

# REGULATIONS

FOR PROCUREMENT

**"DIRECTORS AND OFFICERS LIABILITY INSURANCE"**

(IDENTIFICATION NO RBR 2019/2)



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

Riga

2019

**TABLE OF CONTENTS**

1. ABBREVIATIONS AND TERMS .....	3
2. GENERAL INFORMATION.....	3
3. THE RIGHTS OF THE PROCUREMENT COMMISSION .....	4
4. THE OBLIGATIONS OF THE PROCUREMENT COMMISSION.....	5
5. THE RIGHTS OF THE TENDERER .....	5
6. SUBJECT-MATTER OF THE PROCUREMENT.....	5
7. TENDERER.....	6
8. SELECTION CRITERIA FOR TENDERERS .....	6
9. RELIANCE ON THE CAPACITY OF OTHER PERSONS .....	12
10. SUBCONTRACTING.....	12
11. TECHNICAL PROPOSAL.....	13
12. FINANCIAL PROPOSAL.....	13
13. CONTENTS AND FORM OF THE PROPOSAL .....	13
14. SUBMISSION OF A PROPOSAL .....	14
15. VERIFICATION OF PROPOSALS FOR COMPLIANCE.....	14
16. VERIFICATION OF TECHNICAL PROPOSALS.....	15
17. VERIFICATION OF FINANCIAL PROPOSALS.....	15
18. CONTRACT AWARD CRITERIA .....	15
19. TENDERER CHECK PRIOR TO MAKING THE DECISION REGARDING THE CONCLUSION OF THE CONTRACT .....	15
20. DECISION MAKING, ANNOUNCEMENT OF RESULTS AND ENTERING INTO A CONTRACT.....	16
ANNEX NO 1: TECHNICAL SPECIFICATION.....	18
ANNEX NO 2: APPLICATION.....	25
ANNEX NO 3: EXPERIENCE OF THE TENDERER.....	27
ANNEX NO 4: OTHER ENTITIES ON WHOSE CAPACITY TENDERER RELIES.....	28
ANNEX NO 5: SUBCONTRACTORS.....	29
ANNEX NO 6: FINANCIAL PROPOSAL .....	30
ANNEX NO 7: DRAFT CONTRACT.....	31

## 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 Procurement 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 2019/2);
- 1.6. **Procurement** - procurement "Directors and Officers Liability Insurance" (identification number: RBR 2019/2) 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 11/2019-7 dated 31 January 2019, issued by the Management Board of joint stock company RB Rail AS;
- 1.8. **Proposal** - documentation package the Tenderer submits to participate in the Procurement;
- 1.9. **Regulations** – regulations of the Procurement "Directors and Officers Liability Insurance" (identification number: RBR 2019/2), 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 Procurement is No RBR 2019/2.
- 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 Procurement is co-financed by the Contracting authority and Connecting Europe Facility (CEF).
- 2.4. The applicable CPV code is 66516500-5 (Professional liability insurance services).
- 2.5. The Tenderer shall submit a Proposal for the entire volume of the Procurement.
- 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. Procurement is organised in accordance with Section 9 of the Public Procurement Law of Latvia in effect on the date of publishing the Contract notice. The estimated contract price shall not be equal to or exceed 42 000 EUR (forty-two thousand euros).
- 2.8. Procurement documentation is published using E-Tenders system which is subsystem of the Electronic Procurement System (<https://www.eis.gov.lv/EKEIS/Supplier>).
- 2.9. 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/>.

- 2.10. 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.
- 2.11. Contact person of the Contracting authority for Procurement is Procurement specialist - lawyer, Vineta Kļaviņa, telephone: +371 29352018, e-mail address: [Vineta.Klavina@railbaltica.org](mailto:Vineta.Klavina@railbaltica.org).
- 2.12. 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).
- 2.13. If the Supplier does not have access to the E-Tenders system, the Supplier can 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/>.
- 2.14. 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 have access to the system) by sending it to the Procurement commission electronically via e-mail (see Section 2.11 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 4 (four) days prior to the deadline of the Proposal submission. The Procurement commission shall provide response within 3 (three) business days from the day of receipt of the request from the Supplier.
- 2.15. 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 Procurement 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, persons upon whose capacity the Tenderer is relying or subcontractors 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 Procurement.
- 4.2. The Procurement commission ensures free and direct electronic access to the Procurement 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 additional information has been requested according to Section 2.14 of the Regulations, Contracting authority sends this information to the Supplier who had asked the question, 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 Procurement documents are available, indicating the question asked.
- 4.4. 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.
- 4.5. The Procurement commission assesses the Tenderers and their Proposals based on the Public Procurement Law, Procurement documents, as well as other applicable regulatory enactments.

#### **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 Administrative court according to the procedure stipulated in the Section 9, Paragraph 23 of the Public Procurement Law and Administrative Procedure Law regarding the Tenderer selection requirements, Technical specification or other requirements relating to Procurement, or relating to the activities by the Contracting authority or the Procurement commission during the Procurement.

#### **6. SUBJECT-MATTER OF THE PROCUREMENT**

- 6.1. The subject-matter of the Procurement is a directors and officers liability insurance in accordance with Annex No 1 "Technical specification" (hereinafter – Services).
- 6.2. The delivery of the Services will take place in Estonia, Latvia and Lithuania.

- 6.3. Period of provision of Services is 12 months, from 25 March 2019, 00:00 o'clock (Eastern European Time) till 24 March 2020, 23:59 o'clock (Eastern European Time), including.

## 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 Procurement. In this case all the members of the partnership shall be listed in Annex No 2 "Application for participating in the Procurement". 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

The Contracting authority shall exclude the Tenderer from further participation in the Procurement 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.	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>
8.1.2.	Tenderer's insolvency proceedings have been announced (except where a set of measures aimed at restoring the solvency of the debtor is applied in the insolvency proceedings), the	<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> </ul>

No	Requirement	Documents to be submitted (unless documents are specifically requested by the Procurement commission, no obligation to submit any)
	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 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.	<p>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). A person who drafted the Procurement 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 documents (Contracting authority's official or employee), Procurement commission member or expert</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)
	is related to a member of a partnership in any of the above-mentioned ways.	
8.1.4.	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>
8.1.5.	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

No	Requirement	Documents to be submitted
8.2.1.	The Tenderer or all members of the partnership (if the Tenderer is a partnership) must be registered in the Registry of Enterprises or Registry of Inhabitants, or an	<ul style="list-style-type: none"> <li>- 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</li> </ul>

<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 States 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
	equivalent register in their country of residence, if the legislation of the respective country requires registration of natural or legal persons.	information itself in publicly available databases. <ul style="list-style-type: none"> <li>- For a Tenderer (or a member of a partnership), a person on whose capacity a Tenderer relies, 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, 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 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 or person on whose capacity the Tenderer relies, then a document certifying the rights of the persons who have signed the Proposal or any other documents to represent the Tenderer, a member of the partnership or a person on whose capacity the Tenderer is relying (powers of attorney, authorization agreements etc.) must be included.</li> </ul>
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	<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</li> </ul>

No	Requirement	Documents to be submitted
	signature, i.e., it is an official having the right of signature or a person authorized by the Tenderer.	person registered in Latvia the Contracting authority shall verify the information itself in publicly available databases. - 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.

### 8.3. Technical and professional ability

No	Requirement	Documents to be submitted
8.3.1.1.	In past 3 (three) years (2016, 2017 and 2018) until the submission date of the Proposal Tenderer has delivered at least 3 (three) professional liability insurance policies where at least 1 (one) policy was delivered with a limit of liability of 10 million EUR or more.	- Filled and signed Annex No 3 "Description of the Tenderer's experience", where the Tenderer's experience is clearly specified.
8.3.1.2.	Tenderer is registered as insurance company in accordance with the laws of the state of its registration and is legally capable of providing the liability insurance services in the Republic of Latvia.	- A copy of license (or equivalent document) issued by a competent authority which allows the insurance company to provide liability insurance services in the territory of the Republic of Latvia. Insurance company who has the rights to provide liability insurance services outside the Republic of Latvia, but have not been registered for provision of liability insurance services in Republic of Latvia, in case it will be awarded of contract, will have to register in Republic of Latvia in accordance with the laws and regulations to be legally capable of providing relevant insurance services in Republic of Latvia (a copy of license (or equivalent document) before the conclusion of the Contract shall be submitted to the Contracting authority).
8.3.1.3.	Tenderer and has been evaluated by the international credit rating agency with a rating (Financial Strength rating) in investment category (i.e. Standard & Poors rating from AAA to BBB – including) or no less than 100% of the insured risk is located internationally recognized and proven insurance / reinsurance companies with international credit rating agency credit ratings (Financial Strength Rating) in investment	- Tenderer's statement (affirmation) that Tenderer has been evaluated by the international credit rating agency with a rating (Financial Strength Rating) in investment category (i.e. Standard & Poors rating from AAA to BBB – including) or no less than 100% of the insured risk is located internationally recognized and proven insurance / reinsurance companies with international credit rating agency credit ratings (Financial Strength Rating) in investment

No	Requirement	Documents to be submitted
	category (i.e. Standard & Poors rating from AAA to BBB – including).	category (i.e. Standard & Poors rating from AAA to BBB – including).
8.3.1.4.	Reinsurer has been evaluated by the international credit rating agency with a rating (Financial Strength rating) in investment category (i.e. Standard & Poors rating from AAA to BBB – including) or no less than 100% of the insured risk is located internationally recognized and proven insurance / reinsurance companies with international credit rating agency credit ratings (Financial Strength Rating) in investment category (i.e. Standard & Poors rating from AAA to BBB – including) (if applicable).	<ul style="list-style-type: none"> <li>- Tenderer's statement (affirmation) that Reinsurer has been evaluated by the international credit rating agency with a rating (Financial Strength Rating) in investment category (i.e. Standard &amp; Poors rating from AAA to BBB – including) or no less than 100% of the insured risk is located internationally recognized and proven insurance / reinsurance companies with international credit rating agency credit ratings (Financial Strength Rating) in investment category (i.e. Standard &amp; Poors rating from AAA to BBB – including).</li> </ul>
8.3.1.5.	Insurance broker who represents insurance company (if applicable), is registered as insurance and reinsurance intermediary and is legally capable of providing the liability insurance services in the Republic of Latvia.	<ul style="list-style-type: none"> <li>- A copy of license (or equivalent document) issued by a competent authority which allows Insurance broker to provide liability insurance services in the territory of the Republic of Latvia. Insurance broker who has the rights to provide liability insurance services outside the Republic of Latvia, but have not been registered for provision of liability insurance and reinsurance services in Republic of Latvia, in case Tenderer will be awarded of contract, will have to register in Latvian Republic in accordance with the laws and regulations to be legally capable of providing relevant insurance services in Republic of Latvia (a copy of license (or equivalent document) before the conclusion of the Contract shall be submitted to the Contracting authority).</li> <li>- Power of attorney issued by insurance company that allows insurance broker to represent the insurance company in full amount (from submitting the proposal till provision of Procurement contract).</li> </ul>

8.4. Information provided in the Proposal to prove the compliance with above-mentioned requirements for Technical and professional ability (Section 8.3 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.

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

- 8.6. 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.

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

- 9.1. For the fulfilment of the 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 4 "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 - 8.1.3 and Section 8.1.5 of the Regulations.

## **10. SUBCONTRACTING**

- 10.1. The Tenderer shall indicate in the Proposal all Tenderer's subcontractors whose share of services is equal to or exceeds 10% of the Contract price by filling in the table which is attached as Annex No 5 "A list of subcontractors".

- 10.2. The Contracting authority shall evaluate the subcontractor (whose share of services is equal to or exceeds 10% of the Contract price) of the Tenderer to whom the rights to conclude the Contract should be assigned according to Sections 8.1.5 the Regulations.

## 11. TECHNICAL PROPOSAL

- 11.1. Tenderers shall submit a technical proposal in accordance with this Section considering aspects of Annex No 1 "Technical specification". Technical proposal must contain of at least the following:
- 11.1.1. Professional liability insurance policy;
  - 11.1.2. General terms and conditions of insurance;
  - 11.1.3. Special terms and conditions of insurance.

## 12. FINANCIAL PROPOSAL

- 12.1. The Financial proposal shall be submitted as part of Annex No 6.
- 12.2. 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.
- 12.3. 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.
- 12.4. The costs shall be specified in EUR.
- 12.5. 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.

## 13. CONTENTS AND FORM OF THE PROPOSAL

- 13.1. Documents to be included in the Proposal:
- 13.1.1. Title page with title "Proposal for Procurement "Directors and Officers Liability Insurance", ID No RBR 2019/2", name, address and contact information of the Tenderer (recommended);
  - 13.1.2. Table of contents with page numeration (recommended);
  - 13.1.3. Application for participation in the Procurement in accordance with Annex No 2;
  - 13.1.4. Technical proposal (see Section 11 of the Regulations);
  - 13.1.5. Financial proposal in accordance with Annex No 6;
  - 13.1.6. Information and documents confirming compliance of the Tenderer with the selection criteria for the Tenderers (set in Section 8 of the Regulations);
  - 13.1.7. Information and documents relating to other entities on whose capacity the Tenderer is relying (in accordance with Annex No 4);
  - 13.1.8. Information and documents relating to subcontractors (in accordance with Annex No 5).
- 13.2. 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).
- 13.3. 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.

- 13.4. The Tenderer shall submit a Proposal sewn or bound together, the loose ends of the ribbon fixed so that they cannot be opened without damaging the fixation, upon which the Tenderer must confirm with a signature the number of pages contained in the Proposal.
- 13.5. The Proposal must be signed by a person who is legally representing the Tenderer or is authorized to represent the Tenderer in this Procurement.
- 13.6. The tenderer shall submit:
  - 13.6.1. one (1) signed original, one (1) hard copy and a digital format (USB containing files in MS Office format or PDF format) copy of the Proposal or
  - 13.6.2. one (1) digital format original (USB containing one eDoc, PDF or ASIC-E file) signed by secure e-signature<sup>2</sup> and valid time seal and one (1) hard copy of the Proposal.
- 13.7. Tenderer shall submit Proposal in a glued-up envelope on which it shall be indicated:
  - 13.7.1. Name and address of the Contracting authority: RB Rail AS, Kr. Valdemāra iela 8-7, Riga, LV-1010, Latvia;
  - 13.7.2. Tenderer's name, registration No, legal address, contact information;
  - 13.7.3. Indication "Proposal for Procurement "Directors and Officers Liability Insurance", ID No RBR 2019/2. Do not open until 1 March 2019 at 15:00 o'clock".

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

- 14.1. The Proposal (documents referred to in the Section 12.1 of the Regulations) shall be submitted personally, by courier or registered mail to the RB Rail AS, Kr. Valdemāra iela 8-7, Riga, LV-1010, Latvia by

**1 March 2019 till 15:00 o'clock.**

- 14.2. After the term specified in Section 14.1 of the Regulations, the Contracting authority shall not accept the Proposals. Proposals received after this term shall be returned to the applicant in an unopened form.
- 14.3. The Tenderer may recall or amend its submitted Proposal before the expiry of the deadline for the submission of Proposals. In case of recall or amendments, the Tenderer has to clearly indicate on the Proposal that the Proposal is recalled by indicating "RECALL" or amended by indicating "AMENDMENTS" in addition to the information mentioned in Section 13.7 of the Regulations.

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

- 15.1. The Procurement commission shall proceed with the verification of compliance of Proposals received.

---

<sup>2</sup> Issued by organisation, which is included in the Trusted list according to the Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014

- 15.2. The Procurement commission verifies whether the submitted Proposals comply with the requirements stipulated in Section 13 of the Regulations and whether all required information and documents is submitted and selects for further evaluation the compliant Proposals.
- 15.3. The Procurement commission opens and evaluates the Proposals in a closed session. Procurement commission is entitled to perform evaluation of the compliance only for the Tenderer to whom the rights to conclude the Contract may be assigned.

## **16. VERIFICATION OF TECHNICAL PROPOSALS**

The Procurement commission verifies whether the submitted Technical proposals comply with the requirements stipulated in the Section 11 of the Regulations.

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

- 17.1. The Procurement commission verifies whether Tenderers have completed Annex No 6 "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 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, 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 its 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) or a person on whose capacity the Tenderer is relying to certify its 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 Procurement.

## **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. Tenderer with the lowest price Proposal shall be selected.
- 20.2. Within 3 (three) business days from the date of decision about the Procurement 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 Administrative court regarding violations of the public procurement procedure.
- 20.3. If the Procurement is terminated, the Procurement commission within 3 (three) business days simultaneously informs all Tenderers about the date of decision, all the reasons because of which the Procurement procedure is terminated and informs about the deadline within which a Tenderer may apply regarding the violations of the public procurement procedure to the Administrative court.
- 20.4. 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.
- 20.5. **The selected Tenderer upon receiving the specific notification from Procurement commission must:**
  - 20.5.1. within 5 (five) business days – to 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;
  - 20.5.2. within 5 (five) business days – to submit to the Contracting authority a copy of licence (or equivalent document) issued by competent authority that allows to provide insurance



- services in the territory of the Republic of Latvia (if applicable in accordance with Section 8.3.1.2 or 8.3.1.5 of the Regulations);
- 20.5.3.within 10 (ten) days – to sign the Contract.
- 20.6. The Contract is concluded based on the Tenderer's Proposal and in accordance with Annex No 7 "Draft contract".
- 20.7. The Procurement commission has the right to choose the next most economically advantageous Proposal, if the Tenderer in the time stipulated by the Regulations:
- 20.7.1.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;
- 20.7.2.refuses to submit a copy of licence (or equivalent document) or does not submit a copy of licence (or equivalent document) within the deadlines defined in the Regulations (if applicable in accordance with Section 8.3.1.2 or 8.3.1.5 of the Regulations);
- 20.7.3.refuses to conclude the Contract or does not submit signed Contract within the deadlines defined in the Regulations.
- 20.8. In any of such a case mentioned in Section 20.7 of the Regulations the Procurement commission is entitled to terminate this Procurement 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.
- 20.9. 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 18.5 of the Regulations, the Procurement commission decides to terminate the Procurement without selecting any Proposal.

**ANNEXES:**

1. Technical specification on 7 (seven) pages;
2. Application for participation in the Procurement on 1 (one) page;
3. Description of the Tenderer's experience on 1 (one) page;
4. A list of other entities on whose capacity Tenderer relies on 1 (one) page;
5. A list of the subcontractors on 1 (one) page;
6. Financial proposal on 1 (one) page;
7. Draft contract on 13 (thirteen) pages.

**ANNEX NO 1: TECHNICAL SPECIFICATION**

**TECHNICAL SPECIFICATION FOR THE PROCUREMENT  
"DIRECTORS AND OFFICERS LIABILITY INSURANCE"  
(ID NO. RBR 2019/2)**



**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.

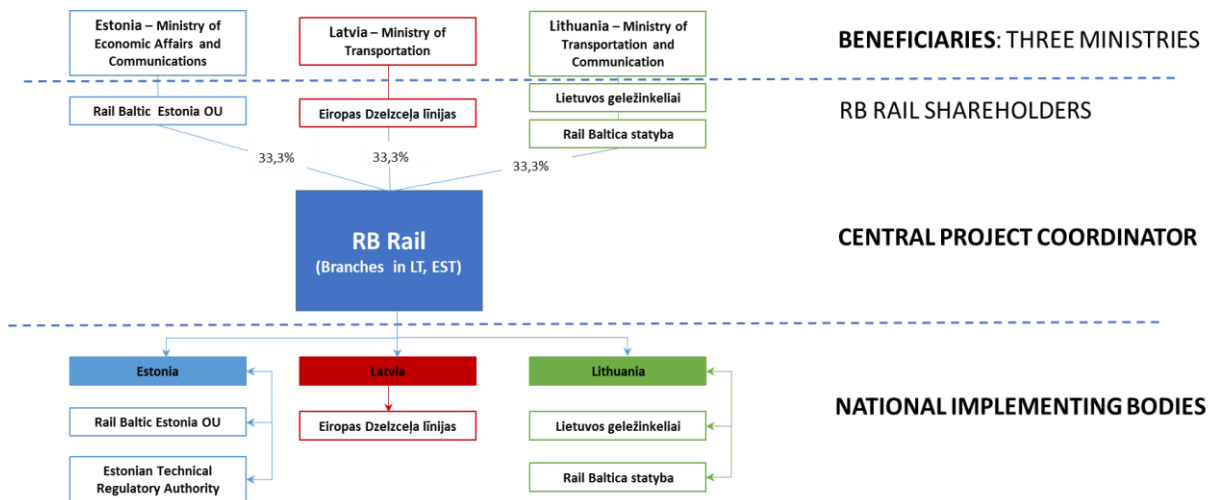
The ambitions of the Rail Baltica Global project (Global Project) are:

- 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

RB Rail AS (hereinafter – RB Rail) is looking for a Directors & Officers liability insurance provider, to provide RB Rail’s accountable persons with liability insurance in accordance with Technical specification and other provisions set by this document. It is understood that accountable persons include existing members, ex-members and future members of the Supervisory Board, Management board and Shareholder representatives and other RB Rail employees as requested.

Tenderer offering insurance have to envisage that compensation includes any financial loss, including – expenditures, financial loses, compensations and other expenses which could arise against RB Rail accountable persons (including any person in company to whom responsibility of decision making is delegated) by civil request of any third party, caused by performance of duties of RB Rail accountable persons including compensation of costs of expertise, law services for advocacy and other litigation costs.

Insurable Supervisory Board and Management Board persons (existing) (including but not limited to):

Supervisory Board:

Name, Surname	Date of appointment
Riia Sillave	31.07.2018

Anti Moppel	31.07.2018
Edvīns Bērziņš	31.07.2018
Vineta Rudzīte	31.07.2018
Karolis Sankovski	31.07.2018
Romas Švedas	31.07.2018

Management Board:

Name, Surname	Date of appointment
Ignas Degutis	01.06.2017
Mart Nielsen	19.03.2018
Kaspars Rokens	24.04.2017

Detailed information regarding the Services:

<b>Type</b>	Directors and Officers Liability Insurance
<b>Policyholder</b>	RB RAIL AS
<b>Policyholder's address</b>	<b>legal</b> Krišjāņa Valdemāra iela 8-7, Rīga, LV-1010
<b>Policy Period</b>	12 (twelve) months starting from 25 March 2019, 0:00 o'clock (Eastern European Time) till 24 March 2020, 23:59 o'clock (Eastern European Time), 24 hours in day
<b>Insurance coverage scope</b>	A. Insured Person's liability cover B. Company's reimbursement cover (Company's expenses for claims against Insured Person)
<b>Limit of Liability</b>	EUR 10 000 000 any one claim and in the aggregate for the Policy Period. Special Excess Protection for Supervisory Board Members and Shareholders' Representatives. In the event that the Limit of Liability is exhausted during the Period of Insurance, then it shall be reinstated once for the benefit only of directors to an aggregate amount equal to EUR 1 000 000 any one claims and EUR 6 000 000 in the aggregate.
<b>Insured Persons</b>	Insured person means: <ul style="list-style-type: none"> <li>any natural person who was, or is, or becomes Policyholder's Director, Supervisory Board Member, Policyholder's Shareholder representative, Policyholder's Management Board member, Manager of the Policyholder's branches;</li> <li>any natural person who was, or is, or becomes a director or officer of the Policyholder and/or its branches;</li> <li>any Employee of the Policyholder and/or its branches only if and to the extent a Claim is made against him or her for a Wrongful Act when named as co-defendant with an Insured Person;</li> <li>any Employee while acting in a managerial capacity at the Policyholder and/or its branches, or who is deemed to be performing any activity normally carried out by an Insured (including, but not limited to the Policyholder's chief</li> </ul>

	<p>accountant, legal counsel and members of a procurement commission established by the Policyholder, and those employees of the Policyholder and the Policyholder's branches who are members of a procurement commission established by Rail Baltic Estonia OÜ (reg. No 12734109), Sabiedrība ar ierobežotu atbildību Eiropas dzelzceļa līnijas (reg. No 40103836785), Akcine bendrove Lietuvos geležinkeliai (reg. No 110053842), UAB "Rail Baltica statyba" (reg. No 303227458)).</p> <ul style="list-style-type: none"> <li>• any Employee of the Policyholder and/or its branches in respect of an Employment Wrongful Act;</li> <li>• any natural person who was, or is, or becomes a non-executive director of the Policyholder;</li> <li>• any spouse or domestic partner or civil partner of any natural person who falls within the scope of Definitions above, but only in respect of an action to enforce a judgment obtained against such person against the property of that spouse or domestic partner or civil partner arising from a Claim covered by the Insurance Contract;</li> </ul> <p>Insured does not include any external auditor or liquidator or administrator or receiver or administrative receiver or legal or other professional adviser of the Policyholder and/or its branches.</p>
<p><b>Minimum Insurance Cover</b></p>	<p>Insurance Cover – third party liability for losses resulting from a claim against Insured Persons in relation to wrongful acts they have committed (actual or alleged breach of duty, negligence, error, misstatement, omission, a conflict of interest, accounting inaccuracies, power of attorney misuse, false statements, false recommendations, expenses, damages, compensations and other payments, to the Insured Person have or will be obliged to pay in connection with any third party claim which incurred in connection with the performance of duties and acceptance decisions at RB Rail AS and/or RB Rail AS branches, as well as reimbursement of expertise, legal, litigation and other expenses for the Insured Person against third-party claims etc.).</p> <p>The exclusions under the Policy may not be more restrictive than the market practice for such insurance.</p> <p>If the Insured Person first become aware of a Wrongful Act or first become aware of a situation or circumstance that the Insured Person reasonably consider may become a Claim, the Insured Person or the Policyholder must provide written notice of that as soon as practicable. In this case, any Claim that is subsequently made will be treated as having been made during the Policy Period.</p>
<p><b>Third Party</b></p>	<p>Any individual or legal entity, including without limitation, a state authority, RB Rail AS, RB Rail AS branches and RB Rail AS shareholders who has suffered losses in the result of the insurable event.</p>
<p><b>Minimum Insurance cover extensions and sub-limits</b></p>	<p>Defence costs – up to full policy limit</p> <p>Emergency costs – Sub-limited at least up to EUR 250,000 of the policy limit</p> <p>Regulatory crisis response expenses - Sub-limited at least up to EUR 250,000 of the policy limit</p> <p>Reputation recovery costs – Sub-limited at least up to EUR 250,000 of the policy limit</p>

	<p>Loss mitigation costs - Sub-limited at least up to EUR 250,000 of the policy limit</p> <p>Assets and Liberty costs - Sub-limited at least up to EUR 250,000 of the policy limit</p> <p>Extradition costs - Sub-limited at least up to EUR 250,000 of the policy limit</p> <p>Insolvency hearing costs - Sub-limited at least up to EUR 100,000 of the policy limit.</p> <p>Personal liability for corporate taxes - Sub-limited at least up to EUR 1,000,000 of the policy limit.</p> <p>Environmental and Pollution claims defence costs - Sub-limited at least up to EUR 250,000 of the policy limit.</p> <p>Civil fines, Administrative fines and Penalties Extension – Sub-limited at least to EUR 500,000 in the aggregate</p> <p>Advancement costs extension</p> <p>Retired Insured discovery period extension</p> <p>Discovery period extension as defined below</p>
<b>Retroactive Date</b>	28 October 2014
<b>Discovery Period</b>	<p>Extended Discovery Period 90 days with no additional premium, but 3 years, in the case if this Policy is neither renewed nor replaced with the Insurer for any reason or the Limit of Liability will be reduced.</p> <p>When one of these cases, Policyholder may purchase the Discovery Period for the additional premium of:</p> <p>up to 100% of the annual premium for the 12 months Discovery period;</p> <p>up to 150% of the annual premium for the 24 months Discovery period;</p> <p>up to 200% of the annual premium for the 36 months Discovery period.</p>
<b>Retired Directors</b>	<p>The Insurer will provide an unlimited Extended Discovery Period for any Insured Person who retires or resigns, other than by reason of a Transaction or Insolvency, during the Policy Period, provided that:</p> <ul style="list-style-type: none"> <li>(i) this Policy is not renewed or replaced with any other Insured Person liability cover; or</li> <li>(ii) where this Policy is renewed or replaced with any other Insured Person liability cover, such renewal or replacement policy does not provide an extended discovery period of at least 6 (six) years for such retired Insured Persons.</li> </ul>
<b>Past Insured</b>	<p>An Insured Person who during the Policy Period has retired from or ceased to hold an office as Insured Person other than an individual disqualified by an official, regulatory or judicial body or authority or court or arbitration, provided that there is no merger or acquisition and the Policyholder is not insolvent.</p> <p>The Insurer will pay to or on behalf of a Past Insured any loss arising from any claim first made against them following the Expiry Date of the Policy Period for a wrongful act committed before the Insured Person ceases to hold the office of an Insured Person, provided that such a Past Insured is not covered by any other policy affording Directors and Officers or Management Liability Cover which renews or replaces this Policy further to its expiration.</p>

<b>Insurance Territory</b>	Any claim shall be allocated to the last Policy Period and the remaining Limit of Liability shall apply.
	Worldwide, excluding USA/Canada
<b>Trigger</b>	Under this insurance, the grounds for indemnification must be any written demand for monetary or non-monetary relief or any civil (including arbitration and other alternative dispute resolution), criminal, regulatory or administrative proceeding against an Insured Person for a wrongful act, deemed to be made upon receipt by or service upon the Insured Person, whichever is earlier within the Insurance Period or Extended Reporting (discovery) Period (if it is in force) - claims made policy.
	Representative of Insured Person (sworn advocate) against the third-party claims shall be selected by the Insured Person.
<b>Payment of Insurance premium</b>	The Insurance Premium payment shall be made within 30 (thirty) calendar days from the conclusion of the Procurement contract and after receipt of all necessary documents (including but limited – Insurer’s invoice).
<b>Payment of Insurance indemnity</b>	The Insurance Indemnity payment shall be made within 30 (thirty) days from the moment the Insurer has received all requested and necessary documents and information.
<b>Deductibles</b>	Nil euros (EUR 0,00) for Insured Person’s liability Nil euros (EUR 0,00) Company’s reimbursement cover
<b>Jurisdiction</b>	Policy (including without limitation any issues arising out of or in connection with negotiation, validity, enforceability or other non-contractual disputes) is in all respects to be construed in accordance with and governed by Latvia law only.
<b>Policyholder’s financial information</b>	RB Rail AS Annual Report 2017 - <a href="http://www.railbaltica.org/wp-content/uploads/2018/05/RB_Rail_Annual_report_2018_2.pdf">http://www.railbaltica.org/wp-content/uploads/2018/05/RB_Rail_Annual_report_2018_2.pdf</a>
<b>Additional notes</b>	Verbatim of proposed insurance terms and definitions might differ from those in the Regulations for this Procurement, however the alternative verbatim shall not be narrower in scope than the terms of these Regulations or for this Procurement. In the event of discrepancies, the terms and definitions set herein shall prevail.



**ANNEX NO 2: APPLICATION**

**APPLICATION FOR PARTICIPATION IN THE PROCUREMENT  
“DIRECTORS AND OFFICERS LIABILITY INSURANCE”  
(ID NO. RBR 2019/2)**

<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 Procurement “Directors and Officers Liability Insurance”, ID No RBR 2019/2;
2. Confirms that, if the Tenderer will be awarded the Contract, the Tenderer will provide quality and timely performance of the contractual liabilities for the offered price and in accordance with the requirements of the Annex No 1 “Technical specification” and its Technical proposal;
3. Indicates that (please indicate by ticking relevant box):
  - will reinsure the risks to reinsurer \_\_\_\_\_  
(name and registration number of reinsurer)
  - won't reinsure the risks to any reinsurer.
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 7 “Draft contract”);

5. Confirms that in the preparation and submission of its Proposal, Tenderer has fully considered all the clarifications issued by the Contracting authority;
6. Confirms that offered services are free from all liens, interests or other rights of third parties;
7. Confirms that Tenderer has prepared the quotation without connection with any other person, company or parties likewise submitting a quotation and that it is in all respects for in good faith, bona fide, without collusion or fraud;
8. 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.
9. Guarantees that all information and documents provided are true.

**10. Confirms<sup>3</sup> that meets the criteria of (please indicate by ticking relevant box):**

a small                       medium                       other

sized enterprise<sup>4</sup> as defined in the Article 2 of the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprise.<sup>5</sup>

---

[date of signing]

---

[name and position of the representative of the Tenderer]

---

<sup>3</sup> Tenderer must indicate size of enterprise for each member of the partnership, if the Tenderer is a partnership. Please

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

<sup>5</sup> Available here - [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2003.124.01.0036.01.ENG&toc=OJ:L:2003:124:TOC](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2003.124.01.0036.01.ENG&toc=OJ:L:2003:124:TOC)

**ANNEX NO 3: EXPERIENCE OF THE TENDERER**

**DESCRIPTION OF THE TENDERER’S EXPERIENCE FOR THE PROCUREMENT  
“DIRECTORS AND OFFICERS LIABILITY INSURANCE”  
(ID NO. RBR 2019/2)**

No	Client, client’s contact information for references (name of representative, phone, e-mail) <sup>6</sup>	Period of the contract (month/year – month/year)	Description of the services provided what characterize required experience, stated in Section 8.3.1.1 of the Regulations	Limit of liability (EUR)
1.				
2.				
3.				
n+1				

\_\_\_\_\_

[date of signing]

\_\_\_\_\_

[name and position of the representative of the Tenderer]

<sup>6</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 8.3.1.1 of the Regulations.

**ANNEX NO 4: OTHER ENTITIES ON WHOSE CAPACITY TENDERER RELIES**

**A LIST OF OTHER ENTITIES ON WHOSE CAPACITY TENDERER RELIES TO MEET THE  
 REQUIREMENT OF THE PROCUREMENT  
 "DIRECTORS AND OFFICERS LIABILITY INSURANCE"  
 (ID NO. RBR 2019/2)**

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

---

[date of signing]

---

[name and position of the representative of the Tenderer]

**ANNEX NO 5: SUBCONTRACTORS**

**A LIST OF THE SUBCONTRACTORS FOR THE PROCUREMENT**  
**"DIRECTORS AND OFFICERS LIABILITY INSURANCE"**  
**(ID NO. RBR 2019/2)**

No	Name of the sub-contractor (registration No., legal address)	Description of the sub-contracted task	Sub-contracted tasks		Size of the enterprise <sup>7</sup>
			Amount, EUR (without VAT)	% from the proposed price	
<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>Total:</b>					
<b>Total (I+II)</b>					

---

[date of signing]

---

[name and position of the representative of the Tenderer]

<sup>7</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 6: FINANCIAL PROPOSAL**

**FINANCIAL PROPOSAL FOR THE PROCUREMENT  
"DIRECTORS AND OFFICERS LIABILITY INSURANCE"  
(ID NO. RBR 2019/2)**

The Tenderer [*name of the Tenderer*] offers to deliver services in accordance with the Annex No 1 "Technical specification" for the following costs<sup>8</sup>:

No	Service	Unit	Quantity	Unit price EUR, excl. VAT	Amount EUR, excl. VAT
1	Amount of Premium	year	1		*

Total price EUR (excl. VAT) in words: \_\_\_\_\_.

\* Contract price that will be evaluated in accordance with Section 17.2 of the Regulations.

Please provide the following information:

No	Service	Percent of annual premium	Amount EUR, excl. VAT
1	Extended discovery period (first year) <sup>9</sup>		
2	Extended discovery period (second year)		
3	Extended discovery period (third year)		

---

[date of signing]

---

[name and position of the representative of the Tenderer]

<sup>8</sup> When preparing the Financial proposal, the rules of Section 12 of the Regulations shall be considered.

<sup>9</sup> Please see the section "Discovery period" in the Technical specification.

**ANNEX NO 7: DRAFT CONTRACT****SERVICE AGREEMENT****between****RB Rail AS****and****[●]**

Contract registration number 8/2019-[●]

CEF<sup>10</sup> Contract No INEA/CEF/TRAN/M2014/1045990 A34,

CEF Contract No INEA/CEF/TRAN/M2015/1129482 B18

CEF Contract No INEA/CEF/TRAN/M2016/1360716 C09

Procurement procedure identification No RBR 2019/2

**Dated [●] [●]2019**

---

<sup>10</sup> Grant Agreement under the Connecting Europe Facility

## SERVICE AGREEMENT

**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 "Policyholder"), 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 "Insurer"), 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 Policyholder has organised procurement "Directors and Officers Liability Insurance" (identification No RBR 2019/2) (the "Procurement") whereby the Insurer's tender proposal (the "Insurer's Proposal") was selected as the winning bid;
- (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)".

### 1. Subject of the Agreement

- 1.1. The Policyholder shall order and pay, but the Insurer shall undertake to perform insurance of directors and officers liability of the Policyholder, for 12 (twelve) calendar months from the day of entering into the Agreement and issue an insurance policy (the "Policy"), in accordance with the technical specification (Annex B "Technical specification") and financial proposal of the Insurer for the Procurement (Annex C "Insurer's Proposal"), as well as the terms and conditions of this Agreement, which shall become as integral parts of this Agreement, hereinafter - the "Service".
- 1.2. On the day of entering into the Agreement the Insurer shall issue a Policy to the Policyholder, which shall become as an integral part of this Agreement and shall come into force on 25 March 2019, 00:00 o'clock (Eastern European Time).
- 1.3. The terms and conditions of the Policy shall not be contrary to the terms and conditions of this Agreement. In case of contradiction, the terms and conditions of the Agreement shall prevail.
- 1.4. Upon signing this Agreement, the Insurer confirms that equal insurance coverage and limits of responsibility shall be ensured for the whole period of the Agreement and it shall not be entitled to terminate the Agreement during its validity term.



## 2. Validity Period and Validity of the Agreement

- 2.1. This Agreement shall come into force after mutual signing thereof and day of registration of the Agreement with the Policyholder, i.e., [•] March 2019, and shall be valid for 12 months 24 (twenty-four) hours per day until the date of expiry of the Policy. **The validity period of the Policy shall be from 25 March 2019 at 0:00 o'clock until 24 March 2020 at 23:59 o'clock (Eastern European time).**
- 2.2. Upon mutual agreement, the Parties shall be entitled to terminate this Agreement at any time.
- 2.3. The Policyholder shall be entitled to unilaterally terminate this Agreement before the expiry thereof by warning the Insurer on that in writing 15 (fifteen) calendar days in advance, if:
  - 2.3.1. the Insurer fails to fulfil the liabilities set in this Agreement or fulfils them in a part;
  - 2.3.2. the Insurer has been declared as insolvent, undergoes the restructuring, winding-up proceedings or bankruptcy proceeding under the court judgement;
  - 2.3.3. a licence for performance of insurance has been annulled for the Insurer;
  - 2.3.4. the contractual penalty calculated for the Insurer has reached the maximum amount set in the Agreement - 10% (ten percent) from the amount of the Premium referred to in Clause 3.1 of the Agreement.
  - 2.3.5. in other special cases, having reasonable grounds for that, by informing the Insurer on that in writing at least 30 (thirty) calendar days in advance.
- 2.4. The Insurer shall be entitled to unilaterally terminate this Agreement before expiry thereof by warning the Policyholder on that in writing 15 (fifteen) calendar days in advance, if:
  - 2.4.1. The Policyholder undergoes the winding-up proceedings;
  - 2.4.2. The contractual penalty calculated for the Policyholder has reached the maximum amount set in the Agreement - 10% (ten percent) from the amount of the Premium referred to in Clause 3.1 of this Agreement.
- 2.5. Upon terminating the Agreement in an unilateral manner, in accordance with Clauses 2.3 and 2.4 of the Agreement, the Insurer shall pay back to the Policyholder a part of the unused Premium, which shall be proportional with the remaining validity period of the Policy, without deducting expenses for administrative expenses, by making the repayment within 10 (ten) working days from the day of receipt of the submission of the Policyholder.
- 2.6. In case of need the Policyholder may request to prolong the insurance period for 1 (one) calendar month and in total not exceeding 10% from the amount referred to in Clause 3.1 of this Agreement.

## 3. Insured Amount and Premium

- 3.1. The Policyholder shall pay to the Insurer the annual insurance premium (the "Premium") in the amount of [•] ([•]) and the Insurer, upon occurrence of the insured event, shall pay the insurance indemnity.
- 3.2. The Policyholder shall pay the Premium for the Service provided by the Insurer - insurance of liability of directors and officials, excluding VAT, in accordance with Section 52, Paragraph 1, Clause 20 of the Value Added Tax Law.
- 3.3. In case if regulatory enactments of the Republic of Latvia changes during the validity period of the Agreement and the services provided by insurers are taxable with VAT, the Policyholder shall pay them in addition, and the amounts included in the Agreement shall be considered as the ones that exclude the value added tax.
- 3.4. The Premium shall include all expenses in relation to provision with insurance, except for expenses of the event stipulated in Clause 3.3 of the Agreement.
- 3.5. The Policyholder shall pay the Premium, within 30 (thirty) calendar days after conclusion of the Agreement and the day of receipt of the invoice issued by the Insurer, to the current account specified in the invoice.
- 3.6. The Insurer's invoices shall contain the following Policyholder's details and details about the Agreement:

Insurer	[●]
Registration No	[●]
VAT payer's No or indication that the Insurer 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: Ģirts Rūda

- 3.7. The day on which the payment made by Policyholder is registered with the bank shall be deemed to be the day of execution of the payment (payment date).
- 3.8. The Insurer shall send the invoice to the Policyholder electronically to the following e-mail address: [invoices@railbaltica.org](mailto:invoices@railbaltica.org). The Parties agree that the invoices should be submitted only electronically and that the invoice should not contain the requisite "signature".

#### 4. Rights and Obligations of the Parties

- 4.1. The Policyholder shall:
- 4.1.1. comply with the terms and conditions of the Agreement;
  - 4.1.2. undertake to provide the Insurer with all information necessary for fulfilment of the Agreement;
  - 4.1.3. pay the Premium referred to in Clause 3.1 of this Agreement, in accordance with the terms and conditions of this Agreement;
  - 4.1.4. be entitled to attract expert for evaluation of the insured event;
  - 4.1.5. in case if the Policyholder has not showed any objections regarding the decision taken on indemnity within 10 (ten) calendar days from the receipt of the decision made, it shall be deemed that it agrees with the decision made;
  - 4.1.6. in order to receive the insurance indemnity, the Policyholder within 10 (ten) workings days after occurrence of the insured event, as soon as it has become possible, shall inform Insurer via telephone [●] and electronically send the application for indemnity to the e-mail address of the Insurer: [●], and notify the Insurer on the occurrence of the insured event;
- 4.2. The Insurer shall:
- 4.2.1. ensure proper quality of the Service, in accordance with the Proposal submitted to the Policyholder and provisions of the present Agreement;
  - 4.2.2. undertake to precisely comply with and fulfil the provisions of the Agreement in a timely manner;
  - 4.2.3. pay the insurance indemnity, in accordance with the amount, procedure and terms set in the Insurance Contract Law of the Republic of Latvia and this Agreement;

- 4.2.4. in case of occurrence of the insured event, make a decision regarding disbursement of the insurance indemnity and disburse the insurance indemnity within 30 (thirty) calendar days after the day of receipt of all necessary documents, which prove the occurrence of the insured event and the amount of losses;
- 4.2.5. In case of termination of the Policy in accordance with the procedure referred to in Clause 2.3 of the Agreement the Insurer shall pay back a part of the unused Premium in proportion with the remaining validity period of the Policy, without deducting expenses for administrative expenses;
- 4.2.6. provide that the Insurance Conditions (attached as Annex [●]) shall remain unchanged for the whole validity period of the Agreement;
- 4.2.7. not be entitled to refuse to disburse the insurance indemnity within the term set in Clause 4.2.4 of the Agreement;
- 4.2.9. receive the Premium, in accordance with the provisions of Clause 3.1 of the Agreement;
- 4.2.10. if the Policyholder fails to agree with the amount of losses calculated by the Insurer pursuant to agreement between the Parties, the Insurer may disburse a part of the insurance indemnity up to the amount that is not disputed by any of the Parties, until making payment of loss in full.

## **5. Responsibility of the Parties**

- 5.1. The Policyholder and the Insurer confirm by mutual signing of the Agreement that there are no circumstances prohibiting the Parties to enter into this Agreement.
- 5.2. The Insurer confirms of having all necessary rights in order to provide the Service in accordance with the terms and conditions of this Agreement.
- 5.3. Upon entering into the present Agreement, the Insurer confirms of being informed and evaluated all risks covered.
- 5.4. The Parties shall be responsible for failure to fulfil the Agreement or improper fulfilment thereof, as well as for losses caused to the other Party, if they have occurred as a result of activity or inactivity of one Party or employees thereof, as well as activities or neglect caused as a result of gross negligence and evil intent. The Party at fault shall compensate to the other Party the occurring losses.
- 5.5. The Insurer shall have an obligation to prove any circumstances, exempting it from the liabilities set in the Agreement to disburse the insurance indemnity.
- 5.6. If the Insurer fails to provide the Service, in accordance with the terms and conditions of the Agreement, which is reflected in non-compliance of the terms set in this Agreement, the Insurer shall pay to the Policyholder a contractual penalty in the amount of 0.1% (one tenth of a percent) from the annual Premium for each day of delay. The total amount of the contractual penalty shall not exceed 10 % (ten percent) from the amount of the Premium.
- 5.7. If the Policyholder fails to make the payment of the Premium, in accordance with the terms and conditions of this Agreement, the Policyholder shall pay to the Insurer a contractual penalty in the amount of 0.1 % (one tenth of a percent) from the Premium of the Agreement for each day of delay. The total amount of the contractual penalty shall not exceed 10 % (ten percent) from the amount of the Premium.
- 5.8. Payment of the contractual penalty shall not exempt the Parties from fulfilment of liabilities of this Agreement.

## **6. Right to audit and on-the-spot visits**

- 6.1. A reputable outside independent body or expert engaged and authorized by the Policyholder shall be entitled during ten (10) years following expiration or termination of this Agreement to inspect and/or audit the Insurer to ensure compliance with the terms of this Agreement, including inspecting and/or auditing:
  - 6.1.1. the performance of any aspect of the Service; and/or

- 6.1.2. any documentation, including all payrolls, accounts of the Insurer and/or other records used in or related to the performance of the Services.
- 6.2. By submitting a written notice five (5) working days in advance, the Policyholder may carry out on-the-spot visits to the sites and premises where the activities implemented within the Agreement are or were carried out with having an 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, as well as shall allow the authorised staff of the performer of the on-the-spot visit the copying of the information and documents, with due respect to the confidentiality obligation.

## **7. Governing law and resolution of disputes**

- 7.1. This Agreement shall be governed by and construed in accordance with the law of the Republic of Latvia.
- 7.2. The Parties shall first attempt to settle any dispute, controversy or claim arising out of or relating to this Agreement by way of amicable negotiations.
- 7.3. Should the Parties fail to agree by means of amicable negotiations within the time period of thirty (30) days 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.

## **8. Force Majeure**

- 8.1. Subject to the requirements set forth in accordance with Clause 8.2 and 8.3, 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.
- 8.2. Each Party shall at all times, following the occurrence of a Force Majeure Event:
- 8.2.1. take reasonable steps to prevent and mitigate the consequences of such an event upon the performance of its obligations under this Agreement;
- 8.2.2. 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
- 8.2.3. 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 8.1 of this Agreement.
- 8.3. 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 three (3) 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 8.2 of the Agreement 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.
- 8.4. 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).
- 8.5. As soon as practicable after the notification specified pursuant to Clause 8.4 of the Agreement, the Parties shall use reasonable endeavours to agree appropriate terms or modifications to the

scope of Service to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.

## 9. Confidentiality

- 9.1. The Parties shall undertake not to use and not to disclose to third parties the confidential information (any written or verbal information, including financial information, commercial secrets, lists of customers, any information and documents with regard to discussion of the Agreement between the Parties and other information that is not publicly available).
- 9.2. All information that the Insurer has received from the Policyholder within the framework of the Agreement or acquired from other persons is confidential. The Insurer shall not be entitled to disclose any such information to third parties, without a written consent of the Policyholder, neither during the validity period of the Agreement, nor after expiry of the validity period of the Agreement.

## 10. Visibility Requirements

- 10.1. At all times during provision of the Service, the Insurer undertakes to comply with each of the following requirements:
  - 10.1.1. Any report, brochure, document or information related to the Service provided by the Insurer to the Policyholder or any other person or which the Insurer makes publicly available shall include each of the following:
    - 10.1.1.1. 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";
    - 10.1.1.2. 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
    - 10.1.1.3. the flag of the Council of Europe and the European Union.
  - 10.1.2. Requirements set forth in Clause 10.1.1.1 and 10.1.1.3 of the Agreement can be fulfilled by using the following logo:



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

in the event the Insurer decides to utilize the above logo, the Insurer 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

- 10.1.3. 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>.

### 11. Authorised Persons of the Parties

- 11.1. During the control of fulfilment of the Agreement the responsible person of the Policyholder shall be: Ģirts Rūda, telephone number +371 29494480, e-mail address: girts.ruda@railbaltica.org.
- 11.2. During the control of fulfilment of the Agreement the responsible person of the Insurer shall be: [•], telephone number [•], e-mail address: [•].

### 12. Final Provisions

- 12.1. In case if any of the provisions of the Agreement becomes void as a result of amendment to regulatory enactments, this Agreement shall not become void with regard to other Clauses thereof. In such a case the Parties shall apply the Agreement in accordance with the effective regulatory enactments.
- 12.2. In case if details for any of the Parties or contact persons of the Parties or contact information thereof set in Section 11 of the Agreement are changed, the relevant Party shall notify the other Party on that in writing within five (5) working days from the day of occurrence of such changes. After receipt of the notification it shall become as an integral part of the Agreement. If the Party fails to fulfil the provisions of the present Clause, it shall be deemed that the other Party has fulfilled its liabilities in full by using the information available in this Agreement regarding the other Party.
- 12.3. In case of reorganisation of the Parties, this Agreement shall remain valid and the provisions thereof shall be binding to the legal successor thereof. The Party shall warn the other Party in writing on the occurrence of such circumstances ten days in advance.
- 12.4. The Parties shall agree in writing on amendments or supplementations to the Agreement, except for the case of information change referred to in Clause 12.2 of this Agreement. The written agreements shall be signed and prepared in two copies, one copy for each of the Parties, and shall be enclosed with this Agreement as an integral part thereof.
- 12.5. Information exchange between the Parties may be performed also by using e-mails, which shall become as integral parts of the Agreement, except for terms and conditions of the Agreement, which provides for information exchange in the written form.
- 12.6. The Parties shall not be entitled to deliver their rights and obligations related to this Agreement and arising from that to third persons.
- 12.7. Annexes to this Agreement shall become as an integral part of this Agreement.
- 12.8. This Agreement is prepared on [•] ([•]) pages in two copies, including the Insurance Conditions on [•] ([•]) pages, [•]. Both copies of this Agreement shall have the same legal force.

### 13. Details and Signatures of the Parties

For and on behalf of the Policyholder:

For and on behalf of the insurer:

Signature: .....

Signature: .....

Name, title: .....

Name, title: .....

Signature: .....

Bank details: .....

Name, title: .....

Bank details:  
.....

### Annex A: Declaration of Insurer

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

1. To respect the freely-exercised right of workers, without distinction, to organise, 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 organise, 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 15 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 recognised 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 agreement, 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 agreements 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 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 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 characterise, 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 an Insurer or an undertaking related to the Insurer 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 Insurer's business or any kind of economic ties with the Insurer;
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 Insurers' 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 an Insurer which participated in a procurement procedure or restrictions with similar effect applies;
18. To promote the adoption of the principles set forth in this Insurer's Declaration by my potential business partners and promote the implementation of the principles set forth in this document towards own suppliers;
19. Not procure goods, works and services from other suppliers:
  - a) who, or its member of the Management Board or the Supervisory Board or procurator of such supplier, or a person having the right to represent such supplier 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, management of criminal organisation;
    - ii. fraud, misappropriation or laundering, human trafficking;
    - 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 agreement aimed at restricting the opportunity of a purchaser to determine the resale price, or



- horizontal cartel agreement, 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 supplier to participate in the tender), economic activity of such supplier has been suspended or discontinued, proceedings regarding bankruptcy of such supplier have been initiated or such supplier will be liquidated;
- e) who has tax debts in the country where the procurement is organised or a country where such supplier 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]

**Annex B: Technical specification**

[INSERT TECHNICAL SPECIFICATION]

**Annex C: Insurer's Proposal**

[INSERT INSURER'S PROPOSAL]