

*Updated version with amendments (amendments in Regulation)
Approved by procurement commission on
5 October 2020, session minutes No 3 (changes marked in red)*

REGULATIONS

FOR THE OPEN COMPETITION

"SUPPLY OF TEMPORARY PROFESSIONAL STAFF FOR RB RAIL AS"

(IDENTIFICATION NO RBR 2020/11)



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

Riga

2020

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1. ABBREVIATIONS AND TERMS

- 1.1. **Common procurement vocabulary (CPV)** – a nomenclature approved by the European Union which is applied in public procurement procedures;
- 1.2. **Framework agreement** - 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 Framework agreement in Open competition to provide services in accordance with requirements stipulated in Regulations and Framework agreement;
- 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 2020/11);
- 1.6. **Open competition** (also the Procurement) - a procurement procedure "Supply of temporary professional staff for RB Rail AS" (identification number: RBR 2020/11) in which all interested Suppliers are entitled to submit their Proposals;
- 1.7. **Procurement commission** – commission the composition of which has been established by the joint stock company RB Rail AS, order No 1.9-16 dated 11 August 2020, issued by the Management Board of joint stock company RB Rail AS;
- 1.8. **Proposal** - documentation package the Tenderer submits to participate in the Open competition;
- 1.9. **Regulations** – regulations of the Open competition "Supply of temporary professional staff for RB Rail AS" (identification number: RBR 2020/11), as well as all the enclosed annexes;
- 1.10. **Supplier** – a natural person or a legal person, a group or association of such persons in any combination thereof which offers to perform works, supply products or provide services accordingly;
- 1.11. **Tenderer** – a Supplier which has submitted a Proposal.

2. GENERAL INFORMATION

- 2.1. The identification number of the Open Competition is No RBR 2020/11.
- 2.2. The applicable CPV code is 79620000-6 (Supply services of personnel including temporary staff).
- 2.3. The Open competition is co-financed by the Contracting authority and Connecting Europe Facility (CEF).
- 2.4. This open competition is organised in accordance with the Public Procurement Law of Republic of Latvia in effect on the date of publishing the contract notice and is provided in accordance with order established in Cabinet of Minister Rules No.107 on Conducting procurement procedures and design contests (*Iepirkuma procedūru un metu konkursu norises kārtība*) of 28 February 2017.
- 2.5. Open competition is carried out using E-Tenders system (<https://www.eis.gov.lv/EKEIS/Supplier>) which is subsystem of the Electronic Procurement System (<https://www.eis.gov.lv/EIS/>).
- 2.6. The Regulations is freely available on Contracting authority's profile in the E-Tenders system at webpage <https://www.eis.gov.lv/Procurement/43400> and the webpage of the Contracting authority <http://railbaltica.org/tenders/>.
- 2.7. Amendments to the Regulations and answers to Suppliers' questions shall be published on Contracting authority's profile in the E-Tenders system at webpage <https://www.eis.gov.lv/Procurement/43400> 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.
- 2.8. Contact person of the Contracting authority for Open competition is Procurement specialist - lawyer, Linda Kalniņa, telephone: +371 26178057, e-mail address: linda.kalnina@railbaltica.org. All requests for information or additional explanations must be submitted solely through the E-Tenders system.

Answers to questions or explanations from the Contracting Authority are also provided through the E-Tenders system.

- 2.9. 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).
- 2.10. If the Supplier does not have access to the E-Tenders system, the Supplier shall follow the guidance for obtaining access to the system available on the Contracting authority's website at <http://www.railbaltica.org/procurement/e-procurement-system/>.
- 2.11. The Supplier can request additional information regarding the Regulations. Additional information can be requested in writing via the E-Tenders system or (in case the Supplier does not yet have access to the system) by sending it to the Procurement commission electronically via e-mail (see Section 2.7 of the Regulations). Any additional information must be requested in a timely fashion, so that the Procurement commission can reply on time - no later than 6 (six) days prior to the deadline of the Proposal submission. The Procurement commission shall provide response within 5 (five) Working Days from the day of receipt of the request from the Supplier.
- 2.12. The Supplier covers all expenses which are related to the preparation of the Proposal and its submission to the Contracting authority. Under no circumstances will the Contracting authority be liable for compensation of any costs and damages related to the preparation and submission of the Proposal (including, *inter alia*, costs associated with any site visits) or the Supplier's participation in the Procurement exercise.

3. THE RIGHTS OF THE PROCUREMENT COMMISSION

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

4. THE OBLIGATIONS OF THE PROCUREMENT COMMISSION

- 4.1. The Procurement commission ensures the process documentation of the Open competition.
- 4.2. The Procurement commission ensures free and direct electronic access to the Open competition documents on Contracting authority's profile at the E-Tenders system's webpage <https://www.eis.gov.lv/Procurement/43400> and on the webpage of the Contracting authority <http://railbaltica.org/tenders/>.
- 4.3. If an interested Supplier has in a timely fashion in writing by post or electronically (including via E-Tenders system), or delivering in person requested additional information about the requirements included in Open competition documents regarding the preparation and submission of the Proposal or regarding the selection of Tenderers, the Procurement commission provides a response electronically within 5 (five) Working Days but not later than 6 (six) days before the deadline for submitting Proposals.

Simultaneously with sending this information to the Supplier who had asked the question, the Contracting authority publishes this information on Contracting authority's profile in the E-Tenders system's webpage <https://www.eis.gov.lv/Procurement/43400> and on its webpage <http://railbaltica.org/tenders/> where Open competition documents are available, indicating the question asked.

- 4.4. If the Contracting authority has amended the Open competition documents, it publishes this information on Contracting authority's profile in the E-Tenders system's webpage <https://www.eis.gov.lv/Procurement/43400> and on the Contracting authority's webpage <http://railbaltica.org/tenders/> where Open competition documents are available, no later than 1 (one) day after the notification regarding the amendments has been submitted to Procurement Monitoring Bureau for publication. If Supplier wishes to receive relevant updates/notifications by email regarding the Procurement exercise (e.g. when amendments to the procurement package documentation are published), Supplier shall register as an interested supplier on the E-Tenders system for the particular Procurement exercise accordingly.
- 4.5. The exchange and storage of information is carried out in such a way that all data included in the Proposals is protected and the Contracting authority can check the content of the Proposals only after the expiration of the deadline for their submission. During the time from the deadline of submission of Proposals until the opening of the Proposals the Contracting authority does not disclose any information regarding the existence of other Proposals, therefore. During the time of Proposal assessment, the Contracting authority does not disclose any information regarding the assessment process until the announcement of the results.
- 4.6. The Procurement commission assesses the Tenderers and their Proposals based on the Public Procurement Law, Open competition documents, as well as other applicable regulatory enactments.
- 4.7. The Procurement commission prepares a report on the Open competition and publishes it on Contracting authority's profile in the E-Tenders system's webpage <https://www.eis.gov.lv/Procurement/43400> and on the Contracting authority's webpage <http://railbaltica.org/tenders/> within 5 (five) Working Days from the day when the decision about the results of the Open competition is made.

5. THE RIGHTS OF THE TENDERER

- 5.1. The Tenderer has the right to submit registration documents for the Electronic Procurement System (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) Working Days after submitting the request receive a copy of the Proposal opening sheet which is an annex to the Proposal opening session minutes.
- 5.3. If the Contracting authority gets the necessary information about the Tenderer directly from a competent institution, through data bases or other sources and the Tenderer's submitted information differs from information obtained by the Contracting authority, the Tenderer in question has the right to submit evidence to prove the correctness of the information the Tenderer has submitted, if the information obtained by the Contracting authority does not conform to the factual situation.
- 5.4. If a Tenderer believes that its rights have been violated or such violation is possible due to possible violation of the regulatory enactments of the European Union or other regulatory enactments, the Tenderer has the right to submit a complaint to the Procurement Monitoring Bureau according to the procedure stipulated in the Public Procurement Law, Article 68, regarding the Tenderer selection requirements, Technical specification or other requirements relating to Open competition, or relating to the activities by the Contracting authority or the Procurement commission during the Open competition.

6. SUBJECT-MATTER OF THE OPEN COMPETITION

- 6.1. Procurement is organised in order to procure a provider to provide a comprehensive, efficient and cost-effective solution to manage and deliver Temporary Professional Staff by identifying and supplying Temporary Professional Staff, the administration of Temporary Professional Staff's assignments, payments to Temporary Professional Staff and ensuring all local regulations and laws in regard to eligibility to work in the region are met. Services must be provided in accordance with Annex No 1 "Technical specification".

- 6.2. The delivery of the Services will take place in Latvia, Lithuania, Estonia (on demand basis).
- 6.3. Period of provision of Services is 24 (twenty-four) months. Maximum budget is **5 500 000,00 MEUR** without VAT.
- 6.4. The Tenderer is not allowed to submit variants of the Proposal. If variants of the Proposal are submitted, then the Proposal will not be reviewed.
- 6.5. The subject-matter is not divided into parts. The Tenderer shall submit proposal for the entire volume of the Procurement. Rights to conclude Framework agreement will be awarded up to three (3) Tenderers with the most economically advantageous proposals selected according to Section 18 of Regulations.
- 6.6. For the provision of temporary staff services Contracting Authority shall appoint the temporary staff providers with the assignments through a mini competition as stated in Framework agreement Section IV „Appointment of an Assignment”.

7. TENDERER

- 7.1. The Proposal can be submitted by:
 - 7.1.1. A Supplier who is a legal or natural person (hereinafter – the Tenderer) which offers on the market to perform works, supply products or provide services accordingly and who complies with the selection criteria for Tenderers;
 - 7.1.2. A group of Suppliers (hereinafter also – the Tenderer, partnership) which offer on the market to perform works, supply products or provide services accordingly and who complies with the selection criteria for Tenderers:
 - 7.1.2.1. A group of Suppliers who have formed a partnership for Open competition. In this case all the members of the partnership shall be listed in Annex No 2 “Application for participating in the Open competition”. If it will be decided to award contracting rights to such partnership, then prior to concluding the Framework agreement the partnership shall at its discretion either enter into a partnership agreement (within the meaning of the Civil Law of the Republic of Latvia, 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 the Commercial Law of the Republic of Latvia (hereinafter – the Commercial Law), Division 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 the Commercial Law, Division IX and X) which complies with the selection criteria for Tenderers.

8. SELECTION CRITERIA FOR TENDERERS

8.1. Exclusion grounds

Before making the decision to award the Framework agreement signing rights, Contracting Authority shall verify whether the Tenderer, to whom the Framework agreement signing rights should be awarded, is not a subject for exclusion grounds set in the Article 42 of Public Procurement Law of Republic of Latvia. The Contracting Authority shall exclude the Tenderer from further participation in the open competition in any of the following circumstances:

No	Requirement	Documents to be submitted ¹ (unless documents are specifically requested by the Procurement commission, no obligation to submit any)
1.	Within previous 3 (three) years before submission of the Proposal the Tenderer or a person who is Tenderer's management board or supervisory board member, person with representation rights or a procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a branch, has been found guilty of or has been subjected to coercive measures for committing any of the following criminal offences by such a public prosecutor's order regarding punishment or a court judgement that has entered into force and may not be challenged and appealed: a) establishment, management of, involvement in a criminal organization or in an organized group included in the criminal organization or other criminal formation, or participation in criminal offences committed by such an organization, b) bribe-taking, bribery, bribe misappropriation, intermediation in bribery, unauthorized participation in property transactions, taking of prohibited benefit, commercial bribing, unlawful claiming of benefits, accepting or providing of benefits, trading influences, c) fraud, misappropriation or money-laundering, d) terrorism, terrorism funding, creation or organization of a terrorist group, traveling for terrorist purposes, justification of terrorism, calling to terrorism, terrorism threats or recruiting or training a person in performance of acts of terrorism, e) human trafficking, f) evasion from payment of taxes or similar payments.	- For a Tenderer and a person who is Tenderer's management board or supervisory board member, person with representation rights or a procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a branch, who is registered or residing in Latvia, the Contracting authority shall verify the information itself in publicly available databases. - For a Tenderer and a person who is Tenderer's management board or supervisory board member, person with representation rights or a procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a branch, who 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.
2.	It has been detected that on the last day of Proposal submission term or on the day when a decision has been made on possible granting of rights to conclude the procurement contract, the Tenderer has tax debts in Latvia or a country where it has been incorporated or is permanently residing, including debts of mandatory state social insurance contributions	- For a Tenderer registered or residing in Latvia Contracting authority shall verify the information itself in publicly available databases. - For a Tenderer registered or residing outside of Latvia Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence.

¹ If the Tenderer submits the European single procurement document as the initial proof, there is no obligation to submit other documents, unless specifically requested by the Procurement commission.

No	Requirement	Documents to be submitted ¹ (unless documents are specifically requested by the Procurement commission, no obligation to submit any)
	exceeding 150 euro in total in any of the countries.	
3.	Tenderer's insolvency proceedings have been announced, the Tenderer's business activities have been suspended, the Tenderer is under liquidation.	- For a Tenderer registered or residing in Latvia Contracting authority shall verify the information itself in publicly available databases. - For a Tenderer registered or residing outside of Latvia Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence.
4.	A person who drafted the procurement procedure documents (Contracting authority's official or employee), Procurement commission member or expert is related to the Tenderer or is interested in selection of some Tenderer and the Contracting authority cannot prevent this situation by measures that cause less restrictions on Tenderer. A person who drafted the procurement procedure documents (Contracting authority's official or employee), Procurement commission member or expert is presumed to be related to the Tenderer in any of the following cases: a) If he or she is a current and/or an ex-employee, official, shareholder, procura holder or member of a Tenderer or a subcontractor which is legal person and if such relationship with the legal person was terminated within the last 24 (twenty-four) months; b) 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; c) If he or she is a relative of a Tenderer or a subcontractor which is a natural person. If the Tenderer is a partnership, consisting of natural or legal persons, a relation to the Tenderer is presumed also if a person who drafted the procurement procedure documents (Contracting authority's official or employee), Procurement commission member or expert is related to a member of a partnership in any of the above-mentioned ways.	No obligation to submit documents, unless specifically requested by the Procurement commission.

No	Requirement	Documents to be submitted ¹ (unless documents are specifically requested by the Procurement commission, no obligation to submit any)
5.	The Tenderer has an advantage that limits competition in the procurement procedure if it or its related legal person consulted the Contracting authority or otherwise was involved in preparing the Open competition, and the advantage cannot be prevented by less restrictive measures, and the Tenderer cannot prove that its or its related legal person's participation in preparing the procurement procedure documents does not restrict competition.	No obligation to submit documents, unless specifically requested by the Procurement commission.
6.	Within the previous 12 (twelve) months before submission of the Proposals by such a decision of a competent authority or a court judgment which has entered into force and may not be challenged and appealed Tenderer has been found guilty of violating competition laws manifested as a horizontal cartel agreement, except for the case when the relevant authority, upon detecting violation of competition laws, has released the Tenderer from a fine or has decreased the fine for cooperation within a leniency program.	- For a Tenderer registered or residing in Latvia Contracting authority shall verify the information itself in publicly available databases. - For a Tenderer registered or residing outside of Latvia Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence or other objective proof of good standing. For example, a link to the database of the competent authority's public database (website) listing all its decisions and validity thereof (provided that access to any such database/website is free of charge to the Contracting authority).
7.	Within the previous 3 (three) years before submission of the Proposals by such a decision of a competent authority, a court judgment or a public prosecutor's order which has entered into force and may not be challenged and appealed Tenderer has been found guilty and is punished for a violation manifested as employment of one or more persons who do not possess the required employment permit or if it is illegal for such persons to reside in a Member State of the European Union.	- For a Tenderer registered or residing in Latvia Contracting authority shall verify the information itself in publicly available databases. - For a Tenderer registered or residing outside of Latvia Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence.
8.	Within the previous 12 (twelve) months before submission of the Proposals by such a decision of a competent authority, a court judgment or a public prosecutor's order which has entered into force and may not be challenged and appealed Tenderer has been found guilty and is punished for a violation manifested as employment of a person without a written employment contract, by failing within the term specified in regulatory enactments to submit an informative employee declaration regarding this person, which must be submitted about persons, who start working.	- For a Tenderer registered or residing in Latvia Contracting authority shall verify the information itself from publicly available databases. - For a Tenderer registered or residing outside of Latvia Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence.

No	Requirement	Documents to be submitted ¹ (unless documents are specifically requested by the Procurement commission, no obligation to submit any)
9.	The Tenderer has provided false information to prove its compliance with provisions of this Section 8.1 of the Regulations or qualification criteria or has not provided the required information at all.	No obligation to submit documents, unless specifically requested by the Procurement commission.
10.	The Tenderer is a registered offshore ² company (legal person) or offshore association of persons.	- For a Tenderer which is registered in Latvia Contracting authority shall verify the information itself in publicly available databases. - For the Tenderer and each member of the partnership (if Tenderer is an unregistered partnership) which is a legal person registered 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.
11.	The owner or shareholder (with more than 25% of share capital) of the Tenderer who is registered in Republic of Latvia, is a registered offshore company (legal person) or offshore association of persons.	- For a Tenderer which is registered in Latvia: • Contracting authority shall verify the information itself in publicly available databases; • if such information by publicly available data bases is not provided, Tenderer shall submit self – declaration which approves fact that there are no registered owners or shareholders of the Tenderer (with more than 25% of share capital) who are registered offshore.
12.	The subcontractors indicated by the Tenderer whose share of services is equal to or exceeds 10% of the Contract price or person on whose capacities Tenderer is relying, is a registered offshore company (legal person) or offshore association of persons.	- For a subcontractor whose share of services is equal to or exceeds 10% of the Framework agreement price or person on whose capacities Tenderer is relying which is registered in Latvia Contracting authority shall verify the information itself in publicly available databases; - For a subcontractor or person on whose capacities Tenderer is relying 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.

² **Offshore:** 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 ¹ (unless documents are specifically requested by the Procurement commission, no obligation to submit any)
13.	International or national sanctions or substantial sanctions by the European Union (EU) or the North Atlantic Treaty Organization (NATO) Member State affecting the interests of the financial and capital market has been imposed to the: a) Tenderer or a person who is the Tenderer's management board or supervisory board member, beneficial owner³, person with representation rights or a procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a branch, b) member of the partnership or a person who is the partnership's management board or supervisory board member, beneficial owner⁴, person with representation rights or a procura holder (if the Tenderer is a partnership), and such sanctions can affect the execution of the Procurement contract.	- For a Tenderer registered or residing in Latvia Contracting authority shall verify the information itself from the Register of Enterprises of the Republic of Latvia. - For a Tenderer registered or residing outside of Latvia Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence with all the information necessary for the examination regarding the Tenderer or a member of the partnership (if the Tenderer is a partnership), including but not limited, information about beneficial owner or the fact that there is no possibility to find out the beneficial owner.

8.2. Legal standing and suitability to pursue the professional activity

No	Requirement	Documents to be submitted
1.	The Tenderer or all members of the partnership (if the Tenderer is a partnership), a person on whose abilities a Tenderer relies to certify its compliance, a subcontractor whose share of work is equal to or exceeds 10% of the contract value must be registered, licensed or certified in the Registry of Enterprises or Registry of Inhabitants, or other register in a	- For a Tenderer which is a legal person (or a member of a partnership, a person on whose abilities a Tenderer relies to certify its compliance, a subcontractor whose share of work is equal to or exceeds 10% of the Framework agreement value) registered in Latvia the Contracting authority shall verify the information itself in publicly available databases. - For a Tenderer which is a natural person (or a member of a partnership, a person on whose abilities a Tenderer relies to certify its compliance,

³ **Beneficial owner:** a natural person who is the owner of the customer - legal person - or who controls the customer, or on whose behalf, for whose benefit or in whose interest's business relationship is being established or an individual transaction is being executed, and it is at least:

a) regarding legal persons - a natural person who owns, in the form of direct or indirect shareholding, more than 25 per cent of the capital shares or voting stock of the legal person or who directly or indirectly controls it;

b) regarding legal arrangements - a natural person who owns or in whose interests a legal arrangement has been established or operates, or who directly or indirectly exercises control over it, including who is the founder, proxy or supervisor (manager) of such legal arrangement.

⁴ Ibid.

No	Requirement	Documents to be submitted
	country where the Tenderer is registered or residing, if the legislation of the respective country requires registration, licensing or certification of natural or legal persons in order to provide respective services.	a subcontractor whose share of work is equal to or exceeds 10% of the Framework agreement value) – a copy of an identification card or passport and certificate or similar document. - For a Tenderer (or a member of a partnership, a person on whose abilities a Tenderer relies to certify its compliance, a subcontractor whose share of work is equal to or exceeds 10% of the Framework agreement value) which is a legal person registered abroad (with its permanent place of residence abroad) – a copy of a valid registration certificate or a similar document issued by a foreign authority in charge of the registration, licensing or certification of legal persons in the country of their residence and <u>wherefrom at least the fact of registration, licensing or certification, information about shareholders, board or supervisory board members, beneficial owners, officials and procura holders, persons who are authorised to represent the Tenderer in operations in relation to a branch (if any) can be determined.</u> - If a proposals is submitted by a partnership, the Proposal <u>shall include an agreement of cooperation (or letter of intention to enter into such agreement) signed by all members on the participation in the procurement, which lists responsibilities of each of every partnership member</u> and a commitment to fulfil the Framework agreement in the respective area, <u>and which authorises one key member to sign the proposal and other documents, to receive and issue orders on behalf of the partnership members, and with whom all payments will be made.</u> - If the Proposal or any other document, including any agreement, is not signed by the legal representative of the Tenderer, members of the partnership, person on whose capabilities the Tenderer relies or sub-contractors, then a document certifying the rights of the persons who have signed the Proposal or any other documents, to represent the Tenderer is relying or a sub-contractor (powers of attorney, authorization agreements etc.) must be included.
2.	The representative of the Tenderer, or a member of a partnership, or a person on whose capacity Tenderer relies who has signed documents contained in the Proposal has the right of signature, i.e., it is an official having the right of signature or a person authorized by the Tenderer.	- 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 Tenderer relies who signs the Proposal. For a Tenderer (or a member of a partnership), a person on whose capacity Tenderer relies which is a legal 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 Tenderer relies, submits a power of attorney (original or a copy

No	Requirement	Documents to be submitted
		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. Economic and financial standing

No	Requirement	Documents to be submitted
1.	Tenderer's or all members of the partnership together (if the Tenderer is a partnership and confirms the <i>average</i> financial turnover jointly) <i>average (Updated, Procurement commission decision made on 5 October 2020, Session minutes No 3)</i> financial turnover within the last 3 (three) financial years (2017, 2018, 2019) is not less than 1 500 000,00 EUR (one million five thousand euros, zero cents) per year. In the event the <i>average (Updated, Procurement commission decision made on 5 October 2020, Session minutes No 3)</i> annual financial turnover of a limited partner of the limited partnership (within the meaning of The Commercial Law, Division X) exceeds its investment in the limited partnership, the <i>average (Updated, Procurement commission decision made on 5 October 2020, Session minutes No 3)</i> financial turnover shall be recognized in the amount of the investment in the limited partnership. In the event the Tenderer or a member of a partnership (if the Tenderer is a partnership) has operated in the market for less than 3 (three) financial years, the requirement shall be met during the Tenderer's actual operation period.	- Filled and signed Annex No 3 "Confirmation of Tenderer's financial standing" (by the Tenderer or each member of the partnership) or entity on whose capabilities the Tenderer is relying to certify its financial and economic performance and who will be financially and economically responsible for fulfilment of the Framework agreement). - Audited or self-approved (if the annual financial statement is not required by the law of the country of residence of the Tenderer) annual financial statements for financial years 2017, 2018, 2019, showing the turnover of the Tenderer or each member of the partnership on whose capacity Tenderer is relying to certify its financial and economic performance and who will be financially responsible for the fulfilment of the Framework agreement (if the Tenderer is a partnership), or other entity on whose capacity Tenderer is relying to certify its financial and economic performance and who will be financially responsible for the fulfilment of the Framework agreement. - If an application is submitted by a partnership or in case the Tenderer is relying on capabilities of other entity to certify its financial and economic performance, the Tenderer shall indicate the member of the partnership or such entity on whose capabilities the Tenderer is relying to certify its financial and economic performance and who will be financially and economically responsible for fulfilment of the contract including this information in the agreement of cooperation (or letter of intention to enter into such agreement) and in addition indicate it in the Annex 3. - If annual financial statement for financial year 2019 is not available yet, Tenderer shall submit other documents showing the annual financial turnover and values of the Tenderer for the financial year 2019. - For a limited partnership (within the meaning of the Commercial Law, Division X) - an additional document evidencing the amount of the investment by the limited partner (the partnership agreement or a document with a similarly binding legal effect). - If the previous 3 (three) reporting years of the Tenderer differ from the years specified in this

No	Requirement	Documents to be submitted
		Section 8.3.1 of the Regulations (2017, 2018, 2019), the financial turnover necessary must be indicated for the Tenderer's previous 3 (three) reporting years. - If the Proposal is submitted by a partnership, Tenderer shall indicate the member of the partnership on whose capacity Tenderer is relying to certify its financial and economic performance and who will be financially and economically responsible for fulfilment of the Contract including this information in the agreement of cooperation (or letter of intent to enter into agreement) stipulated in Section 8.2.1 of the Regulations. - If the Tenderer is relying on any other entity's capacity to certify its financial and economic performance and this entity will be financially and economically responsible for the fulfilment of the Contract, Tenderer along with the Proposal submits confirmation or agreement on cooperation and/or passing of resources to the Tenderer, signed between such entity and the Tenderer (please see the Section 9 of the Regulations for detailed information).
2.	The Tenderer and each member of the partnership (if the Tenderer is a partnership) on whose financial and economic capabilities the partnership is relying and who shall be financially and economically responsible for fulfilment of the procurement contract or entity on whose financial and economic capabilities the Tenderer is relying to certify its financial and economic performance and who shall be financially and economically responsible for fulfilment of the procurement contract shall have stable financial and economic performance, namely, in the last audited financial year liquidity ratio (<i>Current Assets divided by Short-term Liabilities</i>) shall be equal to or exceed 1 and shall have positive equity capital (<i>Total Assets minus Total Liabilities</i>).	- Filled and signed Annex No 3 "Confirmation of Tenderer's financial standing". - Audited or self-approved (if the audited annual financial statement is not required by the law of the country of residence of the Tenderer) annual financial statement for financial year 2019, showing the balance and calculation that proves liquidity ratio and positive equity. - If annual financial statement for financial year 2019 is not available yet, Tenderer shall submit other documents showing the annual financial turnover and values of the Tenderer for the financial year 2019. - If the Tenderer is a partnership, Tenderer shall indicate 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, including this information in the agreement of cooperation or letter of intent to enter into agreement or in any other similar document, signed by all parties involved and submits it along with the Proposal (please see Section 9 of the Regulations for detailed information). - If the Tenderer is relying on any other entity's capacity to certify its financial and economic performance and this entity will be financially and economically responsible for the fulfilment of the Contract, Tenderer along with the Proposal submits confirmation or agreement on cooperation and/or passing of resources to the Tenderer, signed

No	Requirement	Documents to be submitted
		between such entity and the Tenderer (please see Section 9 of the Regulations for detailed information).

8.4. Technical and professional ability

No	Requirement	Documents to be submitted
8.4.1.1.	The Tenderer within the previous 5 (five) years has gained experience in supply of temporary professional staff at least for 5 (five) clients involved in infrastructure project management, where at least 1 (one) shall be a railway project, recruiting for engineering, construction and project management related disciplines ranging throughout the project lifecycle.	- Filled and signed Annex No 4 „Experience of the Tenderer” containing general description and signed references from the clients.
8.4.1.2.	The Tenderer should propose for the provision of services a Project Manager.	
8.4.1.3.	Project Manager meeting the following requirements:	
	a) Bachelor's degree or equivalent;	- A certified copy of diploma proving relevant level of education.
	b) Within last 3 (three) years until the date of submission of the Proposal has worked as a project manager for temporary professional staff recruitment projects for 3 (three) clients involved in infrastructure project management at least 1 (one) shall be a rail project, recruiting for engineering, construction and project management related disciplines ranging throughout the project lifecycle.	- Filled and signed Annex No 5 „Experience of the Project Manager”.
	c) Excellent knowledge of English (at least C1 Level verbal and presentation and written English language skills – based on Common European Framework of Reference for Languages).	- Self-declared information about language skills filled in Annex No 5 „Experience of the Project Manager” and signed by the Project Manager.

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

information in the Proposal required to confirm clearly the compliance with qualification requirements set in the Regulations.

- 8.6. Notices and other documents mentioned in the Section 8.1 of the Regulations 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 mentioned in the Section 8.1 of the Regulations 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.
- 8.7. If the documents with which a Tenderer registered or permanently residing abroad can certify its compliance with the requirements of Section 8.1 of the Regulations are not issued or these documents are insufficient, such documents can be replaced with an oath or, if the regulatory enactments of the country in question do not allow for an oath, - with a certification by the Tenderer or by another person mentioned in Section 8.1 of the Regulations before a competent executive governmental or judicial institution, a sworn notary or a competent organization of a corresponding industry in their country of registration (permanent residence). Regarding all documents submitted based on an oath given under law (e.g. sworn-statements, declarations on oath etc.), the Tenderer must provide (indicate) legal grounds to law or enactment in accordance with such statements or declarations on oath have been given.
- 8.8. If the Tenderer complies with any of the exclusion grounds mentioned in Section 8.1 of the Regulations (except Section 8.1.2, 8.1.10 – 8.1.13 of the Regulations), the Tenderer indicates this fact in Annex No 2 "Application for participating in the Open competition".
- 8.9. The Tenderer to certify that it complies with the selection criteria for Tenderers may submit the European single procurement document (hereinafter - ESPD) as initial proof. This document must be submitted electronically and for each person upon whose capacity Tenderer relies to certify its compliance with the requirements stipulated in the Regulations, and for each of their indicated subcontractors the share of whose work is equal to or exceeds 10 % (ten percent) of the value of the Contract but if the Tenderer is a partnership – for each member thereof. To fill in the ESPD the Tenderer uses the "ESPD.xml" file at the Internet webpage <http://espd.eis.gov.lv/>.

9. RELIANCE ON THE CAPACITY OF OTHER PERSONS

- 9.1. For the fulfilment of the specific contract, to comply with the selection requirements for the Tenderers relating to the economic and financial standing and technical and professional capacity, 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 6 "Entities on whose capabilities the tenderer relies to certify its compliance with qualification requirements" 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 Tenderer will in fact use the resources of such person upon whose capacity it relies.
 - 9.1.3. The Contracting authority shall require joint and several liability for the execution of the Contract between the:
 - 9.1.3.1. Tenderer and a person on whose capacity Tenderer is relying to certify its financial and economic performance and who will be financially and economically responsible for fulfilment of the Contract;

9.1.3.2. Each member of the partnership (if the Tenderer is a partnership) on whose capacity Tenderer is relying and who will be financially and economically responsible for fulfilment of the Contract.

- 9.2. The Contracting authority shall evaluate the person on whose capacity Tenderer to whom the rights to conclude the Contract should be assigned is relying according to Section 8.1.1 - 8.1.8 and Section 8.1.12 - 8.1.13 of the Regulations. In case such person will comply with any of the exclusion grounds which are mentioned in Section 8.1.1- 8.1.8, 8.1.12 and 8.1.13 of the Regulations the Contracting authority shall request Tenderer to change such person. If the Tenderer shall not submit documents about another person which complies with the selection criteria within 10 (ten) Working Days from the date when the request was issued or sent to the Tender, the Contracting authority shall exclude such Tenderer from further participation in the Open competition.

10. SUBCONTRACTING

- 10.1. The Tenderer shall indicate in the Proposal all subcontractors of the Tenderer by filling in the table which is attached as Annex No 7 "Subcontractors".
- 10.2. The Contracting authority shall evaluate the subcontractor of the Tenderer to whom the rights to conclude the Contract should be assigned according to Sections 8.1.2 – 8.1.8 and Sections 8.1.12 to 8.1.13 of the Regulations. In case such subcontractor whose share of services is equal to or exceeds 10% of the Contract price, will comply with any of the exclusion grounds which are mentioned in Section 8.1.2 – 8.1.8, 8.1.12 and Section 8.1.13 of the Regulations, the Contracting authority shall request Tenderer to change such subcontractor. If the Tenderer shall not submit documents about another subcontractor which complies with the selection criteria within 10 (ten) Working Days from the date when the request was issued or sent to the Tender, the Contracting authority shall exclude such Tenderer from further participation in the Open competition.

11. FINANCIAL PROPOSAL

- 11.1. The Financial proposal shall be submitted as part of Annex No 8 „Financial proposal“ of open competition.
- 11.2. The tenderer shall propose percentage (%) for the temporary staff supplies services as administrative charge for temporary staff services provided by the temporary staff services provider. The percentage (%) as Administrative charge will be applied from the amount of the daily rate, which will be determined for the temporary staff. Percentage fee must be the same during Framework agreement for all services and valid throughout the framework agreement.
- 11.3. Price for conversion from temporary staff to permanent staff shall be specified in EUR, except Value Added Tax (hereinafter-VAT).
- 11.4. 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.
- 11.5. The price for conversion from temporary staff to permanent staff shall be fixed for all the term of the fulfilment of the Framework agreement and are not recalculated, except in cases stipulated in the Contract (if any).

12. CONTENTS AND FORM OF THE PROPOSAL

- 12.1. Proposal must be submitted electronically in E-Tenders subsystem of the Electronic Procurement System in accordance with the following options for the Tenderer:
- 12.1.1. by using the available tools of E-Tenders subsystem, filling the attached forms of the E-Tenders subsystem for Procurement procedure;
- 12.1.2. by preparing and filling the necessary electronic documents outside the E-Tenders subsystem and attaching them to relevant requirements (in this situation the Tenderer takes responsibility

for the correctness and compliance of the forms to requirements of documentation and form samples);

- 12.1.3. by encrypting electronically prepared Proposal outside of E-Tenders subsystem with data protection tools provided by third parties, and protection with electronic key and password (in this situation, Tenderer takes responsibility for the correctness and compliance of the forms to requirements of documentation and form samples as well as ensuring capability to open and read the document by the Contracting authority).

12.2. During preparation of the Proposal, Tenderer shall respect the following requirements:

- 12.2.1. Each document mentioned in Section 12.3 of the Regulations must be filled separately, each in a separate electronic document in line with forms attached to Procurement on Contracting authority's profile in E-Tenders subsystem (<https://www.eis.gov.lv/Procurement/43400>) in a Microsoft Office 2010 (or later) format and attached to the Procurement;

- 12.2.2. Upon submission, the Tenderer signs the Proposal with secure electronic signature and time-stamp or with electronic signature provided by Electronic Procurement System. The Tenderer can use secure electronic signature and time-stamp and sign Application form, Financial proposal and other documents separately. Proposal (its parts, if signed separately) are signed by authorized person, including authorization document (e.g. power of attorney).

12.3. **Proposal shall contain the following parts and documents/forms:**

- 12.3.1. Application for participating in the Open competition in accordance with Annex No 2;

- 12.3.2. Financial proposal in accordance with Annex No 8;

- 12.3.3. Confirmation of Tenderers financial standing in accordance with Annex No 3;

- 12.3.4. Description of the Tenderers experience (prepared in accordance with requirements set in Section 8.4.1.1 and related documents (references etc);

- 12.3.5. Description of the Experience of the Project Manager (prepared in accordance with requirements set in Section 8.4.1.3 (a), (b), (c) of Regulation and Annex No 5;

- 12.3.6. Information and documents related to persons on whose capabilities the Tenderer relies to certify its compliance with qualification requirements (prepared in accordance with requirements set in Section 8 and 9 and Annex No 6) and signed cooperation agreement (letter of intention or any other similar documents);

- 12.3.7. Technical Proposal (prepared in accordance with requirements set in Section 18.3);

- 12.3.8. Proof of Tenderers representation or authorisation (e.g. power of attorney or registration certificate) and stating the authorisations to sign, submit and otherwise manage the proposal (in accordance with requirements set in Section 8);

- 12.3.9. For a company registered outside Latvia, a document confirming the right of signature (representation) of the representative of the Tenderer, or a member of a partnership, or a person on whose abilities a Tenderer relies, or subcontractor. If the Tenderer, or a member of a partnership, or a person on whose abilities a Tenderer relies, or subcontractor submits a power of attorney there shall be additionally submitted documents confirming that the issuer of the power of attorney has the right of signature (representation) (in accordance with requirements set in Section 8);

- 12.3.10. The Tenderer in order to certify that it complies with the selection criteria indicated in Section 8 of Regulation, may submit the European single procurement document as initial proof. This document must be submitted electronically, and for each person upon whose capabilities the Tenderer relies, and for each of their indicated subcontractors, the share of whose work is equal to or exceeds 10% (ten percent) of the value of the Contract, but if the Tenderer is a partnership – for each member thereof. In order to fill in the European single procedure document the Tenderer uses the „ESPD.xml” file at the Internet webpage <http://espd.eis.gov.lv> (Electronical procurement system Latvia).

12.4. The Proposal may contain original documents or their derivatives (e.g. copies). In the Proposal or in reply to a request of the Procurement commission 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 of the Republic of Latvia (<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 of the Republic of Latvia (<https://likumi.lv/ta/en/en/id/155411-document-legalisation-law>). Public documents issued abroad can be self-approved by the Tenderer, if it is applicable by the legislation of the respective country. When submitting the Proposal, the Tenderer has the right to certify the correctness of all submitted documents' derivatives and translations with one certification.

- 12.5. The Proposal must be signed by a person who is legally representing the Tenderer or is authorized to represent the Tenderer in this Open competition.
- 12.6. The Tenderer shall prepare Proposal in electronic form using the E-Tenders system available at <https://www.eis.gov.lv/Procurement/43400>.
- 12.7. The Proposal must be submitted in a written form in English or Latvian (if submitted in Latvian, translation in English of the Proposal must be provided together with the Proposal).

13. ENCRYPTION OF THE PROPOSAL INFORMATION

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

14. SUBMISSION OF A PROPOSAL

- 14.1. The Proposal (documents referred to in the Section 12.3 of the Regulations) shall be submitted electronically using the E-Tenders system available at <https://www.eis.gov.lv/Procurement/43400>

by 29 October 2020 till 15:00 o'clock (Time Zone EEST (Eastern European Wintertime), Riga (Latvia))).

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

15. OPENING OF PROPOSALS

- 15.1. The Proposals will be opened on the E-Tenders system on **29 October 2020 starting at 15:00 o'clock (Time Zone EEST (Eastern European Wintertime), Riga (Latvia))** during the opening session. On the E-Tenders system it is possible to follow the opening of submitted Proposals online.
- 15.2. The Proposals are opened by using the tools offered by E-Tenders system. The proposed price and other information that characterizes the Proposal (excluding confidential information) shall be published in the E-Tenders system.
- 15.3. The information regarding the Tenderer, the time of Proposal submission, the proposed price and other information that characterizes the Proposal is generated at the opening of the Proposals by E-Tenders system and written down in the Proposal opening sheet which shall be published on E-Tenders system and Contracting authority's webpage.

16. VERIFICATION OF PROPOSALS FOR COMPLIANCE

- 16.1. Following of the opening of Proposals Procurement commission shall proceed with the verification of compliance of Proposals received and opened in accordance with the opening procedure.

- 16.2. The Procurement commission verifies whether the submitted Proposals comply with the requirements stipulated in Section 12 of the Regulations and whether all required information and documents are submitted and selects for further evaluation the compliant Proposals.
- 16.3. In accordance with Paragraph 16 of the Cabinet regulations No 107 of 28 February 2017 "Procedure of Procurement Procedures and Design Contests" Procurement Commission is entitled to carry out the eligibility check only to the Tenderer to whom the procurement contract should be awarded.

17. VERIFICATION OF FINANCIAL PROPOSALS

- 17.1. The Procurement commission verifies whether Tenderers have completed Annex No 8 "Financial proposal" in accordance with the requirements stated in Section 11 of Regulations.
- 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 proposed percentage limit and proposed prices.
- 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, 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. FRAMEWORK AGREEMENT AWARD CRITERIA

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

	Evaluation criteria:	Maximum points:
18.2.1.	Financial proposal , which will be evaluated in accordance with Section 18.4.2.	100

- 18.3. In case several Tenderers will obtain equal number of points, the procurement Commission will invite representatives of those Tenderers and organize a draw. In situation, when representatives of Tenderers choose to not be present at the draw, procurement commission will carry out the draw without representatives of Tenderers present.
- 18.4. **Evaluation of the Financial Proposal**
 - 18.4.1. The Proposal selection criterion is the most economically advantageous proposal, according to the evaluation methodology described in this Section below.
 - 18.4.2. The economically most advantageous proposal shall be the Proposal which will receive the highest sum of scores for the following criteria:

No	Services	Maximal amount of points	Calculation methodology
1.	Percentage (%) for assignments up to 6 (six) months	40	$Score = \frac{\text{Lowest proposed percentage}}{\text{Proposed percentage under evaluation}} \times 40$
2.	Percentage (%) for assignments longer than 6 (six) months	40	$Score = \frac{\text{Lowest proposed percentage}}{\text{Proposed percentage under evaluation}} \times 40$
3.	Price for conversion from temporary staff to permanent staff	20	$Score = \frac{\text{Lowest proposed price}}{\text{Proposed price under evaluation}} \times 20$
Total		100	

18.4.3. The procurement commission shall estimate the final score for each financial proposal by summing up all points received for the financial proposal.

18.4.4. The Contract shall be awarded to the Tenderer whose Proposal receives the highest score.

19. TENDERER CHECK PRIOR TO MAKING THE DECISION REGARDING THE CONCLUSION OF THE FRAMEWORK AGREEMENT

- 19.1. Prior to making the decision about assigning rights to conclude the Contract, 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 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), a subcontractor whose share of services is equal to or exceeds 10% of the Contract price or a person on whose capacity 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, 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 before the deadline, Procurement commission excludes the Tenderer from participation in the Open competition.
- 19.4. Change of persons on whose capacity Tenderer is relying to certify its compliance with the requirements or subcontractors whose share of services is equal to or exceeds 10% of the Contract price is performed in accordance with Sections 9.2 and 10.2 of the Regulations respectively.
- 19.5. In the event the Tenderer or partnership member (if the Tenderer is a partnership) fails to comply with requirements stipulated in Section 8.1 of the Regulations and has indicated this in the Proposal, upon Procurement commission's request it submits an explanation about the implemented measures in order to restore reliability and prevent occurrences of the same or similar violations in future, as well as attaches evidence which proves the implemented measures, such as but not limited to evidence about compensating damages, on cooperation with investigating authorities, implemented technical, organizational or personnel measures, an assessment of a competent authority regarding the sufficiency of the implemented measures etc. The Procurement commission assesses such information. If the Procurement commission deems the measures taken to be sufficient for the restoration of

reliability and the prevention of similar cases in the future, it makes the decision not to exclude the Tenderer from participation in the Open competition. If the measures taken are insufficient, Procurement commission makes the decision to exclude the Tenderer from further participation in the Open competition. If the Tenderer within the indicated time does not submit the requested information, Procurement commission excludes the Tenderer from participation in the Open competition.

20. DECISION MAKING, ANNOUNCEMENT OF RESULTS AND ENTERING INTO A FRAMEWORK AGREEMENT

- 20.1. The Procurement commission selects Tenderers in accordance with the set selection criteria for Tenderers, verifies the compliance of the Proposals with the requirements stipulated in the Regulation and chooses the proposal in accordance with the Framework agreement award criteria as described in Section 18. Up to the 3 (three) Tenderers whose Proposals shall receive the best score shall be selected.
- 20.2. Within 3 (three) Working Days from the date of decision about the Open competition results Procurement commission informs all Tenderers about the decision made by sending the information by post or electronically (including via the E-Tenders system) and keeping the evidence of the date and means of sending the information. The Procurement commission announces the name of the successful Tenderer, indicating:
 - 20.2.1. to the refused Tenderer - the reasons for refusing its Proposal;
 - 20.2.2. to the Tenderer who has submitted an eligible Proposal - the characterization of the successful Proposal and the relative advantages;
 - 20.2.3. the deadline by which the Tenderer may submit a complaint to the Procurement Monitoring Bureau regarding violations of the public procurement procedure.
- 20.3. If only 1 (one) Tenderer complies with all Tenderer selection requirements, Procurement commission prepares and includes in the Open competition report a justification of the fact that the set requirements for Tenderer selection are objective and commensurate. If the Procurement commission cannot justify that the set requirements for Tenderer selection are objective and commensurate, Procurement commission makes the decision to terminate the Procurement.
- 20.4. If the Procurement is terminated, Procurement commission within 3 (three) Working Days simultaneously informs all Tenderers about all the reasons because of which the Open competition is terminated and informs about the deadline within which a Tenderer may apply regarding the violations of the public procurement procedure to the Procurement Monitoring Bureau.
- 20.5. The Procurement commission when informing about the results has the right not to disclose specific/confidential information, if it may infringe upon public interests or if the Tenderer's legal commercial interests or the conditions of competition would be violated.
- 20.6. As soon as possible but not later than within 5 (five) Working Days from day when the decision about the results of the Open competition is taken, Procurement commission prepares a report on the Open competition and publishes it on the Contracting authority's profile in E-Tenders system's webpage <https://www.eis.gov.lv/Procurement/43400> and on Contracting authority's webpage <http://railbaltica.org/en/procurements>.
- 20.7. The selected Tenderer upon receiving the notification from Procurement commission must:
 - 20.7.1. within 5 (five) Working 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;
 - 20.7.2. within 10 (ten) days upon receiving the invitation - to sign the Framework agreement.
- 20.8. The Contract is concluded based on the selected Tenderer's Proposal and in accordance with Annex No 9 "Framework agreement".
- 20.9. The Procurement commission has the right to choose the next most economically advantageous proposal, if the Tenderer in the time stipulated by the Regulations:
 - 20.9.1. refuses to conclude a partnership contract or to establish the partnership in the cases and deadlines defined by the Regulations or in the cases and deadlines defined by the Regulations

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

20.9.2. refuses to conclude the Framework agreement or does not submit a signed Framework agreement within the deadlines defined in the Regulations.

- 20.10. In any of such a case mentioned in Section 20.9 of the Regulations Procurement commission is entitled to terminate this Open competition without selecting any Proposal or to select the next most economically advantageous proposal. For either of these decisions a written decision must be made.
- 20.11. Prior to making the decision regarding the conclusion of the Framework agreement with the next Tenderer, the Procurement commission assesses whether the next Tenderer is one market participant together with the initially selected Tenderer. If the next selected Tenderer is found to be one market participant together with the initially selected Tenderer or it does not comply with requirements set in the Section 20.7 of the Regulations, Procurement commission decides to terminate the Open competition without selecting any Proposal.

ANNEXES:

1. Technical specification on 7 (seven) pages;
2. Application form on 2 (two) pages;
3. Table „Confirmation of Financial standing” on 2 (two) pages;
4. Table „Experience of the Tenderer” on 1 (one) page;
5. Table „Experience of the Project Manager” on 2 (two) pages;
6. Table „Other entities on whose capacity Tenderer relies” on 1 (one) page;
7. Table „Subcontractors” on 1 (one) page;
8. Table „Financial proposal” on 1 (one) page;
9. Framework agreement on 35 (thirty-five) pages.

ANNEX NO 1: TECHNICAL SPECIFICATION

TECHNICAL SPECIFICATION FOR THE OPEN COMPETITION

"Supply of temporary professional staff for RB Rail AS"

(ID NO RBR 2020/11)



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

Riga

2020

1. INTRODUCTION

This Terms of Reference identifies the purpose, deliverables and performance requirements for implementation of the services associated with the source and supply of Temporary Professional Staff.

Temporary Professional Staff are individuals who are not engaged as an employee or on the payroll of the Principal and who, subject to the approval of the Principal, are seconded by the Contractor for placement on assignment with the Principal.

This Supply of Temporary Professional Staff Terms of Reference sets forth the requirements that the Contractor will meet in providing the services.

2. BACKGROUND

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:

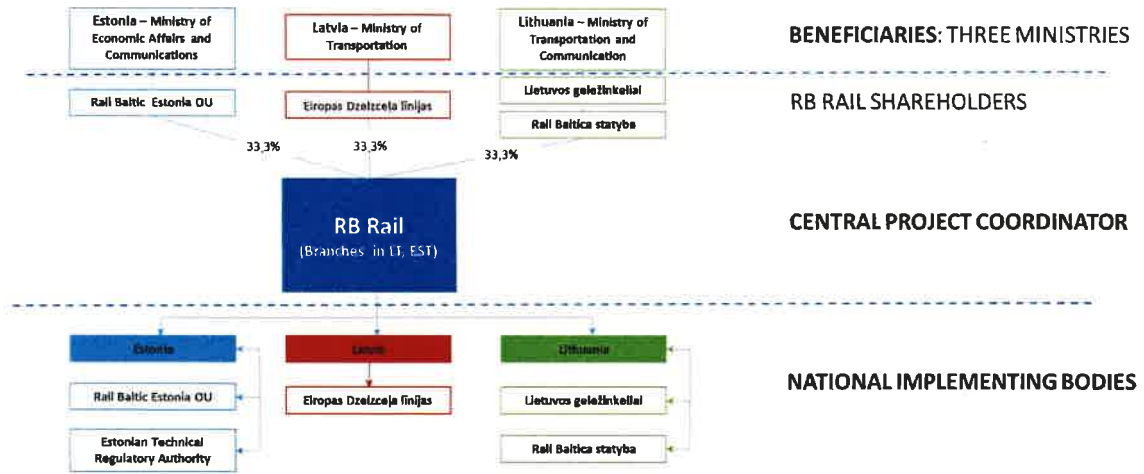
- to become a powerful catalyst for sustainable economic growth in the Baltic States;
- to set a new standard of passenger and freight mobility;
- to ensure a new economic corridor will emerge;
- sustainable employment and educational opportunities;
- an environmentally sustainable infrastructure;
- 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/>.

In order to deliver this major, complex project the Client needs to build an organisation of experienced professional staff. In general, this will be achieved through the recruitment of permanent staff both locally within the Baltics, and internationally. However, there will be occasions where it is not possible to recruit staff with the required expertise in the timeframe needed for the project. In situations it is planned to recruit temporary staff to work within the clients organisation on a short term basis to ensure the continues efficient delivery of the project. Short term staff may also be required to provide additional resourcing during peaks in the project delivery. In these situations, it would not be economic to recruit permanent staff, so short-term staff will be utilised.

The duration of the short-term assignments will vary on a case by case basis but is expected to be between 3 months and 12 months. The assignment durations need to be flexible and will be adjusted based on the needs of the project. For example, if a permanent person is recruited for a role that is being provided Temporary Professional Staff then duration of the assignment for the Temporary Professional staff may be reduced.

3. OVERVIEW OF THE SERVICES

The Contractor will provide a comprehensive, efficient and cost-effective solution to manage and deliver Temporary Professional Staff, for roles identified by the Principal, by sourcing and supplying Temporary Professional Staff; the administration of Temporary Professional Staff's assignments; payments to Temporary Professional Staff; and ensuring all local regulations and laws in regard to eligibility to work in the region are met.

4. SCOPE OF SERVICES

The Services may cover any and all professional staff necessary for the successful delivery of the project. This may include, but is not limited to the following:

Discipline	Roles
Engineering	Track Engineer; Structures Engineer; Building Engineer; Geotechnical Engineer; Signaling Engineer; Electrification Engineer; Roads Engineer; RAMS Engineers; Systems Assurance Engineer; Requirement engineer; Systems integration engineer; Software Engineer; Data Analyst.
Project Management	Project Manager; Deputy Project Manager; Contracts Manager; Deputy Contracts manager.
Project Controls	Project controls manager; Planning Engineer;

	Cost Manager; Risk manager; Change Manager; Reporting Manager; Stakeholder Manager.
Health, safety quality and Environment	Health and Safety Manager; Quality Manager; Quality Auditor; Environmental Manager.

5. DESCRIPTION OF SERVICES

The Contractor shall directly provide the Principal with Temporary Professional Staff. Unless otherwise agreed, all services performed by Temporary Professional Staff shall be performed at the Principal business premises or on project sites in the Baltic states, under the Principal supervision, and Temporary Professional Staff shall perform the tasks assigned by the Contractor.

Temporary professional staff shall act as if they are members of the Principal staff, and work in accordance with the policies, procedures and regulations of the Principal.

The Principal shall provide to the Contractor details of the role which the Principal seeks to fill including the following:

- a) the details of the role to be performed and associated project details as required
- b) the experience, training, qualifications, authorisations and regulatory requirements which the principal considers necessary or which are required by law or any professional body for the Temporary Professional Staff to possess in order to work the position;
- c) the date the Principal requires the Temporary Professional Staff to commence the assignment;
- d) the duration or likely duration of the assignment;
- e) the location and hours of work;
- f) any risks to health or safety known to the principal and what steps the Principal has taken to prevent or control such risks; and
- g) the minimum/ maximum rate of pay, expenses and any other benefits that would be offered.

6. PREQUALIFICATION OF TEMPORARY PROFESSIONAL STAFF

The Contractor shall engage and be responsible to maintain a completed verification of Temporary Professional Staff identity and employment eligibility as applicable by law in Latvia, Lithuania and Estonia. The Contractor shall perform reference, background and other checks or screenings, as designated by the Client and subject to the applicable law of the jurisdiction in which Services are to be provided.

7. SECURITY CLEARANCE

The Temporary Staff shall meet to security clearance requirements specified by the principal in Assignment Order. The Principal has the right to perform a security compliance check of the Temporary Staff before it is allowed to perform their work tasks. The Principal have a right to demand dismissal of Temporary Staff non-compliance with the security clearance requirements stipulated in Assignment Order. Such Principals decision is un-contestable.

8. SUPPLIER DELIVERABLES

The Contractor shall be responsible for the engagement, compensation, discipline, and removing or reassigning Temporary Professional Staff assigned to perform work for the Principal from any project or assignment with the Principal. Prior to placement of any Temporary Professional Staff on assignment with the Principal, the Supplier shall require each such Temporary Professional Staff to execute any pre-engagement documents required by the Principal.

Temporary Professional Staff may need to have access to areas which are restricted to certain Principal employees, customers, visitors and agencies, provided Temporary Professional Staff have met the requirements as set forth by the Principal in accordance with the Principal standards for access to such areas. The Principal agrees that Temporary Professional Staff shall not be allowed onto Principal property or into any of Principal facilities unless prior approval is given by the Principal.

The Contractor shall provide all required administration and control in regard to compliance of a Temporary Professional Staff to undertake assignments for the Principal in country of engagement/service provision.

The split of responsibilities between the Principal and the Contractor is summarized in the following table:

Service Provision	Description of deliverable
Administration	Contractor to administer all requirements in support of source and supply of Temporary Professional Staff to meet the Principal requirements as specified.
Immigration:- Visa(s); Work Permit(s)	Contractor to obtain all Work permits and visas necessary as required.
Background Checks	Contractor to carry out all required background checks prior to submission of candidates for consideration.
Mobilisation & Demobilisation	Contractor responsible for administration of all requirements associated with both the mobilisation and demobilisation of Temporary Professional Staff.
Taxes	Contractor to Process all documentation/administration in regard to ensuring local Tax compliance.
Accommodation	Contractor to arrange accommodation where required.
Transport	If needed to carry out the Services, then will be provided by the Principal.

Personal Protective Equipment (work boots, safety vests, safety helmets and eyewear, gloves)	The Principal shall advise of all PPE requirements and confirm with the Contractor items to be provided by the Principal and those to be provided by the Supplier per role.
Orientation	The Contractor shall provide local orientation to Temporary Professional Staff on arrival in-country and in preparation for job role to include geographic, health & safety and Principal policies.
Welfare	Contractor responsible for ongoing welfare support to Temporary Professional Staff.

9. TERMINATION OF TEMPORARY PROFESSIONAL STAFF

Irrespective of any indicated duration of any assignment for Temporary Professional Staff, the Principal may choose, at their absolute discretion, to terminate an assignment. The Principal is not obliged to give the Contractor any reason or justification for the termination of the assignment.

The Principal shall give the Contractor one month's notice of the termination of the assignment. The Contractor will not be entitled to any additional compensation in the case where an assignment is terminated earlier than anticipated.

Upon completion or termination of any assignment all property of the Principal shall be returned to the Principal.

ANNEX NO 2: APPLICATION

APPLICATION FOR PARTICIPATION IN THE OPEN COMPETITION "SUPPLY OF TEMPORARY PROFESSIONAL STAFF FOR RB RAIL AS" (ID NO RBR 2020/11)

[FORM OF THE TENDERERS COMPANY]

2020.

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

By submitting the Proposal, the Tenderer hereby:

1. Confirms participation in the Open competition "Supply of temporary professional staff for RB Rail AS", ID No RBR 2020/11.
2. *(Only if applicable)*: Informs that the following entities and/or persons comply with the following exclusion grounds:

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

3. Confirms that, if the Tenderer will be awarded the Contract, Tenderer will provide the services in accordance with the requirements of the Annex No 1 "Technical specification".

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 9 „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. Agrees that the Contracting authority reserves itself the right to reject any or all Proposals and cancel the procurement process before entry into Contract on the grounds specified in the Regulations or the law;
7. Guarantees that all information and documents provided are true;
8. **Confirms⁵ that meets the criteria of (please indicate by ticking relevant box):**

☐ a small ☐ medium ☐ other

sized enterprise⁶ as defined in the Article 2 of the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprise.⁷

Signature: _____

Date: _____ *[date of signing]*

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

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

(DOCUMENT OF REPRESENTATION RIGHTS ENCLOSED)

⁵ Tenderer must indicate size of enterprise for each member of the partnership, if the Tenderer is a partnership.

⁶ 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.

⁷ 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

ANNEX NO 3: CONFIRMATION OF FINANCIAL STANDING

"SUPPLY OF TEMPORARY PROFESSIONAL STAFF FOR RB RAIL AS"

(ID NO RBR 2020/11)

1. Section 8.3.1 of the Regulations

Tenderer's or all members of the partnership together (if the Tenderer is a partnership and confirms the *average (Updated, Procurement commission decision made on 5 October 2020, Session minutes No 3)* financial turnover jointly) *average (Updated, Procurement commission decision made on 5 October 2020, Session minutes No 3)* annual financial turnover within the last 3 (three) financial years, i.e. 2017, 2018, 2019 is not less than 1 500 000,00 EUR (one million five thousand euros and zero cents) per year.

In the event the *average (Updated, Procurement commission decision made on 5 October 2020, Session minutes No 3)* annual financial turnover of a limited partner of the limited partnership (within the meaning of the Commercial Law, Division X) exceeds its investment in the limited partnership, the *average (Updated, Procurement commission decision made on 5 October 2020, Session minutes No 3)* financial turnover shall be recognized in the amount of the investment in the limited partnership.

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

No	Year	Total Turnover in EUR	Notes
The Tenderer or member of the partnership (if the Tenderer is a partnership) on whose capacity Tenderer is relying to certify its financial and economic performance (Section 8.3.1 of the Regulations) and who will be financially and economically responsible for fulfilment of the Contract or other entity on whose capacity Tenderer is relying (if the Tenderer is relying on other entity's capacity) to certify its financial and economic performance and who will be financially and economically responsible for fulfilment of the Contract:			
Name of the Tenderer/member of a partnership/other entity			
1.	2019		
2.	2018		
3.	2017		
<i>Average annual turnover within the last 3 (three) financial years (Updated, Procurement commission decision made on 5 October 2020, Session minutes No 3)</i>			

2. Section 8.3.2 of the Regulations

The Tenderer and each member of the partnership (if the Tenderer is a partnership) on whose capacity Tenderer is relying to certify its financial and economic performance and who will be financially and economically responsible for the fulfilment of the Framework agreement and other entity on whose capacity Tenderer is relying to certify its financial and economic performance and who will be financially and economically responsible for the fulfilment of the Framework agreement, shall have stable financial and economic performance, namely, in the last financial year (2019) liquidity ratio (current assets divided by short-term liabilities) shall be equal to or exceed 1 (one) and shall have positive equity.

Name of the Tenderer/member of partnership/other entity*

Financial information from the Tenderer's financial statement used to calculate liquidity ratio and equity*	Year 2019**
Current assets	
Total assets	
Short term-liabilities	
Total liabilities	

**Please continue and provide information regarding each entity to which this requirement applies. If value of assets or liabilities have been calculated from different parts Tenderer's financial statement, Tenderer must provide explanation how the calculation been made.*

***If the previous reporting year of the Tenderer differ from the year specified in Section 8.3.2 of the Regulations (2019), the financial information necessary must be indicated for the Tenderer's previous year.*

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

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

[date of signing] _____

[name and position of the representative of the Tenderer] _____

ANNEX NO 4: EXPERIENCE OF THE TENDERER

DESCRIPTION OF THE TENDERER'S EXPERIENCE FOR THE OPEN COMPETITION

"SUPPLY OF TEMPORARY PROFESSIONAL STAFF FOR RB RAIL AS"

(ID NO RBR 2020/11)

No	Description of the services	Date of commencement and completion of services provided (experience obtained) (month/year -- month/year)	Name of the Contracting Authority (Client)	Client, information (name of representative, phone, e-mail) ⁸	contact information for references
1.					
2.					
3.					
[...]					

Annexes attached by the Tenderer on its own discretion: (Feedback letters, other documents which proves successful delivery of the services and completion of the contract *(if possible)*).

Signature [signature of the representative of the Tenderer]: _____

Date: _____ [date of signing]

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

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

⁸ In case of doubt, the Contracting authority has the right to contact the Client to verify that the services specified complies with the requirement set in Section 8.4.1.1 of the Regulations.

ANNEX NO 5: EXPERIENCE OF THE PROJECT MANAGER

"SUPPLY OF TEMPORARY PROFESSIONAL STAFF FOR RB RAIL AS" (ID NO RBR 2020/11)

EDUCATION

No	Educational institution	Period of studies (month/year – month/year)	Obtained degree (-s)
1.			
2.			
[..]			

EXPERIENCE

For Project Manager mentioned in Section 8.4.1.3 (a), (b), (c) of the Regulations

No	Client/ employer, client's/ employer's contact information for references (name of the representative, phone, e-mail) ⁹	Period of provision of services/ period of employment (month/year – month/year)	Project Manager position in the Project/ Company	Description of the services/ duties
1.				
2.				
[..]				

ENGLISH LANGUAGE SKILLS¹⁰

⁹ In case of doubt, the Contracting authority has the right to contact the Client to verify that the services specified complies with the requirements set in Section 8.4.1.3 (a), (b), (c) of the Regulations.

¹⁰ Language skill level is based on Common European Framework of Reference for Languages (see <http://europass.cedefop.europa.eu/resources/european-language-levels-cefr>)

Understanding		Speaking		Writing
Listening	Reading	Spoken interaction	Spoken production	
Enter level	Enter level	Enter level	Enter level	Enter level

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

I confirm that I have consented that my candidature is proposed in the Open competition "Supply of temporary professional staff for RB Rail AS", ID No RBR 2020/11.

I confirm that in case the Tenderer **[name of the tenderer or members of the partnership]** will conclude the Framework agreement as the result of the Open competition I will participate as **Project Manager** in the execution of the Framework agreement.

[date of signing]

[signature]

[name of the Project Manager]

ANNEX NO 6: ENTITIES ON WHOSE CAPABILITIES THE TENDERER RELIES TO CERTIFY ITS COMPLIANCE WITH QUALIFICATION REQUIREMENTS

**“SUPPLY OF TEMPORARY PROFESSIONAL STAFF FOR RB RAIL AS”
(ID NO RBR 2020/11)**

No	Name of the entity (registration No., legal address)	Description of the capabilities the Tenderer relies to certify its compliance with qualification requirements
1		
2		
[..]		

Signature [*signature of the representative of the Tenderer*]: _____

Date: _____ [*date of signing*]

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

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

ANNEX NO 7: SUB-CONTRACTORS

"SUPPLY OF TEMPORARY PROFESSIONAL STAFF FOR RB RAIL AS" (ID NO RBR 2020/11)

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

9. We meet the criteria of (please mark):

☐ a small ☐ medium ☐ other

sized enterprise¹¹ as defined in the Article 2 of the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprise.¹²

Signature [signature of the representative of the Tenderer]: _____

Date: _____ [date of signing]

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

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

¹¹ 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.

¹² 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

ANNEX NO 8. FINANCIAL PROPOSAL

„Supply of temporary staff for RB Rail AS”, Id No RBR 2020/11

The Tenderer [_____ *name of the Tenderer*] offers to deliver services in accordance with all rules of Regulations and all its Annexes.

No	Item	Percentage (%)
1.	Percentage (%) for assignments up to 6 (six) months*	
2.	Percentage (%) for assignments longer than 6 (six) months*	
3.	Price for conversion from temporary staff to permanent staff	EUR excl. VAT

By submitting its Financial proposal, the Tenderer:

- 1) confirms that it understands that in case the Tenderer is awarded with the Framework agreement signing rights, Framework agreement will be concluded for the total Framework agreement value 5 500 000,00 M EUR excluding VAT, and this value shall not be exceeded.
- 2) confirms that while preparing its Financial proposal, all rules of Section 11 of the Regulations are considered and accepted.

*** The Tenderer shall propose percentage (%) for the temporary staff supplies services as Administrative charge for temporary staff services. The percentage (%) as Administrative charge will be applied from the amount of the daily rate, which will be determined for the temporary staff. Percentage fee must be the same during Framework agreement for all services and valid throughout the Framework agreement.**

Signature: _____

Date: _____ [date of signing]

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

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

FRAMEWORK AGREEMENT
ON
THE SUPPLY OF TEMPORARY PROFESSIONAL STAFF

between

RB Rail AS

and

[●],

Contract registration number **[●],**

CEF¹³ Contract No INEA/CEF/TRAN/M201[●],/[●], **[●],**

Procurement procedure identification No **RBR 2020/11**

Riga

Dated [●], [●], 202[●],

¹³ Grant Agreement under the Connecting Europe Facility

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FRAMEWORK AGREEMENT NO [●]
ON THE SUPPLY OF TEMPORARY PROFESSIONAL STAFF

This Framework agreement (the "Agreement"), together with all Annexes thereto, is entered into in Riga, by and between:

RB Rail AS, a joint stock company registered in the Latvian Commercial Register, registration No 40103845025, legal address at Krišjāņa Valdemāra iela 8-7, Riga, LV-1010, Latvia (the "Principal"), represented by Management Board Member [●] acting on the basis of the Regulations on Representation Rights dated 20 July 2020, on the one side

and

[●], a [●] company registered in the [●], registration No [●], legal address at [●] (the "Contractor"), represented by [●][●] acting on the basis of [●] on the other side

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

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) RB Rail has organised a procurement procedure "Supply of temporary professional staff for RB Rail AS" (identification No RBR 2020/11) (the "Procurement Procedure");
- (C) In the Procurement Procedure the Contractor's tender proposal (the "Contractor's Proposal"; enclosed to this Agreement as *Annex G: Contractor's Proposal*) as well as the tender proposals of [●] ([●]) other contractors (the "Other Contractors") - [●], registration No [●], registered address at [●]; [●], registration No [●], registered address at [●]; [●], registration No [●], registered address at [●] were selected for entering into framework agreement, with the Contractor's and Other Contractors offered Administrative Charge for the Services being as follows:
 - 1. [●],
 - 2. [●],
 - 3. [●],
- (D) This Agreement is co-financed from the Connecting Europe Facility (CEF), CEF Contract No INEA/CEF/TRAN/M201[●]/[●], Activity [●], Action No: [●], furthermore considering the term of this Agreement it may also be co-financed from other CEF Contracts and/or Activities in the future.

Section I. Definitions and Interpretation

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

- 1.2.3 References to a treaty, directive, regulation, law or legislative provision shall be construed, at any particular time, as including a reference to any modification, extension or re-enactment of the respective treaty, directive, regulation, law or legislative provision at any time then in force and to all subordinate legislation enacted from time to time.
- 1.2.4 In the event there arises a conflict between provisions of the Agreement, the last provision to have been written chronologically shall take precedence.
- 1.2.5 Any reference in this Agreement to a Person acting under the direction of another Person shall not include any action that is taken in contravention of any Applicable Law or Standards, unless the relevant Person can demonstrate that an explicit instruction or direction was given to take the relevant action.
- 1.2.6 Unless expressly stated to the contrary, any reference in this Agreement to the right of consent, approval or agreement shall be construed such that the relevant consent, approval or agreement shall not be unreasonably delayed or withheld. The Parties agree and acknowledge as follows:
 - 1.2.6.1 neither Party shall be required to seek or apply for any consent, approval or agreement by any Person which would place the respective Party in breach of the Applicable Law or any Good Industry Practice; and
 - 1.2.6.2 nothing in this Agreement shall require the Principal to give or procure the giving of any consent or approval which would be contrary to the protection, safety and efficient operation of the Railway and the Project.
- 1.2.7 A reference to "writing" shall include an e-mail transmission and any means of reproducing words in a tangible and permanently visible form.
- 1.2.8 The words "include" and "including" are to be construed without limitation.
- 1.2.9 Unless indicated otherwise, all references to "days" shall mean calendar days, but "Business Days" shall mean any day except any Saturday, any Sunday and any day which is a legal holiday in the Republic of Latvia.
- 1.2.10 The words in this Agreement shall bear their natural meaning, except for any Definitions in accordance with *Annex A: Definitions and common terms*
- 1.3 **Order of Precedence.** In the event of any discrepancy or inconsistency between the documents forming part of this Agreement, the following order of precedence shall apply:
 - 1.3.1 this Agreement;
 - 1.3.2 Explanations (clarifications) of the Procurement Procedure documentation;
 - 1.3.3 Procurement Procedure documents with the annexes (including *Annex B: Technical Specifications*);
 - 1.3.4 Clarifications of the Contractor's Proposal;
 - 1.3.5 Contractor's Proposal;
 - 1.3.6 Respective Assignment Order;
 - 1.3.7 All other Annexes of the Agreement.

Section II. Subject of the Agreement

- 2.1 **General subject.** This Agreement sets out the rights and obligations, terms and conditions that apply to the Parties of this Agreement where the Contractor is contracted by the Principal to provide Services to the Principal for the successful implementation of the Project.
- 2.2 **Scope and engagement.** The scope of Services to be provided by the Contractor to the Principal is described in detail in *Annex B: Technical Specification*. The procedure for the provision of Services is further elaborated in Section IV of this Agreement.
- 2.3 **Framework.** The purpose of the Agreement is to define the terms and conditions under which the Contractor will provide Services to the Principal on an **on-demand** basis. The Agreement is framework-based and does

not impose an obligation whatsoever on the Principal to appoint the Contractor to provide Services nor does it guarantee any exclusive right to the Contractor to provide Services to the Principal.

- 2.4 *Acquisition of an Assignment.* This Agreement entitles the Contractor to participate in mini-competitions for an Assignment. The Contractor is solely responsible for its costs and expenses incurred in relation to the participation in mini-competitions.
- 2.5 *Assignment Order.* For every Assignment, a separate Assignment Order (based on Draft of the Assignment Order included in *Annex C: Draft Assignment Order*) will be issued by the Principal and confirmed by the Contractor.
- 2.6 *Mutual agreement.* The Contractor undertakes to provide the Services only on the basis of a mutually confirmed Assignment Order, the conditions and provisions thereof being binding on both the Contractor as well as the Principal.

Section III. Term and value of the Framework Agreements

- 3.1 *On demand basis.* This Agreement as well as the other identical Framework Agreements concluded with the Other Contractors are on-demand based with no fixed work-load and/or fixed overall value.
- 3.2 *Total value.* The total value of all Framework Agreements concluded as a result of the Procurement Procedure together is: 5 500 000,00 EUR excluding VAT.
- 3.3 *Principal's discretion in procuring Services.* However, this total value does not in any way bind the Principal to procure Services through this Agreement or other Framework Agreements for the entirety of the total value or any other guaranteed amount.
- 3.4 *Term.* The term of the Agreement is 24 (twenty-four) months starting from the Effective Date.
- 3.5 *Expiry and termination.* After the expiry of the Agreement term or once the total value has been reached, no more new Assignment Orders can be concluded. The Agreement terminates once all of the existing Assignment Orders are fully completed by the Contractor and approved by the Principal and the Parties have fulfilled their contractual obligations arising out of this Agreement.

Section IV. Appointment of an Assignment

- 4.1 *Selection of Contractor or Other Contractors.* In order to receive Services, the Principal will select the Contractor or one of the Other Contractors and conclude an Assignment Order. The Assignment will be allocated by conducting a **mini-competition** amongst the Contractor and Other Contractors.
- 4.2 *Procedure for Mini-competition.*
 - 4.2.1 The Principal invites the Contractor as well as all Other Contractors to implement an Assignment by sending a request for proposal (the "Request for Proposal") specifying:
 - 4.2.1.1 the details of the role to be performed and associated project details as required;
 - 4.2.1.2 the experience, training, qualifications, authorisations and regulatory requirements which the Principal considers necessary or which are required by law or any professional body for the Temporary Professional Staff to possess in order to work the position;
 - 4.2.1.3 the date the Principal requires the Temporary Professional Staff to commence the Assignment;
 - 4.2.1.4 the duration or likely duration of the Assignment;
 - 4.2.1.5 the location and hours of work;
 - 4.2.1.6 any risks to health or safety known to the Principal and what steps and measures the Principal has taken to prevent or control such risks; and
 - 4.2.1.7 the minimum / maximum daily rate, expenses and any other benefits that would be offered to the respective Temporary Professional Staff.
 - 4.2.2 After receiving the Request for Proposal, the Contractor will, within 10 (ten) Business Days, unless otherwise specified in the Request for Proposal, respond by sending its proposal (the proposal may include multiple options for prospective Temporary Professional Staff) to implement an Assignment. The exact contents of the Contractor's proposal are dependent on the respective Request for Proposal (e.g. requiring the submission of a CV of the respective Temporary Professional Staff and other

information as mentioned Clause 4.2.1.). Failing to respond to the Request for Proposal within the required time period will be considered as a rejection to participate in the respective mini-competition;

- 4.2.3 Mini-competition proposals received from the Contractor and all Other Contractors will be evaluated by the Principal. The most economically advantageous proposal will be awarded with the implementation of the particular Assignment. If the proposals received from the Contractor/Other Contractor's exceed the planned budget or are otherwise untenable to the respective Principal, the Principal reserves the right to discontinue the mini-competition;
- 4.2.4 The Principal will choose the winner of the mini-competition for the provision of the particular Assignment by comparing and evaluating the received proposals based on the criteria specified in the specific Request for Proposal that will follow these general criteria (listed in no particular order and containing no specific value):
 - 4.2.4.1 Amount of the daily rate multiplied by the Administrative Charge for the respective Temporary Professional Staff (e.g. if the daily rate is set at EUR 50 and the Administrative Charge of the Contractor is 10%, then the final evaluable amount for the respective Temporary Professional Staff would be EUR 55 ($50 + (50 \times 10\%)$));
 - 4.2.4.2 Time necessary to begin the provision of the particular Assignment;
 - 4.2.4.3 Experience and other quantitative or qualitative skills of the respective Temporary Professional Staff of the Contractor.
- 4.2.5 The Principal has the right during the evaluation process to conduct interviews with the Temporary Professional Staff of the Contractor and/or check the information submitted (for example by contacting previous employers of the Temporary Professional Staff) in order to assess the experience and suitability for the respective Assignment. The Principal has the right to perform a security clearance check in accordance with the principles of Clause 7.5. of this Agreement in respect to the Temporary Professional Staff of the Contractor or Other Contractor who has submitted the preliminarily most economically advantageous proposal;
- 4.2.6 The Principal shall inform the Contractor and all Other Contractors on the results of each mini-competition;
- 4.2.7 The Contractor or Other Contractor with the most economically advantageous proposal shall be invited to sign the Assignment Order. The Contractor if it is invited to sign the Assignment Order should then draft the specific Assignment Order based on the information laid down in the specific Request for Proposal and its own proposal in the mini-competition as a response to the Request for Proposal and align it with the Principal by e-mail. Aligned Assignment Order should be signed and sent to the Principal as soon as possible but not later than within the five (5) Business Days after receiving the request to draft it. The Assignment Order is first signed by the Contractor and then by the respective Principal;
- 4.2.8 After the Request for Proposal to implement an Assignment (including corresponding Assignment Order) is accepted and signed by the Principal, the conditions and provisions set out in the Assignment Order and the proposal of the mini-competition will become binding upon the Parties of the particular Assignment and the particular Assignment has to be executed in accordance with its specific requirements as well as the general provisions set out in this Agreement.
- 4.3 *General duty of participation.* The Contractor has a right to reject the Principal's Request for Proposal in cases related when the Contractor envisages that the implementation of a particular Assignment would result in a conflict with the requirements set in this Agreement, or in case of a conflict of interest as stated in Clause 4.5 of this Agreement, or if the Contractor cannot offer Temporary Professional Staff suitable for the fulfilment on the particular Assignment. The decision of the Contractor to reject the Principal's Request for Proposal shall be provided in writing by stating the reasons for such decision in sufficient detail.
- 4.4 *Additional information.* The Contractor has the right to request reasonable explanatory information from the Principal regarding the specifics of provision of an Assignment. If the Principal finds it necessary to respond, the Principal has the obligation to disclose information provided to the Contractor also to Other Contractors if such information may influence the contents of the Contractor's bid in the respective mini-competition.
- 4.5 *Conflict of interests.* Considering that the Contractor may have already provided Professional Temporary Staff to third parties that have or may have conflicting interests with the Principal, the Contractor shall immediately notify the Principal of such a possibility and will abstain from participating in the respective mini-competition

where the assignment of Contractor's proposed Professional Temporary Staff may result in a conflict of interest.

Section V. General terms and conditions

- 5.1 *Engagement.* The Principal hereby engages the Contractor to provide and perform the Services for the purposes of the Project, as described in this Agreement and according to the specifications contained *Annex B: Technical Specification* to this Agreement as well as respective Assignment Orders, on the basis of awarded Assignments, and the Contractor hereby accepts such engagement. The Services shall result in the provision to the Principal of the Temporary Professional Staff for the required duration as identified in each Assignment Order.
- 5.2 *Co-Operation of the Parties.* The Parties shall cooperate with one another to fulfil their respective obligations under this Agreement. Parties shall endeavour to maintain good working relationships among all key personnel engaged toward provision of the Services.
- 5.3 *Statutory Requirements.* By signing this Agreement, the declaration is made by the Contractor that the Contractor is professionally qualified, registered, and licensed to provide the Services in the Republic of Latvia, Republic of Lithuania and the Republic of Estonia. The Contractor also warrants that the employment relationships between the Contractor and its Temporary Professional Staff are fully compliant with the requirements of statutory law in the fields of employment and taxation attributable to such employment relationships.
- 5.4 *Labour safety.* The Parties shall actively co-operate in all labour safety related matters by informing each other about any existing or potential labour safety issue as soon as it is identified and further cooperating in appropriate mitigation measures.
- 5.5 *Communication between the Parties.*
- 5.5.1 Communication under the Agreement (e.g. information, requests, submissions, formal notifications, etc.) must:
- 5.5.1.1 be carried out in English;
- 5.5.1.2 be made in writing (including electronic form);
- 5.5.1.3 be carried out between the authorised persons as specified in Clause 5.5.6 or additional specific contact persons as laid down in the corresponding Assignment Order;
- 5.5.1.4 bear the Agreement's number.
- 5.5.2 Communications by e-mail are deemed made when they are sent by the sending Party and receipt is confirmed by the receiving Party, unless the sending Party receives a message of non-delivery. Sending Party is responsible to get confirmation that a message (with all its contents) sent via e-mail was received.
- 5.5.3 Assignment Orders, notices, declarations and invoices shall be deemed received:
- 5.5.3.1 if delivered by hand, on the first Business Day following the delivery day;
- 5.5.3.2 if sent by post, on the fifth Business Day after the date of posting;
- 5.5.3.3 if sent by e-mail, the same Business Day if sent prior to 17:00 o'clock and the next Business Day if sent after 17:00 o'clock (Latvian time applies).
- 5.5.4 If the final day of a time period referred to in this Agreement is Saturday, Sunday or a legal holiday in the Republic of Latvia, the following Business Day shall be considered the final day of the respective period.
- 5.5.5 The Parties agree that information may be exchanged electronically over the internet.
- 5.5.6 For the purposes of this Agreement:
- 5.5.6.1 The authorised representative of RB Rail for Agreement fulfilment issues and Assignment Order procedures (authorised to issue Requests for Proposal, sign the Deed of Acceptance) is [●], e-mail [●], phone [●];

5.5.6.2 The authorised representative of the Contractor ([●]) for Agreement fulfilment issues and Assignment Order procedures (authorised to respond to Requests for Proposal, sign the Deed of Acceptance) is [●], e-mail [●], phone [●].

- 5.6 *Establishment of direct employment relationship.* The Principal and the respective Temporary Professional Staff have the right to establish direct employment relationships during the period of an Assignment. In such circumstances the respective Assignment shall be deemed finished on the date when the direct employment relationship has officially begun. In these cases, the Principal shall pay the Contractor the price for conversion from Temporary Professional Staff to permanent staff of the Principal as indicated in the Contractor's Proposal.

Section VI. Responsibilities of Principal

- 6.1 *Supply of Information.* Unless otherwise provided under this Agreement, the Principal shall, in a timely manner, provide to the Contractor any information regarding requirements and parameters of the Project, as may reasonably be requested by the Contractor for the purposes of the Services and Assignments, provided that the Principal is in possession of such information.
- 6.2 *Decisions.* On all matters properly referred to it in writing by the Contractor the Principal shall give its decision in writing so as not to delay the provision of Services and a particular Assignment and within a reasonable time. The Principal is not limited to provide any answer and information to the Contractor by e-mail.
- 6.3 *Accounting and Auditing Services.* The Principal shall furnish accounting and auditing services as may be necessary for the provision of Services as the Principal may require to ascertain how and/or for what purposes the Contractor has used the funds paid under the terms of this Agreement.
- 6.4 *Training and equipment.* The Principal provides the Professional Temporary Staff with all necessary information, training and equipment that is required for the execution of the respective Assignment (taking into account the split of responsibilities contained in *Annex B: Technical Specification*) and the Principal shall be responsible for the day-to-day guidance and management of the Professional Temporary Staff as could be expected in an ordinary employment relationship.
- 6.5 *Obligation to ensure a safe work place.* The Principal undertakes to ensure the Professional Temporary Staff with safe and harmless working conditions during the period of execution of the Assignment according to the requirements of statutory laws and regulations.

Section VII. Responsibilities of Contractor

- 7.1 *Standard of Performance.* The Contractor shall perform the Services as expeditiously as is consistent with professional skill and care, orderly progress of the Services and each Assignment, and in accordance with the conditions set forth in *Annex B: Technical Specification*.
- 7.2 *Duty of Care and Exercise of Authority.* The Contractor shall:
- (a) in performing its obligations under this Agreement, exercise reasonable professional skill, diligence and care as may be expected of a properly qualified and competent person carrying out services of a similar size, nature, type and complexity;
 - (b) ensure that its Professional Temporary Staff is properly qualified and competent in accordance with the relevant Assignment;
 - (c) at all times during the term of the Services, ascertain and comply with all Applicable Laws and Good Industry Practice of the Republic of Latvia, Republic of Lithuania and the Republic of Estonia;
 - (d) comply, where applicable, with any reasonable requirements of the Principal not otherwise provided for in this Agreement.
- 7.3 *Maintenance of Records.* During the term of the Services and for a period of ten (10) years from expiration or termination of this Agreement for any reason whatsoever, the Contractor shall keep and maintain clear, adequate and accurate records and Documentation evidencing, to the reasonable satisfaction of the Principal, that the Services have been and are being carried out in accordance with the Standards. In case of on-going audits, appeals, litigation or pursuit of claims concerning the grant, including in the case of correction of systemic or recurrent errors, irregularities, fraud or breach of obligations, the records shall be kept and maintained longer.
- 7.4 *Access to Documentation.* At all times during the term of the Services, the Principal shall have access to all Documentation. This access shall be continuing and survive the termination of this Agreement for either cause

or convenience. The Documentation shall be kept to be accessed in a generally recognized format for a period of for a period of 10 (ten) years from the date of expiration or termination of this Agreement. All records forming part of the Documentation shall be available to the Principal's auditor, or expert appointed by the Principal during the period of time specified in accordance with this Clause 7.4.

- 7.5 *Security clearance requirements.* The following security clearance requirements are attributable to Temporary Professional Staff of the Contractor.
- 7.5.1 The Contractor shall not involve in the performance of the Agreement a Temporary Professional Staff convicted of an intentional criminal offense, whose criminal record has been removed or abolished, or of whom there are known facts that cast doubt on his ability to maintain restricted and/or classified information.
 - 7.5.2 The Contractor shall submit to the Principal in writing prior to the involvement of any Temporary Professional Staff in the performance of the Agreement the following information of the Temporary Professional Staff: name, surname, personal identification code (or equivalent personal identification information), place of birth, position.
 - 7.5.3 The Principal has the right to dismiss from each Request for Proposal and/or Assignment (by ending the respective Assignment with immediate effect) such Temporary Professional Staff non-compliant with the security clearance requirements stipulated in this Clause 7.5 at the Principal's sole discretion on the basis of the Principal's written notice. Parties agree that such Principal's decision is uncontestable.
 - 7.5.4 The Contractor undertakes to inform the Temporary Professional Staff involved in the performance of the Agreement about the processing of personal data performed by the Principal when organizing a security compliance check.
 - 7.5.5 The Contractor shall take all necessary actions and measures in a timely manner to ensure that a natural person is not involved in the performance of the Agreement or the involvement is immediately terminated if the Temporary Professional Staff does not comply with Clause 7.5. of this Agreement, otherwise creates or may create security risks for the Principal, the security of the Principal's information or operational risks.
 - 7.5.6 In any case, the Contractor shall immediately notify the Principal in writing of any situation that has arisen before and during the performance of the Agreement or a specific Assignment, as a result of which there is or may be a risk of involving a non-compliant Temporary Professional Staff and related security risks.
 - 7.5.7 The Contractor undertakes to submit to the Principal the necessary certificates from the local authorities in charge of maintaining criminal records in relation to a specific Temporary Professional Staff prior to the commencement of an Assignment if the Principal so demands due to the potentially sensitive nature of a specific Assignment.
 - 7.5.8 The Temporary Professional Staff non-compliance with the security clearance requirements stipulated in this Clause 7.5, the Principal's instructions towards the Contractor regarding these security clearance requirements or other provisions of this Clause 7.5 constitutes a material breach (breach of a material term or condition) of the Agreement and as grounds for the Principal to unilaterally terminate the Agreement by notifying the Contractor in writing 1 (one) business day in advance.
 - 7.5.9 The Contractor is obliged to to observe and not contest the Principal's written instructions and decisions in accordance with Clause 7.5. of the Agreement.
- 7.6 *Right to Sub-Contract.* For the avoidance of doubt the requirements of this Clause is only attributable to Approved Sub-Contractors that the Contract may involve in the provision of Services but is not attributable to members of Contractor's Temporary Professional Staff which are not considered as Approved Sub-Contractors of the Contractor in the sense of the Applicable Law.
- 7.6.1 In carrying out the Services, the Contractor may only rely on the services of those Approved Sub-Contractors listed in *Annex D: List of approved Sub-Contractors*, as such list may, from time to time, be modified or supplemented in agreement with the Principal and in accordance with the terms and subject to the criteria contained in the applicable Public Procurement Law of the Republic of Latvia. Parties shall specify the name, contact details and legal representative(s) of each Approved Sub-Contractor as of the Effective Date in *Annex D: List of approved Sub-Contractors*. The Contractor shall

have an obligation to notify the Principal in writing of any changes to Sub-Contractor data specified in *Annex D: List of approved Sub-Contractors* occurring during the term of this Agreement and of the required information for any new Sub-Contractors which it may subsequently engage toward provision of the Services.

- 7.6.2 Pursuant to the Public Procurement Law of the Republic of Latvia the Contractor shall obtain prior written consent of the Principal for the replacement of each Sub-contractor indicated in *Annex D: List of approved Sub-Contractors* and involvement of additional Sub-contractors.
- 7.6.3 Review and evaluation of the replacement of Sub-contractors shall be carried out, and the consent or refusal to give consent shall be rendered by the Principal in accordance with Article 62 of the Public Procurement Law of the Republic of Latvia.
- 7.6.4 The Contractor shall replace the Sub-Contractor which, during the effectiveness of this Agreement, meets any of the compulsory grounds for exclusion of tenderers (or Sub-Contractors) that were verified during the Procurement Procedure.
- 7.7 *Responsibility for Performance by Sub-Contractors.* The Contractor shall retain the complete responsibility for the proper performance of all of its obligations under this Agreement, and any act, failure to act, breach or negligence on the part of any of its Approved Sub-Contractors shall, for the purposes of this Agreement, be deemed to be the act, failure to act, breach or negligence of the Contractor.
- 7.8 *No Conflicting Activity.* Except with the Principal's knowledge and express written permission, the Contractor shall not engage in any activity, or accept any employment, other agreement, interest, or contribution that would reasonably appear to compromise the Contractor's professional judgment and performance with respect to the provision of Services and/or the Project. In performing the Services, the Contractor shall take all necessary measures to prevent any situation where the impartial and objective implementation of the Services is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest.
- 7.9 *Attendance of Meetings.* To the extent necessary to ensure smooth and efficient provision of the Services, the Contractor shall, at the Principal's request, hold and/or attend meetings with any persons. The Contractor shall arrange Assignment's communication's planning meetings as described in the particular Assignment Order (if any), at which appropriate personnel of the Contractor and the Principal shall be present. The Contractor shall record all meetings (also online meetings) between Parties and prepare meeting reports within five (5) Business Days after each meeting. All meeting reports shall be harmonized by the respective Principal.
- 7.10 *Compliance with Laws.* The Contractor shall review the Applicable Laws that is applicable to the provision of Services. In carrying out any activities forming part of the Services, the Contractor shall, at all times, ensure compliance with requirements imposed by supra-national and/or governmental authorities having jurisdiction over the Project.
- 7.11 *Information Furnished by Principal.* The Contractor shall be entitled to rely on the accuracy and completeness of information furnished by the Principal. The Contractor shall provide prompt written notice to the Principal if the Contractor becomes aware of any errors, omissions, or inconsistencies in the information provided by the Principal or in the preparation or provision of Services, Assignments or information.
- 7.12 *Certain Negative Covenants.* In performing the Services, the Contractor undertakes not to procure goods or services of any kind from any person meeting any of the following criteria:
- (a) the Person who is a member of the Management Board or Supervisory Board of an Approved Sub-Contractor or procurator of an Approved Sub-Contractor, or is authorised to represent or act on behalf of an Approved Sub-Contractor with respect to any activity related to any subsidiary company of such Approved Sub-Contractor, and such Person has been accused of commitment of any of the following criminal offences pursuant to an order issued by a public prosecutor or was found to be guilty of commitment of any of the following criminal offences in accordance with a court judgment that has entered into legal force, is non-disputable and non-appealable:
 - (i) formation, organisation, leading or involvement in the criminal organisation or another criminal formation, or participation in the criminal acts of such organisation or formation;
 - (ii) accepting a bribe, giving of a bribe, misappropriation of a bribe, intermediation toward giving or taking of a bribe, acceptance of a prohibited benefit or commercial bribing;
 - (iii) fraud, misappropriation of funds or money laundering;

- (iv) tax evasion or evasion of payments equivalent to tax;
 - (v) terrorism, financing of terrorism, instigation of acts of terrorism, terrorist threats or recruitment and training of a person with the aim of committing acts of terrorism;
 - (vi) human trafficking;
 - (b) the Person has, by decision of a competent authority or judgment of a court which has entered into legal force and is non-disputable and non-appealable, been found guilty of violation of labour law in any of the following manners:
 - (i) employment of one or more citizens or nationals of countries who are not citizens or nationals of a Member State of the European Union and are residing in the territory of a Member State of the European Union unlawfully;
 - (ii) employment of one or more persons without having entered into written employment agreement with such persons, or without having submitted an employee declaration with respect to such persons within a period of time stipulated in accordance with applicable laws and regulations applicable to persons that enter into salaried employment;
 - (c) the Person who, by decision of a competent authority or in accordance with judgment of a competent court which has entered into legal force, is non-disputable and non-appealable, has been held guilty of violation of applicable rules of competition law manifested as a vertical agreement aimed at restricting the ability of one or more purchasers to determine the resale price, or a horizontal cartel agreement, with the exception of instances where the relevant authority, upon having established the fact of violation of applicable rules of competition law, has discharged the candidate or participant in a tender offer from imposition of a fine or has reduced the amount of fine as a part of co-operation leniency programme;
 - (d) the Person who has insolvency proceedings initiated against it (except in the circumstances where a bailout or a similar set of measures are applied within the insolvency proceedings and are aimed at preventing the bankruptcy and restoring the debtor back to solvency, in which case the Contractor shall evaluate the possibility of participation by such Person in performing the Services), economic activity of the Person has been suspended or discontinued, bankruptcy proceedings have been initiated against the Person or the Person is subject to a liquidation;
 - (e) the Person has unpaid tax indebtedness in the country where the procurement is organised or in the country where the Person is registered or permanently residing as a tax payer, including the indebtedness with respect to State social insurance contributions, in the total amount exceeding EUR 150 in each individual country; in such case, the Contractor can, within its sole discretion, prompt the Approved Sub-Contractor to pay or discharge all outstanding tax indebtedness within 10 (ten) Business Days and, upon such payment or discharge, allow the Person to continue performance of the Services;
 - (f) the Person is an entity registered offshore;
 - (g) International or national sanctions or substantial sanctions by the European Union or the North Atlantic Treaty Organization Member State affecting the interests of the financial and capital market has been imposed to the Person and such sanctions can affect the execution of the Contract; and
 - (h) any of the above-mentioned criteria shall apply to all members of a group of persons if the Person is a group of persons.
- 7.13 **Visibility Requirements.** At all times during performance of the Services, the Contractor undertakes to comply with each of the following requirements:
- (a) any report, brochure, document or information related to the Services conducted by the Contractor hereunder or any other Person, or which the Contractor makes publicly available shall include each of the following:
 - (i) a funding statement which indicates that the Services are financed from CEF funds substantially in the following form: "Co-financed by the Connecting Europe Facility of the European Union";
 - (ii) with respect to printed materials, a disclaimer releasing the European Union from liability with respect to any contents of any distributed materials substantially in the form as follows: "The sole responsibility of this publication lies with the author. The European Union is not responsible

for any use that may be made of the information contained therein". The disclaimer in all official languages of the European Union can be viewed on the website <https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos>; and

- (iii) the flag of the Council of Europe and the European Union.
- (b) the requirements set forth in Clauses 7.13(a)(i) and 7.13(a)(iii) of this Agreement can be complied with by means of utilizing the following logo:



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

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

- (c) in order to comply with the latest applicable visibility requirements established by the European Union, the Contractor 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>.

7.14 **Reporting.** The Contractor shall, in a format and at intervals to be agreed with the Principal:

- (a) provide the Principal with regular reports and status updates on the status of the Services or an Assignment.
- (b) report on any changes to the Annexes of this Agreement, which the Contractor considers may be needed in order to fulfil the objectives set out in the Agreement; and
- (c) use reasonable endeavours to provide any other information and status updates as may be reasonably requested by the Principal at any time.

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

7.15 **Documentation of Temporary Professional Staff.** The Contractor undertakes to provide the Principal with the required Temporary Professional Staff's documentation that is required to implement an Assignment.

7.16 **General duty of diligence.** The Contractor shall engage and be responsible to maintain a completed verification of Temporary Professional Staff's identities and employment eligibility as per Applicable Law in Latvia, Lithuania and Estonia. The Contractor shall perform reference, background and other checks or screenings, as designated by the Principal, insofar the Applicable Law so allow.

Section VIII. Representations and Warranties

8.1 **Certain Representations and Warranties by Parties.** Each Party represents and warrants to the other Parties, as of the Effective Date, as follows:

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

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

- (a) it has all requisite qualification, skills and competence to perform the Services on the terms and conditions of this Agreement which are no less favourable than the terms and conditions of service identified by the Contractor in any document submitted by the Contractor to RB Rail as part of the Procurement Procedure and on the terms of the Contractor's Proposal;
- (b) it holds all requisite licenses, permits, approvals and consents necessary to enable performance by the Contractor of the Services according to the specifications contained in this Agreement and *Annex B: Technical Specification*;
- (c) it has all requisite ability to ensure the highest quality of the Services;
- (d) it will assign competent and duly qualified Professional Temporary Staff to carry out the Services and particular Assignments set out in this Agreement according to the highest professional Standard and Good Industry Practice;
- (e) it is not deemed to be a person associated with the Principal for the purposes of Applicable Law;
- (f) it has not been registered as a VAT payer in the Republic of [COUNTRY] [IF APPLICABLE];
- (g) it is compliant with all of the requirements of the Contractor's Declaration contained in *Annex F: Declaration of Contractor* and will continue to be compliant with all such requirements during the term of this Agreement;
- (h) [IF APPLICABLE] the income mentioned in this Agreement will not derive through permanent establishment or fixed base maintained by the Contractor in the Republic of Latvia. The Contractor agrees to submit to the Principal four (4) copies of *"Residence Certificate–Application for Reduction of or Exemption from Latvian anticipatory taxes withheld at source from payments (management and consultancy fees, leasing fees and certain other types of income), paid to residents of the [COUNTRY]"*(the "Residence Certificate") confirmed by Competent Authority of the [COUNTRY] and the Latvian State Revenue Service. The Residence Certificate shall be submitted to the Principal prior the Principal will due to make a payment of the fee or other payments to the Contractor. Otherwise the Principal will withhold withholding tax at the rate of 20% from the Fee and payments made to the Contractor. The Principal is entitled to make any deductions from the payments due to the Contractor if the Contractor doesn't comply with this provision [IF APPLICABLE];
- (i) that effective employment agreements have been concluded between the Contractor and Temporary Professional Staff that under this Agreement allow the Contractor to provide Services to the Principal;
- (j) that the Contractor is responsible for the disbursement of salary to the Temporary Professional Staff. The Contractor is solely responsible for all obligations that are related to the adherence to Applicable Laws that are applicable to the Temporary Professional Staff as employees of the Contractor (e.g. including but not limited to the conclusion, execution and termination of employment agreements, management and determination of working hours and annual vacation, deduction or disbursement of all types of benefits, taxes, mandatory payments and other sums, which are related to legal employment relationship).

Section IX. Fee and Payment

9.1 *Fee.*

- 9.1.1 In consideration of provision of the Services, the Principal undertakes to pay the Contractor a monthly Fee in the amount set forth in accordance with each Assignment Order (the "Fee"). The Fee includes: (1) the respective Temporary Professional Staff member's daily rate for the time actually worked at the Principal during the previous calendar month (2) that is further multiplied by the Contractor's proposed Administrative Charge as indicated in the Contractor's Proposal with the following formula: Fee = daily rate + (daily rate x Administrative Charge).
- 9.1.2 The Temporary Professional Staff member's daily rate is a flat rate calculated by the Contractor for the provision of Services for an Assignment. The amount of daily rate is subject to business risk of the Contractor meaning that the Contractor should foresee and take into account the employee's gross salary, supplementary payments deriving from the Labour Law e.g. for night work, overtime, work on public holidays and severance pay, sick leave, vacation etc. if such instances occur.

- 9.1.3 The Fee shall include all Costs and expenses incurred by the Contractor and Approved Sub-Contractors toward performing the particular Assignment. The Fee specified in accordance with this Section IX excludes value added tax that will be charged at the rate applicable in accordance with the Applicable Law at the time of invoicing.
- 9.2 *Calculation and working time schedules.* The monthly Fee for each Assignment is calculated on the basis of the Temporary Professional Staff working time schedules that have been approved by the Principal and submitted to the Contractor no later than on the fifth working day of the month for the previous calendar month.
- 9.3 *Invoicing.* According to the received working time schedule(s) the Contractor shall deliver to the Principal an invoice specifying the amount of the Fee payable and the period of time with respect to which the Fee is payable with full breakdown of the contents of the Fee. In the event the Principal objects to payment of any amount claimed by the Contractor in the invoice, notice in the form chosen by the Principal to this effect shall be given by the Principal to the Contractor not later than on the due date for the respective payment under this Clause 9.3. This notice of objection shall state the amount to be withheld, the grounds for withholding the payment and the basis on which that amount is calculated. Unless such notice of objection is made by the Principal, the amount to be paid is that stated in the invoice which shall become due and payable in accordance with this Agreement. For the avoidance of any doubt, the Principal shall not be required to pay any amount under this Agreement with respect to any part of the Services that have not been performed in accordance with this Agreement.
- 9.4 *Payment.* Subject to the provisions of Clause 9.3, the Principal reserves the rights to make the payments to the Contractor with set-off, retention, counterclaim, abatement or other deduction of any kind that arises from this Agreement and from the obligations of the Contractor provided herein (i.e. in cases of accrued contractual penalty amounts, in case if the Principal haven't received residence certificate as stipulated in this Agreement, etc.). If the Principal uses the right to make the payments to the Contractor with set-off, retention, counterclaim, abatement or other deduction of any kind, then the Principal so notifies to the Contractor no later than on the due date of the respective payment stating the amount, the grounds and the basis on the Principal uses its right to set-off, retention, counterclaim, abatement or other deduction or other right. Invoices shall be paid within thirty (30) days after the date on which the Principal received a properly prepared invoice in relation to a signed Assignment Order. Should the Principal receive an improperly prepared invoice the Principal shall notify the Contractor in writing.
- 9.5 *Costs and Commissions.* Each Party shall bear its own costs, fees, commissions and expenses incurred in connection with the transfer of any funds under this Agreement to the other Party.
- 9.6 *Invoice.* The Contractor's invoices shall contain the following Contractor's details and details about the Agreement:

Contractor	[●]
Registration No	[●]
VAT payer's No or indication that the Contractor is not a VAT payer	[●]
The Principal's VAT No	
Legal address, city, Zip code, country	[●]
Legal name of Bank	[●]
Bank SWIFT Code	[●]
Bank Account No IBAN	[●]
Subject:	For provided services according to the Framework Services Agreement for Rail Baltica Railway No [●] (CEF Contract No INEA/CEF/TRAN/M[●]/[●]Activity No [●]), Contract Manager: [●]

The Contractor shall send the invoice to the Principal electronically to the following e-mail addresses: [●]. The Principal shall review the invoice to verify whether it contains all necessary requisites.

Section X. Commencement and acceptance of Services

- 10.1 *Commencement of Services.* The Contractor shall not commence provision of the Services until a particular Assignment Order has been confirmed by the Contractor and the Principal in accordance with the provisions of this Agreement.
- 10.2 *Completion of an Assignment or part of the Assignment.* Delivery of each Assignment or part of an Assignment occurs on a monthly basis by the Principal accepting the respective working time schedules for the previous calendar month in accordance with Clause 9.2. until the duration of the respective Assignment
- 10.3 *Final Acceptance of an Assignment.* Final acceptance of the Assignment shall occur once duration of the respective Assignment as indicated in the Assignment Order has been met. The date when Assignment finishes, and the Parties sign a Deed of Acceptance in relation to the particular Assignment (accompanied by all working time schedules) shall constitute the "Final Assignment Completion Date" with respect to the particular Assignment.

Section XI. Intellectual Property Rights

- 11.1 *Proprietary Rights.* Contractor ensures that the necessary agreements are in place with the Temporary Professional Staff so that the latter transfers author's economic rights to Principal in relation to any work that Temporary Professional Staff may create during performance of an Assignment.
- 11.2 *Title to Intellectual Property.* Contractor ensures that the necessary agreements are in place with the Temporary Professional Staff so that Principal shall have title to any invention, trade mark, design or any other object of intellectual property rights that Temporary Professional Staff may create in the performance of an Assignment. Principal may register such invention, trade mark, design and other items of intellectual property on its own name in accordance with the terms and conditions of the Applicable Law.

Section XII. Termination and suspension

- 12.1 *Termination for Material Breach or Bankruptcy.* Subject to the provisions of Clause 12.2, either Party shall be entitled to terminate this Agreement upon giving a written notice of termination to the other Party in the event of material breach by the other Party of any of its obligations under this Agreement. The written notice of termination shall contain an itemized description of the breach. For the purposes of this Section XII an event of material breach shall include any of the following:
- 12.1.1 commitment by a Party of any persistent or material breach of this Agreement (which shall include failure to pay an amount of at least EUR 5,000 due to the other Party or perform any part of the Assignment or an Assignment valued at least EUR 5,000;
- 12.1.2 failure by the Principal to make any payment to the Contractor in accordance with this Agreement within at least fifteen (15) Business Days from the date of payment falling due;
- 12.1.3 any of the representations or warranties given by either Party under Section VIII or any of the representations or warranties given by the Contractor under Clause 8.2 proving to be untrue.
- 12.2 *Corrective Period.* In the event of breach by either Party of its obligations under this Agreement, the non-breaching Party shall allow the breaching Party fourteen (14) days for corrective action or submission of a corrective action plan (the "Corrective Period"). The Corrective Period shall be counted from the date of receipt by the breaching Party of a written notice of breach. Should no satisfactory corrective action be taken, or acceptable corrective action plan provided by the breaching Party, the non-breaching Party shall have the right to terminate the Agreement.
- 12.3 *Right to Terminate Immediately.*
- 12.3.1 Notwithstanding anything to the contrary contained in this Agreement, a Party may terminate this Agreement immediately upon giving the Parties a written notice of termination explaining, in reasonable detail, the reason for termination upon occurrence of any of the following:
- (a) breach by a Party of Clause 19.2;
- (b) an event of Force Majeure has been continuing during more than sixty (60) days;
- (c) a Party had passed a resolution for winding-up (other than in order to amalgamate or reconstruct);
- (d) breach by the Contractor any of the confidentiality undertakings contained in *Section XV. Confidentiality*;

- (e) a Party is unable to pay its debts and has presented a petition for voluntary bankruptcy;
- (f) a Party had a bankruptcy order issued against it;
- (g) liquidation, insolvency or legal protection proceedings have been initiated with respect to a Party or a Party is declared insolvent;
- (h) the occurrence of any event analogous to the events enumerated under Clauses 12.3.1 (e) – (g) under the law of any jurisdiction to which a Party's assets and undertaking are subject.

12.3.2 *Principal's Right to Terminate Immediately.* The Principal's may terminate this Agreement immediately upon giving the Contractor a written notice of termination explaining, in reasonable detail, the reason for termination, if:

- (a) CEF Co-financing for further financing of the Services are not available to the Principal fully or partly;

In such a case, the Principal shall pay the Contractor the fees in respect of the Services provided under this Agreement up to the date of the notification of the termination of this Agreement and the Principal is not obliged to pay contractual or any other penalty or Damages to the Contractor.

- (b) it is not possible to execute the Agreement due to the application of international or national sanctions, or European Union or North Atlantic Treaty Organization applied sanctions significantly affecting interests of financial or capital market.

12.4 *Termination according to Public Procurement Law.* The Agreement can be immediately terminated upon giving the other Party a written notice of termination explaining, in reasonable detail, the reason for termination upon occurrence of any of the provisions mentioned in the Article 64 of the Public Procurement Law. In such a case, the Principal shall pay the Contractor the fees in respect of the Services provided under this Agreement up to the date of the notification of the termination of this Agreement and the Principal is not obliged to pay contractual or any other penalty or Damages to the Contractor.

12.5 *Consequences of Termination.* Upon expiration or termination of this Agreement, the obligations of the Parties set forth in this Agreement shall cease, except with respect to the following:

- (a) any obligations arising as a result of any antecedent breach of this Agreement or any accrued rights; and
- (b) the provisions stipulated in accordance with Clauses 7.3, 7.4, 13, 13.2, 13.3, 19.2, and *Section XV. Confidentiality, Section XVI. Right to Audit, Section XV. On-the-spot-visits and Section XVIII. Governing Law and Resolution of Disputes* which shall survive the termination or expiry of this Agreement and continue in full force and effect along with any other Clauses of or Annexes hereof which are necessary to give effect to the Clauses specifically identified in this 12.5(b).

12.6 *Principal's Obligation to Pay.* Except in the event of termination by the Principal occurring as a result of violation by the Contractor of Clause 19.2, or termination by the Principal according to Clause 12.3.2 or 12.4 in the event this Agreement is terminated for any reason prior to completion of an Assignment, the Principal shall have an obligation to pay the Contractor the following:

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

12.7 *No Obligation to Pay Costs Incurred Prior to Acceptance.* Notwithstanding anything set forth in this Agreement to the contrary including, without limitation, under Clause 12.6, the Principal shall have no obligation to pay any of the Costs incurred by the Contractor with respect to any particular Assignment (or

part of any particular Assignment) not deemed as having been accepted by the Principal in accordance with Clauses 10.2. and 10.3.

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

Section XIII. Liability

- 13.1 *Liability of the Parties.* The Contractor shall be liable to compensate Damages incurred by the Principal arising out of or in connection with this Agreement if a breach of any of the obligations of the Contractor under this Agreement is established against the Contractor. The Principal shall be liable to compensate Damages incurred by the Principal arising out of or in connection with this Agreement and liable to pay the contractual penalty set forth in accordance with Clause 13.2 if a breach of payment obligations is established against the Principal.
- 13.2 *Contractual Penalty.* In the event of failure by the Principal to pay any amount in accordance with Clause 9, the Principal shall be liable to pay the Contractor a penalty of zero point zero one percent (0.01%) of the amount of the amount invoiced for each day of delay with meeting the payment obligation; provided, however, that the total amount of penalty payable by the Principal under this Clause 13.2 shall not exceed ten percent (10%) of the total amount remaining unpaid under the relevant invoice.
- 13.3 *Compensation for Damages.* Notwithstanding of and without prejudice to any contractual penalty payable in accordance with Clause 13.2 and subject to the provisions of Clause 13.6, in the event it is established that either Party is liable to the other Party with respect to any breach of its respective obligations under this Agreement, the liable Party shall compensate the other Party for any Damages incurred as a result of such breach, subject to the following terms:
- (a) the amount of compensation shall be limited to the amount of reasonably foreseeable Damages suffered as a result of the breach(es), but not otherwise; and
 - (b) if either Party is considered to be liable jointly with third parties to the other, the proportion of compensation payable by the liable Party shall be limited to that proportion of liability which is attributable to the breach by the liable Party.
- 13.4 *Attribution of Damages.* Any Damages suffered by either Party shall, for the purposes of Clause 13.3, be reduced to the extent that the Damages are caused by or contributed to by the another Party's own negligence or breach of its obligations under this Agreement.
- 13.5 *Liability of Temporary Professional Staff.* During the period of an Assignment the respective Temporary Professional Staff member shall be liable to the Principal (and vice-versa) in accordance with Applicable Law.
- 13.6 *Limitation of Liability.* Notwithstanding anything to the contrary set forth in this Agreement, in no circumstances shall the Contractor or Principal be liable to one another for any loss of production, loss of profit, loss of revenue, loss of contract, liability incurred under other agreements (with the exception of costs paid by the Principal to contractors appointed by the Principal in relation to the Services or particular Assignment or the Project) or any indirect or consequential loss arising out of or in connection with this Agreement.

Section XIV. Force Majeure

- 14.1 *Effects of Force Majeure.* Subject to the requirements set forth in accordance with Clauses 14.2 and 14.3, 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.
- 14.2 *Action on Becoming Aware of Force Majeure.* Each Party shall at all times, following the occurrence of a Force Majeure Event:
- (a) take reasonable steps to prevent and mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the Force Majeure Event as soon as practicable and use reasonable endeavours in accordance with Good Industry Practice to remedy its failure to perform; and
 - (b) not be relieved from liability under this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to any failure to comply with its obligations under Clause 14.2(a).

- 14.3 *Notification Requirements.* Upon the occurrence of a Force Majeure Event, the affected Party shall notify the other Party as soon as reasonably practicable and in any event within ten (10) Business 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 14.2(a) and an estimate of the period of time required to overcome the Force Majeure Event. The affected Party shall provide the other Party with any further information it receives or becomes aware of which relates to the Force Majeure Event and provide an update on the estimate of the period of time required to overcome its effects.
- 14.4 *Notification of Resumed Performance.* The affected Party shall notify the other Party as soon as practicable once the performance of its affected obligations can be resumed (performance to continue on the terms existing immediately prior to the occurrence of the Force Majeure Event).
- 14.5 *Mitigation of Effects of Force Majeure.* As soon as practicable after the notification specified pursuant to Clause 14.3, the Parties shall use reasonable endeavours to agree appropriate terms or modifications to the Assignment to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.

Section XV. Confidentiality

- 15.1 *Confidential Information.* "Confidential Information" means, in relation to the Principal, all information of a confidential nature relating to the Principal and its affiliates which is supplied by the Principal (whether before or after the date of this Agreement) to the Contractor, either in writing, orally or in any other form and includes all analyses, compilations, notes, studies, memoranda and other documents and information which contain or otherwise reflect or are derived from such information, but excludes information which:
- (a) the Principal confirms in writing is not required to be treated as confidential; or
 - (b) the Contractor can show that the Confidential Information was in its possession or known to it (by being in its use or being recorded in its files or computers or other recording media) prior to receipt from the Principal and was not previously acquired by the Contractor from the Principal under an obligation of confidence; or
 - (c) was developed by or for the Contractor at any time independently of this Agreement.
- 15.2 *Undertakings with Respect to Confidential Information.* Subject to Section XV and Clause 15.3, the Contractor shall:
- (a) at all times keep confidential all Confidential Information received by it and shall not disclose such Confidential Information to any other Person; and
 - (b) procure that its Temporary Professional Staff, affiliates and their respective officers, employees and agents shall keep confidential and not disclose to any Person any Confidential Information except with the prior written consent of the Party to which such Confidential Information relates.
- 15.3 *Permitted Disclosure.* Notwithstanding anything to the contrary set forth in accordance with Section XV and Clause 15.2, the Contractor shall, without the prior written consent of the Principal, be entitled to disclose Confidential Information:
- (a) that is reasonably required by the Contractor in the performance of its obligations pursuant to this Agreement, including the disclosure of any Confidential Information to any employee, contractor, agent, officer, Sub-Contractor (of any tier) or adviser to the extent necessary to enable the Contractor to perform its obligations under this Agreement;
 - (b) to enable a determination to be made pursuant to *Section XVII. On-the-spot-visits*;
 - (c) to its lenders or their professional advisers, any rating agencies, or its insurance advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
 - (d) to the extent required by Applicable Law or pursuant to an order of any court of competent jurisdiction, any parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law; or

- (e) to the extent Confidential Information has become available to the public other than as a result of any breach of an obligation of confidence; provided that any such disclosure is made in good faith.
- 15.4 *Obligation of Confidentiality Pertinent to Recipients of Confidential Information.* Whenever disclosure is permitted to be made pursuant to Clauses 15.3(a) or (c), the Contractor shall require that the recipient of Confidential Information be subject to the same obligation of confidentiality as that contained in this Agreement.
- 15.5 *Certain Obligations on Termination of Agreement.* If this Agreement is terminated for whatsoever reason, the Contractor shall:
 - (a) return to the Principal all of the Confidential Information then within the possession or control of the Contractor; or
 - (b) destroy such Confidential Information using a secure and confidential method of destruction.
- 15.6 *No Press Release by Contractor.* Save as required by Applicable Law, the Contractor shall not issue any press release in relation to the matters contemplated under this Agreement without the prior written consent of the Principal (such consent not to be unreasonably withheld or delayed) as to both the content and the timing of the issue of the press release.
- 15.7 *Right to Publish.* For the avoidance of any doubt, the Principal shall have the right to publish any of the documents, information or data provided by the Contractor to the Principal during provision of the Services.
- 15.8 *Remedies.* The Parties acknowledge and agree that a breach of the provisions of this *Section XV. Confidentiality* may cause the owner of Confidential Information to suffer Damages.
- 15.9 *Confidentiality constraints of Temporary Professional Staff.* The Parties agree that prior to the commencement of each Assignment the Parties and the respective Temporary Professional Staff shall sign a tripartite Mutual agreement on the nondisclosure of Confidential Information in the form that will be enclosed to the respective Request for Proposal. The contents of this Mutual agreement on the nondisclosure of Confidential Information will be based on the main principles of this *Section XV. Confidentiality*, with additional elaboration of specifics of each case.

Section XVI. Right to Audit

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

Section XVII. On-the-spot-visits

- 17.1 *Right to perform On-the-spot visits.* By submitting a written notice five (5) Business Days in advance, but at the same time reserving the right of an unannounced on-the-spot visit without an advance notice, the Principal may carry out on-the-spot visits to the sites and premises where the activities implemented within the Agreement are or were carried out.

- 17.2 *Personnel involved.* On-the-spot visits may be carried out either directly by authorised staff or representatives of the Principal or by any other outside body or third party authorised to do so on behalf of the Principal. Information provided and collected in the framework of on-the-spot visits shall be treated on confidential basis. The Principal shall ensure that any authorised outside body or third party shall be bound by the same confidentiality obligations.
- 17.3 *Access to the information.* Contractor shall provide to the performer of the on-the-spot visit or any other authorised outside body or third party access to all the information and documents, including information and documents in electronic format, which is requested by the authorised staff of the performer of the on-the-spot visit or any other authorised outside body or third party for the performance of an on-the-spot visit and which relates to the implementation of the Agreement, as well as shall allow the authorised staff of the performer of the on-the-spot visit or any other authorised outside body or third party the copying of the information and documents, with due respect to the confidentiality obligation.
- 17.4 *OLAF checks and inspections.* By virtue of Council Regulation (Euratom, EC) No 2185/961 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EU) No 883/20132 of the European Parliament and the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF), OLAF may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by European Union law for the protection of the financial interests of the European Union against fraud and other irregularities. Where appropriate, OLAF findings may lead to criminal prosecution under national law.

Section XVIII. Governing Law and Resolution of Disputes

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

Section XIX. Miscellaneous provisions

- 19.1 *Capacity.* Each Party warrants to the other Party that it has full power to enter into and perform this Agreement, and the person signing this Agreement on its behalf has been duly authorized and empowered to enter into such agreement. Each Party further acknowledges that it has read this Agreement, understands it and agrees to be bound by it.
- 19.2 *Conflict of Interest, Corruption and Fraud.* Notwithstanding any penalties that may be enforced against the Contractor under Applicable Law, or the laws of other jurisdiction(s), the Contractor shall be deemed to have committed a breach under this Agreement and the Principal shall be entitled to terminate this Agreement immediately and without any regard to the provisions of Clause 12.2, if it is shown that the Contractor is guilty of:
- (a) offering, giving, receiving or soliciting anything of value with a view to influencing the behaviour or action of anyone, whether a public official or otherwise, directly or indirectly in the selection process or in the conduct of the Agreement; or
 - (b) misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Principal, including the use of collusive practices intended to stifle or reduce the benefits of free and open competition.
- 19.3 *Data Protection.*

- 19.3.1 For the purpose of execution of this Agreement, the Parties might transfer to each other certain personal data, such as data on employees of the Parties, Temporary Professional Staff, data on suppliers, data on potential candidates, Project stakeholders and their employees etc. The Parties acknowledge that for the purpose of the Agreement each of the Parties shall act as a controller.
- 19.3.2 The Party shall transfer the personal data to the other Parties and such other Parties shall process the personal data only for the purposes of execution of the Agreement and other such purposes as required by Applicable laws.
- 19.3.3 The Parties agree that except where the Party has a separate legal basis for processing the personal data referred to in the Applicable laws governing the protection of personal data, the Party shall not process the personal data for any other purpose.
- 19.3.4 Besides other obligations provided for in the Agreement, each of the Parties undertakes:
- 19.3.4.1 to process the personal data to the minimum extent necessary;
 - 19.3.4.2 not to infringe any rights of the data subjects;
 - 19.3.4.3 to implement and apply proper organizational and technical measures ensuring the compliance with the requirements of the law;
 - 19.3.4.4 to ensure the compliance with other requirements of the statutory law governing the protection of personal data.
- 19.4 *Notices.* Notices under the Agreement shall be in writing and will take effect from receipt by the Party to which the notice is addressed at the address of the Party set forth in the Preamble to this Agreement. Delivery can be by hand or facsimile message against a written confirmation of receipt or by registered letter.
- 19.5 *Severability.* If any provision of this Agreement shall be held to be illegal, invalid, void or unenforceable under Applicable Laws, the legality, validity and enforceability of the remainder of this Agreement shall not be affected, and the legality, validity and enforceability of the whole of this Agreement shall not be affected.
- 19.6 *Successors and Assigns.* The Principal and the Contractor each bind themselves, their successors, legal representatives, and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect to all covenants of this Agreement. Neither Party shall assign or transfer its respective interest in the Agreement without written consent of the other Party.
- 19.7 *Amendments and Variations.* No amendment to or variation of this Agreement shall be effective unless made in writing and signed by duly authorized representatives of both Parties. The Agreement can be amended in compliance with the provisions of Article 61 of the Public Procurement Law of the Republic of Latvia.
- 19.8 *Entire Agreement.* This Agreement, and the Annexes hereto, constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes and extinguishes all and any prior drafts, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.
- 19.9 *Execution.* This Agreement may be executed in [●] counterparts to be held by each Party which counterparts, taken together, shall constitute one and the same instrument.

Signed by:

Annex A: Definitions and common terms

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

- (a) "Administrative Charge", the charge of the Contractor that is a fixed part (multiplier set out in a percentage value) of the Fee and is laid down in the Contractor's Proposal.
- (b) "Agreement", this Agreement, together with all Annexes thereto.
- (c) "Applicable Law" or "Law", any legislative act, regulation, decree, order, ordinance, statute, treaty, directive, judgment, or other legislative measure. For the avoidance of any doubt, these terms shall also include any legislative act or directive relevant to public procurement.
- (d) "Approved Sub-Contractor", any person or organisation listed pursuant to *Annex D: List of approved Sub-Contractors*, which is in a contractual relationship with the Contractor to provide a part of the Services.
- (e) "Assignment", means the specific instance of Services that is procured by the Principal in accordance with this Agreement within the scope of the framework.
- (f) "Assignment Order", means the agreement between the Principal and the Contractor for the implementation of an Assignment.
- (g) "Confidential Information", as defined in accordance with Section XV of the Agreement.
- (h) "Contractor", the company [·], as further specified in the Preamble of this Agreement, which is employed by the Principal as an independent professional contractor to perform the Services, and legal successors to the Principal and permitted assignees of the Principal.
- (i) "Costs", direct costs reasonably incurred in relation to the Project. Specifically, the Cost shall include any of the following:
 - (i) costs of all materials and supplies forming part of the Services, including transportation and storage expenses (discounts for cash or prompt payments will not reduce these costs);
 - (ii) salaries for personnel in the direct employ of the Contractor in the performance of the Services or relating to the Services;
 - (iii) salaries of the Contractor's employees for the time that they spend in connection with the Services;
 - (iv) payments to sub-contractors for relating to the Services;
 - (v) costs of all employee benefits and taxes for items such as social security and other benefits for the labour and employees;
 - (vi) costs, including transportation and maintenance, of equipment and hand tools not owned by workmen employed by the Contractor which are employed or consumed toward the Services;
 - (vii) payments for rental charges for machinery, equipment, facilities and tools used in connection with the Services, and payments for installations, repairs, replacements, dismantling, removal, lubrication, transportation and delivery of those rental items;
 - (viii) other transportation costs incurred in connection with the Services;
 - (ix) that portion attributable to this Agreement of premiums for insurance that is required by this Agreement (if applicable) or by law to be obtained or maintained by the Contractor;
 - (x) sales, use, gross receipts or other taxes related to the Services, imposed by any governmental authority, to the extent that the Contractor is responsible for such taxes;
 - (xi) costs of long-distance telephone calls, telephone service at the site and postage relating to the Services;
 - (xii) costs of any data processing services used in connection with the performance of the Services required under this Agreement; and
 - (xiii) losses and expenses, not compensated by insurance, sustained by the Contractor in connection with the Services under this Agreement (if applicable), provided they resulted from causes other than the fault or neglect of the Contractor.

- (j) "Corrective Period", as defined in accordance With Clause 12.2.
- (k) "Damages", any cost, claim, damage, demand, loss, expense or liability incurred by the relevant Party or Person.
- (l) "Deed of Acceptance", as defined in accordance with Clause 10.3 and in the form as provided in Annex E: Form of the Deed of Acceptance.
- (m) "Documentation", all records, correspondence, and files of the Contractor, its Temporary Professional Staff employees, engineers, and consultants pertaining to the Project.
- (n) "Effective Date", the date when all of the required Contractors/Other Contractors Procurement Procedure have signed this Agreement and other identical Framework Agreements.
- (o) "EUR" and "euro", the official currency of the eurozone, officially known as the euro area.
- (p) "Fee", as specified in accordance with Clause 9.1 **Error! Reference source not found..**
- (q) "Final Assignment Completion Date", as defined in accordance with Clause 10.3.
- (r) "Force Majeure Event", any of the following events:
 - (xiv) an act of the public enemy or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;
 - (xv) an act of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;
 - (xvi) a natural disaster or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);
 - (xvii) nuclear, chemical or biological contamination;
 - (xviii) pressure waves caused by devices travelling at supersonic speeds;
 - (xix) discovery of fossils, antiquities or unexploded bombs; and/or
 - (xx) strike, lockout or other industrial action other than involving the Contractor or the Principal.
- (s) "Framework Agreements", this Agreement as well as the other identical framework agreements concluded with the Other Contractors based on the results of the Procurement Procedure;
- (t) "Good Industry Practice", in relation to the performance of any activity to which this standard is applied, the exercise of that degree of skill, diligence, prudence and foresight as would reasonably be expected to be exercised by a properly qualified and competent person engaged in carrying out Services of a similar size, nature, scope, type and complexity, complying with Applicable Law, applicable Standards and published codes of practice.
- (u) "Intellectual Property", all intellectual property rights in any part of the world in respect of any documentation or information provided by the Contractor and its Temporary Professional Staff to the Principal, including any patent, patent application, trade mark, trade mark application, registered design, registered design application, utility model, trade name, discovery, invention, process, formula, specification, copyright (including all neighbouring rights, rights in computer software and database and topography rights), know how or unregistered design right.
- (v) "Other Contractors", the companies [●] as further specified in the Preamble of this Agreement, who are also engaged by the Principals in the provision of Services as a result of Lot No [●] of the Public Procurement.
- (w) "Party" and "Parties", the Principal and the Contractor and include their respective successors in title, permitted assigns and permitted transferees.
- (x) "Person" shall include any person, company, body corporate, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the foregoing.

- (y) "Project", development of a 1435 mm standard gauge railway line in the Rail Baltica (RB) corridor through Estonia, Latvia and Lithuania aimed at eliminating the technical bottleneck due to the gauge differences (1,520 mm vs. the EU standard of 1,435 mm).
- (z) "Principal", the company RB Rail AS as further specified in the Preamble of this Agreement, which employ the services of the Contractor, and legal successors to the Contractor and permitted assignees of the Contractor.
- (aa) "Railway", a new fast conventional double track electrified railway line according TSI INF P2-F1 criteria and European standard gauge (1435 mm) on the Route.
- (bb) "Residence Certificate", a certificate mentioned in Clause 8.2(h).
- (cc) "Request for Proposal", as described in Clause 4.2.
- (dd) "Standards", CEF Standards and Grant Agreement Standards;
- (ee) "Services", the supply and posting of Temporary Professional Staff to the Principal that is to be provided on an on-demand basis as specified in *Annex B: Technical Specification*.
- (ff) "Temporary Professional Staff", the employees of the Contractor and Other Contractors who will be posted to the Principal in accordance with concluded Assignment Orders.
- (gg) "VAT", value added tax;
- (hh) "Business Day", as specified in accordance with Clause 1.2.9 of this Agreement.

Annex B: Technical Specification

Annex C: Draft Assignment Order

ASSIGNMENT ORDER NO. [●]

Date [●]

FOR THE SUPPLY OF TEMPORARY PROFESSIONAL STAFF

This Assignment Order has been entered into pursuant to the Framework Agreement No [●] for the supply of temporary professional staff

RB Rail AS, a joint stock company registered in the Latvian Commercial Register, registration No 40103845025, legal address at Krišjāņa Valdemāra iela 8-7, Riga, LV-1010, Latvia (the "**Principal**"), represented by Management Board Member [●] acting on the basis of the Regulations on Representation Rights dated 20 July 2020, on the one side, and

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

for providing of the Assignment Order by the Contractor to the Principal on the following conditions:

1. Name(s) of the Temporary Professional Staff to implement Assignment Order: [-]
2. Description of the Assignment Order and the desired result: [-].
3. Commencement date and term of Assignment;
4. Location of execution of Assignment;
5. Contact person(s) for the Principal: [-].
6. Contact person(s) for the Contractor: [-].
7. Daily rate of the Temporary Professional Staff: [-].
8. Payment: According to the Framework Agreement No [●] for the supply of temporary professional staff.
9. [additional information as required]
10. Governance: This Assignment Order supplements, forms part of and is subject to the Framework Agreement No [●] for the for the supply of temporary professional staff. All provisions contained in the Agreement thereof govern this Assignment Order. In the event of any inconsistency between the provisions of the Framework Agreement No [●] for the supply of temporary professional staff and this Assignment Order, this Assignment Order shall prevail.
11. Other terms: [-].

Principal

Contractor

Annex D: List of approved Sub-Contractors

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

Annex E: Form of the Deed of Acceptance**No** [INSERT NUMBER]**Date:** [INSERT DATE IN THE FORM OF 1 January 2020]**Location:** [INSERT LOCATION]**For:** **RB Rail AS**, registration number 40103845025, legal address: Krišjāņa Valdemāra iela 8-7, Riga, LV-1010, Latvia (the "Principal")

This Deed of Acceptance is issued to the Principal by [•] [INSERT NAME, REGISTRATION NUMBER INSERT REGISTRATION NUMBER, LEGAL ADDRESS] (the "Contractor"), represented by [INSERT NAME OF REPRESENTATIVE ON THE BASIS OF INSERT BASIS OF REPRESENTATION].

Whereas:

- (A) the Principal and the Contractor have entered into the Assignment Order No. [•];
- (B) the Assignment have been fully completed by the Temporary Professional Staff of the Contractor;
- (C) as stipulated by Clause 10.3 of the Agreement, completion of a Assignment shall be evidenced by means of the Contractor issuing a signed Deed of Acceptance;

The Contractor hereby confirms that the Assignment has been duly completed on [INSERT DATE IN THE FORM OF 1 January 2020], as specified in accordance with the Assignment Order No. [•].

By signing this Deed of Acceptance, the Principal confirms its satisfaction with the result of the Assignment completed, and the Principal accepts the Assignment in its entirety. Additionally, the Principal certifies that all of the necessary authorisations for the acceptance of the Assignment have been duly received.

Signatures:**For and on behalf of the Principal**

[•]

For and on behalf of the Contractor

[•]

Annex F: Declaration of Contractor

I, the undersigned duly authorised representative, on behalf of [NAME OF THE CONTRACTOR] undertake:

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

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

the candidate or tenderer from a fine or reduced fine within the framework of the co-operation leniency programme;

- d. whose insolvency proceedings have been announced (except the case where a bailout or similar set of measures is applied within insolvency proceedings oriented towards prevention of possible bankruptcy and restoration of solvency of the debtor, in which case I shall evaluate the possibility of such Contractor to participate in the tender), economic activity of such Contractor has been suspended or discontinued, proceedings regarding bankruptcy of such Contractor have been initiated or such Contractor will be liquidated;
- e. who has tax debts in the country where the procurement is organised or a country where such Contractor 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 G: Contractor's Proposal
[INSERT CONTRACTOR'S PROPOSAL]