) separately.
- 11.2. In accordance with Section 41, Paragraph 11, Article 2 of the Public Procurement Law Contracting authority rejects the Tenderer's proposal for Open competition, if Tenderer's proposed contract price for any of part of the Procurement exceeds 150% from estimated contract price set in Section 2.7.1, 2.7.2 or 2.7.3 of the Regulations.
- 11.3. The proposed contract price shall include all taxes, fees and payments, and all costs related to the fulfilment of the specific services, that can be reasonably estimated, except VAT, including but not limited to:
  - 11.3.1. cost of business trips, time of consultants and daily allowance,
  - 11.3.2. field research,
  - 11.3.3. purchase of external materials and researches,
  - 11.3.4. purchase of external experts if applicable.

- 11.4. Tenderer shall include any travel expenses (if any arise) in proposed contract price. Contracting authority won't additionally reimburse any travel expenses incurred by Tenderer during the provision of Services.
- 11.5. The costs shall be specified in EUR.
- 11.6. The costs must be calculated and indicated with an accuracy of 2 (two) decimal places after comma. If more than 2 (two) decimal places after comma will be indicated, then only the first two decimal places will be considered.

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

- 12.1. Proposal must be submitted electronically in E-Tenders subsystem of the Electronic Procurement System in accordance with the following options for the Tenderer:
  - 12.1.1. by using the available tools of E-Tender subsystem, filling the attached forms of the E-Tender subsystem for Procurement procedure;
  - 12.1.2. by preparing and filling the necessary electronic documents outside the E-Tenders subsystem and attaching them to relevant requirements (in this situation the Tenderer takes responsibility for the correctness and compliance of the forms to requirements of documentation and form samples);
  - 12.1.3. by encrypting electronically prepared Proposal outside subsystem of E-Tenders with data protection tools provided by third parties, and protection with electronic key and password (in this situation, the Tenderer takes responsibility for the correctness and compliance of the forms to requirements of documentation and form samples as well as ensuring capability to open and read the document by the Contracting authority);
- 12.2. During preparation of the Proposal, the Tenderer shall respect the following requirements:
  - 12.2.1. Each document mentioned in Section 12.3 of the Regulations must be filled separately, each in a separate electronic document in line with forms attached to procurement process of E-Tenders subsystem in a Microsoft Office 2010 (or later) format and attached to the designated part of the Procurement;
  - 12.2.2. Upon submission, the Tenderer signs the Proposal with secure electronic signature and time-stamp or with electronic signature provided by Electronic Procurement System. The Tenderer can use secure electronic signature and time-stamp and sign Application form, Financial proposal and other documents separately. Proposal (its parts, if signed separately) are signed by authorized person, including authorization document (e.g. power of attorney).
- 12.3. Documents to be included in the Proposal:
  - 12.3.1. Application for participation in the Open procedure in accordance with Annex No. 4;
  - 12.3.2. Financial proposal in accordance with Annex No. 10;
  - 12.3.3. Information and documents confirming compliance of the Tenderer with the selection criteria for the Tenderers (set in Section 8 of the Regulations), or the corresponding European single procurement documents;
  - 12.3.4. Information and documents relating to other entities on whose capacity the Tenderer is relying (in accordance with Annex No. 8), or the corresponding European single procurement documents;

12.3.5. Information and documents relating to subcontractors (in accordance with Annex No. 9) and/or the corresponding European single procurement documents.

- 12.4. The Proposal may contain original documents or their derivatives (e.g. copies). In the Proposal or in reply to a request of the Procurement commission the Tenderer shall submit only such original documents which have legal force. For the document to gain legal force it must be issued and formatted in accordance with the Law on Legal Force of Documents (<https://likumi.lv/ta/en/id/210205-law-on-legal-force-of-documents>) but public documents issued abroad shall be formatted and legalized in accordance with the requirements of the Document Legalization Law (<https://likumi.lv/ta/id/301436-dokumentu-izstradasanas-un-noformesanas-kartiba>). Public documents issued abroad can be self-approved by the Tenderer, if it is applicable by the legislation of the respective country. When submitting the Proposal, the Tenderer has the right to certify the correctness of all submitted documents' derivatives and translations with one certification.
- 12.5. The Proposal must be signed by a person who is legally representing the Tenderer or is authorized to represent the Tenderer in this Open competition.
- 12.6. The Tenderer shall prepare Proposal in electronic form using the E-Tenders system available at <https://www.eis.gov.lv/EKEIS/Supplier>.
- 12.7. The Proposal must be submitted in a written form in English or Latvian (if submitted in Latvian, translation in English of the Proposal must be provided together with the Proposal).

### **13. ENCRYPTION OF THE PROPOSAL INFORMATION**

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

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

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

**28 January 2019 till 15:00 o'clock.**

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

## **15. OPENING OF PROPOSALS**

- 15.1. The Proposals will be opened in the E-Tenders system 28 January 2019 starting at 15:00 Latvian time during the opening session. It is possible to follow the opening of submitted Proposals online in the E-Tenders system.
- 15.2. The Proposals are opened by using the tools offered by E-Tenders system. The proposed price and other information that characterizes the Proposal (excluding confidential information) shall be published in the E-Tenders system.
- 15.3. The information regarding the Tenderer, the time of Proposal submission, the proposed price and other information that characterizes the Proposal is generated at the opening of the Proposals by E-Tenders system and written down in the Proposal opening sheet which shall be published in E-Tenders system and Contracting authority's webpage.

## **16. VERIFICATION OF PROPOSALS FOR COMPLIANCE**

- 16.1. Following of the opening of Proposals, each part (Part No. 1, Part No. 2 and Part No. 3) of Open competition will be evaluated separately.
- 16.2. The Procurement commission shall proceed with the verification of compliance of Proposals received and opened in accordance with the opening procedure.
- 16.3. The Procurement commission verifies whether the submitted Proposals comply with the requirements stipulated in Section 12 of the Regulations and whether all required information and documents is submitted and selects for further evaluation the compliant Proposals.

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

- 17.1. The Procurement commission verifies whether Tenderers have completed Annex No. 10 "Financial proposal" in accordance with the requirements.
- 17.2. The Procurement commission verifies whether there are any arithmetical errors, whether an abnormally low Proposal has been received, as well as assesses and compares the contract prices proposed.
- 17.3. The Procurement commission informs the Tenderer whose arithmetical errors have been corrected about the correction of arithmetical errors and the corrected Financial proposal.
- 17.4. When evaluating the Financial proposal, the Procurement commission takes corrections into account.
- 17.5. The Procurement commission has the right to demand that the Tenderer explains the calculation upon which the Financial proposal is based and other related aspects to ascertain the objectivity of the Financial proposal and whether an abnormally low Proposal has been submitted.
- 17.6. The Procurement commission further evaluates the compliant Proposals which have not been declared as abnormally low Proposals.

## **18. CONTRACT AWARD CRITERIA**

- 18.1. The Proposal selection criterion is the most economically advantageous proposal according to the evaluation methodology described in this Section below.

- 18.2. The economically most advantageous proposal in each Part of the Procurement shall be Proposal with the lowest proposed contract price (the only evaluation criterion), which complies with the requirements stipulated by the Regulations.
- 18.3. The Procurement commission shall determine a Tenderer in accordance with Section 18.2 of the Regulations and the Contract shall be awarded to the Tenderer with lowest proposed contract price.
- 18.4. In case several Tenderers will propose equal contract price in Part No. 1 or Part No. 2 of the Procurement, the Procurement commission will award the contract rights to Tenderer who has submitted Financial proposal with lowest price in the fee for "monthly tasks". If still several Tenderers will have equal contract price and equal "monthly tasks" fee, Procurement Commission will invite representatives of those particular Tenderers and organize a draw. In situation, when representatives of Tenderers chose to not be present at the draw, Procurement commission will carry out the draw without representatives of Tenders present.
- 18.5. In case several Tenderers will propose equal contract price in Part No. 3 of the Procurement, the Procurement commission will invite representatives of those particular Tenderers and organize a draw. In situation, when representatives of Tenderers chose to not be present at the draw, Procurement commission will carry out the draw without representatives of Tenders present.

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

- 19.1. Prior to making the decision about assigning rights to conclude the Contract, the Procurement commission performs a check regarding the existence of grounds of exclusion for Tenderers, members of a partnership (if the Tenderer is a partnership), persons on whose capacity the Tenderer is relying to certify it's compliance with the requirements and subcontractors.
- 19.2. If, in accordance with the information published on the day of the last data update in a public database, on the last day of Proposal submission or on the day when the decision regarding the possible assignment of rights to conclude a Contract is made, the Tenderer, member of a partnership (if the Tenderer is a partnership), a subcontractor whose share of services is equal to or exceeds 10% of the Contract price or a person on whose capacity the Tenderer is relying to certify it's compliance with the requirements, 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 (ten) days from the day of issuing or receiving information – for the submission of a statement evidencing absence of tax debt, including state mandatory insurance contributions debts, the total sum of which exceeds 150 euro, on the last day of Proposal submission or on the day when the decision regarding the possible assignment of rights to conclude a Contract was made.
- 19.3. If the Tenderer fails to submit required evidence about itself before the deadline, the Procurement commission excludes the Tenderer from participation in the Open competition.
- 19.4. Change of persons on whose capacity the Tenderer is relying to certify it's compliance with the requirements or subcontractors whose share of services is equal to or exceeds 10% of the Contract price is performed in accordance with Sections 9.2 and 10.2 of the Regulations respectively.
- 19.5. In the event the Tenderer or partnership member (if the Tenderer is a partnership) fails to comply with requirements stipulated in Section 8.1 of the Regulations 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, organizational or personnel measures, an assessment of a competent authority regarding the sufficiency of the implemented measures etc. The Procurement commission assesses such information. If the Procurement commission deems the measures taken to be sufficient for the restoration of reliability and the prevention of similar cases in the future, it makes the decision not to exclude the Tenderer from participation in the Open competition. If the measures taken are insufficient, the Procurement commission makes the decision to exclude the Tenderer from further participation in the Open competition. If the Tenderer within the indicated time does not submit the requested information, the Procurement commission excludes the Tenderer from participation in the Open competition.

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

- 20.1. The Procurement commission selects the Tenderers in accordance with the set selection criteria for Tenderers, verifies the compliance of the Proposals with the requirements stipulated in the Regulations and chooses the Proposal in accordance with the contract award criteria as described in Section 18 of the Regulations. In each part of the Open competition the Tenderer with the lowest price Proposal shall be selected.
- 20.2. Within 3 (three) business days from the date of decision about the Open competition results the Procurement commission informs all the Tenderers about the decision made by sending the information by post or electronically (including through the E-Tenders system) and keeping the evidence of the date and means of sending the information. The Procurement commission announces the name of the successful Tenderer, indicating:
  - 20.2.1. to the refused Tenderer - the reasons for refusing its Proposal;
  - 20.2.2. to the Tenderer who has submitted an eligible Proposal - the characterization of the successful Proposal and the relative advantages;
  - 20.2.3. the deadline by which the Tenderer may submit a complaint to the Procurement Monitoring Bureau regarding violations of the public procurement procedure.
- 20.3. If only 1 (one) Tenderer complies with all the Tenderer selection requirements, the Procurement commission prepares and includes in the Open competition procedure report a justification of the fact that the set requirements for Tenderer selection are objective and commensurate. If the Procurement commission cannot justify that the set requirements for Tenderer selection are objective and commensurate, it makes the decision to terminate the Procurement in relevant part.
- 20.4. If the Procurement is terminated partly or in total, the Procurement commission within 3 (three) business days simultaneously informs all Tenderers about all the reasons because of which the Open competition procedure partly or in total is terminated and informs about the deadline within which a Tenderer may apply regarding the violations of the public procurement procedure to the Procurement Monitoring Bureau.
- 20.5. The Procurement commission when informing of the results has the right not to disclose specific/confidential information, if it may infringe upon public interests or if the Tenderer's legal commercial interests, or the conditions of competition would be violated.
- 20.6. As soon as possible, but not later than within 5 (five) working days from day when the decision about the results of the Open competition is taken, the Procurement commission prepares a

report on the Open competition and publishes it on the E-procurement system's webpage <https://www.eis.gov.lv/EKEIS/Supplier> and on Contracting authority's webpage <http://railbaltica.org/en/procurements>.

- 20.7. **The selected Tenderer upon receiving the notification from Procurement commission must:**
- 20.7.1. within 5 (five) business days - submit to the Contracting authority a copy of partnership agreement or notification regarding the establishment of the partnership, if required pursuant to requirements under Section 7.1.2.1 of the Regulations;
  - 20.7.2. within 5 (five) business days - submit to the Contracting authority a copy valid insurance certificate in amount according to Section 8.3.3 of the Regulations;
  - 20.7.3. within 10 (ten) days upon receiving the invitation - to sign the Contract.
- 20.8. The Contract is concluded based on the Tenderer's Proposal and in accordance with Annex No. 11 "Draft contract for the Part No. 1" and/or Annex No. 12 "Draft contract for the Part No. 2" and/or Annex No. 13 "Draft contract for the Part No. 3".
- 20.9. The Procurement commission has the right to choose the next most economically advantageous Proposal, if the Tenderer in the time stipulated by the Regulations:
- 20.9.1. refuses to conclude a partnership contract or establish the partnership in the cases and deadlines defined by the Regulations or in the cases and deadlines defined by the Regulations does not submit a copy of the partnership contract, or does not inform of the founding of a partnership company;
  - 20.9.2. in the cases and deadlines defined by the Regulations does not submit a copy of valid insurance certificate in amount according to Section 8.3.3 of the Regulations;
  - 20.9.3. refuses to conclude the Contract or does not submit a signed Contract within the deadlines defined in the Regulations.
- 20.10. In any of such a case mentioned in Section 20.9 of the Regulations the Procurement commission is entitled to terminate this Open competition without selecting any Proposal or to select the Proposal with the next lowest proposed contract price. For either of these decisions a written decision must be made.
- 20.11. Prior to making the decision regarding the conclusion of the Contract with the next Tenderer, the Procurement commission assesses whether the next Tenderer is one market participant together with the initially selected Tenderer. If the next selected Tenderer is found to be one market participant together with the initially selected Tenderer or it does not comply with requirements set in the Section 20.7 of the Regulations, the Procurement commission decides to terminate the Open competition without selecting any Proposal.

#### **ANNEXES:**

1. Technical specification for the Part No. 1 on 8 (eight) pages;
2. Technical specification for the Part No. 2 on 8 (eight) pages;
3. Technical specification for the Part No. 3 on 6 (six) pages;
4. Application for participation in the Open procedure on 2 (two) pages;
5. Confirmation of the Tenderer's financial standing on 2 (two) pages;
6. Description of the Tenderer's experience on 2 (two) page;



7. Description of the Expert's experience on 2 (two) pages;
8. A list of other entities on whose capacity Tenderer relies on 1 (one) page;
9. A list of the subcontractors on 1 (one) page;
10. Financial proposal on 2 (two) pages;
11. Draft contract for the Part No. 1 on 51 (fifty-one) pages;
12. Draft contract for the Part No. 2 on 51 (fifty-one) pages;
13. Draft contract for the Part No. 3 on 22 (twenty-two) pages.

## **ANNEX NO. 1: TECHNICAL SPECIFICATION FOR THE PART NO. 1**

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

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



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

Riga

2019

## 1. INTRODUCTION TO RAIL BALTICA

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

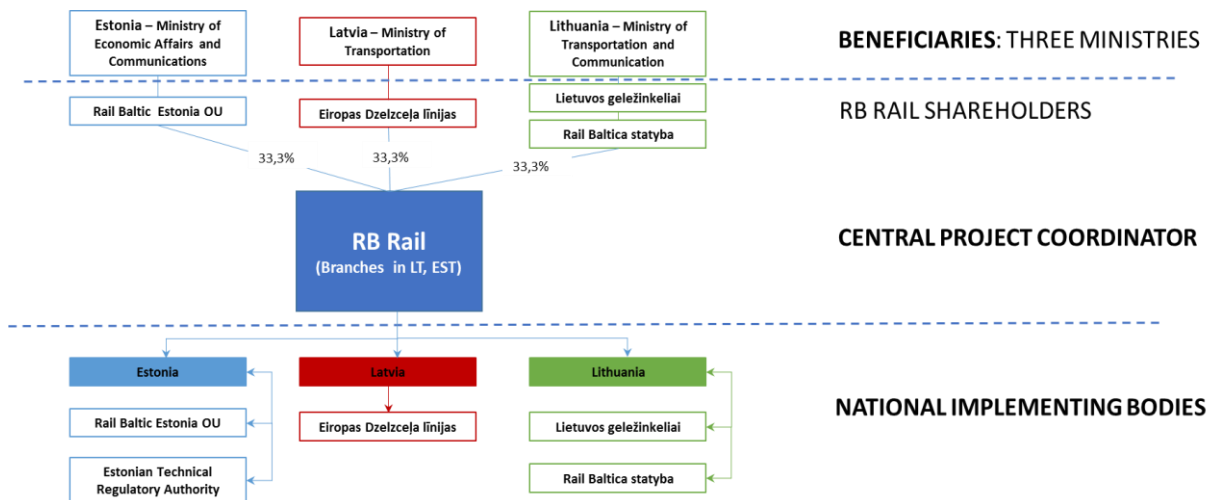
The ambitions of the Rail Baltica Global project (Global Project) are:

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

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

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

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



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

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

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

## 2. FRAMEWORK OF ASSIGNMENT

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

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

Branch is not independent project management unit as it is fully integrated in the overall RBR organization and project activities by common management, workplan and administrative procedures. Branch employs local technical experts who are involved in the national RBR activities, and also contribute to global project development on a pan-Baltic scale. Employees of the branch have matrix

reporting lines to functional managers who may be employed in the head office or another branch as well as their branch manager.

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

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

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

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

### 3. CONTENT OF ASIGNMENT

Estonia		
Task	Current scope	Expected scope in 2019 - 2020
<b>1. Monthly tasks</b>		
1.1. Payroll and tax compliance	14 (fourteen) branch employees, including non-resident employees. Fixed monthly salaries payable once a month. Revue calculations prepared in Excel by Contracting authority's accountants. Contractor must make and explain any adjustments, if adjustments are necessary. Contractor must prepare and submit declarations on behalf of Contracting authority.	Number of branch employees expected to increase gradually up to 26 (twenty-six) employees.
	Preparation and submission of tax declarations for 3 (three) Members of the Board of Contracting authority for whom social insurance is paid in Estonia based on A1 certificates.	3-4 (three to four) Members of the Board.

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

2.3. Annual VAT declaration (if required)		
<b>3. Unplanned tasks<sup>14</sup></b>	Unforeseen tasks exceeding the agreed scope (maximum by 10% from contract price).	To be paid per hour.

#### 4. SERVICE CONTRACT MANAGEMENT

##### 4.1. Contractor's obligations

- 4.1.1. For the provision of Services, the Contractor shall remain fully responsible for the results of its Services during and after the provision of Services. Any additional expenses arisen due to the correction of the unacceptable results shall be covered solely by the Contractor. On reasonable grounds Contracting authority reserves the right to request the Contractor to correct the results of Services regardless whether it is necessary during the period of Service provision or after completion of thereof.
- 4.1.2. The Contractor undertakes to effect such insurance with an insurer and on terms and conditions acceptable to the Contracting authority. The limit of Professional risk indemnity insurance liability for the insurance coverable shall be no less than 300 000,00 EUR (three hundred thousand euros zero cents) per claim/occurrence during the whole period of performance of the Procurement Contract and with extended reporting period of 5 (five) years. The costs of such insurance shall be at the expense of the Contractor.
- 4.1.3. The Contractor shall ensure necessary effort, means, resources and personnel required for the successful provision of Services.
- 4.1.4. The Contractor shall be responsible for ensuring that its experts included in Contract are available throughout the Service provision period.
- 4.1.5. The Contractor must keep records and other supporting documentation (original supporting documents) as evidence that the assignments are performed correctly, and the expenses related to provision of Services were actually incurred. Documentation must be available for review upon the request of Contracting authority.
- 4.1.6. The Contractor shall make its own arrangements for office facilities, personal computers and other facilities of appropriate performance and security standard for Service provision.
- 4.1.7. The Contractor shall ensure that its team members (experts etc.) involved in Service provision are adequately supported and equipped. Costs for administration of service contract and office operation including telecommunication costs shall be included.

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<sup>14</sup> Please see the Section 6.4 of the Regulations.

#### 4.2. Provision of Services

- 4.2.1. The Contractor must perform the Contract in compliance with its provisions and all legal obligations under applicable EU, international and national law within the set deadlines and to the highest professional, diligence and ethical standards.
- 4.2.2. The Contractor shall carry out the tasks, prepare and provide all documents, reports and any other information material required for the provision of the Services.
- 4.2.3. During the implementation of Services, the Contractor shall identify possible risks at early stage and propose a mitigation measures in order to successfully deliver Services on time.

#### 4.3. Confidentiality, independence and absence of conflict of interest

- 4.3.1. The Contractor is expected to ensure that its contractual and professional obligations in particular with regard to confidentiality, independence and absence of conflict of interests are well understood and upheld throughout and after Services provision.
- 4.3.2. During the provision of Services, the Contractor shall provide independent view based on its expertise, education and experience.

#### 4.4. Miscellaneous

- 4.4.1. Communication with Contracting authority under Contract (e.g. information, requests, submissions, formal notifications, etc.) must be carried out in English.
- 4.4.2. Communication channels: e-mail, Skype, telecommunications etc.
- 4.4.3. All written materials shall meet the highest standards and technical terminology proficiency. If requested by the Contracting authority, the Contractor shall engage professional proofreading Services at its own expense.
- 4.4.4. Contractor shall include any travel expenses (if any arise) in proposed contract price. Contracting authority won't additionally reimburse any travel expenses incurred by Contractor during the provision of Services.
- 4.4.5. Contracting authority is deemed as the administrative instance and will be responsible for making the principal decisions.

#### 4.5. Deliverables and deadlines

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

No.	Tasks	Deadline	Terms of Cooperation
1	Monthly tasks	31.12.2020.	Contractor declares changes in employment status to tax authorities within 24 (twenty-four) hours (on working days) from receiving information from Contracting authority by e-mail or not later than submission deadline.  Salaries for current month are paid on the last working day of the month. Contractor reviews and corrects draft payroll calculation within 24 (twenty-four) hours (on working days) after receiving it from Contracting authority by e-mail.



			<p>Contracting authority will send invoices and expense claims for previous month to Contractor on the 6<sup>th</sup> working day of the following month, but not later than the previous working day before the reporting deadline.</p> <p>Contractor provides to Contracting authority information related to changes in relevant legal acts and rules at least 1 (one) month before their enactment.</p> <p>Contractor passes requests and information from Estonian tax authorities to Contracting authority within 24 (twenty-four) hours (on working days). Contractor forwards replies or information to tax authorities within 24 (twenty-four) hours of receiving it from Contracting authority (on working days).</p> <p>Contracting authority provides replies to questions, additional information requested by Contractor and approves draft tax returns within 24 (twenty-four) hours (on working days), not later than by the end of the working day on submission deadline.</p>
2	Annual tasks	31.03.2021.	<p>Contracting authority provides to Contractor a draft annual report for Estonia branch by 28 February of the following year. Draft annual report should be ready for submission to authorities before 31 March. Contractor sends the final report to Contracting authority for approval by 15 March.</p> <p>Contractor submits annual tax declarations (if required) to tax authorities before annual tax declaration deadlines, and information requested from Contracting authority at least 2 (two) weeks before the submission deadline.</p>
3	Unplanned tasks	In accordance with Contract amendments	Scope and timing agreed separately in each case.

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

## **ANNEX NO. 2: TECHNICAL SPECIFICATION FOR THE PART NO. 2**

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

PART NO. 2 "Tax compliance and reporting services for RB Rail AS Lithuania branch"



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

Riga  
2019

## 1. INTRODUCTION TO RAIL BALTICA

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

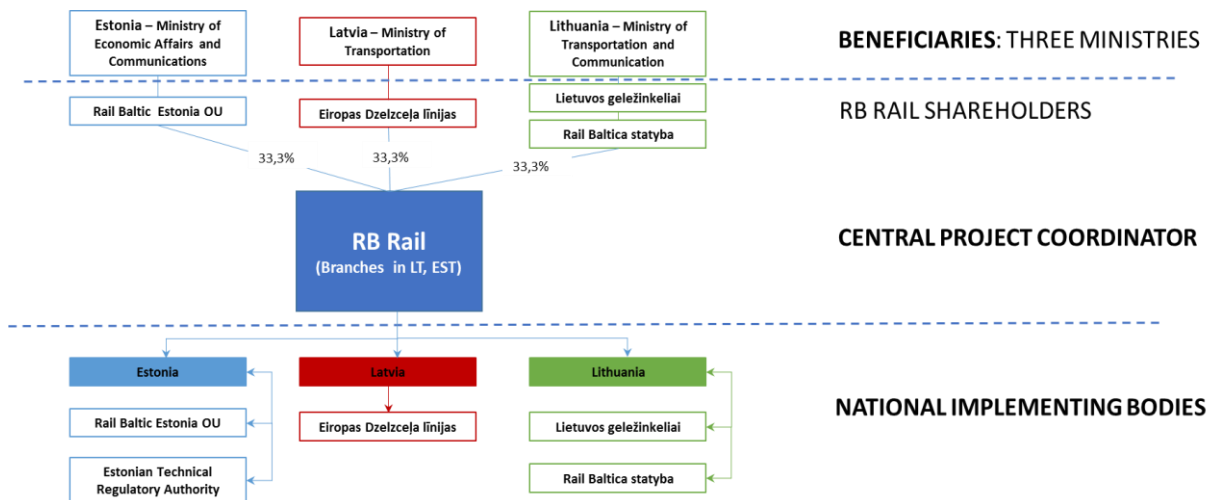
The ambitions of the Rail Baltica Global project (Global Project) are:

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

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

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

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



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

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

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

## 2. FRAMEWORK OF ASSIGNMENT

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

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

Branch is not independent project management unit as it is fully integrated in the overall RBR organization and project activities by common management, workplan and administrative procedures. Branch employs local technical experts who are involved in the national RBR activities, and also contribute to global project development on a pan-Baltic scale. Employees of the branch have matrix

reporting lines to functional managers who may be employed in the head office or another branch as well as their branch manager.

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

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

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

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

### 3. CONTENT OF ASIGNMENT

Lithuania		
Task	Current scope	Expected scope in 2019 - 2020
<b>1. Monthly tasks</b>		
1.1. Payroll and tax compliance	8 (eight) branch employees. Fixed monthly salaries payable once a month. Revue calculations prepared by Contracting authority's accountants. Contractor must make and explain any adjustments, if adjustments are necessary. Contractor must prepare and submit declarations on behalf of Contracting authority.	Number of branch employees expected to increase gradually up to 16 (sixteen) employees.
	Preparation and submission of tax declarations for 3 (three) Members of the Board of Contracting authority for whom social insurance is paid in Lithuania based on A1 certificates.	3 – 4 (three to four) Members of the Board.

1.2. Value added tax (VAT) and iSAF compliance	Preparation and filing the iSAF reports and VAT returns of the branch based on list of transactions and scanned images of invoices. 2-5 purchase invoices per month (domestic). No sales invoices with output VAT so far - input VAT is deducted in preparation to provide project management services to Lithuanian implementation organizations / beneficiaries.	Number of invoices may double. If Contracting authority's stakeholders will not conclude agreement on purchase of services RBR, the Contracting authority may stop deducting input VAT in 2019.
<p><b>Monthly tasks include:</b></p> <ul style="list-style-type: none"> <li>• <b>Information on applicable tax and labour legislation and changes therein</b> (Informing the Contracting authority on all relevant taxation and documentation rules applicable to RBR transactions in Lithuania, labour law requirements, business travel per diems and other relevant legislation);</li> <li>• <b>Communications interface with local tax authorities</b> (Acting as the first point of contact for tax authorities on behalf of Contracting authority, assisting in communication when necessary).</li> </ul>		
<p><b>2. Annual tasks</b></p>		
2.1. Annual report and corporate income tax (CIT) declaration	Review trial balance, profit and loss (PL) statement and balance sheet of the branch for the year. Translation of documents into Lithuanian and submitting to authorities if necessary. Preparing and submitting corporate income tax return for the year.	Unchanged.
2.2. Annual employer's personal income tax return	Prepare and submit tax return by deadline (currently 15 February)	Unchanged.
2.3. Annual VAT declaration (if required)	No such declaration was necessary for year 2017.	If required

<b>3. Unplanned tasks<sup>15</sup></b>	Unforeseen tasks exceeding the agreed scope (maximum by 10% from contract price).	To be paid per hour.
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#### **4. SERVICE CONTRACT MANAGEMENT**

##### **4.1. Contractor's obligations**

- 4.1.1. For the provision of Services, the Contractor shall remain fully responsible for the results of its Services during and after the provision of Services. Any additional expenses arisen due to the correction of the unacceptable results shall be covered solely by the Contractor. On reasonable grounds Contracting authority reserves the right to request the Contractor to correct the results of its Services regardless whether it is necessary during the period of Service provision or after completion of thereof.
- 4.1.2. The Contractor undertakes to effect such insurance with an insurer and on terms and conditions acceptable to the Contracting authority. The limit of Professional risk indemnity insurance liability for the insurance coverable shall be no less than 300 000,00 EUR (three hundred thousand euros zero cents) per claim/occurrence during the whole period of performance of the Procurement Contract and with extended reporting period of 5 (five) years. The costs of such insurance shall be at the expense of the Contractor.
- 4.1.3. The Contractor shall ensure necessary effort, means, resources and personnel required for the successful provision of Services.
- 4.1.4. The Contractor shall be responsible for ensuring that its experts included in Contract are available throughout the Service provision period.
- 4.1.5. The Contractor must keep records and other supporting documentation (original supporting documents) as evidence that the assignments are performed correctly, and the expenses related to provision of Services were actually incurred. Documentation must be available for review upon the request of Contracting authority.
- 4.1.6. The Contractor shall make its own arrangements for office facilities, personal computers and other facilities of appropriate performance and security standard for Service provision.
- 4.1.7. The Contractor shall ensure that its team members (experts etc.) involved in Service provision are adequately supported and equipped. Costs for administration of service contract and office operation including telecommunication costs shall be included.

##### **4.2. Provision of Services**

- 4.2.1. The Contractor must perform the Contract in compliance with its provisions and all legal obligations under applicable EU, international and national law within the set deadlines and to the highest professional, diligence and ethical standards.
- 4.2.2. The Contractor shall carry out the tasks, prepare and provide all documents, reports and any other information material required for the provision of the Services.

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<sup>15</sup> Please see the Section 6.4 of the Regulations.

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

**4.3. Confidentiality, independence and absence of conflict of interest**

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

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

**4.4. Miscellaneous**

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

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

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

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

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

**4.5. Deliverables and deadlines**

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

No.	Tasks	Deadline	Terms of Cooperation
1	Monthly tasks	31.12.2020.	<p>Contractor declares changes in employment status to tax authorities within 24 (twenty-four) hours (on working days) from receiving information from Contracting authority by e-mail or not later than submission deadline.</p> <p>Salaries for current month are paid on the last working day of the month. Contractor reviews and corrects draft payroll calculation within 24 (twenty-four) hours (on working days) after receiving it from Contracting authority by e-mail.</p> <p>Contracting authority will send invoices and expense claims for previous month to Contractor on the 7<sup>th</sup> working day of the following month, but not later than the previous working day before the reporting deadline.</p> <p>Contractor provides to Contracting authority information related to changes in relevant legal acts and rules at least 1 (one) month before their enactment.</p>



			<p>Contractor passes requests and information from Lithuanian tax authorities to Contracting authority within 24 (twenty-four) hours (on working days). Contractor forwards replies or information to tax authorities within 24 (twenty-four) hours of receiving it from Contracting authority (on working days).</p> <p>Contracting authority provides replies to questions, additional information requested by Contractor and approves draft tax returns within 24 (twenty-four) hours (on working days), not later than by the end of the working day on submission deadline.</p>
2	Annual tasks	31.03.2021.	<p>Contracting authority provides to Contractor draft PL statements and balance sheet report for Lithuania branch by 28 February of the following year.</p> <p>Contractor prepares and sends to Contracting authority for approval an annual corporate income tax declaration by 15 March and submits it to tax authorities before 31 March.</p> <p>Contractor submits annual employer's personal income tax return to tax authorities before tax return submission deadline (currently 15 February).</p>
3	Unplanned tasks	In accordance with Contract amendments	Scope and timing agreed separately in each case.

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

## **ANNEX NO. 3: TECHNICAL SPECIFICATION FOR THE PART NO. 3**

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

PART NO. 3 "On-demand tax advisory services covering all taxes and duties in Estonia, Latvia and Lithuania"



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

Riga

2019

## 1. INTRODUCTION TO RAIL BALTICA

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

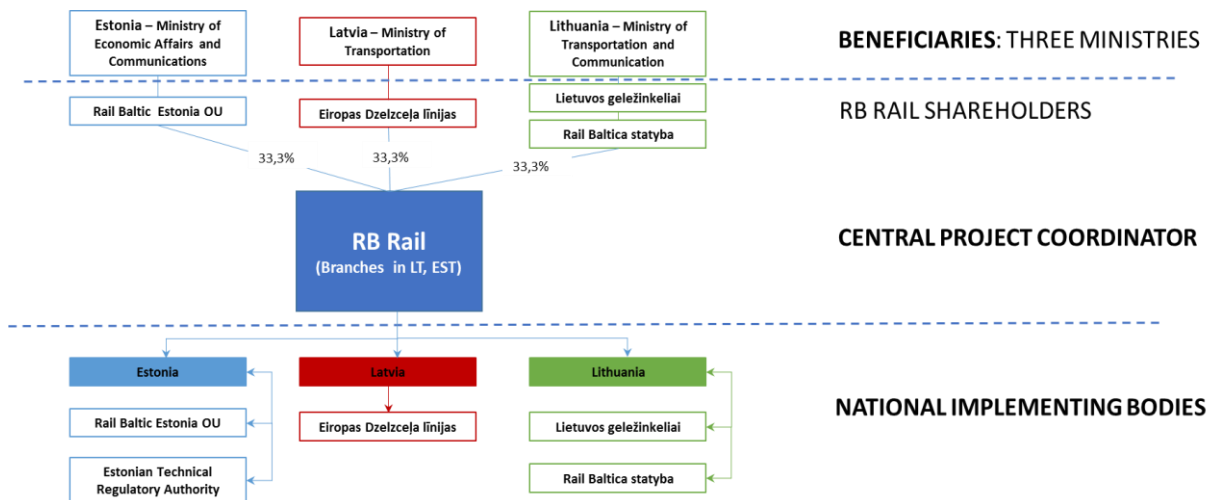
The ambitions of the Rail Baltica Global project (Global Project) are:

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

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

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

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



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

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

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

## 2. FRAMEWORK OF ASSIGNMENT

The Contractor shall provide tax advisory services related to operations of the RB Rail AS and its main partners involved in the implementation of the Rail Baltica project in accordance with this Technical specification (hereinafter – Services). Scope of Tax advisory services (but not limited to):

- Value added tax, in particular its application to railway designing and construction activities and related consulting and administrative services, joint or central procurements, compensation of costs and complex financing arrangements;
- Individual income taxes and social insurance contributions, including taxation of foreign nationals, directors’ fees, royalties, contracts for services, compensations of travel and other business-related costs;
- Corporate income tax and taxation of RB Rail AS and its foreign branches, withholding taxes;

- Transfer pricing documentation (if applicable) for services provided among related parties within the scope of Rail Baltica project;
- Environmental taxes;
- Administrative procedures of various tax authorities in Latvia, Estonia and Lithuania, expert assistance in case of tax audit, disputes with tax authorities, litigation cases.

Services should be delivered in English in written form, using MS Word, Power Point and Excel applications as appropriate and agreed for each assignment. Potential transaction or situation under question should be reviewed for all applicable taxes, several possible scenarios indicated where applicable, including corresponding costs, benefits and risks, and the best course of action proposed. References to relevant laws, regulations and court decisions should be included where applicable and agreed separately.

EU legislation governing national tax laws as well as business and public administration regulations as far as they relate to particular tax questions and situations. Tax advisory services should be provided in the context of financial reporting based on IFRS (International Financial Reporting Standards issued by the International Accounting Standards Board) and local statutory requirements in Latvia, Estonia and Lithuania.

### **3. SERVICE CONTRACT MANAGEMENT**

#### **3.1. Contractor's obligations**

- 3.1.1. For the provision of Services, the Contractor shall remain fully responsible for the results of its Services during and after the provision of Services. Any additional expenses arisen due to the correction of the unacceptable results shall be covered solely by the Contractor. On reasonable grounds Contracting authority reserves the right to request the Contractor to correct the results of its Services regardless whether it is necessary during the period of Service provision or after completion of thereof.
- 3.1.2. The Contractor undertakes to effect such insurance with an insurer and on terms and conditions acceptable to the Contracting authority. The limit of Professional risk indemnity insurance liability for the insurance coverable shall be no less than 1 000 000,00 EUR (one million euros zero cents) per claim/occurrence during the whole period of performance of the Procurement Contract and with extended reporting period of 5 (five) years. The costs of such insurance shall be at the expense of the Contractor.
- 3.1.3. The Contractor shall ensure necessary effort, means, resources and personnel required for the successful provision of Services.
- 3.1.4. The Contractor shall be responsible for ensuring that its experts included in Contract are available throughout the Service provision period.
- 3.1.5. The Contractor must keep records and other supporting documentation (original supporting documents) as evidence that the Contract is performed correctly, and the expenses were actually incurred. These must be available for review upon the request of Contracting authority.
- 3.1.6. The Contractor shall make its own arrangements for office facilities, personal computers and other facilities of appropriate performance and security standard for Service provision.
- 3.1.7. The Contractor shall ensure that its team members (experts etc.) involved in Service provision are adequately supported and equipped. Costs for administration of service contract, office

operation (including telecommunication costs), transportation and accommodation costs shall be included.

### **3.2. Provision of Services**

- 3.2.1. The Contractor must perform the Contract in compliance with its provisions and all legal obligations under applicable EU, international and national law within the set deadlines and to the highest professional, diligence and ethical standards.
- 3.2.2. The Contractor shall carry out the tasks, prepare and provide all documents, reports and any other information material required for the provision of the Services.
- 3.2.3. During the implementation of Services, the Contractor shall identify possible risks at early stage and propose a mitigation measures in order to successfully deliver Services on time.

### **3.3. Provision of assignment**

- 3.3.1. Contractor should accept orders of tax advisory services in a written form by e-mail from RB Rail Accounting manager or CFO, acknowledge their receipt by return e-mail including estimated workload in hours. If total estimated hours required for fulfilment of particular task exceed 8 (eight) hours, the Parties should agree on precise content, scope form of deliverable and fixed number of hours before starting the particular assignment.
- 3.3.2. Contractor should prepare delivery acceptance statement together with each invoice for services provided. All completed assignments during the invoicing period should be listed on the delivery acceptance statement, showing time consumed, including tasks and questions which required less than 8 (eight) hours.
- 3.3.3. VAT expert or Direct taxation expert in provision of services may involve other consultants at own discretion as long as full responsibility for the deliverable remains with the expert proposed.

### **3.4. Confidentiality, independence and absence of conflict of interest**

- 3.4.1. The Contractor is expected to ensure that its contractual and professional obligations in particular with regard to confidentiality, independence and absence of conflict of interests are well understood and upheld throughout and after Services provision.
- 3.4.2. During the provision of Services, the Contractor shall provide independent view based on its expertise, education and experience.

### **3.5. Miscellaneous**

- 3.5.1. Communication with Contracting authority under Contract (e.g. information, requests, submissions, formal notifications, etc.) must be carried out in English.
- 3.5.2. Communication channels: e-mail, Skype, telecommunications etc.
- 3.5.3. All written materials shall meet the highest standards and technical terminology proficiency. If requested by the Contracting authority, the Contractor shall engage professional proofreading Services at its own expense.
- 3.5.4. Contractor shall include any travel expenses (if any arise) in proposed contract price. Contracting authority won't additionally reimburse any travel expenses incurred by Contractor during the provision of Services.

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

**ANNEX NO. 4: APPLICATION**

**APPLICATION FOR PARTICIPATION IN THE OPEN COMPETITION  
“TAX ADVISORY AND REPORTING SERVICES FOR RB RAIL AS IN 2019 - 2020”  
(ID NO. RBR 2018/31)**

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

By submitting the Proposal, the Tenderer hereby:

1. Confirms participation in the Open competition “Tax advisory and reporting services for RB Rail AS in 2019-2020”, ID No RBR 2018/31, in a<sup>16</sup>:

Part No. 1 “Tax compliance and reporting services for RB Rail AS Estonia branch”

Part No. 2 “Tax compliance and reporting services for RB Rail AS Lithuania branch”

<sup>16</sup> Please indicate by ticking relevant box/ -es (Part No. 1, Part No. 2, Part No. 3 or combination of these parts) in which the Tenderer takes participation.



Part No. 3 "On-demand tax advisory services covering all taxes and duties in Estonia, Latvia and Lithuania"

2. Informs that the following entities and/or persons comply with the following exclusion grounds (if any):

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

3. Confirms that, if the Tenderer will be awarded the Contract, the Tenderer will provide the services in accordance with the requirements of the Annex No. 1 "Technical specification for the Part No. 1" and/ -or Annex No. 2 "Technical specification for the Part No. 2" and/ -or Annex No. 3 "Technical specification for the Part No. 3".
4. Confirms that Regulations is clear and understandable, that it does not have any objections and complaints and that in the case of granting the right to enter into a Contract it shall fulfil all conditions of the Regulations as well as enter into a Contract in accordance with the Draft contract enclosed with the Regulations (Annex No. 11 "Draft contract for the Part No. 1" and/ or Annex No. 12 "Draft contract for the Part No. 2", and/ or Annex No. 13 "Draft contract for the Part No. 3").
5. Confirms that in the preparation and submission of its Proposal, Tenderer has fully considered all the clarifications issued by the Contracting authority.
6. Agrees that the Contracting authority reserves itself the right to reject any or all Proposals and cancel the procurement process before entry into Contract on the grounds specified in the Regulations or the law.
7. Guarantees that all information and documents provided are true.

**8. Confirms<sup>17</sup> that meets the criteria of (please indicate by ticking relevant box):**

a small                       medium                       other

sized enterprise<sup>18</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>19</sup>

---

[date of signing]

---

[name and position of the representative of the Tenderer]

<sup>17</sup> Tenderer must indicate size of enterprise for each member of the partnership, if the Tenderer is a partnership,

<sup>18</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>19</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. 5: CONFIRMATION OF FINANCIAL STANDING

### CONFIRMATION OF TENDERER'S FINANCIAL STANDING FOR THE OPEN PROCEDURE "TAX ADVISORY AND REPORTING SERVICES FOR RB RAIL AS IN 2019 - 2020" (ID NO. RBR 2018/31)

#### 1. Section 8.3.1 of the Regulation

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

If the Tenderer submits a Proposal for two parts of the Procurement, the Tenderer's or all members of the partnership together (if the Tenderer is a partnership and confirms the average financial turnover jointly), average financial turnover within the last 3 (three) financial years (2016, 2017, 2018) is not less than 160 000 EUR (one hundred sixty thousand euros) per year.

If the Tenderer submits a Proposal for all parts of the Procurement, the Tenderer's or all members of the partnership together (if the Tenderer is a partnership and confirms the average financial turnover jointly), average financial turnover within the last 3 (three) financial years (2016, 2017, 2018) is not less than 260 000 EUR (two hundred sixty thousand euros) per year.

In the event the 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 financial turnover shall be recognized in the amount of the investment in the limited partnership.

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

No	Year	Total Turnover in EUR	Notes
The Tenderer or member of the partnership (if the Tenderer is a partnership) on whose capacity the Tenderer is relying to certify its financial and economic performance (Section 8.3 of the Regulations) and who will be financially and economically responsible for fulfilment of the Contract/-s or other entity on whose capacity the Tenderer is relying (if the Tenderer is relying on other entity's capacity) to certify its financial and economic performance and who will be financially and economically responsible for fulfilment of the Contract/-s:			
Name of the Tenderer/member of a partnership/other entity			
1.	2018		
2.	2017		
3.	2016		
<b>Average annual turnover</b>			
within the last 3 (three) financial years			

## 2. Section 8.3.2 of the Regulations

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

---

Name of the Tenderer/member of partnership/other entity

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

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

---

[date of signing]

---

[name and position of the representative of the Tenderer]

**ANNEX NO. 6: EXPERIENCE OF THE TENDERER**

**DESCRIPTION OF THE TENDERER’S EXPERIENCE FOR THE OPEN PROCEDURE  
“TAX ADVISORY AND REPORTING SERVICES FOR RB RAIL AS IN 2019 - 2020”  
(ID NO. RBR 2018/31)**

**TABLE NO.1**

No	Client, client’s contact information for references (name of representative, phone, e-mail) <sup>20</sup>	Period of the contract (month/year – month/year)	Description of the services provided what characterize required experience, stated in Section 8.4.1.1 and/ or 8.4.2.1, and/ or 8.4.3.1 of the Regulations
1.			
2.			
3.			
n+1			

**TABLE NO.2**

No	Client, client’s contact information for references (name of representative, phone, e-mail) <sup>21</sup>	Period of the contract (month/year – month/year)	Description of the services provided what characterize required experience, stated in Section 8.4.1.2 and/ or 8.4.2.2, and/or 8.4.3.2 of the Regulations
1.			
2.			
3.			
n+1			

<sup>20</sup> In case of doubt, the Contracting authority has the right to contact the Client to verify that the services specified complies with the requirements set in Section 8.4.1.1 and/or 8.4.2.1, and/or 8.4.3.1 of the Regulations.

<sup>21</sup> In case of doubt, the Contracting authority has the right to contact the Client to verify that the services specified complies with the requirements set in Section 8.4.1.2 and/or 8.4.2.2, and/or 8.4.3.2 of the Regulations.

**TABLE NO.3**

No	Client, client’s contact information for references (name of representative, phone, e-mail) <sup>22</sup>	Period of the contract (month/year – month/year)	Description of the services provided what characterize required experience, stated in Section 8.4.1.3 and/ or 8.4.2.3 of the Regulations
1.			
2.			
3.			
n+1			

\_\_\_\_\_

[date of signing]

\_\_\_\_\_

[name and position of the representative of the Tenderer]

<sup>22</sup> In case of doubt, the Contracting authority has the right to contact the Client to verify that the specified project complies with the requirements set in Section 8.4.1.3 and/or 8.4.2.3 of the Regulations.

**ANNEX NO. 7: EXPERIENCE OF THE EXPERT**

**DESCRIPTION OF THE EXPERT’S EXPERIENCE FOR THE OPEN PROCEDURE  
“TAX ADVISORY AND REPORTING SERVICES FOR RB RAIL AS IN 2019 - 2020”  
(ID NO. RBR 2018/31)**

**GENERAL INFORMATION:**

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

**EDUCATION:**

	<b>Educational institution</b>	<b>Period of studies (month/year – month/year)</b>	<b>Obtained degree (-s)</b>
1.			
...			

**EXPERIENCE:**

	<b>Client, client’s contact information for references (name of the representative, phone, e- mail)<sup>23</sup></b>	<b>Period of provision of services (month/year – month/year)</b>	<b>Description of the Client, responsibilities, main relevant tasks etc. which characterize the experience mentioned in Section 8.4.1.4.1 (b) and/or 8.4.1.4.2 (b), and/or Section 8.4.2.4.1 (b) and/or 8.4.2.4.2 (b), and/or Section 8.4.3.3.1 (b) and/or 8.4.3.3.2. (b), (c) of the Regulations</b>
1.			
2.			
...			

<sup>23</sup> In case of doubt, the Contracting authority has the right to contact the Client to verify that the it complies with the requirements set in Section 8.4.1.4.1 (b) and/or 8.4.1.4.2 (b), and/or 8.4.2.4.1 (b), and/or 8.4.2.4.2 (b), and/or 8.4.3.3.1 (b), and/or 8.4.3.3.2 (b), (c) of the Regulations.

**ENGLISH LANGUAGE SKILLS<sup>24</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.

I confirm that I have consented that my candidature is proposed in the open competition "Tax advisory and reporting services for RB Rail AS in 2019-2020", ID No RBR 2018/31.

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

\_\_\_\_\_  
[date of signing]

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
[name of the expert]

<sup>24</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>)

**ANNEX NO. 8: OTHER ENTITIES ON WHOSE CAPACITY TENDERER RELIES**
**A LIST OF OTHER ENTITIES ON WHOSE CAPACITY TENDERER RELIES TO MEET THE  
 REQUIREMENT OF THE OPEN PROCEDURE**
**"TAX ADVISORY AND REPORTING SERVICES FOR RB RAIL AS IN 2019 - 2020"**
**(ID NO. RBR 2018/31)**

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

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 [date of signing]

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 [name and position of the representative of the Tenderer]



**ANNEX NO. 9: SUBCONTRACTORS**

**A LIST OF THE SUBCONTRACTORS FOR THE OPEN PROCEDURE**  
**"TAX ADVISORY AND REPORTING SERVICES FOR RB RAIL AS IN 2019 - 2020"**  
**(ID NO. RBR 2018/31)**

No	Name of the sub-contractor (registration No., legal address)	Description of the sub-contracted task	Sub-contracted tasks		Size of the enterprise <sup>25</sup>
			Amount, EUR (without VAT)	% from the proposed price	
<b>I</b>	<b>Total amount of the sub-contracted tasks is equal to or exceeds 10% from the proposed contract price</b>				
1					
2					
n+1					
<b>Total:</b>					
<b>II</b>	<b>Total amount of the sub-contracted tasks is smaller than 10% from the proposed contract price</b>				
1					
2					
n+1					
<b>Total:</b>					
<b>Total (I+II)</b>					

---

 [date of signing]

---

 [name and position of the representative of the Tenderer]

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<sup>25</sup> Please indicate the size of enterprise (small, medium or other) as defined in the Article 2 of Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprise. Available here: [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2003.124.01.0036.01.ENG&toc=OJ:L:2003:124:TOC](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. 10: FINANCIAL PROPOSAL

### FINANCIAL PROPOSAL FOR THE OPEN PROCEDURE “TAX ADVISORY AND REPORTING SERVICES FOR RB RAIL AS IN 2019 - 2020” (ID NO. RBR 2018/31)

#### Part No. 1 “Tax compliance and reporting services for RB Rail AS Estonia branch”

The Tenderer [*name of the Tenderer*] offers to deliver services in accordance with the Annex No. 1 “Technical specification for the Part No. 1” for the following costs<sup>26</sup>:

No.	Service	Unit	Unit price (EUR without VAT)	Amount	Price (EUR without VAT)
1.	Monthly tasks:				
	1.1. Payroll and tax compliance	month		23 <sup>27</sup>	
	1.2. Value added tax (VAT) compliance	month		23 <sup>28</sup>	
	1.3. Corporate income tax (CIT) compliance	month		23 <sup>29</sup>	
2.	Annual tasks	year		3	
3.	Unplanned tasks <sup>30</sup> (blended hourly rate)	hour		40 <sup>31</sup>	
<b>Total (EUR without VAT):</b>					

Total price (Sum of positions No. 1 - 3) EUR (excl. VAT) in words: \_\_\_\_\_.

<sup>26</sup> When preparing the Financial proposal, the rules of Section 11 of the Regulations shall be considered.

<sup>27</sup> Quantity is indicated for Proposals evaluation purposes and can vary according to date when Contract will be signed.

<sup>28</sup> Quantity is indicated for Proposals evaluation purposes and can vary according to date when Contract will be signed.

<sup>29</sup> Quantity is indicated for Proposals evaluation purposes and can vary according to date when Contract will be signed.

<sup>30</sup> Please see the Section 6.4. of the Regulations.

<sup>31</sup> Quantity is indicated for Proposals evaluation purposes only.

## Part No. 2 “Tax compliance and reporting services for RB Rail AS Lithuania branch”

The Tenderer [*name of the Tenderer*] offers to deliver services in accordance with the Annex No. 2 “Technical specification for the Part No. 2” for the following costs<sup>32</sup>:

No.	Service	Unit	Unit price (EUR without VAT)	Amount	Price (EUR without VAT)
1.	Monthly tasks:				
	1.1. Payroll and tax compliance	month		23 <sup>33</sup>	
	1.2. Value added tax (VAT) and iSAF compliance	month		23 <sup>34</sup>	
2.	Annual tasks	year		3	
3.	Unplanned tasks <sup>35</sup> (blended hourly rate)	hour		40 <sup>36</sup>	
<b>Total (EUR without VAT):</b>					

Total price (Sum of positions No. 1 - 3) EUR (excl. VAT) in words: \_\_\_\_\_.

## Part No. 3 “On-demand tax advisory services covering all taxes and duties in Estonia, Latvia and Lithuania”

The Tenderer [*name of the Tenderer*] offers to deliver services in accordance with the Annex No. 3 “Technical specification for the Part No. 3” for the following costs<sup>37</sup>:

No.	Service	Unit	Hourly rate (EUR without VAT)
1.	On-demand tax advisory services (blended hourly rate)	hour	
<b>Total (EUR without VAT):</b>			

\_\_\_\_\_

[date of signing]

\_\_\_\_\_

[name and position of the representative of the Tenderer]

<sup>32</sup> When preparing the Financial proposal, the rules of Section 11 of the Regulations shall be considered.

<sup>33</sup> Quantity is indicated for Proposals evaluation purposes and can vary according to date when Contract will be signed.

<sup>34</sup> Quantity is indicated for Proposals evaluation purposes and can vary according to date when Contract will be signed.

<sup>35</sup> Please see the Section 6.4. of the Regulations.

<sup>36</sup> Quantity is indicated for Proposals evaluation purposes only.

<sup>37</sup> When preparing the Financial proposal, the rules of Section 11 of the Regulations shall be considered.

**ANNEX NO. 11: DRAFT CONTRACT FOR THE PART NO. 1****PROFESSIONAL CONSULTANT SERVICE****AGREEMENT****for Tax Advisory and Reporting Services for RB Rail AS in 2019-2020****for Part No 1 "Tax compliance and reporting services for RB Rail AS Estonia branch"****between****RB Rail AS****and****[•]**

Contract registration number 8/2019-[•]

CEF<sup>38</sup> Contract No INEA/CEF/TRAN/M2014/1045990 A34,CEF<sup>39</sup> Contract No INEA/CEF/TRAN/M2015/1129482 B18CEF<sup>40</sup> Contract No INEA/CEF/TRAN/M2016/1360716 C09

Procurement procedure identification No RBR 2018/31

Riga

Dated [•] [•] 2019

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<sup>38</sup> Grant Agreement under the Connecting Europe Facility<sup>39</sup> Grant Agreement under the Connecting Europe Facility<sup>40</sup> Grant Agreement under the Connecting Europe Facility

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## PROFESSIONAL CONSULTANT SERVICE AGREEMENT

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

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

and

[●], a [●] company organized and existing under [●] law, with registration number [●], having its registered address at [●] (the "Service Provider"), represented by [●] acting on the basis of [●] on the other side.

WHEREAS:

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

### Section I DEFINITIONS AND INTERPRETATION

- 1.1. *Definitions.* In this Agreement, unless the context requires otherwise, all Definitions shall have the meanings as described to such terms in accordance with *Annex A: Definitions and common terms*.
- 1.2. *Interpretation.*
  - (a) The headings contained in this Agreement shall not be used in its interpretation.
  - (b) References to the singular shall include references in the plural and vice versa, words denoting a gender shall include any other gender where the context requires, and words denoting natural persons shall include any other Persons.

- (c) References to a treaty, directive, regulation, law or legislative provision shall be construed, at any particular time, as including a reference to any modification, extension or re-enactment of the respective treaty, directive, regulation, law or legislative provision at any time then in force and to all subordinate legislation enacted from time to time.
  - (d) In the event there arises a conflict between provisions of the Agreement, the last provision to have been written chronologically shall take precedence.
  - (e) Any reference in this Agreement to a Person acting under the direction of another Person shall not include any action that is taken in contravention of any Applicable Law or Standards, unless the relevant Person can demonstrate that an explicit instruction or direction was given to take the relevant action.
  - (f) Unless expressly stated to the contrary, any reference in this Agreement to the right of consent, approval or agreement shall be construed such that the relevant consent, approval or agreement shall not be unreasonably delayed or withheld. The Parties agree and acknowledge as follows:
    - (i) neither Party shall be required to seek or apply for any consent, approval or agreement by any Person which would place the respective Party in breach of the Applicable Law, Standards or any Good Industry Practice; and
    - (ii) nothing in this Agreement shall require the Principal to give or procure the giving of any consent or approval which would be contrary to the protection, safety and efficient operation of the Railway and the Project.
  - (g) A reference to "writing" shall include an e-mail transmission and any means of reproducing words in a tangible and permanently visible form.
  - (h) The words "include" and "including" are to be construed without limitation.
  - (i) Unless indicated otherwise, all references to "days" shall mean calendar days.
  - (j) The words in this Agreement shall bear their natural meaning, except for any Definitions in accordance with *Annex A: Definitions and common terms*.
- 1.3. *Order of Precedence*. In the event of any discrepancy or inconsistency between the documents forming part of this Agreement, the following order of precedence shall apply:
- (a) This Agreement document;
  - (b) Explanations (clarifications) of the procurement documentation;
  - (c) Procurement documents with the annexes (including Technical specification (Scope of Service));
  - (d) Clarifications of the Service Provider's Proposal;
  - (e) Service Provider's Proposal;
  - (f) All other Annexes of the Agreement.

## **Section II GENERAL TERMS AND CONDITIONS**

- 2.1 *Engagement*. The Principal hereby engages the Service Provider to provide and perform the Service for the purposes of the Project with the objective of ensuring provision and performance of all Works more fully identified in *Annex B: Technical Specification* attached to this Agreement

- (the "Scope of Service") subject to the terms of this Agreement, and the Service Provider hereby accepts such engagement.
- 2.2 *Objective.* The Service shall result in the performance of all Works identified in according to the terms of this Agreement and delivery to the Principal of the Deliverables according to the schedule specified in *Annex B: Technical Specification* to this Agreement.
- 2.3 *Ordinary, Additional and Extraordinary Services.* The Service under this Agreement shall comprise the following:
- (a) Ordinary Services are those designated as "Monthly Tasks" and "Annual Tasks" in accordance with *Annex B: Technical Specification* (the "Ordinary Services");
  - (b) Additional Services are those designated as "Additional tasks" in accordance with *Annex B: Technical Specification* or which by written agreement of the Parties are otherwise additional to Ordinary Services (the "Additional Services") and which are necessarily performed by the Service Provider, provided that the Scope of Services identified in accordance with *Annex B: Technical Specification* is supplemented with the Additional Services in strict compliance with Applicable Law of the Latvia. Irrespective of anything to the contrary set forth in this Agreement, each Additional Service shall constitute an Alteration.
- 2.4. *Alteration Requests by Principal.* Notwithstanding any provisions in this Agreement to the contrary, whenever the Principal reasonably considers that an Alteration is necessary:
- (a) to address, alleviate or comply with (as appropriate) a Mandatory Alteration; or
  - (b) to address changes to the underlying assumptions set out in the Scope of Service,
- the Principal shall send to the Service Provider a written notice requesting an Alteration to the Scope of Service and/or Service Schedule (the "Alteration Request") to the extent that the Alteration is reasonable in the circumstances. For the avoidance of any doubt, no Alteration shall be effective unless and until agreed in writing by both Parties and made in accordance with Applicable Law of Latvia.
- 2.5 *Co-Operation of the Parties.* The Parties shall cooperate with one another to fulfil their respective obligations under this Agreement. The Parties shall endeavour to maintain good working relationships among all key personnel engaged toward provision of the Service.
- 2.6 *Licensing Requirements.* By signing this Agreement, the declaration is made by the Service Provider that the Service Provider is professionally qualified, registered, and licensed to practice in the Republic of Estonia, if it's required in accordance with legal acts of Estonia.
- 2.7 *General Obligations of Service Provider.* The Service Provider shall be responsible for the professional quality, technical accuracy, and coordination of all concepts, programming, reports, designs, drawings, specifications, and other services furnished under this Agreement. The Service Provider shall have an obligation, without additional compensation of any kind, to correct or revise any errors, deficiencies, or omissions in concepts, programming, reports, designs, drawings, specifications, estimates, and other services rendered hereunder and forming part of the Service. The Service Provider shall furnish to the Principal all Deliverables as described in *Annex B: Technical Specification*, configured according to this Agreement.



### Section III OBLIGATIONS OF SERVICE PROVIDER

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

- (i) act in accordance with the terms and conditions of the agreement entered into between the Principal and the relevant third party; provided, however, that the details of such powers and duties, to the extent not described pursuant to Scope of Services are acceptable to the Service Provider;
- (ii) if authorized to certify, decide or exercise discretion, do so fairly between the Principal and third party not as an arbitrator but as an independent professional exercising its best skill and judgment; and
- (iii) to the extent so authorized, cause the obligations of any third party to be adjusted or modified, subject to obtaining the prior approval of the Principal to any adjustment or modification which can have a material effect on Costs, quality or time (except in any emergency when the Service Provider shall inform the Principal as soon as practicable).

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

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

In addition to the obligations set forth in accordance with this Clause 3.5, the Service Provider shall have an obligation, during the term of this Agreement, to retain copies of the object code of all software used in the design and production of the Service Provider software, if such software shall be used.

In case of on-going audits, appeals, litigation or pursuit of claims concerning the grant, including in the case of correction of systemic or recurrent errors, irregularities, fraud or breach of obligations, the records shall be kept and maintained longer.

3.4 *Access to Documentation.* At all times during the term of the Service, the Principal shall have access to all Documentation. This access shall be continuing and survive the termination of this Agreement for either cause or convenience. The Documentation shall be kept being accessed in a generally recognized format for a period of for period of ten (10) years from the date of expiration or termination of this Agreement. All records forming part of the Documentation shall be available to the Principal auditor, or expert appointed by the Principal during the period of time specified in accordance with this Clause 3.6.

3.5 *Right to Sub-Contract and Staff.*

- (a) In performing the Services in accordance with the Scope of Service and subject to the provisions of Clause 3.14 and this Clause, the Service Provider may only rely on the services of those Approved Sub-Contractors and Staff listed in *Annex D: List of Approved Sub-Contractors and Staff*, as such list may, from time to time, be modified or supplemented in agreement with the Principal and in accordance with the terms and subject to the criteria

contained in the applicable Public Procurement Law of the Republic of Latvia. Parties shall specify the name, contact details and legal representative(s) of each Approved Sub-Contractor as of the Effective Date in *Annex D: List of Approved Sub-Contractors and Staff*. The Service Provider shall have an obligation to notify the Principal in writing of any changes to Sub-Contractor or Staff data specified in *Annex D: List of Approved Sub-Contractors and Staff* occurring during the term of this Agreement and of the required information for any new Sub-Contractors or Staff member which it may subsequently engage toward performing the Service.

- (b) Pursuant to the Public Procurement Law of the Republic of Latvia the Service Provider shall obtain prior written consent of the Principal for the replacement of each Sub-Contractor or each Staff member, or each key personnel indicated in *Annex D: List of Approved Sub-Contractors and Staff* and involvement of additional Sub-Contractors or Staff members, or key personnel.
- (c) Review and evaluation of the replacement of Sub-Contractors or Staff shall be carried out, and the consent or refusal to give consent shall be rendered by the Principal in accordance with Section 62 of the Public Procurement Law of the Republic of Latvia.
- (d) The Service Provider shall not involve employee and/or staff (including but not limited to key office-holders, key personnel (including but not limited to Supervisor/manager, Consultants) who have a criminal record, in the implementation of the Agreement.
- (e) The Service Provider shall submit to the Principal the name, surname, personal code (identification number), professional title (job position) of every natural person that will implement the Agreement and/or will be present on site at least ten (10) Working Days prior involvement of this person in the implementation of the Agreement and/or its presence on site. The Service Provider shall provide a brief (concise) description of duties towards the implementation of the Agreement of the persons, and, if requested by the Principal.
- (f) The Principal has a right to demand dismissal of such a natural person non-compliant with the security clearance requirements stipulated in this Clause 3.5 at the Principal's sole discretion on the basis of the Principal's written request for dismissal. Parties agree that such Principal's decision is in-contestable.
- (g) The Service Provider shall replace the Sub-Contractor and/or Staff member which, during the effectiveness of this Agreement, meets any of the compulsory grounds for exclusion of tenderers (or Sub-Contractors) that were verified during the Procurement Procedure and/or the Principal has demanded his/her dismissal according to Clause 3.5(f) and to prevent (i) involvement of such a natural person in the implementation of the Agreement and (ii) the presence of this person in the real estate, construction site or any other site. The Service Provider shall immediately undertake all the necessary actions and measures to ensure that any risk of involvement of such a natural person in the implementation of the Agreement is promptly and duly eliminated.
- (h) In case mentioned in Clause 3.5(f) the Service Provider is obliged:
  - (i) to immediately replace the dismissed person according to Section 62 of the Public Procurement Law of the Republic of Latvia and the Agreement, and

- (ii) to comply with the Principal's written instructions pursuant to this Clause 3.5 and not to challenge these instructions, and
- (iii) to inform the Principal about dismissal or replacement proceedings pursuant to this Clause.

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

The Service Provider's non-compliance with the security clearance requirements stipulated in this Clause 3.7, the Principal's instructions towards the Service Provider regarding these security clearance requirements or other provisions of this Clause 3.5 constitutes a material breach (breach of a material term or condition) of the Agreement.

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

- (c) pass to the Principal a complete set of any documents, manuals or other information that the Principal may require in connection with the Project and the Railway and which, at the time of termination, are in the possession or under the control of the Service Provider.
- 3.11 *Attendance of Meetings.* To the extent necessary to ensure smooth and efficient provision of the Service, the Service Provider shall, at the Principal's request, hold and/or attend meetings with any Persons, at which appropriate personnel of the Service Provider and the Principal and the Representatives of each Party shall be present. The Service Provider shall record all meetings (also online meetings) between Parties and prepare meeting reports within five (5) Working Days after each meeting. All meeting reports shall be harmonized by Principal.
- 3.12 *Compliance with Laws.* The Service Provider shall review the Applicable Law that is applicable to the Service Provider's services. In carrying out any activities forming part of the Service, the Service Provider shall, at all times, ensure compliance with requirements imposed by supra-national and/or governmental authorities having jurisdiction over the Project.
- 3.13 *No Material Interference.* The Service Provider agrees that non-Principal activities undertaken by the Service Provider will be managed so as not to materially interfere with the Service Provider's obligations to the Principal under this Agreement.
- 3.14 *No Conflicting Activity.* Except with the Principal's knowledge and express written permission, the Service Provider shall not engage in any activity, or accept any employment, other agreement, interest, or contribution that would reasonably appear to compromise the Service Provider's professional judgment and performance with respect to the Service and/or the Project. In performing the Service, the Service Provider shall take all necessary measures to prevent any situation where the impartial and objective implementation of the Service is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest.
- 3.15 *Certain Negative Covenants.* In carrying out the Service, the Service Provider undertakes not to procure goods or services of any kind from any person meeting any of the following criteria:
- (a) the Person who is a member of the Management Board or Supervisory Board of an Approved Sub-Contractor or procurator of an Approved Sub-Contractor, or is authorised to represent or act on behalf of an Approved Sub-Contractor with respect to any activity related to any subsidiary company of such Approved Sub-Contractor, and such Person has been accused of commitment of any of the following criminal offences pursuant to an order issued by a public prosecutor or was found to be guilty of commitment of any of the following criminal offences in accordance with a court judgment that has entered into legal force, is non-disputable and non-appealable:
- (i) formation, organisation, leading or involvement in the criminal organisation or another criminal formation, or participation in the criminal acts of such organisation or formation;
- (ii) accepting a bribe, giving of a bribe, misappropriation of a bribe, intermediation toward giving or taking of a bribe, acceptance of a prohibited benefit or commercial bribing, unauthorized participation in property transactions, unlawful claiming of benefits, accepting or providing benefits, trading influences;
- (iii) fraud, misappropriation of funds or money laundering;
- (iv) tax evasion or evasion of payments equivalent to tax;

- (v) terrorism, financing of terrorism, creation or organization of terrorist group, traveling for terrorist purpose, justification of terrorism, instigation of acts of terrorism, terrorist threats or recruitment and training of a person with the aim of committing acts of terrorism;
- (vi) human trafficking;
- (b) the Person has, by decision of a competent authority or judgment of a court which has entered into legal force and is non-disputable and non-appealable, been found guilty of violation of labour law in any of the following manners:
  - (i) employment of one or more citizens or nationals of countries who are not citizens or nationals of a Member State of the European Union and are residing in the territory of a Member State of the European Union unlawfully;
  - (ii) employment of one or more persons without having entered into written employment agreement with such persons, or without having submitted an employee declaration with respect to such persons within a period of time stipulated in accordance with applicable laws and regulations applicable to persons that enter into salaried employment;
- (c) the Person who, by decision of a competent authority or in accordance with judgment of a competent court which has entered into legal force, is non-disputable and non-appealable, has been held guilty of violation of applicable rules of competition law manifested as a vertical agreement aimed at restricting the ability of one or more purchasers to determine the resale price, or a horizontal cartel agreement, with the exception of instances where the relevant authority, upon having established the fact of violation of applicable rules of competition law, has discharged the candidate or participant in a tender offer from imposition of a fine or has reduced the amount of fine as a part of co-operation leniency programme;
- (d) the Person who has insolvency proceedings initiated against it (except in the circumstances where a bailout or a similar set of measures are applied within the insolvency proceedings and are aimed at preventing the bankruptcy and restoring the debtor back to solvency, in which case the Service Provider shall evaluate the possibility of participation by such Person in performing the Service), economic activity of the Person has been suspended or discontinued, bankruptcy proceedings have been initiated against the Person or the Person is subject to a liquidation;
- (e) the Person has unpaid tax indebtedness in the country where the procurement is organised or in the country where the Person is registered or permanently residing as a tax payer, including the indebtedness with respect to State social insurance contributions, in the total amount exceeding EUR 150 in each individual country; in such case, the Service Provider can, within its sole discretion, prompt the Approved Sub-Contractor to pay or discharge all outstanding tax indebtedness within 10 (ten) Working Days and, upon such payment or discharge, allow the Person to continue performance of the Service;
- (f) the Person is an entity registered offshore;
- (g) International or national sanctions or substantial sanctions by the European Union or the North Atlantic Treaty Organization Member State affecting the interests of the financial and capital market has been imposed to the Person and such sanctions can affect the execution of the Contract; and

- (h) any of the above-mentioned criteria shall apply to all members of a group of persons if the Person is a group of persons.

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

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



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

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

#### **Section IV OBLIGATIONS OF PRINCIPAL**

4.1. *Acting in Good Faith and Supply of Information.* At all times during the term of this Agreement, the Principal undertakes to act in good faith toward the Service Provider in respect of all matters under this Agreement. The Principal shall, so as not to delay the Service and within a reasonable time, supply to the Service Provider free of cost all information in the power of the Principal to obtain which pertains to the Service, the Project and the Railway. The Principal shall, free of any Costs to the Service Provider, to the extent not explicitly stated otherwise in this Agreement, comply with all of its obligations under this Agreement, including with respect to carrying out

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

## **Section V REPRESENTATIONS AND WARRANTIES**

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



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

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

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

## **Section VI PERSONNEL AND REPRESENTATIVES**

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

6.2. *Representatives.* Each Party shall appoint an officer, employee or individual to serve as its representative toward supply or receipt of the Service with full authority to act on its behalf in connection with this Agreement (hereinafter, the "Representative"), the initial Representatives having been identified in accordance with *Annex H: Representatives*. Any restriction placed by

either Party on its Representative's authority shall be notified to the other Party in writing in order to be effective. The Representatives may delegate their authority by notice in writing specifying the identity of the delegate and specifying the scope of authority so delegated. In addition to the appointment of a Representative in accordance with this Clause 6.2, to the extent required by the Principal, the Service Provider shall designate an individual to liaise with the Representative of the Principal in each country where the Project is implemented.

- 6.3. *Changes in Personnel.* To the extent necessary to replace any Person among personnel or Representative of either Party engaged toward provision or receipt of the Service, the Party responsible for the appointment of such Person shall immediately arrange for replacement of the appointed Person by another Person of comparable competence. The costs of such replacement shall be borne by the Party responsible for the appointment, except that if the replacement is requested by the other Party,
- (a) such request shall be made in writing and state the reason for the request; and
  - (b) the Party making the request shall bear the costs of replacement, unless misconduct or inability to perform is satisfactorily established as the reason for the replacement.
- 6.4. *Supplemental Personnel.* To the extent necessity arises to supplement the personnel of the Service Provider engaged toward provision of the Service with additional personnel, the Service Provider shall immediately arrange for engagement of such supplemental personnel. The costs of such engagement shall be borne by the Service Provider. For the avoidance of any doubt, the engagement of supplemental personnel under this Clause 6.4 shall not require approval by the Principal, provided that this personnel complies with the Applicable Law, including the Public Procurement Law of the Republic of Latvia, and this Agreement.

## **Section VII SERVICE MEETINGS, REPORTING AND RISK REDUCTION**

- 7.1 *Service Meetings.* The Service Provider shall arrange meetings if requested by the Principal, at which appropriate personnel of the Service Provider and the Principal and the Representatives of each Party shall be present. Service Provider shall record all meetings (also online meetings) between Parties and prepare meeting reports within five (5) Working Days after each meeting. All meeting reports shall be harmonized by Principal.
- 7.2 *Reporting.* The Service Provider shall, in a format and at intervals to be agreed with the Principal:
- (a) provide the Principal with regular reports and status updates on the progress of the Works.
  - (b) report on any changes to the *Annex B: Technical Specification, Annex C: Schedule of Service*, which the Service Provider considers may be needed in order to fulfil the objectives set out in the *Annex B: Technical Specification* and *Annex C: Schedule of Service* and
  - (c) use reasonable endeavours to provide any other information and status updates as may be reasonably requested by the Principal at any time.

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

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

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

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

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

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

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

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

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

## **Section VIII COMMENCEMENT OF SERVICE, REMEDY OF DEFECTS AND ACCEPTANCE**

8.1 *Service Commencement.* The Service Provider shall not commence provision of the Service until Service Start Date as identified in accordance with *Annex C: Schedule of Service* and shall ensure that the Deliverables are furnished on or before each relevant Due Date set in the *Annex B: Technical Specification*. The Service Provider shall render the Service timely and with due diligence having due regard to any applicable Due Date and any other key dates for performance of the Service set out in the Agreement and the applicable Annexes, as may be amended from time to time with the consent of the Principal or in accordance with this Agreement and Public Procurement Law of the Republic of Latvia.

- 8.2 *Impediments and Delays.* If the Service, or any part thereof, is impeded or delayed by the Principal or any third party engaged by the Principal so as to increase the duration of the Service or any of the applicable Due Dates:
- (a) the Service Provider shall inform the Principal of the circumstances and probable effects of such impediment or delay upon the agreed schedule of Service specified in accordance with *Annex C: Schedule of Service*; and
  - (b) the duration of the Service shall be increased, and any Due Date affected by the impediment or delay shall be extended accordingly.
- 8.3 *Defects and Defects Date.* Until the Defects Date specified in accordance with *Annex C: Schedule of Service* the Principal shall notify the Service Provider of each Defect of any kind as soon as Defect is identified by the Principal and the Service Provider shall have an obligation to notify the Principal of each Defect as soon as Defect is identified by the Service Provider. Upon discovering a Defect, or upon receipt by the Service Provider of a notification of Defect from the Principal, the Service Provider shall have period to remedy the Defect as set in accordance with *Annex C: Schedule of Service* (the "Cure Period"). In the event of inability or failure by the Service Provider to remedy the Defect within the Cure Period, the Principal shall be entitled, at the sole and exclusive discretion of the Principal, to do any of the following:
- (a) allow the Service Provider an additional time period for remedying the Defect, such time period to be determined in the sole discretion of the Principal;
  - (b) remedy the Defect at own cost of the Principal (including by means of relying on the services of a third Person) and demand reimbursement by the Service Provider of Costs incurred by the Principal as a result of having to pay other Persons toward carrying out any work or action;
  - (c) terminate the Agreement according to *Section X TERMINATION AND SUSPENSION*; or
  - (d) remedy the Defects, irrespective of the extent or nature of the Defects, in accordance with Clause 8.3 (b) and terminate the Agreement pursuant to *Section X TERMINATION AND SUSPENSION*.

For the avoidance of any doubt, the application of the Cure Period under this Clause 8.3 shall be without prejudice to and shall not relieve the Service Provider from the obligation to pay any contractual penalty in accordance with the provisions of Clause 11.2 or to pay Damages in accordance with the provisions of Clause 11.3 of this Agreement.

- 8.4 Supply of a Deliverables completed by the Service Provider according to the *Annex B: Technical Specification* and *Annex C: Schedule of Service* during the previous month and by the relevant Due Date occurs until the 5 date of the current month. On producing all Deliverables (including all Documentation and information forming part of the Deliverable) in the month constituting all or an identifiable part of the Service in a Due Date, the Service Provider shall issue to the Principal one Provisional Completion Note substantially in the form of *Annex F: Form of Provisional Completion Note* (hereinafter, the "Provisional Completion Note"). The Provisional Completion Note shall include the Deliverables and adequate supporting Documentation and information relevant to the Deliverables completed in the previous month.
- 8.5 *Objection Notice and Provisional Acceptance Note.* In the event the Principal objects to the issuance of a Provisional Acceptance Note for all or some of the Deliverables, it shall give notice to the Service Provider setting out in reasonable detail any Defect or reason for the objection (the "Objection Notice") within reasonable time following receipt of the Provisional Completion Note. In the event no reasons for objection to the Provisional Completion Note exist, the Principal shall

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

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

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

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

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

## Section IX INTELLECTUAL PROPERTY RIGHTS

- 9.1 *Proprietary Rights.* All Documentation forming part of the Deliverables developed under this Agreement is and shall become the property of the Principal at the moment of creation regardless of whether the Service or Deliverable is produced or finally accepted. It is acknowledged and agreed by the Parties that the Principal shall be permitted to reproduce the drawings and schemes and distribute the prints in connection with the use or disposition of the Documentation without any approval of the Service Provider and without incurring obligation to pay any royalties or additional compensation whatsoever to the Service Provider.
- 9.2 *Intellectual Property in Documentation.* The Service Provider represents and warrants that it owns all Intellectual Property required for the purposes of completing its obligations under this Agreement and in all Documentation deliverable by or on behalf of the Service Provider under this Agreement and that, to the extent any Intellectual Property in any Documentation is not owned by the Service Provider, it has obtained all requisite consents from owner(s) of all Intellectual Property in the Documentation to fulfil all of the obligations undertaken by the Service Provider under this Agreement and has fully discharged all obligations with respect to payment of any royalties or fees.
- 9.3 *Transfer of Ownership to Principal.* The Principal shall acquire legal title to and ownership in the Intellectual Property in all Documentation deliverable to the Principal under this Agreement as of the moment of delivery by the Service Provider to the Principal of the Provisional Completion Note, together with the Deliverable and Documentation and information forming part of the Deliverable, in accordance with Clause 8.4 of this Agreement; provided, however, that the Principal has paid the Fee or other consideration payable under the terms of this Agreement with respect to the relevant part of the Service or Deliverable. For the avoidance of any doubt, such title and ownership shall confer upon the Principal, without limitation, each of the following:
- (a) the right to reproduce the Documentation and information, or any part thereof, and distribute copies of the Documentation and information or any part thereof;
  - (b) the right to modify, amend and supplement the Documentation and information, or any part thereof;
  - (c) the right to licence the Documentation and information, or any part thereof, for use by others; and
  - (d) the right to transfer ownership in the Documentation and information, or any part thereof, to others.
- 9.4 *Grant of Limited License to Service Provider.* Upon acceptance by the Principal of any Deliverable and Documentation forming part of any Deliverable in accordance with Clause 8.5, 8.6 and 8.7 the Principal shall be deemed to have granted the Service Provider an irrevocable and exclusive licence to reproduce, modify and distribute copies of any Documentation forming part of any Deliverable for the purposes of the Service and the Project, subject to the following restrictions:
- (a) the license shall apply during the term of this Agreement only;
  - (b) the permitted use shall only cover the right to reproduce, modify and distribute the Documentation and information, or any part thereof, for the purposes of performing, implementing or modifying the Service; and
  - (c) the Documentation and information, or any part thereof, shall not, without the prior consent by the Principal, be distributed or communicated to any third party for purposes other than those permitted in accordance with this Clause 9.4.

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

- 9.5 *No Additional Royalty.* It is acknowledged and agreed by the Parties that consideration for the transfer of ownership in the Intellectual Property shall be forming part of the Fee and no additional royalty, fee or other consideration of any kind shall be payable by the Principal to the Service Provider or to any third party in consideration of the transfer of ownership in the Intellectual Property in any Documentation.
- 9.6 *No Infringement.* The Service Provider represents and warrants to the Principal that no Documentation and information deliverable to the Principal under the terms of this Agreement will infringe any existing Intellectual Property of any third party. In the event any of the representations or warranties contained in this *Section IX INTELLECTUAL PROPERTY RIGHTS* prove to be untrue or inaccurate, the Service Provider undertakes, at its own cost and expense, to defend and settle any claim raised by any third party alleging infringement of Intellectual Property in the Documentation and information. The foregoing undertaking by the Service Provider shall apply subject to the following conditions:
- (a) the Principal shall notify the Service Provider, without undue delay, of any third-party claim alleging infringement of any Intellectual Property in any Documentation and information;
  - (b) the Principal refrains from admitting liability under any third-party claim or acting on the account of such claim without prior approval by the Service Provider; and
  - (c) the exclusive control over any legal proceeding or settlement related any third-party claim shall be exercised by the Service Provider; provided, however, that the Principal shall render the Service Provider all reasonable assistance toward such proceeding or settlement, at the cost and expense of the Service Provider.
- 9.7 *Infringement Proceedings.* In the event the Principal is a party to legal proceedings involving allegations of infringement of any Intellectual Property in the Documentation of any third party, the Service Provider shall keep the Principal fully informed of all aspects relevant to the legal proceedings and the Principal shall have the right, at its own cost, to be represented in the legal proceedings by separate counsel. In the event the Service Provider fails to act against claims alleging infringement of any Intellectual Property in the Documentation and information of any third party within reasonable time but, in any event, within twenty (20) days of having been notified of such claims, the Principal shall have the right to assume legal defence against claims alleging infringement of Intellectual Property and shall be entitled to reimbursement by the Service Provider of reasonable costs and expenses incurred toward such defence.
- 9.8 *Continued Use.* In the event a court of competent jurisdiction resolves in a binding judgment that the Documentation and information, or any part thereof, infringe Intellectual Property of any third party, the Service Provider shall, at its own cost and expense, procure for the Principal the right of continued use of the Documentation and information, or part thereof infringing Intellectual Property of a third party.
- 9.9 *License in Intellectual Property of the Service Provider.* The Service Provider hereby grants the Principal an irrevocable and non-exclusive license to use, reproduce, modify and/or enhance any Intellectual Property of the Service Provider, provided and to the extent Intellectual Property of the Service Provider is used by the Principal for the purposes of the Railway and/or the Project. It is agreed and acknowledged by the Parties that the license fee for the grant of license in accordance with this Clause 9.9 forms part of the Fee and such license shall continue to be valid irrespective of expiration of this Agreement following completion of the Service or termination of this Agreement for any reason.

- 9.10 *Obligation to Procure Intellectual Property Rights.* Where the Service Provider is not the legal owner of any relevant Intellectual Property of the Service Provider, the Service Provider shall use reasonable endeavours to procure for the Principal the rights specified in accordance with Clause 9.8.
- 9.11 *Obligation to Indemnify with Respect to Uses Other Than for the Purpose.* The Principal shall defend and indemnify the Service Provider from and against any and all Damages and Costs arising from the use by the Principal of any Intellectual Property of the Service Provider other than for the purposes of the Railway and/or the Project.
- 9.12 *Indemnification by the Service Provider.* The Service Provider shall defend and indemnify the Principal from and against any and all Damages arising from the use by the Principal of any Intellectual Property of the Service Provider, to the extent use by the Principal is within the scope of the license granted to the Principal in accordance with Clause 9.9.
- 9.13 *Certain Rights of Service Provider.* The Service Provider shall have the right to include photographic or artistic representations of the design of the Project among the Service Provider's promotional and professional materials after obtaining prior written approval from the Principal. The Service Provider shall be given reasonable access to the completed Project to make such representations. However, the Service Provider's materials shall not include the Principal's confidential or proprietary information regardless of whether or not the Principal has previously advised the Service Provider in writing of the specific information considered by the Principal to be confidential or proprietary. These materials also shall not contain any information or data that shall be used in accordance to any conditions and requirements set forth by the Principal or other entity; in this case the Service Provider shall comply with such conditions and requirements.

## **Section X TERMINATION AND SUSPENSION**

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



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

- (h) the occurrence of any event analogous to the events enumerated under Clauses 10.4(e)-(g) under the law of any jurisdiction to which the other Party's assets and undertaking are subject.
- 10.5 *Principal's Right to Terminate Immediately.* The Principal may terminate this Agreement immediately upon giving the other Party a written notice of termination explaining, in reasonable detail, the reason for termination, if:
- (a) CEF Co-financing for further financing of the Service are not available to the Principal fully or partly;
- In such a case, the Principal shall pay the Service Provider the fees in respect of the Service provided under this Agreement up to the date of the notification of the termination of this Agreement and the Principal is not obliged to pay contractual or any other penalty or damages to the Service Provider.
- (a) it is not possible to execute the Agreement due to the application of international or national sanctions, or European Union or North Atlantic Treaty Organization applied sanctions significantly affecting interests of financial or capital market.
- 10.6 *Termination according to Public Procurement Law.* The Agreement can be immediately terminated upon giving the other Party a written notice of termination explaining, in reasonable detail, the reason for termination upon occurrence of any of the provisions mentioned in the Section 64 of the Public Procurement Law. In such a case, the Principal shall pay the Service Provider the fees in respect of the Works and Service provided under this Agreement up to the date of the notification of the termination of this Agreement and the Principal is not obliged to pay contractual or any other penalty or damages to the Service Provider.
- 10.7 *Right to Advance to Completion.* In the event the Service Provider fails to fulfil any of its obligations or fails to cure any breach in accordance with Clause 10.2, and the Agreement is terminated by the Principal, the Principal may advance the Service to completion by employing the services of other professional service supplier(s) or by other means available to the Principal. The Service Provider shall be liable to the Principal for any and all additional costs incurred due to failure by the Service Provider to perform. The rights and remedies available to the Principal set forth in accordance with this Clause 10.7 shall be in addition to any and all other rights and remedies available under Applicable Law.
- 10.8 *Consequences of Termination.* Upon expiration or termination of this Agreement, the obligations of the Parties set forth in this Agreement shall cease, except with respect to the following:
- (a) any obligations arising as a result of any antecedent breach of this Agreement or any accrued rights; and
- (b) the provisions stipulated in accordance with Clauses 3.2, 3.4, 8.3, 9.5, 9.6, 9.7, 9.8, 9.9, 9.11, 9.12, 10.9, 11.1, 11.2, 11.3, 11.5, 11.6, 11.7, 17.3, 17.8, 17.9 and *Section XIII CONFIDENTIALITY, Section XIV RIGHT TO AUDIT, Section XV ON-THE-SPOT-VISITS and Section XVI GOVERNING LAW AND RESOLUTION OF DISPUTES* which shall survive the termination or expiry of this Agreement and continue in full force and effect along with any other Clauses of or Annexes hereof which are necessary to give effect to the clauses specifically identified in this Clause 10.8(b).
- 10.9 *Partial Acceptance.* Notwithstanding anything in this Agreement to the contrary including, without limitation, the provisions of Clauses 8.4, 8.5, 8.6 and 8.7 and in the event of termination of this Agreement, the Principal shall have the right, in the sole discretion of the Principal, to

partially accept any Works, part of Works or any Service or part of the Service delivered to the Principal under this Agreement (the "Right of Partial Acceptance"). The Principal shall notify the Service Provider of its intention to exercise the Right of Partial Acceptance in the termination notice given in accordance with Clause 10.1 or Clause 10.4 of this Agreement, specifying, in reasonable detail, the Works, part of Works or part of the Service which the Principal would like to partially accept. In the event of receipt of such notice, the Service Provider shall reasonably cooperate with the Principal in order to ascertain transfer to the Principal of ownership in the result(s) of such Works, part of Works or part of the Service and determination of the amount of consideration payable by the Principal.

10.10 *Principal's Obligation to Pay.* Subject to the provisions of Clause 10.9 and except in the event of termination by the Principal occurring as a result of violation by the Service Provider of Clause 11.2, and/or termination by the Principal according to Clause 10.5 and/or 10.6 in the event this Agreement is terminated for any reason prior to completion of the Service, the Principal shall have an obligation to pay the Service Provider the following:

- (a) the Costs incurred by the Service Provider up to the date of termination; and
- (b) except where termination is due to negligence of the Service Provider, due to the application of international sanctions, breach by the Service Provider, insolvency of the Service Provider or a Force Majeure Event under *Section XII FORCE MAJEURE*:
  - (i) an amount equal to the costs reasonably and properly incurred by the Service Provider as a result of or in connection with such termination; and
  - (ii) such additional amount as is required to put the Service Provider in the same after-tax position (taking into account the amount of any relief, allowance, deduction, set-off or credit relating to tax available to the Service Provider in respect of the payment received) as it would have been in if the payment had not been a taxable receipt in the hands of the Service Provider.

10.11 *No Obligation to Pay Costs Incurred Prior to Acceptance.* Notwithstanding anything set forth in this Agreement to the contrary including, without limitation, under Clause 10.9, the Principal shall have no obligation to pay any of the Costs incurred by the Service Provider with respect to any Works or the Service (or part of any Works or the Service) not deemed as having been accepted by the Principal in accordance with Clauses 8.4, 8.5, 8.6 and 8.7 of this Agreement.

10.12 *No Prejudice to Other Rights.* The right to terminate this Agreement shall be without prejudice to any other right of either Party which has accrued prior to or as a result of such termination or to any remedy available to either Party under the terms of this Agreement or in accordance with Applicable Law.

## **Section XI LIABILITY**

11.1 *Liability of the Parties.* The Service Provider shall be liable to compensate Damages incurred by the Principal arising out of or in connection with this Agreement and pay contractual penalty set forth in accordance with Clause 11.2 if a breach of any of the obligations of the Service Provider under this Agreement is established against the Service Provider. The Principal shall be liable to pay the contractual penalty set forth in accordance with Clause 11.2 if a breach of payment obligations of the Principal under this Agreement is established against the Principal.

11.2 *Contractual Penalty.* In the event of failure by the Service Provider to meet any Service Milestone and/or supply any Deliverable, the Service Provider shall be liable to pay to the Principal a penalty of zero point five percent (0.5%) of the amount of total the Fee payable under this Agreement

with respect to the relevant Service period for each day of delay starting from the first delayed day with meeting any of the Due Dates and/or supplying any of the Deliverables set forth in accordance with *Annex C: Schedule of Service* provided, however, that the total amount of penalty payable by the Service Provider under this Clause 11.2 for the relevant Works, as specified according to *Annex C: Schedule of Service* shall not exceed ten percent (10%) of the total amount of the Fee payable in consideration of such Works and Service. In the event of failure by the Principal to pay any amount in accordance with Clause 18.1, the Principal shall be liable to pay the Service Provider a penalty of zero point one percent (0.1%) of the amount of the amount invoiced for each day of delay with meeting the payment obligation; provided, however, that the total amount of penalty payable by the Principal under this Clause 11.2 shall not exceed ten percent (10%) of the total amount remaining unpaid under the relevant invoice.

- 11.3 *Compensation for Damages.* Notwithstanding of and without prejudice to any contractual penalty payable in accordance with Clause 11.2 and subject to the provisions of Clause 11.511.4 in the event it is established that either Party is liable to the other Party with respect to any breach of its respective obligations under this Agreement, the liable Party shall compensate the other Party for any Damages incurred as a result of such breach, subject to the following terms:
- (a) the amount of compensation shall be limited to the amount of reasonably foreseeable Damages suffered as a result of the breach(es), but not otherwise; and
  - (b) if either Party is considered to be liable jointly with third parties to the other, the proportion of compensation payable by the liable Party shall be limited to that proportion of liability which is attributable to the breach by the liable Party.
- 11.4 *Attribution of Damages.* Any Damages suffered by either Party shall, for the purposes of Clause 11.3, be reduced to the extent that the Damages are caused by or contributed to by the other Party's own negligence or breach of its obligations under this Agreement.
- 11.5 *Limitation of Liability.* Notwithstanding anything to the contrary set forth in this Agreement, in no circumstances shall the Service Provider or Principal be liable to one another for any loss of production, loss of profit, loss of revenue, loss of contract, liability incurred under other agreements (with the exception of costs paid by the Principal to Service Providers appointed by the Principal in relation to the Service or the Project) or any indirect or consequential loss arising out of or in connection with this Agreement. The Service Provider's total liability for the Works carried out under this Agreement shall in no circumstances exceed 500 000 EUR (five hundred thousand euros).
- 11.6 *Liability Cap.* Subject to the provisions of Clause 11.6 the maximum aggregate liability of each Party to the other Party for any reason arising under, or in connection with, this Agreement or the Project including but not limited to breach of the Agreement, or for breach of Applicable Law shall not exceed an amount equal to 500 000 EUR (five hundred thousand euros). Notwithstanding the above limitation, where, in respect of the same event, a Party recovers any amount of money under an insurance policy, it shall immediately pay such amounts to the other Party. Each Party shall use reasonable endeavours to make such recovery under any insurance policy (which shall include an obligation to make and diligently pursue a claim but shall not include an obligation upon the Party to take legal action).
- 11.7 *Non-Applicability of Liability Cap.* The provisions of Clause 11.6 shall not apply to Damages incurred by either Party as a result of:
- (a) any liability in respect of death or personal injury resulting from a negligent act or omission or breach of statutory duty by the liable Party or any employee of the liable Party;

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

## **Section XII FORCE MAJEURE**

- 12.1 *Effects of Force Majeure.* Subject to the requirements set forth in accordance with Clauses 12.2 and 12.3, each Party shall be relieved from liability for non-performance of its obligations under this Agreement (other than any obligation to pay) to the extent that the Party is not able to perform such obligations due to a Force Majeure Event.
- 12.2 *Action on Becoming Aware of Force Majeure.* Each Party shall at all times, following the occurrence of a Force Majeure Event:
- (a) take reasonable steps to prevent and mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the Force Majeure Event as soon as practicable and use reasonable endeavours in accordance with Good Industry Practice to remedy its failure to perform; and
  - (b) not be relieved from liability under this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to any failure to comply with its obligations under Clause 12.1.
- 12.3 *Notification Requirements.* Upon the occurrence of a Force Majeure Event, the affected Party shall notify the other Party as soon as reasonably practicable and in any event within five (5) Working Days of it becoming aware of the relevant Force Majeure Event. Such notification shall give sufficient details to identify the particular event claimed to be a Force Majeure Event and shall contain detailed information relating to the failure to perform (or delay in performing), including

the date of occurrence of the Force Majeure Event, the effect of the Force Majeure Event on the ability of the affected Party to perform, the action being taken in accordance with Clause 12.2(a) and an estimate of the period of time required to overcome the Force Majeure Event. The affected Party shall provide the other Party with any further information it receives or becomes aware of which relates to the Force Majeure Event and provide an update on the estimate of the period of time required to overcome its effects.

- 12.4 *Notification of Resumed Performance.* The affected Party shall notify the other Party as soon as practicable once the performance of its affected obligations can be resumed (performance to continue on the terms existing immediately prior to the occurrence of the Force Majeure Event).
- 12.5 *Mitigation of Effects of Force Majeure.* As soon as practicable after the notification specified pursuant to Clause 12.3, the Parties shall use reasonable endeavours to agree appropriate terms or modifications to the Service to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.

### **Section XIII CONFIDENTIALITY**

- 13.1 *Confidential Information.* "Confidential Information" means, in relation to the Principal, all information of a confidential nature relating to the Principal and its affiliates which is supplied by the Principal (whether before or after the date of this Agreement) to the Service Provider, either in writing, orally or in any other form and includes all analyses, compilations, notes, studies, computer files, memoranda and other documents and information which contain or otherwise reflect or are derived from such information, but excludes information which:
- (a) the Principal confirms in writing is not required to be treated as confidential; or
  - (b) the Service Provider can show that the Confidential Information was in its possession or known to it (by being in its use or being recorded in its files or computers or other recording media) prior to receipt from the Principal and was not previously acquired by the Service Provider from the Principal under an obligation of confidence; or
  - (c) was developed by or for the Service Provider at any time independently of this Agreement.
- 13.2 *Undertakings with Respect to Confidential Information.* Subject to Clauses 13.1 and 13.3, the Service Provider shall:
- (a) at all times keep confidential all Confidential Information received by it and shall not disclose such Confidential Information to any other Person; and
  - (b) procure that its affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any Person any Confidential Information except with the prior written consent of the Party to which such Confidential Information relates.
- 13.3 *Permitted Disclosure.* Notwithstanding anything to the contrary set forth in accordance with Clauses 13.1 and 13.2, the Service Provider shall, without the prior written consent of the Principal, be entitled to disclose Confidential Information:
- (a) that is reasonably required by the Service Provider in the performance of its obligations pursuant to this Agreement, including the disclosure of any Confidential Information to any employee, Service Provider, agent, officer, Sub-Contractor (of any tier) or adviser to the extent necessary to enable the Service Provider to perform its obligations under this Agreement;

- (b) to enable a determination to be made pursuant to *Section XVI GOVERNING LAW AND RESOLUTION OF DISPUTES*;
  - (c) to its lenders or their professional advisers, any rating agencies, or its insurance advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
  - (d) to the extent required by Applicable Law or pursuant to an order of any court of competent jurisdiction, any parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law;
  - (e) to register or record any Necessary Consents and to affect any property registration that may be required;
  - (f) in order to fulfil its license obligations or assist in the planning or execution of other maintenance, renewal or enhancement projects; or
  - (g) to the extent Confidential Information has become available to the public other than as a result of any breach of an obligation of confidence; provided that any such disclosure is made in good faith.
- 13.4 *Obligation of Confidentiality Pertinent to Recipients of Confidential Information.* Whenever disclosure is permitted to be made pursuant to Clauses 13.3(a) or (c), the Service Provider shall require that the recipient of Confidential Information be subject to the same obligation of confidentiality as that contained in this Agreement.
- 13.5 *Certain Obligations on Termination of Agreement.* If this Agreement is terminated for whatsoever reason, the Service Provider shall have an obligation to do all of the following:
- (a) return to the Principal all of the Confidential Information then within the possession or control of the Service Provider; or
  - (b) destroy such Confidential Information using a secure and confidential method of destruction.
- 13.6 *No Press Release by Service Provider.* Save as required by Applicable Law, the Service Provider shall not issue any press release in relation to the matters contemplated under this Agreement without the prior written consent of the Principal (such consent not to be unreasonably withheld or delayed) as to both the content and the timing of the issue of the press release.
- 13.7 *Right to Publish.* For the avoidance of any doubt, the Principal and any of the Beneficiaries and Implementing Bodies shall have the right to publish any of the documents, information or data provided by the Service Provider to the Principal during provision of the Service.
- 13.8 *Remedies.* The Parties acknowledge and agree that a breach of the provisions of this *Section XIII CONFIDENTIALITY* may cause the owner of Confidential Information to suffer irreparable Damages that could not be adequately remedied by an action at law. Accordingly, the Service Provider agrees that the owner of Confidential Information that is disclosed in breach of Clauses 13.2, 13.4 or 13.6 may be entitled to specific performance of those provisions to enjoin a breach or attempted breach thereof and to any other remedy, including, inter alia, damages and injunctive relief, awarded by a court of competent jurisdiction.

#### **Section XIV RIGHT TO AUDIT**

- 14.1 *Right to Audit.* Notwithstanding anything to the contrary set forth in this Agreement including, the Principal itself, a reputable outside independent body or expert engaged and authorized by

the Principal shall be entitled to inspect and/or audit the Service Provider to ensure compliance with the terms of this Agreement, including inspecting and/or auditing:

- (a) the performance of any aspect of the Service; and/or
- (b) any documentation, including all payrolls, accounts of the Service Provider and/or other records used in or related to the performance of the Services.

- 14.2 *Obligation to Assist.* The Service Provider shall provide all reasonable assistance to the Principal or the independent body authorized by the Principal in carrying out any inspection or audit pursuant to this *Section XIV RIGHT TO AUDIT*. The Principal shall be responsible for its own costs, or the costs incurred by the outside independent body designated by the Principal, incurred toward carrying out such inspection or audit, unless, in the case of any such audit, that audit reveals that the Service Provider is not compliant with the terms of this Agreement, in which case the Service Provider shall reimburse the Principal for all of its additional reasonable costs incurred, provided such non-compliance is material.
- 14.3 *Survival of Termination.* The rights and obligations of the Principal set forth in accordance with this *Section XIV RIGHT TO AUDIT* shall survive expiration or termination of this Agreement for any reason and shall continue to apply during ten (10) years following expiration or termination of this Agreement for any reason whatsoever.

#### **Section XV ON-THE-SPOT-VISITS**

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



## Section XVI GOVERNING LAW AND RESOLUTION OF DISPUTES

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

## Section XVII MISCELLANEOUS PROVISIONS

- 17.1 *Capacity.* Each Party warrants to the other Party that it has full power to enter into and perform this Agreement, and the person signing this Agreement on its behalf has been duly authorized and empowered to enter into such agreement. Each Party further acknowledges that it has read this Agreement, understands it and agrees to be bound by it.
- 17.2 *Assignability.* The Service Provider shall not without the prior written consent of the Principal assign any of the rights or benefits from the Agreement, provided that the consent by the Principal shall not be unreasonably withheld or delayed. Neither Party shall assign any of the obligations under the Agreement without the prior written consent of the other Party; provided, however, that the Principal shall be entitled, at any time, to assign any of the rights under this Agreement to any of the Beneficiaries or Implementing Bodies without consent of the Service Provider.
- 17.3 *Conflict of Interest, Corruption and Fraud.* Notwithstanding any penalties that may be enforced against the Service Provider under Applicable Law, or the laws of other jurisdiction(s), the Service Provider shall be deemed to have committed a breach under this Agreement and the Principal shall be entitled to terminate this Agreement immediately and without any regard to the provisions of Clause 3.15, if it is shown that the Service Provider is guilty of:
- (a) offering, giving, receiving or soliciting anything of value with a view to influencing the behaviour or action of anyone, whether a public official or otherwise, directly or indirectly in the selection process or in the conduct of the Agreement; or
  - (b) misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Principal, including the use of collusive practices intended to stifle or reduce the benefits of free and open competition.
- 17.4 *Notices.* All notices and other communications made or required to be given pursuant to this Agreement shall be in writing and shall be deemed given if delivered personally or by facsimile transmission (if receipt is confirmed by the facsimile operator of the recipient), or delivered by overnight courier service, or mailed by registered or certified mail (return receipt requested),

postage prepaid, to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice):

- (a) to the Principal: .....
- .....
- .....
- (b) to the Service Provider: .....
- .....
- .....

- 17.5 *Changes in Address.* Either Party shall be entitled to change its address for purposes of the Clause 17.4 by notice to the other Party. A notice of a change of address shall be effective only upon receipt thereof.
- 17.6 *Damages Covered by Insurance.* To the extent Damages are covered by insurance, the Principal and the Service Provider waive all rights against each other and against the Service Providers, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance current as of the date of this Agreement.
- 17.7 *Relationship of the Parties.* The relationship between the Service Provider to the Principal under this Agreement is that of independent Service Providers. The Service Provider (or the Service Provider's Sub-Contractors) is not an employee of the Principal, is not carrying out the regular business of the Principal and is not subject to the same employment regulations as are applicable to employees of the Principal. Each of the Parties shall be solely and entirely responsible for their own acts and the acts of their employees. No benefits, special considerations, or employer/employee-type provisions are provided by the Principal to the Service Provider, the Service Provider's employees, or the Service Provider's consultants, or the employees of such consultants.
- 17.8 *Severability.* If any provision of this Agreement shall be held to be illegal, invalid, void or unenforceable under Applicable Laws, the legality, validity and enforceability of the remainder of this Agreement shall not be affected, and the legality, validity and enforceability of the whole of this Agreement shall not be affected.
- 17.9 *Successors and Assigns.* The Principal and the Service Provider each bind themselves, their successors, legal representatives, and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect to all covenants of this Agreement. Neither Party shall assign or transfer its respective interest in the Agreement without written consent of the other Party.
- 17.10 *Waivers.* No waiver by either Party of any default by the other Party in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default, irrespective of the character of such default. No failure or delay by either Party in exercising any of its rights, power or privileges under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise by that Party of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege.
- 17.11 *Amendments and Variations.* No amendment to or variation of this Agreement shall be effective unless made in writing and signed by duly authorized representatives of both Parties. The Agreement can be amended in compliance with the provisions of Section 61 of the Public Procurement Law of the Republic of Latvia.
- 17.12 *Entire Agreement.* This Agreement, and the Annexes hereto, constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes and extinguishes all

and any prior drafts, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.

- 17.13 *Execution.* This Agreement may be executed in two counterparts to be held by each Party which counterparts, taken together, shall constitute one and the same instrument.

### **Section XVIII FEE AND PAYMENT**

- 18.1 *Fee.* In consideration of provision of the Service, the Service Provider is entitled to receive a Fee in the total amount set forth in accordance with *Annex C: Schedule of Service* which shall be split into separate instalments and be payable by the Principal to the Service Provider according to the schedule set forth in *Annex C: Schedule of Service*. It is acknowledged and agreed by the Parties that the Fee shall include all Costs and expenses incurred by the Service Provider and Approved Sub-Contractors toward performing and successfully completing the Agreement. The Fee specified in accordance with this Clause excludes value added tax that will be charged at the rate applicable in accordance with Applicable Law at the time of invoicing.
- 18.2 *Invoicing.* According to *Annex C: Schedule of Service* and following each Completion Date and/or Final Acceptance Date, provided that the Principal has accepted/approved the particular Deliverable of the Service which the invoice related to, the Service Provider shall deliver to the Principal an invoice specifying the amount of the Fee payable and the period of time with respect to which the Fee is payable. In the event the Principal objects to payment of any amount claimed by the Service Provider in the invoice, notice in the form chosen by the Principal to this effect shall be given by the Principal to the Service Provider not later than five (5) days before the Due Date for payment under this Clause 18.4. This notice of objection shall state the amount to be withheld, the grounds for withholding the payment and the basis on which that amount is calculated. Unless such notice of objection is made by the Principal, the amount to be paid is that stated in the invoice which shall become due and payable in accordance with this Agreement. For the avoidance of any doubt, the Principal shall not be required to pay any amount under this Agreement with respect to any part of the Service that has not been accepted by the Principal in accordance with Clauses 8.4, 8.5, 8.6 and 8.7 of this Agreement.
- 18.3 *Payment.* Subject to the provisions of Clause 18.1, the Principal reserves the rights to make the payments to the Service Provider with set-off, retention, counterclaim, abatement or other deduction of any kind that arises from this Agreement and from the obligations of the Service Provider provided herein (i.e. in cases of accrued contractual penalty amounts, in case if the Principal haven't received residence certificate as stipulated in this Agreement, etc.). If the Principal uses the right to make the payments to the Service Provider with set-off, retention, counterclaim, abatement or other deduction of any kind, then the Principal so notifies to the Service Provider no later than on the date of the respective payment stating the amount, the grounds and the basis on the Principal uses its right to set-off, retention, counterclaim, abatement or other deduction or other right. Invoices shall be paid within thirty (30) days after the date of issue of the invoice. For the avoidance of any doubt, the Principal shall not be required to pay any amount with respect to any invoice in the absence of a Provisional Completion Note duly signed by the Principal or, with respect to the final payment of the Fee to be effected under this Agreement, the Final Acceptance Note duly signed by the both Parties, taking into account that the Service shall be accepted by the Principal in accordance with Clauses 8.4, 8.5, 8.6 and 8.7 of this Agreement.
- 18.4 *Costs and Commissions.* Each Party shall bear its own costs, fees, commissions and expenses incurred in connection with the transfer of any funds under this Agreement to the other Party.

18.5 *Compliance with Tax Obligations in [COUNTRY]*. It is acknowledged and agreed by the Parties that the Fee shall include all taxes and duties payable by the Service Provider in the consequence of provision of the Service, except value added tax (the "VAT"). The Service Provider shall, at the sole cost and expense of the Service Provider, comply with the obligation to pay all taxes and duties relevant to the provision of the Service in [COUNTRY] and in accordance with Applicable Law of [COUNTRY]. In addition, the Service Provider shall assume all risks associated with the payment or obligation to pay such taxes and duties, if any. The Service Provider assumes all risks associated with the possible increase in the amount of the Fee arising as a result of the obligation of having to pay any such taxes or duties.

18.6 *Invoice*. The Service Provider's invoices shall contain the following Service Provider's details and details about the Agreement:

Service Provider	[●]
Registration No	[●]
VAT payer's No or indication that the Service Provider is not a VAT payer	[●]
The Principal's VAT No	LV40103845025
Legal address (street, house, area, country, postcode)	[●]
Name of Bank (legal name)	[●]
Bank SWIFT Code	[●]
IBAN	[●]
	For provided services according to the Service Agreement for Rail Baltica Railway No 8/2019- [●] (CEF Contract No INEA/CEF/TRAN/M2014/1045990 Activity No A34, CEF Contract No INEA/CEF/TRAN/M2015/1129482 Activity No B18, CEF Contract No INEA/CEF/TRAN/M2016/1360716 Activity No C09), Contract Manager: Anita Pūka

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

Signed by:

For and on behalf of the Principal:

For and on behalf of the Service Provider:

Signature: .....

Signature: .....

Name, title: .....

Name, title: .....

Signature: .....

Bank details:

.....  
.....

Name, title: .....

Bank details:

.....  
.....

## Annex A: Definitions and common terms

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

- (a) "Agreement", this Agreement, together with all Annexes thereto.
- (b) "Alteration", any material change to the *Annex B: Technical specification, Annex C: Schedule of Service* or Due Date which is not the result of the ordinary process of developing the scope and detail of the Project.
- (c) "Alteration Request", as defined in accordance with Clause 2.4 of the Agreement.
- (d) "Applicable Law" or "Law", any legislative act, regulation, decree, order, ordinance, statute, treaty, directive, judgment, or other legislative measure. For the avoidance of any doubt, these terms shall include any legislative act or directive relevant to public procurement.
- (e) "Approved Staff", any person or organization listed pursuant to *Annex D: List of Approved Sub-Contractors and Staff*, which is in a contractual relationship with the Service Provider to provide a part of the Service.
- (f) "Approved Sub-Contractor", any person or organisation listed pursuant to *Annex D: List of Approved Sub-Contractors and Staff*, which is in a contractual relationship with the Service Provider to provide a part of the Service.
- (g) "Completion Acceptance Note", as defined in accordance with Clause 8.4, as appropriate.
- (h) "Completion Date", as defined in accordance with Clause 8.5 and 8.6, as appropriate.
- (i) "Confidential Information", as defined in accordance with Clause 13.1 of the Agreement.
- (j) "Costs", direct costs reasonably incurred in relation to the Project. Specifically, the Cost shall include any of the following:
  - (i) costs of all materials and supplies forming part of the Service, including transportation and storage expenses (discounts for cash or prompt payments will not reduce these costs);
  - (ii) salaries for personnel in the direct employ of the Service Provider in the performance of the Service or relating to the Service;
  - (iii) salaries of the Service Provider's employees for the time that they spend in connection with the Service;
  - (iv) payments to Service Provider, Sub-Contractors for Works relating to the Service;
  - (v) costs of all employee benefits and taxes for items such as social security and other benefits for the labour and employees;
  - (vi) costs, including transportation and maintenance, of equipment and hand tools not owned by workmen employed by the Service Provider which are employed or consumed toward the Service;
  - (vii) payments for rental charges for machinery, equipment, facilities and tools used in connection with the Service, and payments for installations, repairs, replacements, dismantling, removal, lubrication, transportation and delivery of those rental items;
  - (viii) other transportation costs incurred in connection with the Service;

- (ix) that portion attributable to this Agreement of premiums for insurance that is required by this Agreement (if applicable) or by law to be obtained or maintained by the Service Provider;
  - (x) sales, use, gross receipts or other taxes related to the Service, imposed by any governmental authority, to the extent that the Service Provider is responsible for such taxes;
  - (xi) costs of long-distance telephone calls, telephone service at the site and postage relating to the Service;
  - (xii) costs of any data processing services used in connection with the performance of the Work required under this Agreement; and
  - (xiii) costs associated with any alteration as to which the Service Provider is entitled to payment hereunder;
  - (xiv) losses and expenses, not compensated by insurance, sustained by the Service Provider in connection with the Works under this Agreement (if applicable), provided they resulted from causes other than the fault or neglect of the Service Provider.
- (k) "Corrective Period", as defined in accordance with Clause 10.2.
  - (l) "Cure Period", as defined in accordance with Clause 8.3.
  - (m) "Damages", any cost, claim, damage, demand, loss, expense or liability incurred by the relevant Party or Person.
  - (n) "Defect", a part of the Service which is not in accordance with *Annex B: Technical Specification*, Applicable Law or Good Industry Practice.
  - (o) "Defects Date", a date specified in accordance with *Annex C: Schedule of Service* by which the Principal or the Service Provider is obliged to notify about each Defect in the Service.
  - (p) "Deliverable", any information, notes, material, drawings (including drawings in 3D model), records, computer files, documents and/or other information or items which the Service Provider is required to deliver to the Principal as part of the Service, as further specified pursuant to *Annex C: Schedule of Service*.
  - (q) "Documentation", all records, correspondence, and computer files of the Service Provider, its employees, engineers, and consultants pertaining to the Project.
  - (r) "Due Date", the date for delivery of one or more Deliverables, as set out in the *Annex B: Technical Specification*, *Annex C: Schedule of Service* and applicable law.
  - (s) "Effective Date", as first above specified in the Preamble to this Agreement.
  - (t) "EUR" and "euro", the official currency of the eurozone, officially known as the euro area.
  - (u) "Fee", as specified in accordance with *Annex C: Schedule of Service*.
  - (v) "Final Acceptance Date", as defined in accordance with Clause 8.7.
  - (w) "Final Acceptance Note", as described in accordance with Clause 8.7.
  - (x) "Force Majeure Event", any of the following events:
    - (i) an act of the public enemy or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;

- (ii) an act of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;
  - (iii) a natural disaster or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);
  - (iv) nuclear, chemical or biological contamination;
  - (v) pressure waves caused by devices travelling at supersonic speeds;
  - (vi) discovery of fossils, antiquities or unexploded bombs; and/or
  - (vii) strike, lockout or other industrial action other than involving the Service Provider or the Principal.
- (y) "Good Industry Practice", in relation to the performance of any activity to which this standard is applied, the exercise of that degree of skill, diligence, prudence and foresight as would reasonably be expected to be exercised by a properly qualified and competent person engaged in carrying out Works or services of a similar size, nature, scope, type and complexity, complying with Applicable Law, applicable Standards and published codes of practice.
- (z) "Intellectual Property", all intellectual property rights in any part of the world in respect of any documentation or information provided by the Service Provider to the Principal, including any patent, patent application, trade mark, trade mark application, registered design, registered design application, utility model, trade name, discovery, invention, process, formula, specification, copyright (including all neighbouring rights, rights in computer software and database and topography rights), know how or unregistered design right.
- (aa) "Intellectual Property of the Service Provider", all Intellectual Property owned or licensed to the Service Provider with a right to sub-license.
- (bb) "Necessary Consents", all approvals, permissions, consents, licenses, certificates, registrations and authorizations (whether statutory or otherwise), which may be required from time to time for the purposes of carrying out the Project.
- (cc) "Mandatory Alteration", any Alteration necessitated by:
- (i) any specific change in Law; and/or
  - (ii) any Change in Standards for safety reasons.
- (dd) "Objection Notice", as defined in accordance with Clause 8.5.
- (ee) "Party" and "Parties", the Principal and the Service Provider and include their respective successors in title, permitted assigns and permitted transferees.
- (ff) "Person" shall include any person, company, body corporate, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the foregoing.
- (ee) "Principal", the company RB Rail AS, as further specified in the Preamble of this Agreement, which employs the services of the Service Provider, and legal successors to the Service Provider and permitted assignees of the Service Provider.
- (gg) "Project", development of a 1435 mm standard gauge railway line in the Rail Baltica (RB) corridor through Estonia, Latvia and Lithuania aimed at eliminating the technical bottleneck due to the gauge differences (1,520 mm vs. the EU standard of 1,435 mm).



- (hh) "Provisional Acceptance Note", as defined in accordance with Clause 8.5.
- (ii) "Provisional Completion Note", as defined in accordance with Clause 8.4.
- (jj) "Railway", a new fast conventional double track electrified railway line according TSI INF P2-F1 criteria and European standard gauge (1435 mm) on the Route.
- (kk) "Residence Certificate", a certificate mentioned in Clause 5.2(i).
- (ll) "Right of Partial Acceptance", as defined in accordance with Clause 10.9.
- (mm) "Service Provider", the company [•], as further specified in the Preamble of this Agreement, which is employed by the Principal as an independent professional Service Provider to perform the Service, and legal successors to the Principal and permitted assignees of the Principal.
- (nn) "Service Provider's Software", the object code versions of any downloadable software owned by or duly licensed to the Service Provider solely for the purpose of accessing the Service, including but not limited to an agent, together with the updates, new releases or versions, modifications or enhancements, owned or licensed to and provided by the Service Provider to the Principal pursuant to this Agreement, together with all pertinent Documentation and other instructions related to such software.
- (oo) "Standards", CEF Standards and Grant Agreement Standards;
- (ff) "Service" Services mentioned in the *Annex B: Technical Specification* and this Agreement.
- (pp) "Service Provider", the company [•], as further specified in the Preamble of this Agreement, which is employed by the Principal as an independent professional Service Provider to perform the Service, and legal successors to the Principal and permitted assignees of the Principal.
- (qq) "Service Provider's Software", the object code versions of any downloadable software owned by or duly licensed to the Service Provider solely for the purpose of accessing the Service, including but not limited to an agent, together with the updates, new releases or versions, modifications or enhancements, owned or licensed to and provided by the Service Provider to the Principal pursuant to this Agreement, together with all pertinent Documentation and other instructions related to such software.
- (rr) "VAT", value added tax;
- (ss) "Working Day", any day (other than Saturday or Sunday) on which banks in the Republic of Latvia are open for conduct of business.
- (tt) "Works", all incidental works, steps and actions performed by the Service Provider for the attainment of the objectives of the Service.

## **Annex B: Technical Specification**

### Annex C: Schedule of Service

“**Fee**” a Fee in the amount of EUR [AMOUNT]

and

Value added tax (hereinafter – VAT), which on the date of conclusion of this Agreement is 21%, i.e., EUR [AMOUNT]

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

No	Deliverable	Due Date <sup>41</sup>	Defects Date (days after submission of particular Deliverable)	Cure period
1.	Monthly tasks	According to law of the Republic of Estonia	14 calendar days	24 hours during the next Working Day if the Principal did not set otherwise
2.	Annual tasks	According to law of the Republic of Estonia	14 calendar days	24 hours during the next Working Day if the Principal did not set otherwise
3.	Unplanned tasks	Agreed separately in each case	Timing agreed separately in each case	Timing agreed separately in each case

Payment Schedule:

No	Deliverable	Time	Amount (EUR), excl. VAT
1.	Monthly tasks		
1.1	Payroll and tax compliance	After acceptance	[•]
1.2	Value added tax (VAT) compliance	After acceptance	[•]

<sup>41</sup> In accordance with Clause 4.5.1 of the Annex B (*Technical Specification*).

1.3	Corporate income tax (CIT) compliance	After acceptance	[●]
2.	Annual tasks		
2.1	Annual report	After acceptance	[●]
2.2	Annual CIT declaration (if required)	After acceptance	[●]
	Annual VAT declaration (if required)	After acceptance	[●]
3.	Unplanned tasks	After acceptance	Agreed separately in each case Hourly rate: [●] EUR/h (excl. VAT)

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

**Annex D: List of Approved Sub-Contractors and Staff**

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

### Annex E: Form of Provisional Completion Note

No [INSERT NUMBER]

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

Location: [INSERT LOCATION]

For:

RB Rail AS

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

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

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

Whereas:

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

The following Service Milestone(s) has/have been met on [INSERT DATE IN THE FORM OF 1 JANUARY 2018], as specified in accordance with the *Annex B: Technical Specification* of the Agreement:

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

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

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

As stipulated in Clause 8.4 of the Agreement, in the event the Principal objects to the issue of the Provisional Completion Note, the Principal shall give a written notice to the Service Provider setting out in reasonable detail Defects or reasons for the objection (the "Objection Notice") within fourteen (14) days following receipt of the Provisional Completion Note.

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

Signature:

[INSERT NAME, SURNAME  
INSERT POSITION  
INSERT COMPANY NAME]

**Annex F: Form of Provisional Acceptance Note**

No [INSERT NUMBER]

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

Location: [INSERT LOCATION]

For: [•] (the "Service Provider")

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

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

Whereas:

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

The Principal is satisfied with the result of any and all achieved Deliverables completed and submitted and, in accordance with Clause 8.6 of the Agreement, the Principal accepts the part of the Service performed as of the date of this Provisional Acceptance Note.

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

Signatures:

[INSERT NAME, SURNAME

INSERT POSITION

INSERT COMPANY NAME]



### Annex G: Form of Final Acceptance Note

No [INSERT NUMBER]

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

Location: [INSERT LOCATION]

For: [•] (the "Service Provider")

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

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

Whereas:

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

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

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

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

Signatures:

[INSERT NAME, SURNAME

INSERT POSITION]

RB Rail AS

Principal

**Annex H: Representatives**

[SPECIFY REPRESENTATIVES]

**Annex I: Service Provider's Proposal**

[INSERT SERVICE PROVIDER'S PROPOSAL]

### Annex J: Declaration of Service Provider

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. 12: DRAFT CONTRACT FOR THE PART NO. 2****PROFESSIONAL CONSULTANT SERVICE  
AGREEMENT**

**for Tax Advisory and Reporting Services for RB Rail AS in 2019-2020  
for Part No 2 "Tax compliance and reporting services for RB Rail AS Lithuania branch"**

**between**

**RB Rail AS**

**and**

**[•]**

Contract registration number 8/2019-[•]

CEF<sup>42</sup> Contract No INEA/CEF/TRAN/M2014/1045990 A34,

CEF<sup>43</sup> Contract No INEA/CEF/TRAN/M2015/1129482 B18

CEF<sup>44</sup> Contract No INEA/CEF/TRAN/M2016/1360716 C09

Procurement procedure identification No RBR 2018/31

Riga

Dated [•] [•] 2019

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<sup>42</sup> Grant Agreement under the Connecting Europe Facility

<sup>43</sup> Grant Agreement under the Connecting Europe Facility

<sup>44</sup> Grant Agreement under the Connecting Europe Facility

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## PROFESSIONAL CONSULTANT SERVICE AGREEMENT

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

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

and

[●], a [●] company organized and existing under [●] law, with registration number [●], having its registered address at [●] (the "Service Provider"), represented by [●] acting on the basis of [●] on the other side.

WHEREAS:

- (A) This Agreement is entered into under the Global Project which includes all activities undertaken by the respective beneficiaries and implementing bodies of the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania in order to build, render operational and commercialise the Rail Baltica railway – a new fast conventional double track electrified railway line according TSI INF P2-F1 criteria and European standard gauge (1435mm) on the route from Tallinn through Pärnu-Riga-Panevėžys-Kaunas to Lithuanian-Polish border, with the connection of Kaunas – Vilnius, and related railway infrastructure in accordance with the agreed route, technical parameters and time schedule;
- (B) The Principal has organised procurement procedure "Tax Advisory and Reporting Services for RB Rail AS in 2019-2020" (identification No RBR 2018/31) (the "Procurement Procedure") whereby the Service Provider's tender proposal (the "Service Provider's Proposal") was selected as the winning bid for Part No 2 "Tax compliance and reporting services for RB Rail AS Lithuania branch";
- (C) This Agreement is co-financed from the Connecting Europe Facility (CEF), CEF Contract No INEA/CEF/TRAN/ M2014/1045990, Activity 34, Action No: A5.1.1: "Project implementation support measures (RBR)", CEF Contract No INEA/CEF/TRAN/ M2015/1129482, Activity 18, Action: "Global project management" and CEF Contract No INEA/CEF/TRAN/ M2016/1360716, Activity 9, Action No: C5.1.2: "Global project and Action project implementation support measures (RB Rail, EE, LV, LT)".

### Section I DEFINITIONS AND INTERPRETATION

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

1.2. *Interpretation.*

- (a) The headings contained in this Agreement shall not be used in its interpretation.
- (b) References to the singular shall include references in the plural and vice versa, words denoting a gender shall include any other gender where the context requires, and words denoting natural persons shall include any other Persons.

- (c) References to a treaty, directive, regulation, law or legislative provision shall be construed, at any particular time, as including a reference to any modification, extension or re-enactment of the respective treaty, directive, regulation, law or legislative provision at any time then in force and to all subordinate legislation enacted from time to time.
  - (d) In the event there arises a conflict between provisions of the Agreement, the last provision to have been written chronologically shall take precedence.
  - (e) Any reference in this Agreement to a Person acting under the direction of another Person shall not include any action that is taken in contravention of any Applicable Law or Standards, unless the relevant Person can demonstrate that an explicit instruction or direction was given to take the relevant action.
  - (f) Unless expressly stated to the contrary, any reference in this Agreement to the right of consent, approval or agreement shall be construed such that the relevant consent, approval or agreement shall not be unreasonably delayed or withheld. The Parties agree and acknowledge as follows:
    - (i) neither Party shall be required to seek or apply for any consent, approval or agreement by any Person which would place the respective Party in breach of the Applicable Law, Standards or any Good Industry Practice; and
    - (ii) nothing in this Agreement shall require the Principal to give or procure the giving of any consent or approval which would be contrary to the protection, safety and efficient operation of the Railway and the Project.
  - (g) A reference to "writing" shall include an e-mail transmission and any means of reproducing words in a tangible and permanently visible form.
  - (h) The words "include" and "including" are to be construed without limitation.
  - (i) Unless indicated otherwise, all references to "days" shall mean calendar days.
  - (j) The words in this Agreement shall bear their natural meaning, except for any Definitions in accordance with *Annex A: Definitions and common terms*.
- 1.3. *Order of Precedence*. In the event of any discrepancy or inconsistency between the documents forming part of this Agreement, the following order of precedence shall apply:
- (a) This Agreement document;
  - (b) Explanations (clarifications) of the procurement documentation;
  - (c) Procurement documents with the annexes (including Technical specification (Scope of Service));
  - (d) Clarifications of the Service Provider's Proposal;
  - (e) Service Provider's Proposal;
  - (f) All other Annexes of the Agreement.

## **Section II GENERAL TERMS AND CONDITIONS**

- 2.1 *Engagement*. The Principal hereby engages the Service Provider to provide and perform the Service for the purposes of the Project with the objective of ensuring provision and performance of all Works more fully identified in *Annex B: Technical Specification* attached to this Agreement

- (the "Scope of Service") subject to the terms of this Agreement, and the Service Provider hereby accepts such engagement.
- 2.2 *Objective.* The Service shall result in the performance of all Works identified in according to the terms of this Agreement and delivery to the Principal of the Deliverables according to the schedule specified in *Annex B: Technical Specification* to this Agreement.
- 2.3 *Ordinary, Additional and Extraordinary Services.* The Service under this Agreement shall comprise the following:
- (a) Ordinary Services are those designated as "Monthly Tasks" and "Annual Tasks" in accordance with *Annex B: Technical Specification* (the "Ordinary Services");
  - (b) Additional Services are those designated as "Additional tasks" in accordance with *Annex B: Technical Specification* or which by written agreement of the Parties are otherwise additional to Ordinary Services (the "Additional Services") and which are necessarily performed by the Service Provider, provided that the Scope of Services identified in accordance with *Annex B: Technical Specification* is supplemented with the Additional Services in strict compliance with Applicable Law of the Latvia. Irrespective of anything to the contrary set forth in this Agreement, each Additional Service shall constitute an Alteration.
- 2.4. *Alteration Requests by Principal.* Notwithstanding any provisions in this Agreement to the contrary, whenever the Principal reasonably considers that an Alteration is necessary:
- (a) to address, alleviate or comply with (as appropriate) a Mandatory Alteration; or
  - (b) to address changes to the underlying assumptions set out in the Scope of Service,
- the Principal shall send to the Service Provider a written notice requesting an Alteration to the Scope of Service and/or Service Schedule (the "Alteration Request") to the extent that the Alteration is reasonable in the circumstances. For the avoidance of any doubt, no Alteration shall be effective unless and until agreed in writing by both Parties and made in accordance with Applicable Law of Latvia.
- 2.8 *Co-Operation of the Parties.* The Parties shall cooperate with one another to fulfil their respective obligations under this Agreement. The Parties shall endeavour to maintain good working relationships among all key personnel engaged toward provision of the Service.
- 2.9 *Licensing Requirements.* By signing this Agreement, the declaration is made by the Service Provider that the Service Provider is professionally qualified, registered, and licensed to practice in the Republic of Lithuania, if it's required in accordance with legal acts of Lithuania.
- 2.10 *General Obligations of Service Provider.* The Service Provider shall be responsible for the professional quality, technical accuracy, and coordination of all concepts, programming, reports, designs, drawings, specifications, and other services furnished under this Agreement. The Service Provider shall have an obligation, without additional compensation of any kind, to correct or revise any errors, deficiencies, or omissions in concepts, programming, reports, designs, drawings, specifications, estimates, and other services rendered hereunder and forming part of the Service. The Service Provider shall furnish to the Principal all Deliverables as described in *Annex B: Technical Specification*, configured according to this Agreement.

### Section III OBLIGATIONS OF SERVICE PROVIDER

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

- (i) act in accordance with the terms and conditions of the agreement entered into between the Principal and the relevant third party; provided, however, that the details of such powers and duties, to the extent not described pursuant to Scope of Services are acceptable to the Service Provider;
- (ii) if authorized to certify, decide or exercise discretion, do so fairly between the Principal and third party not as an arbitrator but as an independent professional exercising its best skill and judgment; and
- (iii) to the extent so authorized, cause the obligations of any third party to be adjusted or modified, subject to obtaining the prior approval of the Principal to any adjustment or modification which can have a material effect on Costs, quality or time (except in any emergency when the Service Provider shall inform the Principal as soon as practicable).

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

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

In addition to the obligations set forth in accordance with this Clause 3.5, the Service Provider shall have an obligation, during the term of this Agreement, to retain copies of the object code of all software used in the design and production of the Service Provider software, if such software shall be used.

In case of on-going audits, appeals, litigation or pursuit of claims concerning the grant, including in the case of correction of systemic or recurrent errors, irregularities, fraud or breach of obligations, the records shall be kept and maintained longer.

3.4. *Access to Documentation.* At all times during the term of the Service, the Principal shall have access to all Documentation. This access shall be continuing and survive the termination of this Agreement for either cause or convenience. The Documentation shall be kept being accessed in a generally recognized format for a period of for period of ten (10) years from the date of expiration or termination of this Agreement. All records forming part of the Documentation shall be available to the Principal auditor, or expert appointed by the Principal during the period of time specified in accordance with this Clause 3.6.

3.5. *Right to Sub-Contract and Staff.*

- (a) In performing the Services in accordance with the Scope of Service and subject to the provisions of Clause 3.14 and this Clause, the Service Provider may only rely on the services of those Approved Sub-Contractors and Staff listed in *Annex D: List of Approved Sub-Contractors and Staff*, as such list may, from time to time, be modified or supplemented in agreement with the Principal and in accordance with the terms and subject to the criteria

contained in the applicable Public Procurement Law of the Republic of Latvia. Parties shall specify the name, contact details and legal representative(s) of each Approved Sub-Contractor as of the Effective Date in *Annex D: List of Approved Sub-Contractors and Staff*. The Service Provider shall have an obligation to notify the Principal in writing of any changes to Sub-Contractor or Staff data specified in *Annex D: List of Approved Sub-Contractors and Staff* occurring during the term of this Agreement and of the required information for any new Sub-Contractors or Staff member which it may subsequently engage toward performing the Service.

- (b) Pursuant to the Public Procurement Law of the Republic of Latvia the Service Provider shall obtain prior written consent of the Principal for the replacement of each Sub-Contractor or each Staff member, or each key personnel indicated in *Annex D: List of Approved Sub-Contractors and Staff* and involvement of additional Sub-Contractors or Staff members, or key personnel.
- (c) Review and evaluation of the replacement of Sub-Contractors or Staff shall be carried out, and the consent or refusal to give consent shall be rendered by the Principal in accordance with Section 62 of the Public Procurement Law of the Republic of Latvia.
- (d) The Service Provider shall not involve employee and/or staff (including but not limited to key office-holders, key personnel (including but not limited to Supervisor/manager, Consultants) who have a criminal record, in the implementation of the Agreement.
- (e) The Service Provider shall submit to the Principal the name, surname, personal code (identification number), professional title (job position) of every natural person that will implement the Agreement and/or will be present on site at least ten (10) Working Days prior involvement of this person in the implementation of the Agreement and/or its presence on site. The Service Provider shall provide a brief (concise) description of duties towards the implementation of the Agreement of the persons, and, if requested by the Principal.
- (f) The Principal has a right to demand dismissal of such a natural person non-compliant with the security clearance requirements stipulated in this Clause 3.5 at the Principal's sole discretion on the basis of the Principal's written request for dismissal. Parties agree that such Principal's decision is in-contestable.
- (g) The Service Provider shall replace the Sub-Contractor and/or Staff member which, during the effectiveness of this Agreement, meets any of the compulsory grounds for exclusion of tenderers (or Sub-Contractors) that were verified during the Procurement Procedure and/or the Principal has demanded his/her dismissal according to Clause 3.5(f) and to prevent (i) involvement of such a natural person in the implementation of the Agreement and (ii) the presence of this person in the real estate, construction site or any other site. The Service Provider shall immediately undertake all the necessary actions and measures to ensure that any risk of involvement of such a natural person in the implementation of the Agreement is promptly and duly eliminated.
- (h) In case mentioned in Clause 3.5(f) the Service Provider is obliged:
  - (i) to immediately replace the dismissed person according to Section 62 of the Public Procurement Law of the Republic of Latvia and the Agreement, and

- (ii) to comply with the Principal's written instructions pursuant to this Clause 3.5 and not to challenge these instructions, and
- (iii) to inform the Principal about dismissal or replacement proceedings pursuant to this Clause.

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

The Service Provider's non-compliance with the security clearance requirements stipulated in this Clause 3.7, the Principal's instructions towards the Service Provider regarding these security clearance requirements or other provisions of this Clause 3.5 constitutes a material breach (breach of a material term or condition) of the Agreement.

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

- (c) pass to the Principal a complete set of any documents, manuals or other information that the Principal may require in connection with the Project and the Railway and which, at the time of termination, are in the possession or under the control of the Service Provider.
- 3.11 *Attendance of Meetings.* To the extent necessary to ensure smooth and efficient provision of the Service, the Service Provider shall, at the Principal's request, hold and/or attend meetings with any Persons, at which appropriate personnel of the Service Provider and the Principal and the Representatives of each Party shall be present. The Service Provider shall record all meetings (also online meetings) between Parties and prepare meeting reports within five (5) Working Days after each meeting. All meeting reports shall be harmonized by Principal.
- 3.12 *Compliance with Laws.* The Service Provider shall review the Applicable Law that is applicable to the Service Provider's services. In carrying out any activities forming part of the Service, the Service Provider shall, at all times, ensure compliance with requirements imposed by supra-national and/or governmental authorities having jurisdiction over the Project.
- 3.13 *No Material Interference.* The Service Provider agrees that non-Principal activities undertaken by the Service Provider will be managed so as not to materially interfere with the Service Provider's obligations to the Principal under this Agreement.
- 3.14 *No Conflicting Activity.* Except with the Principal's knowledge and express written permission, the Service Provider shall not engage in any activity, or accept any employment, other agreement, interest, or contribution that would reasonably appear to compromise the Service Provider's professional judgment and performance with respect to the Service and/or the Project. In performing the Service, the Service Provider shall take all necessary measures to prevent any situation where the impartial and objective implementation of the Service is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest.
- 3.15 *Certain Negative Covenants.* In carrying out the Service, the Service Provider undertakes not to procure goods or services of any kind from any person meeting any of the following criteria:
- (a) the Person who is a member of the Management Board or Supervisory Board of an Approved Sub-Contractor or procurator of an Approved Sub-Contractor, or is authorised to represent or act on behalf of an Approved Sub-Contractor with respect to any activity related to any subsidiary company of such Approved Sub-Contractor, and such Person has been accused of commitment of any of the following criminal offences pursuant to an order issued by a public prosecutor or was found to be guilty of commitment of any of the following criminal offences in accordance with a court judgment that has entered into legal force, is non-disputable and non-appealable:
    - (i) formation, organisation, leading or involvement in the criminal organisation or another criminal formation, or participation in the criminal acts of such organisation or formation;
    - (ii) accepting a bribe, giving of a bribe, misappropriation of a bribe, intermediation toward giving or taking of a bribe, acceptance of a prohibited benefit or commercial bribing, unauthorized participation in property transactions, unlawful claiming of benefits, accepting or providing benefits, trading influences;
    - (iii) fraud, misappropriation of funds or money laundering;
    - (iv) tax evasion or evasion of payments equivalent to tax;



- (v) terrorism, financing of terrorism, creation or organization of terrorist group, traveling for terrorist purpose, justification of terrorism, instigation of acts of terrorism, terrorist threats or recruitment and training of a person with the aim of committing acts of terrorism;
- (vi) human trafficking;
- (b) the Person has, by decision of a competent authority or judgment of a court which has entered into legal force and is non-disputable and non-appealable, been found guilty of violation of labour law in any of the following manners:
  - (i) employment of one or more citizens or nationals of countries who are not citizens or nationals of a Member State of the European Union and are residing in the territory of a Member State of the European Union unlawfully;
  - (ii) employment of one or more persons without having entered into written employment agreement with such persons, or without having submitted an employee declaration with respect to such persons within a period of time stipulated in accordance with applicable laws and regulations applicable to persons that enter into salaried employment;
- (c) the Person who, by decision of a competent authority or in accordance with judgment of a competent court which has entered into legal force, is non-disputable and non-appealable, has been held guilty of violation of applicable rules of competition law manifested as a vertical agreement aimed at restricting the ability of one or more purchasers to determine the resale price, or a horizontal cartel agreement, with the exception of instances where the relevant authority, upon having established the fact of violation of applicable rules of competition law, has discharged the candidate or participant in a tender offer from imposition of a fine or has reduced the amount of fine as a part of co-operation leniency programme;
- (d) the Person who has insolvency proceedings initiated against it (except in the circumstances where a bailout or a similar set of measures are applied within the insolvency proceedings and are aimed at preventing the bankruptcy and restoring the debtor back to solvency, in which case the Service Provider shall evaluate the possibility of participation by such Person in performing the Service), economic activity of the Person has been suspended or discontinued, bankruptcy proceedings have been initiated against the Person or the Person is subject to a liquidation;
- (e) the Person has unpaid tax indebtedness in the country where the procurement is organised or in the country where the Person is registered or permanently residing as a tax payer, including the indebtedness with respect to State social insurance contributions, in the total amount exceeding EUR 150 in each individual country; in such case, the Service Provider can, within its sole discretion, prompt the Approved Sub-Contractor to pay or discharge all outstanding tax indebtedness within 10 (ten) Working Days and, upon such payment or discharge, allow the Person to continue performance of the Service;
- (f) the Person is an entity registered offshore;
- (g) International or national sanctions or substantial sanctions by the European Union or the North Atlantic Treaty Organization Member State affecting the interests of the financial and capital market has been imposed to the Person and such sanctions can affect the execution of the Contract; and

- (h) any of the above-mentioned criteria shall apply to all members of a group of persons if the Person is a group of persons.

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

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



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

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

#### **Section IV OBLIGATIONS OF PRINCIPAL**

4.1. *Acting in Good Faith and Supply of Information.* At all times during the term of this Agreement, the Principal undertakes to act in good faith toward the Service Provider in respect of all matters under this Agreement. The Principal shall, so as not to delay the Service and within a reasonable time, supply to the Service Provider free of cost all information in the power of the Principal to obtain which pertains to the Service, the Project and the Railway. The Principal shall, free of any Costs to the Service Provider, to the extent not explicitly stated otherwise in this Agreement, comply with all of its obligations under this Agreement, including with respect to carrying out

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

## **Section V REPRESENTATIONS AND WARRANTIES**

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

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

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

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

## **Section VI PERSONNEL AND REPRESENTATIVES**

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

6.2. *Representatives.* Each Party shall appoint an officer, employee or individual to serve as its representative toward supply or receipt of the Service with full authority to act on its behalf in connection with this Agreement (hereinafter, the "Representative"), the initial Representatives having been identified in accordance with *Annex H: Representatives*. Any restriction placed by

either Party on its Representative's authority shall be notified to the other Party in writing in order to be effective. The Representatives may delegate their authority by notice in writing specifying the identity of the delegate and specifying the scope of authority so delegated. In addition to the appointment of a Representative in accordance with this Clause 6.2, to the extent required by the Principal, the Service Provider shall designate an individual to liaise with the Representative of the Principal in each country where the Project is implemented.

- 6.3. *Changes in Personnel.* To the extent necessary to replace any Person among personnel or Representative of either Party engaged toward provision or receipt of the Service, the Party responsible for the appointment of such Person shall immediately arrange for replacement of the appointed Person by another Person of comparable competence. The costs of such replacement shall be borne by the Party responsible for the appointment, except that if the replacement is requested by the other Party,
- (a) such request shall be made in writing and state the reason for the request; and
  - (b) the Party making the request shall bear the costs of replacement, unless misconduct or inability to perform is satisfactorily established as the reason for the replacement.
- 6.4. *Supplemental Personnel.* To the extent necessity arises to supplement the personnel of the Service Provider engaged toward provision of the Service with additional personnel, the Service Provider shall immediately arrange for engagement of such supplemental personnel. The costs of such engagement shall be borne by the Service Provider. For the avoidance of any doubt, the engagement of supplemental personnel under this Clause 6.4 shall not require approval by the Principal, provided that this personnel complies with the Applicable Law, including the Public Procurement Law of the Republic of Latvia, and this Agreement.

## **Section VII SERVICE MEETINGS, REPORTING AND RISK REDUCTION**

- 7.1. *Service Meetings.* The Service Provider shall arrange meetings if requested by the Principal, at which appropriate personnel of the Service Provider and the Principal and the Representatives of each Party shall be present. Service Provider shall record all meetings (also online meetings) between Parties and prepare meeting reports within five (5) Working Days after each meeting. All meeting reports shall be harmonized by Principal.
- 7.2. *Reporting.* The Service Provider shall, in a format and at intervals to be agreed with the Principal:
- (a) provide the Principal with regular reports and status updates on the progress of the Works.
  - (b) report on any changes to the *Annex B: Technical Specification, Annex C: Schedule of Service*, which the Service Provider considers may be needed in order to fulfil the objectives set out in the *Annex B: Technical Specification* and *Annex C: Schedule of Service* and
  - (c) use reasonable endeavours to provide any other information and status updates as may be reasonably requested by the Principal at any time.

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

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

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

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

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

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

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

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

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

## **Section VIII COMMENCEMENT OF SERVICE, REMEDY OF DEFECTS AND ACCEPTANCE**

8.1 *Service Commencement.* The Service Provider shall not commence provision of the Service until Service Start Date as identified in accordance with *Annex C: Schedule of Service* and shall ensure that the Deliverables are furnished on or before each relevant Due Date set in the *Annex B: Technical Specification*. The Service Provider shall render the Service timely and with due diligence having due regard to any applicable Due Date and any other key dates for performance of the Service set out in the Agreement and the applicable Annexes, as may be amended from time to time with the consent of the Principal or in accordance with this Agreement and Public Procurement Law of the Republic of Latvia.

- 8.2 *Impediments and Delays.* If the Service, or any part thereof, is impeded or delayed by the Principal or any third party engaged by the Principal so as to increase the duration of the Service or any of the applicable Due Dates:
- (a) the Service Provider shall inform the Principal of the circumstances and probable effects of such impediment or delay upon the agreed schedule of Service specified in accordance with *Annex C: Schedule of Service*; and
  - (b) the duration of the Service shall be increased, and any Due Date affected by the impediment or delay shall be extended accordingly.
- 8.3 *Defects and Defects Date.* Until the Defects Date specified in accordance with *Annex C: Schedule of Service* the Principal shall notify the Service Provider of each Defect of any kind as soon as Defect is identified by the Principal and the Service Provider shall have an obligation to notify the Principal of each Defect as soon as Defect is identified by the Service Provider. Upon discovering a Defect, or upon receipt by the Service Provider of a notification of Defect from the Principal, the Service Provider shall have period to remedy the Defect as set in accordance with *Annex C: Schedule of Service* (the "Cure Period"). In the event of inability or failure by the Service Provider to remedy the Defect within the Cure Period, the Principal shall be entitled, at the sole and exclusive discretion of the Principal, to do any of the following:
- (a) allow the Service Provider an additional time period for remedying the Defect, such time period to be determined in the sole discretion of the Principal;
  - (b) remedy the Defect at own cost of the Principal (including by means of relying on the services of a third Person) and demand reimbursement by the Service Provider of Costs incurred by the Principal as a result of having to pay other Persons toward carrying out any work or action;
  - (c) terminate the Agreement according to *Section X TERMINATION AND SUSPENSION*; or
  - (d) remedy the Defects, irrespective of the extent or nature of the Defects, in accordance with Clause 8.3 (b) and terminate the Agreement pursuant to *Section X TERMINATION AND SUSPENSION*.

For the avoidance of any doubt, the application of the Cure Period under this Clause 8.3 shall be without prejudice to and shall not relieve the Service Provider from the obligation to pay any contractual penalty in accordance with the provisions of Clause 11.2 or to pay Damages in accordance with the provisions of Clause 11.3 of this Agreement.

- 8.4 Supply of a Deliverables completed by the Service Provider according to the *Annex B: Technical Specification* and *Annex C: Schedule of Service* during the previous month and by the relevant Due Date occurs until the 5 date of the current month. On producing all Deliverables (including all Documentation and information forming part of the Deliverable) in the month constituting all or an identifiable part of the Service in a Due Date, the Service Provider shall issue to the Principal one Provisional Completion Note substantially in the form of *Annex F: Form of Provisional Completion Note* (hereinafter, the "Provisional Completion Note"). The Provisional Completion Note shall include the Deliverables and adequate supporting Documentation and information relevant to the Deliverables completed in the previous month.
- 8.5 *Objection Notice and Provisional Acceptance Note.* In the event the Principal objects to the issuance of a Provisional Acceptance Note for all or some of the Deliverables, it shall give notice to the Service Provider setting out in reasonable detail any Defect or reason for the objection (the "Objection Notice") within reasonable time following receipt of the Provisional Completion Note. In the event no reasons for objection to the Provisional Completion Note exist, the Principal shall

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

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

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

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

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



## Section IX INTELLECTUAL PROPERTY RIGHTS

- 9.1 *Proprietary Rights.* All Documentation forming part of the Deliverables developed under this Agreement is and shall become the property of the Principal at the moment of creation regardless of whether the Service or Deliverable is produced or finally accepted. It is acknowledged and agreed by the Parties that the Principal shall be permitted to reproduce the drawings and schemes and distribute the prints in connection with the use or disposition of the Documentation without any approval of the Service Provider and without incurring obligation to pay any royalties or additional compensation whatsoever to the Service Provider.
- 9.2 *Intellectual Property in Documentation.* The Service Provider represents and warrants that it owns all Intellectual Property required for the purposes of completing its obligations under this Agreement and in all Documentation deliverable by or on behalf of the Service Provider under this Agreement and that, to the extent any Intellectual Property in any Documentation is not owned by the Service Provider, it has obtained all requisite consents from owner(s) of all Intellectual Property in the Documentation to fulfil all of the obligations undertaken by the Service Provider under this Agreement and has fully discharged all obligations with respect to payment of any royalties or fees.
- 9.3 *Transfer of Ownership to Principal.* The Principal shall acquire legal title to and ownership in the Intellectual Property in all Documentation deliverable to the Principal under this Agreement as of the moment of delivery by the Service Provider to the Principal of the Provisional Completion Note, together with the Deliverable and Documentation and information forming part of the Deliverable, in accordance with Clause 8.4 of this Agreement; provided, however, that the Principal has paid the Fee or other consideration payable under the terms of this Agreement with respect to the relevant part of the Service or Deliverable. For the avoidance of any doubt, such title and ownership shall confer upon the Principal, without limitation, each of the following:
- (a) the right to reproduce the Documentation and information, or any part thereof, and distribute copies of the Documentation and information or any part thereof;
  - (b) the right to modify, amend and supplement the Documentation and information, or any part thereof;
  - (c) the right to licence the Documentation and information, or any part thereof, for use by others; and
  - (d) the right to transfer ownership in the Documentation and information, or any part thereof, to others.
- 9.4 *Grant of Limited License to Service Provider.* Upon acceptance by the Principal of any Deliverable and Documentation forming part of any Deliverable in accordance with Clause 8.5, 8.6 and 8.7 the Principal shall be deemed to have granted the Service Provider an irrevocable and exclusive licence to reproduce, modify and distribute copies of any Documentation forming part of any Deliverable for the purposes of the Service and the Project, subject to the following restrictions:
- (a) the license shall apply during the term of this Agreement only;
  - (b) the permitted use shall only cover the right to reproduce, modify and distribute the Documentation and information, or any part thereof, for the purposes of performing, implementing or modifying the Service; and
  - (c) the Documentation and information, or any part thereof, shall not, without the prior consent by the Principal, be distributed or communicated to any third party for purposes other than those permitted in accordance with this Clause 9.4.

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

- 9.5 *No Additional Royalty.* It is acknowledged and agreed by the Parties that consideration for the transfer of ownership in the Intellectual Property shall be forming part of the Fee and no additional royalty, fee or other consideration of any kind shall be payable by the Principal to the Service Provider or to any third party in consideration of the transfer of ownership in the Intellectual Property in any Documentation.
- 9.6 *No Infringement.* The Service Provider represents and warrants to the Principal that no Documentation and information deliverable to the Principal under the terms of this Agreement will infringe any existing Intellectual Property of any third party. In the event any of the representations or warranties contained in this *Section IX INTELLECTUAL PROPERTY RIGHTS* prove to be untrue or inaccurate, the Service Provider undertakes, at its own cost and expense, to defend and settle any claim raised by any third party alleging infringement of Intellectual Property in the Documentation and information. The foregoing undertaking by the Service Provider shall apply subject to the following conditions:
- (a) the Principal shall notify the Service Provider, without undue delay, of any third-party claim alleging infringement of any Intellectual Property in any Documentation and information;
  - (b) the Principal refrains from admitting liability under any third-party claim or acting on the account of such claim without prior approval by the Service Provider; and
  - (c) the exclusive control over any legal proceeding or settlement related any third-party claim shall be exercised by the Service Provider; provided, however, that the Principal shall render the Service Provider all reasonable assistance toward such proceeding or settlement, at the cost and expense of the Service Provider.
- 9.7 *Infringement Proceedings.* In the event the Principal is a party to legal proceedings involving allegations of infringement of any Intellectual Property in the Documentation of any third party, the Service Provider shall keep the Principal fully informed of all aspects relevant to the legal proceedings and the Principal shall have the right, at its own cost, to be represented in the legal proceedings by separate counsel. In the event the Service Provider fails to act against claims alleging infringement of any Intellectual Property in the Documentation and information of any third party within reasonable time but, in any event, within twenty (20) days of having been notified of such claims, the Principal shall have the right to assume legal defence against claims alleging infringement of Intellectual Property and shall be entitled to reimbursement by the Service Provider of reasonable costs and expenses incurred toward such defence.
- 9.8 *Continued Use.* In the event a court of competent jurisdiction resolves in a binding judgment that the Documentation and information, or any part thereof, infringe Intellectual Property of any third party, the Service Provider shall, at its own cost and expense, procure for the Principal the right of continued use of the Documentation and information, or part thereof infringing Intellectual Property of a third party.
- 9.9 *License in Intellectual Property of the Service Provider.* The Service Provider hereby grants the Principal an irrevocable and non-exclusive license to use, reproduce, modify and/or enhance any Intellectual Property of the Service Provider, provided and to the extent Intellectual Property of the Service Provider is used by the Principal for the purposes of the Railway and/or the Project. It is agreed and acknowledged by the Parties that the license fee for the grant of license in accordance with this Clause 9.9 forms part of the Fee and such license shall continue to be valid irrespective of expiration of this Agreement following completion of the Service or termination of this Agreement for any reason.

- 9.10 *Obligation to Procure Intellectual Property Rights.* Where the Service Provider is not the legal owner of any relevant Intellectual Property of the Service Provider, the Service Provider shall use reasonable endeavours to procure for the Principal the rights specified in accordance with Clause 9.8.
- 9.11 *Obligation to Indemnify with Respect to Uses Other Than for the Purpose.* The Principal shall defend and indemnify the Service Provider from and against any and all Damages and Costs arising from the use by the Principal of any Intellectual Property of the Service Provider other than for the purposes of the Railway and/or the Project.
- 9.12 *Indemnification by the Service Provider.* The Service Provider shall defend and indemnify the Principal from and against any and all Damages arising from the use by the Principal of any Intellectual Property of the Service Provider, to the extent use by the Principal is within the scope of the license granted to the Principal in accordance with Clause 9.9.
- 9.13 *Certain Rights of Service Provider.* The Service Provider shall have the right to include photographic or artistic representations of the design of the Project among the Service Provider's promotional and professional materials after obtaining prior written approval from the Principal. The Service Provider shall be given reasonable access to the completed Project to make such representations. However, the Service Provider's materials shall not include the Principal's confidential or proprietary information regardless of whether or not the Principal has previously advised the Service Provider in writing of the specific information considered by the Principal to be confidential or proprietary. These materials also shall not contain any information or data that shall be used in accordance to any conditions and requirements set forth by the Principal or other entity; in this case the Service Provider shall comply with such conditions and requirements.

## **Section X TERMINATION AND SUSPENSION**

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

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

- (h) the occurrence of any event analogous to the events enumerated under Clauses 10.4(e)-(g) under the law of any jurisdiction to which the other Party's assets and undertaking are subject.
- 10.5 *Principal's Right to Terminate Immediately.* The Principal may terminate this Agreement immediately upon giving the other Party a written notice of termination explaining, in reasonable detail, the reason for termination, if:
- (a) CEF Co-financing for further financing of the Service are not available to the Principal fully or partly;  
  
In such a case, the Principal shall pay the Service Provider the fees in respect of the Service provided under this Agreement up to the date of the notification of the termination of this Agreement and the Principal is not obliged to pay contractual or any other penalty or damages to the Service Provider.
  - (b) it is not possible to execute the Agreement due to the application of international or national sanctions, or European Union or North Atlantic Treaty Organization applied sanctions significantly affecting interests of financial or capital market.
- 10.6 *Termination according to Public Procurement Law.* The Agreement can be immediately terminated upon giving the other Party a written notice of termination explaining, in reasonable detail, the reason for termination upon occurrence of any of the provisions mentioned in the Section 64 of the Public Procurement Law. In such a case, the Principal shall pay the Service Provider the fees in respect of the Works and Service provided under this Agreement up to the date of the notification of the termination of this Agreement and the Principal is not obliged to pay contractual or any other penalty or damages to the Service Provider.
- 10.7 *Right to Advance to Completion.* In the event the Service Provider fails to fulfil any of its obligations or fails to cure any breach in accordance with Clause 10.2, and the Agreement is terminated by the Principal, the Principal may advance the Service to completion by employing the services of other professional service supplier(s) or by other means available to the Principal. The Service Provider shall be liable to the Principal for any and all additional costs incurred due to failure by the Service Provider to perform. The rights and remedies available to the Principal set forth in accordance with this Clause 10.7 shall be in addition to any and all other rights and remedies available under Applicable Law.
- 10.8 *Consequences of Termination.* Upon expiration or termination of this Agreement, the obligations of the Parties set forth in this Agreement shall cease, except with respect to the following:
- (a) any obligations arising as a result of any antecedent breach of this Agreement or any accrued rights; and
  - (b) the provisions stipulated in accordance with Clauses 3.2, 3.4, 8.3, 9.5, 9.6, 9.7, 9.8, 9.9, 9.11, 9.12, 10.9, 11.1, 11.2, 11.3, 11.5, 11.6, 11.7, 17.3, 17.8, 17.9 and *Section XIII CONFIDENTIALITY, Section XIV RIGHT TO AUDIT, Section XV ON-THE-SPOT-VISITS and Section XVI GOVERNING LAW AND RESOLUTION OF DISPUTES* which shall survive the termination or expiry of this Agreement and continue in full force and effect along with any other Clauses of or Annexes hereof which are necessary to give effect to the clauses specifically identified in this Clause 10.8(b).
- 10.9 *Partial Acceptance.* Notwithstanding anything in this Agreement to the contrary including, without limitation, the provisions of Clauses 8.4, 8.5, 8.6 and 8.7 and in the event of termination of this Agreement, the Principal shall have the right, in the sole discretion of the Principal, to

partially accept any Works, part of Works or any Service or part of the Service delivered to the Principal under this Agreement (the "Right of Partial Acceptance"). The Principal shall notify the Service Provider of its intention to exercise the Right of Partial Acceptance in the termination notice given in accordance with Clause 10.1 or Clause 10.4 of this Agreement, specifying, in reasonable detail, the Works, part of Works or part of the Service which the Principal would like to partially accept. In the event of receipt of such notice, the Service Provider shall reasonably cooperate with the Principal in order to ascertain transfer to the Principal of ownership in the result(s) of such Works, part of Works or part of the Service and determination of the amount of consideration payable by the Principal.

10.10 *Principal's Obligation to Pay.* Subject to the provisions of Clause 10.9 and except in the event of termination by the Principal occurring as a result of violation by the Service Provider of Clause 11.2, and/or termination by the Principal according to Clause 10.5 and/or 10.6 in the event this Agreement is terminated for any reason prior to completion of the Service, the Principal shall have an obligation to pay the Service Provider the following:

- (a) the Costs incurred by the Service Provider up to the date of termination; and
- (b) except where termination is due to negligence of the Service Provider, due to the application of international sanctions, breach by the Service Provider, insolvency of the Service Provider or a Force Majeure Event under *Section XII FORCE MAJEURE*:
  - (i) an amount equal to the costs reasonably and properly incurred by the Service Provider as a result of or in connection with such termination; and
  - (ii) such additional amount as is required to put the Service Provider in the same after-tax position (taking into account the amount of any relief, allowance, deduction, set-off or credit relating to tax available to the Service Provider in respect of the payment received) as it would have been in if the payment had not been a taxable receipt in the hands of the Service Provider.

10.11 *No Obligation to Pay Costs Incurred Prior to Acceptance.* Notwithstanding anything set forth in this Agreement to the contrary including, without limitation, under Clause 10.9, the Principal shall have no obligation to pay any of the Costs incurred by the Service Provider with respect to any Works or the Service (or part of any Works or the Service) not deemed as having been accepted by the Principal in accordance with Clauses 8.4, 8.5, 8.6 and 8.7 of this Agreement.

10.12 *No Prejudice to Other Rights.* The right to terminate this Agreement shall be without prejudice to any other right of either Party which has accrued prior to or as a result of such termination or to any remedy available to either Party under the terms of this Agreement or in accordance with Applicable Law.

## **Section XI LIABILITY**

11.1 *Liability of the Parties.* The Service Provider shall be liable to compensate Damages incurred by the Principal arising out of or in connection with this Agreement and pay contractual penalty set forth in accordance with Clause 11.2 if a breach of any of the obligations of the Service Provider under this Agreement is established against the Service Provider. The Principal shall be liable to pay the contractual penalty set forth in accordance with Clause 11.2 if a breach of payment obligations of the Principal under this Agreement is established against the Principal.

11.2 *Contractual Penalty.* In the event of failure by the Service Provider to meet any Service Milestone and/or supply any Deliverable, the Service Provider shall be liable to pay to the Principal a penalty of zero point five percent (0.5%) of the amount of total the Fee payable under this Agreement

with respect to the relevant Service period for each day of delay starting from the first delayed day with meeting any of the Due Dates and/or supplying any of the Deliverables set forth in accordance with *Annex C: Schedule of Service* provided, however, that the total amount of penalty payable by the Service Provider under this Clause 11.2 for the relevant Works, as specified according to *Annex C: Schedule of Service* shall not exceed ten percent (10%) of the total amount of the Fee payable in consideration of such Works and Service. In the event of failure by the Principal to pay any amount in accordance with Clause 18.1, the Principal shall be liable to pay the Service Provider a penalty of zero point one percent (0.1%) of the amount of the amount invoiced for each day of delay with meeting the payment obligation; provided, however, that the total amount of penalty payable by the Principal under this Clause 11.2 shall not exceed ten percent (10%) of the total amount remaining unpaid under the relevant invoice.

- 11.3 *Compensation for Damages.* Notwithstanding of and without prejudice to any contractual penalty payable in accordance with Clause 11.2 and subject to the provisions of Clause 11.511.4 in the event it is established that either Party is liable to the other Party with respect to any breach of its respective obligations under this Agreement, the liable Party shall compensate the other Party for any Damages incurred as a result of such breach, subject to the following terms:
- (a) the amount of compensation shall be limited to the amount of reasonably foreseeable Damages suffered as a result of the breach(es), but not otherwise; and
  - (b) if either Party is considered to be liable jointly with third parties to the other, the proportion of compensation payable by the liable Party shall be limited to that proportion of liability which is attributable to the breach by the liable Party.
- 11.4 *Attribution of Damages.* Any Damages suffered by either Party shall, for the purposes of Clause 11.3, be reduced to the extent that the Damages are caused by or contributed to by the other Party's own negligence or breach of its obligations under this Agreement.
- 11.5 *Limitation of Liability.* Notwithstanding anything to the contrary set forth in this Agreement, in no circumstances shall the Service Provider or Principal be liable to one another for any loss of production, loss of profit, loss of revenue, loss of contract, liability incurred under other agreements (with the exception of costs paid by the Principal to Service Providers appointed by the Principal in relation to the Service or the Project) or any indirect or consequential loss arising out of or in connection with this Agreement. The Service Provider's total liability for the Works carried out under this Agreement shall in no circumstances exceed 500 000 EUR (five hundred thousand euros).
- 11.6 *Liability Cap.* Subject to the provisions of Clause 11.6 maximum aggregate liability of each Party to the other Party for any reason arising under, or in connection with, this Agreement or the Project including but not limited to breach of the Agreement, or for breach of Applicable Law shall not exceed an amount equal to 500 000 EUR (five hundred thousand euros). Notwithstanding the above limitation, where, in respect of the same event, a Party recovers any amount of money under an insurance policy, it shall immediately pay such amounts to the other Party. Each Party shall use reasonable endeavours to make such recovery under any insurance policy (which shall include an obligation to make and diligently pursue a claim but shall not include an obligation upon the Party to take legal action).
- 11.7 *Non-Applicability of Liability Cap.* The provisions of Clause 11.6 shall not apply to Damages incurred by either Party as a result of:
- (a) any liability in respect of death or personal injury resulting from a negligent act or omission or breach of statutory duty by the liable Party or any employee of the liable Party;

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

## **Section XII FORCE MAJEURE**

- 12.1 *Effects of Force Majeure.* Subject to the requirements set forth in accordance with Clauses 12.2 and 12.3, each Party shall be relieved from liability for non-performance of its obligations under this Agreement (other than any obligation to pay) to the extent that the Party is not able to perform such obligations due to a Force Majeure Event.
- 12.2 *Action on Becoming Aware of Force Majeure.* Each Party shall at all times, following the occurrence of a Force Majeure Event:
- (a) take reasonable steps to prevent and mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the Force Majeure Event as soon as practicable and use reasonable endeavours in accordance with Good Industry Practice to remedy its failure to perform; and
  - (b) not be relieved from liability under this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to any failure to comply with its obligations under Clause 12.1.
- 12.3 *Notification Requirements.* Upon the occurrence of a Force Majeure Event, the affected Party shall notify the other Party as soon as reasonably practicable and in any event within five (5) Working Days of it becoming aware of the relevant Force Majeure Event. Such notification shall give sufficient details to identify the particular event claimed to be a Force Majeure Event and shall contain detailed information relating to the failure to perform (or delay in performing), including



the date of occurrence of the Force Majeure Event, the effect of the Force Majeure Event on the ability of the affected Party to perform, the action being taken in accordance with Clause 12.2(a) and an estimate of the period of time required to overcome the Force Majeure Event. The affected Party shall provide the other Party with any further information it receives or becomes aware of which relates to the Force Majeure Event and provide an update on the estimate of the period of time required to overcome its effects.

- 12.4 *Notification of Resumed Performance.* The affected Party shall notify the other Party as soon as practicable once the performance of its affected obligations can be resumed (performance to continue on the terms existing immediately prior to the occurrence of the Force Majeure Event).
- 12.5 *Mitigation of Effects of Force Majeure.* As soon as practicable after the notification specified pursuant to Clause 12.3, the Parties shall use reasonable endeavours to agree appropriate terms or modifications to the Service to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.

### **Section XIII CONFIDENTIALITY**

- 13.1 *Confidential Information.* "Confidential Information" means, in relation to the Principal, all information of a confidential nature relating to the Principal and its affiliates which is supplied by the Principal (whether before or after the date of this Agreement) to the Service Provider, either in writing, orally or in any other form and includes all analyses, compilations, notes, studies, computer files, memoranda and other documents and information which contain or otherwise reflect or are derived from such information, but excludes information which:
- (a) the Principal confirms in writing is not required to be treated as confidential; or
  - (b) the Service Provider can show that the Confidential Information was in its possession or known to it (by being in its use or being recorded in its files or computers or other recording media) prior to receipt from the Principal and was not previously acquired by the Service Provider from the Principal under an obligation of confidence; or
  - (c) was developed by or for the Service Provider at any time independently of this Agreement.
- 13.2 *Undertakings with Respect to Confidential Information.* Subject to Clauses 13.1 and 13.3, the Service Provider shall:
- (a) at all times keep confidential all Confidential Information received by it and shall not disclose such Confidential Information to any other Person; and
  - (b) procure that its affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any Person any Confidential Information except with the prior written consent of the Party to which such Confidential Information relates.
- 13.3 *Permitted Disclosure.* Notwithstanding anything to the contrary set forth in accordance with Clauses 13.1 and 13.2, the Service Provider shall, without the prior written consent of the Principal, be entitled to disclose Confidential Information:
- (a) that is reasonably required by the Service Provider in the performance of its obligations pursuant to this Agreement, including the disclosure of any Confidential Information to any employee, Service Provider, agent, officer, Sub-Contractor (of any tier) or adviser to the extent necessary to enable the Service Provider to perform its obligations under this Agreement;

- (b) to enable a determination to be made pursuant to *Section XVI GOVERNING LAW AND RESOLUTION OF DISPUTES*;
  - (c) to its lenders or their professional advisers, any rating agencies, or its insurance advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
  - (d) to the extent required by Applicable Law or pursuant to an order of any court of competent jurisdiction, any parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law;
  - (e) to register or record any Necessary Consents and to affect any property registration that may be required;
  - (f) in order to fulfil its license obligations or assist in the planning or execution of other maintenance, renewal or enhancement projects; or
  - (g) to the extent Confidential Information has become available to the public other than as a result of any breach of an obligation of confidence; provided that any such disclosure is made in good faith.
- 13.4 *Obligation of Confidentiality Pertinent to Recipients of Confidential Information.* Whenever disclosure is permitted to be made pursuant to Clauses 13.3(a) or (c), the Service Provider shall require that the recipient of Confidential Information be subject to the same obligation of confidentiality as that contained in this Agreement.
- 13.5 *Certain Obligations on Termination of Agreement.* If this Agreement is terminated for whatsoever reason, the Service Provider shall have an obligation to do all of the following:
- (a) return to the Principal all of the Confidential Information then within the possession or control of the Service Provider; or
  - (b) destroy such Confidential Information using a secure and confidential method of destruction.
- 13.6 *No Press Release by Service Provider.* Save as required by Applicable Law, the Service Provider shall not issue any press release in relation to the matters contemplated under this Agreement without the prior written consent of the Principal (such consent not to be unreasonably withheld or delayed) as to both the content and the timing of the issue of the press release.
- 13.7 *Right to Publish.* For the avoidance of any doubt, the Principal and any of the Beneficiaries and Implementing Bodies shall have the right to publish any of the documents, information or data provided by the Service Provider to the Principal during provision of the Service.
- 13.8 *Remedies.* The Parties acknowledge and agree that a breach of the provisions of this *Section XIII CONFIDENTIALITY* may cause the owner of Confidential Information to suffer irreparable Damages that could not be adequately remedied by an action at law. Accordingly, the Service Provider agrees that the owner of Confidential Information that is disclosed in breach of Clauses 13.2, 13.4 or 13.6 may be entitled to specific performance of those provisions to enjoin a breach or attempted breach thereof and to any other remedy, including, inter alia, damages and injunctive relief, awarded by a court of competent jurisdiction.

#### **Section XIV RIGHT TO AUDIT**

- 14.1 *Right to Audit.* Notwithstanding anything to the contrary set forth in this Agreement including, the Principal itself, a reputable outside independent body or expert engaged and authorized by

the Principal shall be entitled to inspect and/or audit the Service Provider to ensure compliance with the terms of this Agreement, including inspecting and/or auditing:

- (a) the performance of any aspect of the Service; and/or
- (b) any documentation, including all payrolls, accounts of the Service Provider and/or other records used in or related to the performance of the Services.

- 14.2 *Obligation to Assist.* The Service Provider shall provide all reasonable assistance to the Principal or the independent body authorized by the Principal in carrying out any inspection or audit pursuant to this *Section XIV RIGHT TO AUDIT*. The Principal shall be responsible for its own costs, or the costs incurred by the outside independent body designated by the Principal, incurred toward carrying out such inspection or audit, unless, in the case of any such audit, that audit reveals that the Service Provider is not compliant with the terms of this Agreement, in which case the Service Provider shall reimburse the Principal for all of its additional reasonable costs incurred, provided such non-compliance is material.
- 14.3 *Survival of Termination.* The rights and obligations of the Principal set forth in accordance with this *Section XIV RIGHT TO AUDIT* shall survive expiration or termination of this Agreement for any reason and shall continue to apply during ten (10) years following expiration or termination of this Agreement for any reason whatsoever.

#### **Section XV ON-THE-SPOT-VISITS**

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

## Section XVI GOVERNING LAW AND RESOLUTION OF DISPUTES

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

## Section XVII MISCELLANEOUS PROVISIONS

- 17.1 *Capacity.* Each Party warrants to the other Party that it has full power to enter into and perform this Agreement, and the person signing this Agreement on its behalf has been duly authorized and empowered to enter into such agreement. Each Party further acknowledges that it has read this Agreement, understands it and agrees to be bound by it.
- 17.2 *Assignability.* The Service Provider shall not without the prior written consent of the Principal assign any of the rights or benefits from the Agreement, provided that the consent by the Principal shall not be unreasonably withheld or delayed. Neither Party shall assign any of the obligations under the Agreement without the prior written consent of the other Party; provided, however, that the Principal shall be entitled, at any time, to assign any of the rights under this Agreement to any of the Beneficiaries or Implementing Bodies without consent of the Service Provider.
- 17.3 *Conflict of Interest, Corruption and Fraud.* Notwithstanding any penalties that may be enforced against the Service Provider under Applicable Law, or the laws of other jurisdiction(s), the Service Provider shall be deemed to have committed a breach under this Agreement and the Principal shall be entitled to terminate this Agreement immediately and without any regard to the provisions of Clause 3.15, if it is shown that the Service Provider is guilty of:
- (a) offering, giving, receiving or soliciting anything of value with a view to influencing the behaviour or action of anyone, whether a public official or otherwise, directly or indirectly in the selection process or in the conduct of the Agreement; or
  - (b) misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Principal, including the use of collusive practices intended to stifle or reduce the benefits of free and open competition.
- 17.4 *Notices.* All notices and other communications made or required to be given pursuant to this Agreement shall be in writing and shall be deemed given if delivered personally or by facsimile transmission (if receipt is confirmed by the facsimile operator of the recipient), or delivered by overnight courier service, or mailed by registered or certified mail (return receipt requested),

postage prepaid, to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice):

- (a) to the Principal: .....
- .....
- .....
- (b) to the Service Provider: .....
- .....
- .....

- 17.5 *Changes in Address.* Either Party shall be entitled to change its address for purposes of the Clause 17.4 by notice to the other Party. A notice of a change of address shall be effective only upon receipt thereof.
- 17.6 *Damages Covered by Insurance.* To the extent Damages are covered by insurance, the Principal and the Service Provider waive all rights against each other and against the Service Providers, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance current as of the date of this Agreement.
- 17.7 *Relationship of the Parties.* The relationship between the Service Provider to the Principal under this Agreement is that of independent Service Providers. The Service Provider (or the Service Provider's Sub-Contractors) is not an employee of the Principal, is not carrying out the regular business of the Principal and is not subject to the same employment regulations as are applicable to employees of the Principal. Each of the Parties shall be solely and entirely responsible for their own acts and the acts of their employees. No benefits, special considerations, or employer/employee-type provisions are provided by the Principal to the Service Provider, the Service Provider's employees, or the Service Provider's consultants, or the employees of such consultants.
- 17.8 *Severability.* If any provision of this Agreement shall be held to be illegal, invalid, void or unenforceable under Applicable Laws, the legality, validity and enforceability of the remainder of this Agreement shall not be affected, and the legality, validity and enforceability of the whole of this Agreement shall not be affected.
- 17.9 *Successors and Assigns.* The Principal and the Service Provider each bind themselves, their successors, legal representatives, and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect to all covenants of this Agreement. Neither Party shall assign or transfer its respective interest in the Agreement without written consent of the other Party.
- 17.10 *Waivers.* No waiver by either Party of any default by the other Party in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default, irrespective of the character of such default. No failure or delay by either Party in exercising any of its rights, power or privileges under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise by that Party of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege.
- 17.11 *Amendments and Variations.* No amendment to or variation of this Agreement shall be effective unless made in writing and signed by duly authorized representatives of both Parties. The Agreement can be amended in compliance with the provisions of Section 61 of the Public Procurement Law of the Republic of Latvia.
- 17.12 *Entire Agreement.* This Agreement, and the Annexes hereto, constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes and extinguishes all

and any prior drafts, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.

- 17.13 *Execution.* This Agreement may be executed in two counterparts to be held by each Party which counterparts, taken together, shall constitute one and the same instrument.

### **Section XVIII FEE AND PAYMENT**

- 18.1 *Fee.* In consideration of provision of the Service, the Service Provider is entitled to receive a Fee in the total amount set forth in accordance with *Annex C: Schedule of Service* which shall be split into separate instalments and be payable by the Principal to the Service Provider according to the schedule set forth in *Annex C: Schedule of Service*. It is acknowledged and agreed by the Parties that the Fee shall include all Costs and expenses incurred by the Service Provider and Approved Sub-Contractors toward performing and successfully completing the Agreement. The Fee specified in accordance with this Clause excludes value added tax that will be charged at the rate applicable in accordance with Applicable Law at the time of invoicing.
- 18.2 *Invoicing.* According to *Annex C: Schedule of Service* and following each Completion Date and/or Final Acceptance Date, provided that the Principal has accepted/approved the particular Deliverable of the Service which the invoice related to, the Service Provider shall deliver to the Principal an invoice specifying the amount of the Fee payable and the period of time with respect to which the Fee is payable. In the event the Principal objects to payment of any amount claimed by the Service Provider in the invoice, notice in the form chosen by the Principal to this effect shall be given by the Principal to the Service Provider not later than five (5) days before the Due Date for payment under this Clause 18.4. This notice of objection shall state the amount to be withheld, the grounds for withholding the payment and the basis on which that amount is calculated. Unless such notice of objection is made by the Principal, the amount to be paid is that stated in the invoice which shall become due and payable in accordance with this Agreement. For the avoidance of any doubt, the Principal shall not be required to pay any amount under this Agreement with respect to any part of the Service that has not been accepted by the Principal in accordance with Clauses 8.4, 8.5, 8.6 and 8.7 of this Agreement.
- 18.3 *Payment.* Subject to the provisions of Clause 18.1, the Principal reserves the rights to make the payments to the Service Provider with set-off, retention, counterclaim, abatement or other deduction of any kind that arises from this Agreement and from the obligations of the Service Provider provided herein (i.e. in cases of accrued contractual penalty amounts, in case if the Principal haven't received residence certificate as stipulated in this Agreement, etc.). If the Principal uses the right to make the payments to the Service Provider with set-off, retention, counterclaim, abatement or other deduction of any kind, then the Principal so notifies to the Service Provider no later than on the date of the respective payment stating the amount, the grounds and the basis on the Principal uses its right to set-off, retention, counterclaim, abatement or other deduction or other right. Invoices shall be paid within thirty (30) days after the date of issue of the invoice. For the avoidance of any doubt, the Principal shall not be required to pay any amount with respect to any invoice in the absence of a Provisional Completion Note duly signed by the Principal or, with respect to the final payment of the Fee to be effected under this Agreement, the Final Acceptance Note duly signed by the both Parties, taking into account that the Service shall be accepted by the Principal in accordance with Clauses 8.4, 8.5, 8.6 and 8.7 of this Agreement.
- 18.4 *Costs and Commissions.* Each Party shall bear its own costs, fees, commissions and expenses incurred in connection with the transfer of any funds under this Agreement to the other Party.

18.5 *Compliance with Tax Obligations in [COUNTRY]*. It is acknowledged and agreed by the Parties that the Fee shall include all taxes and duties payable by the Service Provider in the consequence of provision of the Service, except value added tax (the "VAT"). The Service Provider shall, at the sole cost and expense of the Service Provider, comply with the obligation to pay all taxes and duties relevant to the provision of the Service in [COUNTRY] and in accordance with Applicable Law of [COUNTRY]. In addition, the Service Provider shall assume all risks associated with the payment or obligation to pay such taxes and duties, if any. The Service Provider assumes all risks associated with the possible increase in the amount of the Fee arising as a result of the obligation of having to pay any such taxes or duties.

18.6 *Invoice*. The Service Provider's invoices shall contain the following Service Provider's details and details about the Agreement:

Service Provider	[●]
Registration No	[●]
VAT payer's No or indication that the Service Provider is not a VAT payer	[●]
The Principal's VAT No	LV40103845025
Legal address (street, house, area, country, postcode)	[●]
Name of Bank (legal name)	[●]
Bank SWIFT Code	[●]
IBAN	[●]
	For provided services according to the Service Agreement for Rail Baltica Railway No 8/2019- [●] (CEF Contract No INEA/CEF/TRAN/M2014/1045990 Activity No A34, CEF Contract No INEA/CEF/TRAN/M2015/1129482 Activity No B18, CEF Contract No INEA/CEF/TRAN/M2016/1360716 Activity No C09), Contract Manager: Anita Pūka

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

Signed by:

For and on behalf of the Principal:

For and on behalf of the Service Provider:

Signature: .....

Signature: .....

Name, title: .....

Name, title: .....

Bank details:

.....  
.....

Signature: .....

Name, title: .....

Bank details:

.....  
.....



### Annex A: Definitions and common terms

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

- (a) "Agreement", this Agreement, together with all Annexes thereto.
- (b) "Alteration", any material change to the *Annex B: Technical specification, Annex C: Schedule of Service* or Due Date which is not the result of the ordinary process of developing the scope and detail of the Project.
- (c) "Alteration Request", as defined in accordance with Clause 2.4 of the Agreement.
- (d) "Applicable Law" or "Law", any legislative act, regulation, decree, order, ordinance, statute, treaty, directive, judgment, or other legislative measure. For the avoidance of any doubt, these terms shall include any legislative act or directive relevant to public procurement.
- (e) "Approved Staff", any person or organization listed pursuant to *Annex D: List of Approved Sub-Contractors and Staff*, which is in a contractual relationship with the Service Provider to provide a part of the Service.
- (f) "Approved Sub-Contractor", any person or organisation listed pursuant to *Annex D: List of Approved Sub-Contractors and Staff*, which is in a contractual relationship with the Service Provider to provide a part of the Service.
- (g) "Completion Acceptance Note", as defined in accordance with Clause 8.4, as appropriate.
- (h) "Completion Date", as defined in accordance with Clause 8.5 and 8.6, as appropriate.
- (i) "Confidential Information", as defined in accordance with Clause 13.1 of the Agreement.
- (j) "Costs", direct costs reasonably incurred in relation to the Project. Specifically, the Cost shall include any of the following:
  - (i) costs of all materials and supplies forming part of the Service, including transportation and storage expenses (discounts for cash or prompt payments will not reduce these costs);
  - (ii) salaries for personnel in the direct employ of the Service Provider in the performance of the Service or relating to the Service;
  - (iii) salaries of the Service Provider's employees for the time that they spend in connection with the Service;
  - (iv) payments to Service Provider, Sub-Contractors for Works relating to the Service;
  - (v) costs of all employee benefits and taxes for items such as social security and other benefits for the labour and employees;
  - (vi) costs, including transportation and maintenance, of equipment and hand tools not owned by workmen employed by the Service Provider which are employed or consumed toward the Service;
  - (vii) payments for rental charges for machinery, equipment, facilities and tools used in connection with the Service, and payments for installations, repairs, replacements, dismantling, removal, lubrication, transportation and delivery of those rental items;
  - (viii) other transportation costs incurred in connection with the Service;

- (ix) that portion attributable to this Agreement of premiums for insurance that is required by this Agreement (if applicable) or by law to be obtained or maintained by the Service Provider;
- (x) sales, use, gross receipts or other taxes related to the Service, imposed by any governmental authority, to the extent that the Service Provider is responsible for such taxes;
- (xi) costs of long-distance telephone calls, telephone service at the site and postage relating to the Service;
- (xii) costs of any data processing services used in connection with the performance of the Work required under this Agreement; and
- (xiii) costs associated with any alteration as to which the Service Provider is entitled to payment hereunder;
- (xiv) losses and expenses, not compensated by insurance, sustained by the Service Provider in connection with the Works under this Agreement (if applicable), provided they resulted from causes other than the fault or neglect of the Service Provider.
- (k) "Corrective Period", as defined in accordance with Clause 10.2.
- (l) "Cure Period", as defined in accordance with Clause 8.3.
- (m) "Damages", any cost, claim, damage, demand, loss, expense or liability incurred by the relevant Party or Person.
- (n) "Defect", a part of the Service which is not in accordance with *Annex B: Technical Specification*, Applicable Law or Good Industry Practice.
- (o) "Defects Date", a date specified in accordance with *Annex C: Schedule of Service* by which the Principal or the Service Provider is obliged to notify about each Defect in the Service.
- (p) "Deliverable", any information, notes, material, drawings (including drawings in 3D model), records, computer files, documents and/or other information or items which the Service Provider is required to deliver to the Principal as part of the Service, as further specified pursuant to *Annex C: Schedule of Service*.
- (q) "Documentation", all records, correspondence, and computer files of the Service Provider, its employees, engineers, and consultants pertaining to the Project.
- (r) "Due Date", the date for delivery of one or more Deliverables, as set out in the *Annex B: Technical Specification*, *Annex C: Schedule of Service* and applicable law.
- (s) "Effective Date", as first above specified in the Preamble to this Agreement.
- (t) "EUR" and "euro", the official currency of the eurozone, officially known as the euro area.
- (u) "Fee", as specified in accordance with *Annex C: Schedule of Service*.
- (v) "Final Acceptance Date", as defined in accordance with Clause 8.7.
- (w) "Final Acceptance Note", as described in accordance with Clause 8.7.
- (x) "Force Majeure Event", any of the following events:
  - (i) an act of the public enemy or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;

- (ii) an act of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;
  - (iii) a natural disaster or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);
  - (iv) nuclear, chemical or biological contamination;
  - (v) pressure waves caused by devices travelling at supersonic speeds;
  - (vi) discovery of fossils, antiquities or unexploded bombs; and/or
  - (vii) strike, lockout or other industrial action other than involving the Service Provider or the Principal.
- (y) "Good Industry Practice", in relation to the performance of any activity to which this standard is applied, the exercise of that degree of skill, diligence, prudence and foresight as would reasonably be expected to be exercised by a properly qualified and competent person engaged in carrying out Works or services of a similar size, nature, scope, type and complexity, complying with Applicable Law, applicable Standards and published codes of practice.
- (z) "Intellectual Property", all intellectual property rights in any part of the world in respect of any documentation or information provided by the Service Provider to the Principal, including any patent, patent application, trade mark, trade mark application, registered design, registered design application, utility model, trade name, discovery, invention, process, formula, specification, copyright (including all neighbouring rights, rights in computer software and database and topography rights), know how or unregistered design right.
- (aa) "Intellectual Property of the Service Provider", all Intellectual Property owned or licensed to the Service Provider with a right to sub-license.
- (bb) "Necessary Consents", all approvals, permissions, consents, licenses, certificates, registrations and authorizations (whether statutory or otherwise), which may be required from time to time for the purposes of carrying out the Project.
- (cc) "Mandatory Alteration", any Alteration necessitated by:
- (i) any specific change in Law; and/or
  - (ii) any Change in Standards for safety reasons.
- (dd) "Objection Notice", as defined in accordance with Clause 8.5.
- (ee) "Party" and "Parties", the Principal and the Service Provider and include their respective successors in title, permitted assigns and permitted transferees.
- (ff) "Person" shall include any person, company, body corporate, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the foregoing.
- (gg) "Principal", the company RB Rail AS, as further specified in the Preamble of this Agreement, which employs the services of the Service Provider, and legal successors to the Service Provider and permitted assignees of the Service Provider.
- (gg) "Project", development of a 1435 mm standard gauge railway line in the Rail Baltica (RB) corridor through Estonia, Latvia and Lithuania aimed at eliminating the technical bottleneck due to the gauge differences (1,520 mm vs. the EU standard of 1,435 mm).

- (hh) "Provisional Acceptance Note", as defined in accordance with Clause 8.5.
- (ii) "Provisional Completion Note", as defined in accordance with Clause 8.4.
- (jj) "Railway", a new fast conventional double track electrified railway line according TSI INF P2-F1 criteria and European standard gauge (1435 mm) on the Route.
- (kk) "Residence Certificate", a certificate mentioned in Clause 5.2(i).
- (ll) "Right of Partial Acceptance", as defined in accordance with Clause 10.9.
- (mm) "Service Provider", the company [•], as further specified in the Preamble of this Agreement, which is employed by the Principal as an independent professional Service Provider to perform the Service, and legal successors to the Principal and permitted assignees of the Principal.
- (nn) "Service Provider's Software", the object code versions of any downloadable software owned by or duly licensed to the Service Provider solely for the purpose of accessing the Service, including but not limited to an agent, together with the updates, new releases or versions, modifications or enhancements, owned or licensed to and provided by the Service Provider to the Principal pursuant to this Agreement, together with all pertinent Documentation and other instructions related to such software.
- (oo) "Standards", CEF Standards and Grant Agreement Standards;
- (hh) "Service" Services mentioned in the *Annex B: Technical Specification* and this Agreement.
- (pp) "Service Provider", the company [•], as further specified in the Preamble of this Agreement, which is employed by the Principal as an independent professional Service Provider to perform the Service, and legal successors to the Principal and permitted assignees of the Principal.
- (qq) "Service Provider's Software", the object code versions of any downloadable software owned by or duly licensed to the Service Provider solely for the purpose of accessing the Service, including but not limited to an agent, together with the updates, new releases or versions, modifications or enhancements, owned or licensed to and provided by the Service Provider to the Principal pursuant to this Agreement, together with all pertinent Documentation and other instructions related to such software.
- (rr) "VAT", value added tax;
- (ss) "Working Day", any day (other than Saturday or Sunday) on which banks in the Republic of Latvia are open for conduct of business.
- (tt) "Works", all incidental works, steps and actions performed by the Service Provider for the attainment of the objectives of the Service.

## **Annex B: Technical Specification**

### Annex C: Schedule of Service

“**Fee**” a Fee in the amount of EUR [AMOUNT]

and

Value added tax (hereinafter – VAT), which on the date of conclusion of this Agreement is 21%, i.e., EUR [AMOUNT]

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

No	Deliverable	Due Date <sup>45</sup>	Defects Date (days after submission of particular Deliverable)	Cure period
1.	Monthly tasks	According to law of the Republic of Lithuania	14 calendar days	24 hours during the next Working Day if the Principal did not set otherwise
2.	Annual tasks	According to law of the Republic of Lithuania	14 calendar days	24 hours during the next Working Day if the Principal did not set otherwise
3.	Unplanned tasks	Agreed separately in each case	Timing agreed separately in each case	Timing agreed separately in each case

Payment Schedule:

No	Deliverable	Time	Amount (EUR), excl. VAT
1.	Monthly tasks		
1.1	Payroll and tax compliance	After acceptance	[•]
1.2	Value added tax (VAT) compliance	After acceptance	[•]

<sup>45</sup> In accordance with Clause 4.5.1 of the Annex B (*Technical Specification*).

1.3	Corporate income tax (CIT) compliance	After acceptance	[•]
2.	Annual tasks		
2.1	Annual report	After acceptance	[•]
2.2	Annual CIT declaration (if required)	After acceptance	[•]
	Annual VAT declaration (if required)	After acceptance	[•]
3.	Unplanned tasks	After acceptance	Agreed separately in each case Hourly rate: [•] EUR/h (excl. VAT)

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

**Annex D: List of Approved Sub-Contractors and Staff**

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



## Annex E: Form of Provisional Completion Note

No [INSERT NUMBER]

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

Location: [INSERT LOCATION]

For:

RB Rail AS

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

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

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

Whereas:

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

The following Service Milestone(s) has/have been met on [INSERT DATE IN THE FORM OF 1 JANUARY 2018], as specified in accordance with the *Annex B: Technical Specification* of the Agreement:

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

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

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

As stipulated in Clause 8.4 of the Agreement, in the event the Principal objects to the issue of the Provisional Completion Note, the Principal shall give a written notice to the Service Provider setting out in reasonable detail Defects or reasons for the objection (the "Objection Notice") within fourteen (14) days following receipt of the Provisional Completion Note.

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

Signature:

[INSERT NAME, SURNAME  
INSERT POSITION  
INSERT COMPANY NAME]

**Annex F: Form of Provisional Acceptance Note**

No [INSERT NUMBER]

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

Location: [INSERT LOCATION]

For: [•] (the "Service Provider")

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

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

Whereas:

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

The Principal is satisfied with the result of any and all achieved Deliverables completed and submitted and, in accordance with Clause 8.6 of the Agreement, the Principal accepts the part of the Service performed as of the date of this Provisional Acceptance Note.

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

Signatures:

[INSERT NAME, SURNAME

INSERT POSITION

INSERT COMPANY NAME]

### Annex G: Form of Final Acceptance Note

No [INSERT NUMBER]

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

Location: [INSERT LOCATION]

For: [•] (the "Service Provider")

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

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

Whereas:

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

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

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

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

Signatures:

[INSERT NAME, SURNAME

INSERT POSITION]

RB Rail AS

Principal

**Annex H: Representatives**

[SPECIFY REPRESENTATIVES]

## **Annex I: Service Provider’s Proposal**

[INSERT SERVICE PROVIDER’S PROPOSAL]

### Annex J: Declaration of Service Provider

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. 13: DRAFT CONTRACT FOR THE PART NO. 3****FRAMEWORK AGREEMENT****ON****for Tax Advisory and Reporting Services for RB Rail AS in 2019-2020****for Part No 3 "On-demand tax advisory services covering all taxes and duties in Estonia, Latvia  
and Lithuania"****between****RB Rail AS****and****[●]**

Contract registration number 8/2019-[●]

CEF<sup>46</sup> Contract No INEA/CEF/TRAN/M2014/1045990 A34,CEF<sup>47</sup> Contract No INEA/CEF/TRAN/M2015/1129482 B18CEF<sup>48</sup> Contract No INEA/CEF/TRAN/M2016/1360716 C09

Procurement procedure identification No RBR 2018/31

Riga

Dated [●] [●] 2019

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<sup>46</sup> Grant Agreement under the Connecting Europe Facility<sup>47</sup> Grant Agreement under the Connecting Europe Facility<sup>48</sup> Grant Agreement under the Connecting Europe Facility

## FRAMEWORK AGREEMENT

This Framework agreement ("Agreement") together with all Annexes thereto, is entered into in Riga, on [●] [●] of the year 2019 (the "Effective Date") by and between:

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

and

[●], a [●] company organized and existing under [●] law, with registration number [●], having its registered address at [●] (the "Service Provider"), represented by [●] acting on the basis of [●] on the other side.

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

WHEREAS:

- (B) Core business of the Principal 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");
- (C) The Principal has organised procurement procedure "Tax Advisory and Reporting Services for RB Rail AS in 2019-2020" (identification No RBR 2018/31) (the "Procurement Procedure") whereby the Service Provider's tender proposal (the "Service Provider's Proposal") was selected as the winning bid for Part No 3 "On-demand tax advisory services covering all taxes and duties in Estonia, Latvia and Lithuania";
- (D) This Framework Agreement is co-financed from the Connecting Europe Facility (CEF), CEF Contract No INEA/CEF/TRAN/ M2014/1045990, Activity 34, Action No: A5.1.1: "Project implementation support measures (RBR)", CEF Contract No INEA/CEF/TRAN/ M2015/1129482, Activity 18, Action: "Global project management" and CEF Contract No INEA/CEF/TRAN/ M2016/1360716, Activity 9, Action No: C5.1.2: "Global project and Action project implementation support measures (RB Rail, EE, LV, LT)".

NOW, THEREFORE, the Parties hereby enter into this Agreement on the following terms and conditions:

### 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 is contracted by the Principal to provide tax advisory services related to operations of the RB Rail AS and its main partners involved in the implementation of the Rail Baltica project in accordance with this Technical specification (Annex A) for the Principal for the successful implementation of the Rail Baltica project.
- 1.2. The range of tax advisory Services to be provided by the Service Provider to the Principal is described in Annex 3 of the Procurement Procedure (Annex A of this Agreement) and includes, but is not limited to, counselling, preparation of documents, litigation, representation (the "Tax

Advisory Services"). The procedure for the provision of Tax Advisory 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 Tax Advisory Services to the Principal on-demand basis. The Agreement is framework-based and does not impose an obligation on the Principal to appoint the Service Provider to provide services and does not guarantee any exclusive right to the Service Provider to provide Tax Advisory Services to the Principal. This Agreement entitles the Service Provider to be requested by the Principal at the full discretion of the latter. The Service Provider is solely responsible for its costs and expenses incurred in connection with providing the Tax Advisory Services.
- 1.4. For every assignment, a separate assignment order in any form/document as decided by the Principal (the "Assignment order") shall be issued by the Principal 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 Principal.
- 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 Principal at the Principal's request of the amount corresponding to the double (2x) of the total sum of the 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 Provider are on-demand based with no fixed work-load and/or fixed overall value.
- 2.2. The total allocated amount for the Procurement of Tax Advisory Services for Agreement concluded as a result of the Procurement is: 50 000,00 EUR (fifty thousand euros zero cents), excl. VAT.
- 2.3. However, this does not bind the Principal to purchase Tax Advisory Services through the Framework agreement for the estimated amount.
- 2.4. The Agreement period is 2019-2020 starting from the Commencement date until 31 December 2020.
- 2.5. The Agreement terminates after Agreement period expires or until the maximum Agreement amount is reached whichever occurs earlier and after the all Assignment orders are fully completed by the Service Provider and approved by the Principal.

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

- 3.1. In order to receive Tax Advisory Services, the Principal shall conclude an Assignment order.
- 3.2. The Principal invites the Service Provider to implement an assignment by sending an Assignment order by e-mail in any form/document as decided by the Principal.

- 3.3. The Assignment order shall include details of the Tax Advisory Services to be carried out by the Service Provider. If total estimated hours required for fulfillment of assignment exceed eight (8) hours, the Assignment order should include details on precise content, scope form of deliverable and fixed number of hours, etc.
- 3.4. 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 availability to implement the assignment. In case the Service Provider fails to respond within the required time period, the Service Provider is obligated to pay a contractual penalty to the Principal in 500 EUR (five hundred *euro*) amount. In case of a Conflict of Interests (Clause 15), the Service Provider is obligated to notify the Principal immediately about its Conflict of Interests and refrain from providing the particular assignment.
- 3.5. After the corresponding Assignment order is accepted by the Service Provider, the conditions set in the Assignment order become binding upon the Parties.
- 3.6. The Service Provider has right to reject Principal's invitation to implement an assignment only in exceptional cases 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 15). The decision of the Service Provider to reject the Principal's invitation to implement an assignment shall be provided in writing by stating the actual reasons for such decision.
- 3.7. The Service Provider has the right to request reasonable explanatory information from the Principal regarding the specifics of provision of an assignment via email.

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

- 4.1. The Service Provider must perform the Agreement in compliance with its provisions, the instructions given by the Principal, 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 Tax Advisory Services to the Principal must comply with the relevant professional diligence and applicable legislation governing the activities of tax advisers and the provision of Tax Advisory 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 Tax Advisory Services, endeavour to carry out all activities that would reasonably assist and aid the Principal, always act in the best interests of the Principal 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 Principal shall deliver to the Service Provider relevant essential information necessary for the provision of Tax Advisory Services. The Principal understands that the proper provision of Tax Advisory Services requires the Principal 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 Principal shall provide the Service Provider or Service Provider's nominated advisers (experts from Service Provider's Proposal) (the "expert") with a respective power of attorney at the request of the Service Provider, if necessary, for providing the particular assignment.

- 4.6. The Principal shall have the final and exclusive right in the negotiations, terms, decisions, agreements, etc. and in any and all matters related to Tax Advisory 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 Principal with all and any information and documentation in its possession or control relating to the Tax Advisory Services provided to the Principal. The Service Provider shall return original documents to the Principal immediately at the Principal'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>49</sup>) specified in an Assignment order.
- 4.9. The Principal 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 Principal 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 Principal 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>50</sup> way, by providing explicit and full source details (initial information, evidences etc.) used for the analysis and provision of Deliverables.
- 4.11. The Principal shall have no responsibility over any content of Deliverables provided by the Service Provider.
- 4.12. Approval by the Principal 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 Principal's losses incurred due to such results) of its services after the completion of an Assignment order. Any

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<sup>49</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>50</sup> The information provided in the Deliverables shall be understandable to the average-level bookkeeper or manager with no particular experience in a specific topic concerned.

additional expenses arisen due to the correction of unacceptable outcome results shall be covered solely by the Service Provider. The Principal reserves the right to request the Service Provider to correct the results of 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 (except mentioned in the Proposal) 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 Principal's request.
- 5.6. The Principal 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 covering all the Experts 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 and with extended reporting period 5 (five) years. The Service Provider is obliged to submit to the Principal 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.
- 5.8. The Service Provider represents and warrants to the Principal, as of the Commencement date, as follows:
  - 5.8.1. it has all requisite qualification, skills and competence to provide the Service to the Principal on the terms and conditions of this Agreement which are no less favourable than the terms and conditions of service identified by the Service Provider in any document submitted by the Service Provider to the Principal as part of the Procurement Procedure and on the terms of the Service Provider's Proposal identified in accordance with Service Provider's Proposal;
  - 5.8.2. it holds all requisite licenses, permits, approvals and consents necessary to enable performance of the Service according to the specifications contained in this Agreement and Technical Specification (Annex A);
  - 5.8.3. it has all requisite ability to ensure the highest quality of the Tax Advisory Service;
  - 5.8.4. it will assign competent and duly qualified personnel to carry out the Tax Advisory Service set out in this Agreement according to the highest professional Standard and Good Industry Practice;
  - 5.8.5. it is not deemed to be a person associated with the Principal for the purposes of applicable law;
  - 5.8.6. it has not been registered as a VAT payer in the Republic of [COUNTRY] [IF APPLICABLE];
  - 5.8.7. it is compliant with all of the requirements of the Service Provider's Declaration contained in Annex C;
  - 5.8.8. and will continue to be compliant with all such requirements during the term of this Agreement;

5.8.9. the income mentioned in this Agreement will not derive through permanent establishment or fixed base maintained by the Service Provider in the Republic of Latvia. The Service Provider agrees to submit to the Principal four (4) copies of "*Residence Certificate–Application for Reduction of or Exemption from Latvian anticipatory taxes withheld at source from payments* (management and consultancy fees, leasing fees and certain other types of income), paid to residents of the [COUNTRY]" (the "Residence Certificate") confirmed by Competent Authority of the [COUNTRY] and the Latvian State Revenue Service. The Residence Certificate shall be submitted to the Principal prior the Principal will due to make a payment of the fee or other payments to the Service Provider. Otherwise the Principal will withhold withholding tax at the rate of 20% from the fee and payments made to the Service Provider. The Principal is entitled to make any deductions from the payments due to the Service Provider if the Service Provider doesn't comply with this provision [IF APPLICABLE].

## 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 Principal (by signing Delivery Acceptance Deed), the Service Provider must submit the invoice within thirty (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 2018/31, and name of the contact person: Anita Pūka.
- 6.3. The Principal shall make the payment after fifteen (15) days from the date on which the Principal receives properly prepared payment request (invoice) on the accepted Deliverable.
- 6.4. The Principal may suspend the payment at any time if:
  - 6.4.1. the Deliverable is not accepted by the Principal;
  - 6.4.2. invoice supporting documents are missing;
  - 6.4.3. the invoice is incorrect;
  - 6.4.4. the Principal has to make further checks to verify details of invoice.
- 6.5. The Principal shall reject the invoice (parts of) if it does not fulfil the conditions of the Agreement and particular Assignment order.
- 6.6. The Principal 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 Principal must formally notify the Service Provider of its intention, include the reasons why, and invite the Service Provider to submit any observations within fifteen (15) days of receiving notification. If the Principal does not accept these observations, it will formally notify confirmation of the rejection or reduction.
- 6.7. Payments are subject to the Principal'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 Principal 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 Principal 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 Principal 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 Principal to the Service Provider under the corresponding Assignment order with respect to the relevant time period shall be reduced by zero point five percent (0.5%) of the amount of such fee for each day of delay.
- 6.11. Payments will be made in euros.
- 6.12. The Principal 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 Tax Advisory 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 Principal 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 Principal 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. FEES**

- 7.1. The Service Provider shall act as an independent contractor on its own cost and for its own account and the Principal 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 Principal shall remunerate to the Service Provider the fees and costs stated in the Assignment order.
- 7.2. The applicable fees (hourly rate) of the Service Provider are included in the Proposal. The fees offered by the Service Provider at the request of the Principal for providing a particular Assignment may not be higher than the 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 Principal refuses the Service Provider's proposal for providing of an assignment.

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

- 8.1. The Principal 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.
- 8.2. The Principal will acquire all rights and obligations in this Clause 8.2 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.

- 8.3. The copyright fee has been included in the 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.
- 8.4. The Principal 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 Principal cannot agree on the execution of this work, the Principal is entitled to involve another Service Provider in carrying out the said task.
- 8.5. 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.
- 8.6. 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 Principal by third persons.

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

- 9.1. 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.
- 9.2. By giving a written notice five (5) business days in advance, but in case of an unannounced check without an advance notice, the Principal 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.
- 9.3. On-the-spot visits may be carried out either directly by the authorised staff of the Principal or by any other outside body authorised to do so on behalf of the Principal. Information provided in the framework of on-the-spot visits shall be treated on confidential basis. The Principal shall ensure that any outside body authorised shall be bound by the confidentiality obligation.
- 9.4. 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.

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

- 10.1. The Agreement can be amended in compliance with the provisions of Section 61 of the Public Procurement Law.
- 10.2. 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 Tax Advisory Services increase or

- decrease and when a prior warning has been given, then, after a mutual agreement by the Parties, the Fee is amended.
- 10.3. 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.
  - 10.4. 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.
  - 10.5. 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.
  - 10.6. This Agreement may be terminated by a Party by giving the other Party sixty (60) days prior written notice of termination (the "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.
  - 10.7. The Principal reserves the right to terminate the Agreement within ten (10) business days after sending a written notice to the Service Provider due to the following reasons:
    - 10.7.1. 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;
    - 10.7.2. The Service Provider breaches conditions of the Agreement and does not cure the breach within two (2) business days of written notice of same;
    - 10.7.3. Service Provider and/or its expert poorly performs his/her tasks defined in the corresponding Assignment order.
  - 10.8. The Parties reserve the right to terminate the Agreement at any time after sending a written notice if:
    - 10.8.1. the Principal 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;
    - 10.8.2. 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;
    - 10.8.3. a breach of confidentiality (Clause 14) occurs;
    - 10.8.4. a breach of obligation to avoid Conflict of Interests (Clause 15) occurs;
    - 10.8.5. The Service Provider fails to submit a valid professional risk indemnity insurance agreement within a time mentioned in Clause 5.7.
  - 10.9. The Principal reserves the right to terminate the Agreement if services of the Service Provider are no longer required or the Service Provider has rejected the last three (3) Principal's invitation to implement an assignment.
  - 10.10. The Principal 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 Principal.

- 10.11. If the Principal has unilaterally terminated the Agreement due to non-fulfilment of the obligations undertaken in the Agreement by the Service Provider, the Principal has the right to disqualify the Service Provider from participation in any tenders organized by the Principal during twelve (12) months from the date of the termination of the Agreement.
- 10.12. Termination according to Public Procurement Law. The Agreement can be immediately terminated upon giving the other Party a written notice of termination explaining, in reasonable detail, the reason for termination upon occurrence of any of the provisions mentioned in the Section 64 of the Public Procurement Law. In such a case, the Principal shall pay the Service Provider the fees in respect of the services provided under this Agreement up to the date of the notification of the termination of this Agreement and the Principal is not obliged to pay contractual or any other penalty or damages to the Service Provider.
- 10.13. The Principal may terminate this Agreement immediately upon giving to the Service Provider a written notice of termination explaining, in reasonable detail, the reason for termination, if:
- 10.13.1. CEF Co-financing for further financing of the Tax Advisory Service are not available to the Principal fully or partly;
- In such a case, the Principal shall pay the Service Provider the fees in respect of the Tax Advisory Service provided under this Agreement up to the date of the notification of the termination of this Agreement and the Principal is not obliged to pay contractual or any other penalty or damages to the Service Provider.
- 10.13.2. it is not possible to execute the Agreement due to the application of international or national sanctions, or European Union or North Atlantic Treaty Organization applied sanctions significantly affecting interests of financial or capital market.

## **11. FORCE MAJEURE**

- 11.1. 'Force majeure' means any situation or event that:
- 11.1.1. prevents either Party from fulfilling their obligations under the Agreement;
  - 11.1.2. was unforeseeable, exceptional and beyond the Parties' control;
  - 11.1.3. was not due to error or negligence on their part; and
  - 11.1.4. proves to be inevitable in spite of exercising due diligence.
- 11.2. A force majeure must be immediately and formally notified to the other Party.
- 11.3. Notification must include details of the situation's nature, likely duration and expected effects.
- 11.4. 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.

## **12. COMMUNICATION BETWEEN THE PARTIES**

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

- 12.1.4. bear the Agreement's and Assignment order's number.
- 12.2. 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.
- 12.3. 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.
- 12.4. Assignment orders, notices, declarations and invoices shall be deemed received:
- 12.4.1. if delivered by hand, on the first business day following the delivery day;
- 12.4.2. if sent by post, on the fifth (5<sup>th</sup>) business day after the date of posting;
- 12.4.3. 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)
- 12.5. 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.
- 12.6. The Parties agree that information may be exchanged electronically over the internet.

### **13. EXPERT CHANGE**

- 13.1. Only in exceptional cases experts included in the Agreement can be replaced and by signing an amendment to the Agreement.
- 13.2. 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 Procedure process.
- 13.3. The Principal reserves the right to request the Service Provider to replace an expert in case of any of the following reasons:
- 13.3.1. repeated careless performance of duties;
- 13.3.2. incompetence or negligence;
- 13.3.3. non-fulfilment of obligations or duties stipulated in the Agreement;
- 13.3.4. poor knowledge of English language (unsatisfactory presentation, writing skills in English);
- 13.3.5. termination of employment relations or cooperation agreement with the Service Provider.
- 13.4. The Service Provider shall not involve experts, employee and/or staff (including but not limited to manager, consultants) who have a criminal record, in the implementation of the Agreement.
- 13.5. The Service Provider shall submit to the Principal the name, surname, personal code (identification number), professional title (job position) of every natural person that will implement the Agreement and/or will be present on site at least ten (10) working days prior involvement of this person in the implementation of the Agreement and/or its presence on site. The Service Provider shall provide a brief (concise) description of duties towards the implementation of the Agreement of the persons, and, if requested by the Principal.

- 13.6. The Principal has a right to demand dismissal of such a natural person non-compliant with the security clearance requirements stipulated in this Clause 13.4 at the Principal's sole discretion on the basis of the Principal's written request for dismissal. Parties agree that such Principal's decision is in-contestable.
- 13.7. The Service Provider shall replace the Sub-Contractor and/or Staff member which, during the effectiveness of this Agreement, meets any of the compulsory grounds for exclusion of tenderers (or Sub-Contractors) that were verified during the Procurement Procedure and/or the Principal has demanded his/her dismissal according to Clause 13.4 and to prevent (i) involvement of such a natural person in the implementation of the Agreement and (ii) the presence of this person in the real estate, construction site or any other site. The Service Provider shall immediately undertake all the necessary actions and measures to ensure that any risk of involvement of such a natural person in the implementation of the Agreement is promptly and duly eliminated.
- 13.8. In case mentioned in Clause 13.6 the Service Provider is obliged:
- 13.8.1. to immediately replace the dismissed person according to Section 62 of the Public Procurement Law of the Republic of Latvia and the Agreement, and
  - 13.8.2. to comply with the Principal's written instructions pursuant to the Clause 13.6 and not to challenge these instructions, and
  - 13.8.3. to inform the Principal about dismissal or replacement proceedings pursuant to Clause 13.6.
- 13.9. In case if the immediate dismissal or replacement of the dismissed natural person non-compliant with the security clearance requirements stipulated in this Clause 13.6 results in the unreasonable increase of the costs towards the Service Provider, the Service Provider shall immediately inform the Principal about this fact in written and the Parties shall agree upon the conditions of the provision of the Services.
- 13.10. The Service Provider's non-compliance with the security clearance requirements stipulated in Clauses 13.4 and 13.6, the Principal's instructions towards the Service Provider regarding these security clearance requirements or other provisions of Section 13 constitutes a material breach (breach of a material term or condition) of the Agreement.
- 13.11. Failing of the Service Provider to propose another expert with equivalent or better qualifications within ten (10) business days period might lead to the termination of the Agreement by the Principal according to the procedure set in Clause 10.8.
- 13.12. The Principal shall approve or reject the replacement of an expert as soon as possible, but no later than within five (5) business days after the receipt of all information and documents necessary for a decision in accordance with the provisions in this Agreement.

#### **14. CONFIDENTIALITY**

- 14.1. 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 (the "Confidential Information").

- 14.2. The Service Provider and experts (including but not limited to attorneys) of the Service Provider shall maintain confidentiality of the fact that the Principal has requested the Service Provider to provide Tax Advisory Services as well as of the information that has become known to the Service Provider in the provision of Tax Advisory Services. The Service Provider shall use the Confidential Information only for the provision of the Tax Advisory 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 Tax Advisory Services or perform Service Provider's obligations under the Agreement.
- 14.3. 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.
- 14.4. The Principal reserves the right to request the Service Provider and/or Expert to sign a confidentiality agreement for the implementation of a particular Assignment order.
- 14.5. The confidentiality obligation shall not expire in time.
- 14.6. If the Service Provider violates its confidentiality obligation, then it shall be liable to pay to the Principal 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.

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

- 15.1. If the Service Provider provides or will provide Tax Advisory Services to any person whose interests are or probably will be in conflict with the interests of the Principal in relation with providing the assignment (in the past, in the present and in the foreseeable future) to the Principal, 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 Principal (the "Conflict of Interests"), the Service Provider has the obligation to refrain from providing the assignment to the Principal. 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 Principal if the Service Provider provides or probably will provide Tax Advisory Services to persons that have an interest in that Procurement.
- 15.2. As part of the obligation of the Service Provider to avoid Conflict of Interest, the Service Provider must also refrain from providing Tax Advisory Services to any person whose interests are or probably will be in conflict with the interests of the Principal in relation with providing the Assignment (in the past, in the present and in the foreseeable future) to the Principal. 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 Tax Advisory Services to persons that have an interest in that Procurement.
- 15.3. The Service Provider immediately has to notify the Principal 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 Principal has the right to decide whether a Conflict of Interests situation occurs or not.
- 15.4. 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 Principal 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.

## 16. VISIBILITY REQUIREMENTS

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

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

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

16.1.2. Requirements set in Clauses 16.1.1(a) – 16.1.1(c) can be fulfilled by using the following logo:



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

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;

16.1.3. 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>.

16.1.4. Under this Agreement, the Principal hereby agrees and authorises the Firm to make a reference to the Principal's name and logo (trademark) in the marketing materials of the Firm, including on the Internet home page of the Firm, in capability statements, legal directories, brochures, presentations, etc. In order to indicate the cooperation between the Firm and the Principal. The Parties hereby agree that this consent remains effective throughout the term of the Agreement and 5 (five) years after the termination or expiry of this Agreement.

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

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



- 17.2. Checks and audits may be carried out either directly by the authorized staff of the Principal or by any other outside body authorised to do so on Principal's behalf.
- 17.3. Information and documents obtained in the framework of checks or audits shall be treated on a confidential basis. Principal shall ensure that its staff and any outside body authorised by the Principal be bound by the confidentiality obligation.
- 17.4. The Service Provider shall ensure 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.

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

- 18.1. 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.
- 18.2. 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.
- 18.3. 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.

## **19. MISCELLANEOUS**

- 19.1. 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.
- 19.2. 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.
- 19.3. 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.
- 19.4. The Principal 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 Principal's wilful misconduct or gross negligence.
- 19.5. 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 20.

- 19.6. Both parties agree that procurement regulations shall be considered as integral part of the Agreement.
- 19.7. The Agreement is concluded in 2 (two) copies in English, one for each, all having the same legal effect.

## 20. ANNEXES

Annex A – Technical specification on [●] pages;

Annex B – Tenderers' Proposal (Proposal for Procurement Procedure) on [●] pages;

Annex C – Service Provider's declaration on 2 (two) pages.

### SIGNATURES

**Principal:****RB Rail AS**

Uniform registration No 40103845025

Address: K.Valdemāra iela 8-7, Riga, Latvia, LV-1010

Account details:

Bank: Luminor Bank AS

SWIFT code: NDEALV2X

Account number: LV73NDEA0000084270995

\_\_\_\_\_

[●]

Management Board Member

\_\_\_\_\_

[●]

Management Board Member

**Service Provider:**

Uniform registration No

Address:

Account details:

Bank:

SWIFT code:

Account number:

\_\_\_\_\_

[●]

## **ANNEX A: TECHNICAL SPECIFICATION**

## **ANNEX B – TENDERERS’ PROPOSAL**

(PROPOSAL FOR PROCUREMENT PROCEDURE)

### ANNEX C: SERVICE PROVIDER'S DECLARATION

I, the undersigned duly authorised representative, on behalf of [●] 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.

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