

ANNEX NO 12: DRAFT CONTRACT

(Updated, Procurement commission decision made on 7 April 2022, Session minutes No 4)

AGREEMENT ON RECRUITMENT SERVICES

between

RB Rail AS

and

[●]

Agreement No [●]

Grant Agreements [●]

Procurement procedure No [●]

Dated [●]

AGREEMENT ON RECRUITMENT SERVICES

This AGREEMENT ON RECRUITMENT SERVICES (the "Agreement"), together with all Annexes thereto, is entered into in Riga, on [●] (the "Effective Date") by and between:

- (1) **RB Rail AS**, a joint stock company registered in the Latvian Commercial Register registration No 40103845025, legal address at Satekles iela 2B, Riga, LV-1050, Latvia (the "Principal"), represented by [●] acting on the basis of [●], on the one side,

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

WHEREAS:

- (A) this Agreement is entered into under the Project which includes all activities undertaken by the respective beneficiaries and implementing bodies of the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania in order to build, render operational and commercialise the Rail Baltica railway – a new fast conventional double track electrified railway line according TSI INF P2-F1 criteria and European standard gauge (1435mm) on the route from Tallinn through Pärnu-Riga-Panevėžys-Kaunas to Lithuanian-Polish border, with the connection of Kaunas – Vilnius, and related railway infrastructure in accordance with the agreed route, technical parameters and time schedule;
- (B) the Principal has organised procurement procedure "RECRUITMENT SERVICES" (identification No RBR [●]) (the "Procurement Procedure"), which was divided into two parts: Part No 1 "Recruitment services – European Union/ European Economic Area", Part No 2 "Recruitment services – Baltic states (Latvia, Lithuania, Estonia)";
- (C) In the Procurement Procedure the Service Provider's proposal for Part No [●] of the Procurement Procedure (the "Service Provider's Proposal") (enclosed to this Agreement as **Annex C: Technical proposal** and **Annex D: Financial Proposal**) was selected as the winning bid in Part No [●] of the Procurement Procedure;
- (D) this Agreement is co-financed from the Connecting Europe Facility (CEF), CEF Agreement No [●] and other recently signed Grant Agreements or future Grant Agreements to be signed.

Section I. Definitions and Interpretation

- 1.1 *Definitions.* In this Agreement, unless the context requires otherwise, all defined terms shall have the meanings ascribed 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 Any reference to "this Agreement", "hereof", "herein", "herewith", "hereunder" and words of similar import shall unless otherwise stated or where the context requires otherwise, include a reference to this Agreement and any part thereof, including its Annexes as amended from time to time.

- 1.2.5 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:
- 1.2.5.1 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 any Applicable Law or Good Industry Practice; and
- 1.2.5.2 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.
- 1.2.6 A reference to "writing" shall include an e-mail transmission and any means of reproducing words in a tangible and permanently visible form.
- 1.2.7 The words "include" and "including" are to be construed without limitation.
- 1.2.8 Unless indicated otherwise, all references to "days" shall mean calendar days, but "Business Days" shall mean any day except any Saturday (except if the national authorities of Latvia or Lithuania, respectively take an official decision that a particular Saturday is not a holiday, in which case such Saturdays are "Business Days"), any Sunday and any day which is a legal holiday in the Republic of Latvia, as the case may be.
- 1.3 *Order of Precedence.* In the event of any discrepancy or inconsistency arising between the documents forming part of this Agreement, the following order of precedence shall apply:
- 1.3.1 this Agreement document (body text) together with **Annex A: Definitions and Common Terms**;
- 1.3.2 Explanations (clarifications) of the Procurement Procedure documentation;
- 1.3.3 Procurement Procedure documents;
- 1.3.4 Clarifications of the Service Provider's Proposal;
- 1.3.5 Service Provider's Proposal;
- 1.3.6 All other Annexes of the Agreement.

Section II. General terms and conditions.

- 2.1 *Engagement.* The Principal hereby engages the Service Provider to provide and perform the Services on demand basis for the purposes of the Project with the objective of ensuring provision and performance of all Works more fully identified in the Scope subject to the terms of this Agreement, and the Service Provider hereby accepts such an engagement. The Agreement does not impose an obligation whatsoever on the Principal to appoint the Service Provider to provide any particular amount of Services nor does it guarantee any exclusive right to the Service Provider to provide Services to the Principals.
- 2.2 *Total Value and Term.* The total value of the Agreement is [●] EUR ([●]euro), excluding VAT (the "Total Value"). The Agreement term is 24 (twenty-four) months starting from the Effective Date or until the Total Value is reached, whichever comes first. In case the Total Value has not been reached, yet the initial 24 (twenty-four) month term has passed, then the Agreement can be further prolonged for an additional 1 (one) year, or until the Total Value has been reached, whichever comes first.
- 2.3 *Expiry and Termination.* After the expiry of the Agreement term or once the Total Value has been reached, no more new requests for Assignments or Services can be issued by the Principal. The Agreement terminates once all of the existing Assignments and Services are fully completed by the Service Provider and approved by the Principal and the Parties have fulfilled their contractual obligations arising out of the Agreement.
- 2.4 *Co-Operation of the Parties.* The Parties shall cooperate with one another to fulfil their respective obligations under this Agreement. Both Parties shall endeavour to maintain good working relationships among all key personnel engaged toward provision of the Services.

- 2.5 *Licensing Requirements.* By signing this Agreement, the declaration is made by the Service Provider that the Service Provider and its subcontractors is professionally qualified, registered, and licensed to practice in the Republic of Latvia, Lithuania and Estonia as described in the Scope if applicable in accordance with the Applicable Law.
- 2.6 *General Obligations of Service Provider.* The Service Provider shall be responsible for the professional quality, technical accuracy, and timely provision of the Services under this Agreement. The Service Provider shall have an obligation, without additional compensation of any kind, to correct or revise any errors, Defects, or omissions in concepts, specifications, estimates, and other services rendered hereunder and forming part of the Services.
- 2.7 *Acceptance Not a Waiver.* The review, approval, acceptance, or payment for the Works forming part of the Service shall not be interpreted or construed to operate as a waiver of any right or cause for action arising out of the Service Provider's performance of any Works under this Agreement. The Service Provider shall remain liable as allowed under this Agreement and under Applicable Law for any and all costs and/or Damages caused by the Service Provider's negligent performance of any of the Works furnished under this Agreement.
- 2.8 *Certain Representations and Warranties by Parties.* Each Party represents and warrants to the other Party, as of the Effective Date, as follows:
- 2.8.1 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;
 - 2.8.2 it has entered into this Agreement without having any intention or goal whatsoever to violate the Applicable Law, its own Statutes, other constitutional documents or agreements of any kind to which it is a party;
 - 2.8.3 it is not bankrupt and is not the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, it is not in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws of the country where it is registered and submits its tax accounts; and
 - 2.8.4 it has entered into this Agreement of its own volition and in good faith.
- 2.9 *Certain Representations and Warranties by Service Provider.* The Service Provider represents and warrants to the Principal, as of the Effective Date, as follows:
- 2.9.1 it has all requisite qualification, skills and competence to provide the Services to the Principal on the terms and conditions of this Agreement which are no less favourable than the terms and conditions of service identified by the Service Provider in any document submitted by the Service Provider to the Principal as part of the Procurement Procedure and on the terms of the Service Provider's Proposal identified in accordance with Service Provider's Proposal;
 - 2.9.2 it holds all requisite licenses, permits, approvals and consents necessary to enable performance of the Services according to the specifications contained in the Scope if applicable in accordance with the Applicable Law;
 - 2.9.3 it has all requisite ability to ensure the highest quality of the Services;
 - 2.9.4 it will assign competent and duly qualified personnel to carry out the Works set out in this Agreement and provide Services according to the highest professional standard and Good Industry Practice;
 - 2.9.5 it is not deemed to be a Person associated with the Principal for the purposes of Applicable Law;
 - 2.9.6 it has been registered as a VAT payer in [●];
 - 2.9.7 it is compliant with all of the requirements of the Service Provider's Declaration available on the Principals' website (here: https://www.railbaltica.org/wp-content/uploads/2019/03/Common-procurement-standards-and-guidelines_appendix6.pdf) and will continue to be compliant with all such requirements during the term of this Agreement; and

2.9.8 [IF APPLICABLE - if the Service Provider and the Principal are residing in different jurisdictions, the Services under this Agreement will not be provided through a permanent establishment or fixed base maintained by the Service Provider in the Republic of Latvia] The Service Provider is aware that the applicable laws of Latvia prescribe certain instances when payments to non-residents are subject to a withholding tax (for instance, in case of management and consultancy services), and the Principal will be obliged to make such withholdings with the following exception. No withholdings will be made if the Service Provider (before the Principal will be obliged to make any payment under the Agreement) will provide all necessary information and documents (including, where relevant, a residence certificate confirmed by the competent authority of the Service Provider's country of residence and the Latvian State Revenue Service) allowing to make an exemption from such withholding pursuant to the terms of the applicable laws of Latvia and international conventions or agreements between Latvia and the Service Provider's country of residence

Section III. Obligations of Service Provider

- 3.1 *General Obligations.* The Service Provider's services shall be performed as expeditiously as is consistent with professional skill and care, orderly progress of the Services, and in accordance with this Agreement. The Service Provider shall, at all times during the term of this Agreement, act in good faith towards the Principal in respect of all matters under the Agreement. The Service Provider undertakes to perform the Services in its entirety.
- 3.2 *Duty of Care and Exercise of Authority.* The Service Provider shall:
- 3.2.1 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;
 - 3.2.2 ensure that its personnel are properly qualified and competent in accordance with the relevant standards;
 - 3.2.3 ensure that all plans, specifications, estimates, surveys and other documents required to be prepared or submitted by the Service Provider under this Agreement conform to Good Industry Practice generally acceptable at the time of submission of such plans, specifications, estimates, studies and documents;
 - 3.2.4 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;
 - 3.2.5 comply, where applicable, with any reasonable requirements of the Principal not otherwise provided for in this Agreement; and
 - 3.2.6 notify the Principal of any Defects, faults or omissions as soon as they are identified by the Service Provider;
 - 3.2.7 whenever the Services includes the exercise of powers or performance of duties authorized or required pursuant to the terms of any contract entered into between the Principal and any third party, the Service Provider shall:
 - 3.2.7.1 act in accordance with the terms and conditions of the agreement entered into between the Principal and the relevant third party; provided, however, that the details of such powers and duties, to the extent not described pursuant to **Annex B: Technical Specification** and **Annex C: Technical proposal** are acceptable to the Service Provider;
 - 3.2.7.2 if authorized to certify, decide or exercise discretion, do so fairly between the Principal and third party not as an arbitrator but as an independent professional exercising its best skill and judgment; and
 - 3.2.7.3 to the extent so authorized, cause the obligations of any third party to be adjusted or modified, subject to obtaining the prior approval of the Principal to any adjustment or modification which can have a material effect on Costs, quality or time (except in any emergency when the Service Provider shall inform the Principal as soon as practicable).
- 3.3 *Maintenance of Records.* During the term of the Services and during ten (10) years from expiration or termination of this Agreement for any reason whatsoever, the Service Provider shall keep and maintain clear,

adequate and accurate records and Documentation evidencing, to the reasonable satisfaction of the Principal, that the Services have been and are being carried out in accordance with the relevant 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.

- 3.4 *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 in a generally recognised format for a period of ten (10) years from the date of termination of this Agreement or the Final Acceptance Date, as applicable. All records forming part of the Documentation shall be available to the Principal auditor, or expert appointed by the Principal during the period of time specified in accordance with this Clause.
- 3.5 *Right to Sub-Contract and Approved Staff.* In carrying out the Services, the Service Provider may only rely on the services of those Approved Sub-Contractors and Approved Staff listed in **Annex E: List of Approved Sub-Contractors and Approved Staff**. Such list may, from time to time, be modified or supplemented in accordance with the terms and subject to the criteria contained in the Agreement and applicable Public Procurement Law of the Republic of Latvia. Parties shall specify the name, contact details (legal representative(s)) of each Approved Sub-Contractor and Approved Staff as of the Effective Date in **Annex E: List of Approved Sub-Contractors and Approved Staff**. The Service Provider shall have an obligation to notify the Principal in writing of any changes to Sub-Contractor or Approved Staff data specified in **Annex E: List of Approved Sub-Contractors and Approved Staff** occurring during the term of this Agreement and of the required information for any new Sub-Contractors or Approved Staff member which it may subsequently engage toward provision of the Services. In respect of previously mentioned:
- 3.5.1 Pursuant to the Public Procurement Law of the Republic of Latvia the Service Provider shall obtain prior written consent of the Principal for the replacement of each Sub-Contractor or each Approved Staff member, or each key personnel indicated in **Annex E: List of Approved Sub-Contractors and Approved Staff** and involvement of additional Sub-contractors or Approved Staff members, or key personnel.
- 3.5.2 Review and evaluation of the replacement of Sub-Contractors or Approved Staff 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.
- 3.5.3 The Service Provider shall replace the Sub-Contractor and/or Approved Staff member which, during the effectiveness of this Agreement, meets any of the compulsory grounds for exclusion of tenderers (or sub-contractors) that were verified during the Procurement Procedure.
- 3.6 *Responsibility for Performance by Sub-Contractors.* The Service Provider shall retain the complete responsibility for the proper performance of all of its obligations under this Agreement, and any act, failure to act, breach or negligence on the part of any of its Approved Sub-Contractors shall, for the purposes of this Agreement, be deemed to be the act, failure to act, breach or negligence of the Service Provider.
- 3.7 *Property of Principal.* Anything supplied by or paid for by the Principal for the use by the Service Provider toward provision of the Services under this Agreement shall constitute the property of the Principal and, to the extent practicable, shall be marked by the Service Provider as property of the Principal. To the extent the Services are completed or terminated, the Service Provider shall furnish inventories of whatever has not been consumed in the performance of the Service to the Principal and shall deliver such inventories in such manner and to such location(s) as designated by the Principal. For the avoidance of any doubt, such delivery shall not be forming part of the Scope and the terms of the delivery shall be agreed between the Principal and the Service Provider separately.
- 3.8 *Reservation of Certain Approval Rights.* Nothing in this Agreement shall require the Principal to give or procure the giving of any consent or approval which would be contrary to or inconsistent with the interests of protection, safety and efficient operation of the Railway or the Project and the safety of Persons or property.
- 3.9 *Obligations of Service Provider on Termination.* In the event of issue or receipt of a notice of termination of the Agreement in compliance with the **Section IX. Termination and suspension**, the Service Provider shall:
- 3.9.1 take immediate steps to bring an end to the performance of the Services in an orderly manner;

- 3.9.2 make arrangements to minimize the expenditure under this Agreement as rapidly as possible; and
- 3.9.3 pass to the Principal a complete set of any documents, manuals or other information that the Principal may require in connection with the Project and the Railway and which, at the time of termination, are in the possession or under the control of the Service Provider.
- 3.10 *Attendance of Meetings.* To the extent necessary to ensure smooth and efficient provision of the Services, the Service Provider shall, at the Principal's request, hold and/or attend meetings with the Principal or any Persons.
- 3.11 *Compliance with Laws.* The Service Provider shall review the Applicable Laws applicable to the provision of the Services. In carrying out any activities forming part of the Services, the Service Provider shall, at all times, ensure compliance with requirements imposed by supra-national and/or governmental authorities having jurisdiction over the Project.
- 3.12 *Information Furnished by Principal.* The Service Provider shall be entitled to rely on the accuracy and completeness the information furnished by the Principal. The Service Provider shall inform the Principal if the Service Provider becomes aware of any errors, omissions, or inconsistencies in the provided information.
- 3.13 *No Conflicting Activity.* Except with the Principal's knowledge and express written permission, the Service Provider shall not engage in any activity, or accept any employment, other agreement, interest, or contribution that would reasonably appear to compromise the Service Provider's professional judgment and performance with respect to the Services and/or the Project. In performing the Services, the Service Provider 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.
- 3.14 *Certain Negative Covenants.* In carrying out the Services, the Service Provider undertakes not to procure goods or services of any kind from any Person meeting any of the following criteria:
- 3.14.1 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:
- 3.14.1.1 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;
- 3.14.1.2 fraud, misappropriation of funds or money laundering;
- 3.14.1.3 tax evasion or evasion of payments equivalent to tax;
- 3.14.1.4 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;
- 3.14.2 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:
- 3.14.2.1 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;
- 3.14.2.2 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;
- 3.14.3 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;

- 3.14.4 the Person who has insolvency proceedings initiated against it (except in the circumstances where a bailout or a similar set of measures are applied within the insolvency proceedings and are aimed at preventing the bankruptcy and restoring the debtor back to solvency, in which case the Service Provider shall evaluate the possibility of participation by such Person in performing the 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;
- 3.14.5 the Person has unpaid tax indebtedness in the country where the Procurement Procedure is organised or in the country where the Person is registered or permanently residing as a tax payer, including the indebtedness with respect to State social insurance contributions, in the total amount exceeding EUR 150 in each individual country; in such case, the Service Provider can, within its sole discretion, prompt the Approved Sub-Contractor to pay or discharge all outstanding tax indebtedness within 10 (ten) Business Days and, upon such payment or discharge, allow the person to continue performance of the Services; and
- 3.14.6 any of the above-mentioned criteria shall apply to all members of a group of persons if the Person is a group of persons.

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

- 3.15.1 any report, brochure, document or information related to the Services provided by the Service Provider to the Principal which the Service Provider makes publicly available shall include each of the following:
 - 3.15.1.1 a funding statement which indicates that the Services are financed from CEF funds substantially in the following form: "Rail Baltica is co-financed by the European Union's Connecting Europe Facility";
 - 3.15.1.2 with respect to printed materials, a disclaimer releasing the European Union from liability with respect to any contents of any distributed materials substantially in the form as follows: "The sole responsibility of this publication lies with the author. The European Union is not responsible for any use that may be made of the information contained therein". The disclaimer in all official languages of the European Union can be viewed on the website <https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos>; and
 - 3.15.1.3 the flag of the Council of Europe and the European Union.
- 3.15.2 the requirements set forth in Clauses 3.15.1.1 and 3.15.1.3 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 Service Provider decides to utilize the above logo, the Service Provider shall ensure that the individual elements forming part of the logo are not separated (the logo shall be utilized as a single unit) and sufficient free space is ensured around the logo; and

- 3.15.3 in order to comply with the latest applicable visibility requirements established by the European Union, the Service Provider shall regularly monitor changes to visibility requirements; as of the

Effective Date, the visibility requirements are available for review on the webpage <https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos>.

Section IV. Obligations of Principal

- 4.1 *Supply of Information.* Unless otherwise provided under this Agreement, the Principal shall, in a timely manner, provide to the Service Provider any information necessary for the provision of the Services or fulfillment of any other obligations under the Agreement, as may reasonably be requested by the Service Provider for the purposes of the Services and Assignments, provided that the Principal is in possession of such information.
- 4.2 *Review of Documentation.* The Principal shall examine Documentation as may be submitted by the Service Provider for review by the Principal toward partial completion of the Services and, upon request of the Service Provider, shall render decisions and opinions pertaining thereto.
- 4.3 *Decisions by Principal.* On all matters properly referred to it by the Service Provider in writing the Principal shall give its decision in writing so as not to delay the Services and within a reasonable time.
- 4.4 *Accounting and Auditing Services.* The Principal shall furnish accounting and auditing services as may be necessary for the provision of the Services as the Principal may require to ascertain how and/or for what purposes the Service Provider has used the funds paid under the terms of this Agreement.
- 4.5 *Action Upon Becoming Aware of Defects.* In the event the Principal observes or otherwise becomes aware of any error, fault, omission, or defect in the Services or non-conformance of any action forming part of the Services with the Documentation, the Principal shall give prompt notice thereof to the Service Provider. The Service Provider shall have the obligation to correct such error, fault, omission, or defect in the Service or non-conformance of any action forming part of the Services.

Section V. Personnel and Representatives

- 5.1 *Supply of Personnel.* The personnel who are designated by the Service Provider shall be fit for their respective assignments, and their qualifications shall be acceptable to the Principal. For the sake of clarity, the Service Provider must ensure timely and uninterrupted provision of the Services. Therefore, in the event that the Service Provider's Representative or personnel are permanently or temporarily absent for any reason, the Service Provider is obliged to immediately replace the Representative or supplement the personnel as the case may be to ensure uninterrupted implementation of the Services. If possible, the Service Provider tries to provide local representation for provision of Services that are performed in each of the countries - Estonia, Latvia and Lithuania.
- 5.2 *Representatives.* Each Party shall appoint an officer, employee or individual to serve as its representative toward supply or receipt of the Services with full authority to act on its behalf in connection with this Agreement, without the right to amend the terms of the Agreement, (the "Representative"), the initial Representatives having been identified in accordance with **Annex F: Representatives**. Any restriction placed by either Party on its Representative's authority shall be notified to the other Party in writing in order to be effective. The Representatives may delegate their authority by notice in writing specifying the identity of the delegate and specifying the scope of authority so delegated. In addition to the appointment of a Representative in accordance with this Clause 5.2, to the extent required by the Principal, the Service Provider shall designate an individual to liaise with the Representative of the Principal in each country where the Project is implemented.
- 5.3 *Changes in Personnel.* Taking into account the provisions of the Clause 3.5, to the extent necessary to temporarily or permanently replace any Person among personnel or Representative of either Party engaged toward provision or receipt of the Services, the Party responsible for the appointment of such Person shall immediately arrange for replacement of the appointed Person by another Person of comparable competence.
- 5.4 *Supplemental Personnel.* To the extent necessity arises to supplement the personnel of the Service Provider engaged toward provision of the Services with additional personnel, the Service Provider shall immediately arrange for engagement of such supplemental personnel. The costs of such engagement shall be borne by the Service Provider. For the avoidance of any doubt, the engagement of supplemental personnel under this

Clause 5.4 shall not require approval by the Principal, provided that these personnel comply with the law and this Agreement.

Section VI. Service meetings and reporting

- 6.1 *Service Meetings.* The Service Provider shall arrange project's communication's planning meetings on weekly, monthly and quarterly bases (or more frequently, to the extent mutually agreed by the Parties) if the Principal requests such meetings to be scheduled, at which appropriate personnel of the Service Provider and the Principal and the Representatives of each Party shall be present. Service Provider shall record all meetings (also online meetings) between Parties and prepare meeting reports within five (5) Business Days after each meeting at the request of the Principal. All meeting reports shall be harmonized by Principal.
- 6.2 *Reporting.* The Service Provider shall, in a format and at intervals to be agreed with the Principal:
- 6.2.1 provide the Principal with regular monthly reports and status updates on the progress of the Works, if not agreed otherwise by the Principal;
 - 6.2.2 inform on any changes to the Annexes of this Agreement, which the Service Provider considers may be needed in order to fulfil the objectives set out in the Agreement; and
 - 6.2.3 use reasonable endeavours to provide any other information and status updates as may be reasonably requested by the Principal at any time.
- 6.3 *Obligation to Act Pursuant to Principal's Comments.* In performing the Services, the Service Provider shall have due regard to any comments made by the Principal in connection with any review of the Documentation and shall provide reasons to the Principal where it does not take into account any such comments.
- 6.4 *Ambiguities and Inconsistencies.* Either Party shall notify the other Party as soon as it becomes aware of any ambiguity or inconsistency in or between the documents forming part of this Agreement or inconsistency in such documents and comments made by the Principal about the Services provided by the Service Provider. The Principal shall have the absolute and exclusive discretion in resolving any such ambiguity or inconsistency.

Section VII. Commencement of Service, and acceptance

- 7.1 *Service Commencement.* Service Provider shall be engaged by the Principal to provide the Services on an on-demand basis, with each instance of such an engagement constituting a separate assignment to perform the Services ("Assignment"). The Parties shall agree on the Deliverable, Milestone, and Fee in compliance with the Scope, **Annex D: Financial Proposal**, **Annex C: Technical proposal** and **Annex B: Technical Specification** for each Assignment constituting a part of the Services separately in accordance with Clause 7.2. The Service Provider shall render the Services with due diligence having due regard to any applicable Milestones for each Deliverable within the performance of the Services agreed by the Parties in compliance with the terms of the Agreement.
- 7.2 *Appointment of an Assignment.* The Principal invites the Service Provider to implement an Assignment by sending a request for the Assignment by e-mail in the form chosen by the Principal indicating at least the position title, preliminary job description and an invitation to the vacancy specification meeting as further described in the Scope. The Parties shall hold a vacancy specification meeting within five (5) Business Days following the Principals request for Assignment, if not agreed otherwise by the Parties. At the vacancy specification meeting the Parties shall agree on the specific Deliverable, Milestone and Fee to be determined in compliance with the Scope, **Annex D: Financial Proposal**, **Annex C: Technical proposal** and **Annex B: Technical Specification**, which shall be updated to the Recruitment Log, an online recruitment log maintained by the Principal reflecting up-to-date detailed information of the ongoing and finalized Assignments ("Recruitment Log").
- 7.3 *Recruitment Log.* The Principal shall update the Recruitment Log with up-to-date information on the Assignment as agreed by the parties in the vacancy specification meeting no later than the next Business Day following the vacancy specification meeting. The Service Provider is entitled to challenge the Recruitment Log entries by submitting a written notice to the Principal, in particular the Deliverable, Milestone, Fee of the particular Assignment if they do not comply with the mutual agreement of the Parties as of the Vacancy

7.4 *Acceptance of a specific Assignment.* The Parties agree that each specific Assignment shall be deemed as completed and accepted if the Service Provider has fully provided the Principal with the required Services according to the terms of the Agreement. In accordance with Clause 8.1.1 the Completion Dates in relation to each Assignment shall be:

7.4.1 the date when the Principal enters into contract with the Candidate; and

7.4.2 the date when the chosen Candidate successfully withstands the probation period defined by the Principal in the specific contract.

7.5 *Impediments and Delays.* If the Services, or any part thereof, is impeded or delayed by the Principal or any third party engaged by the Principal to increase the duration of the Assignment:

7.5.1 the Service Provider shall inform the Principal of the circumstances and probable effects of such impediment taking into consideration the Assignment; and

7.5.2 the duration of the Assignment shall be increased, and any Milestone affected by the impediment or delay shall be extended accordingly.

7.6 *Obligation to repeat Services.* For the sake of clarity, the Service Provider undertakes to provide repeated Services as a part of the Assignment without any additional compensation of Costs or Fee by the Principal upon certain events referred to in Clause 8.1.5.

7.7 *General duty of participation.* The Service Provider undertakes a general duty of participation for the provision of the Services and thus shall be obliged to confirm Assignment requested by the Principal in accordance with the terms of the Agreement. The Service Provider has a right to reject the Assignment only in exceptional cases where the Service Provider envisages that the implementation of a particular Assignment would result in a material conflict with the requirements of the Agreement. The decision of the Service Provider to reject the Principal's request for Assignment shall be provided in writing by stating the reasons for such decision in sufficient detail.

7.8 *Final Acceptance of Services.* Final acceptance of the Services as a whole shall occur upon the expiry or termination of this Agreement. Final acceptance shall be evidenced by means of both Parties mutually signing the Final Acceptance Note substantially in the form of **Annex G: Final Acceptance Note** (the "Final Acceptance Note"). The date of the Final Acceptance Note shall constitute the "Final Acceptance Date" with respect to the Services in its entirety. The Principal shall not unreasonably withhold or delay issuance of a Final Acceptance Note. Final Recruitment Log printout shall be attached to the Final Acceptance Note as an annex and it will become an integral part of the Final Acceptance Note.

8.1 *Fee.* In consideration of provision of the Services in compliance with the terms of the Agreement the Principal undertakes to pay the Service Provider a Fee in the amount agreed by the Parties for the particular Assignment which shall be determined in compliance with the **Annex D: Financial Proposal** (the “Fee”) and paid in accordance with the terms of the Agreement. It is acknowledged and agreed that the Fee shall include all Costs and expenses incurred by the Service Provider towards the provision of the particular Assignment. The following considerations will be taken into account before the Fee will be paid:

- | Completion Dates | Payment, % from the Fee |
|--|-------------------------|
| Principal enters into employment agreement /service agreement/management agreement with the Candidate (P1, P2 or P3 / P4, P5) | 70% |

| | |
|---|-----|
| Success fee after the respective Candidate (P1, P2 or P3 / P4, P5) withstands the probation period as defined by the employment agreement signed with the Principal | 30% |
|---|-----|

(Updated, Procurement commission decision made on 7 April 2022, Session minutes No 4)

For the sake of clarity, within the scope of the Agreement the Service Provider shall be entitled to receive the first payment of the Fee only if the Principal signs an employment/~~service/management~~ agreement with the Candidate sourced as a part of the Services. *(Updated, Procurement commission decision made on 7 April 2022, Session minutes No 4)*

- 8.1.2 In case if the Principal enters into the employment/~~service/management~~ agreement with two (2) selected Candidates from the shortlist provided by the Service Provider within the Assignment, the Principal, in addition to Fee payments per the payment schedule under Clause 8.1.1, shall pay to the Service Provider additional compensation equivalent to fifty percent (50%) of the Fee amount payable for the second recruited Candidate. *(Updated, Procurement commission decision made on 7 April 2022, Session minutes No 4).*
- 8.1.3 The Principal shall be entitled to terminate any Assignment upon giving a written notice of termination to the Service Provider. In such case the Principal shall have an obligation to pay the Service Provider a termination fee for the specific Assignment in the amount of fifty percent (50%) of the Fee payable for the respective position level (P1; P2 or P3 / P4, P5) if the Assignment is terminated after the Service Provider has already submitted the Deliverable to the Principal. This Clause is not applicable in the event of termination of the Agreement by the Principal occurring as a result of a violation of material breach by the Service Provider, and in the events described under Clause 8.1.4.
- 8.1.4 The Principal shall not pay the termination fee to the Service Provider as indicated under Clause 8.1.3. if:
 - 8.1.4.1 the submitted Deliverable does not comply with the requirements of the Agreement, e.g. it does not include at least three (3) qualified Candidates who comply with the requirements of the vacancy;
 - 8.1.4.2 the Service Provider has the obligation to repeat the provision of the Services within the scope of the Assignment under Clause 8.1.5. but the Deliverable does not comply with the requirements of the Agreement, e.g., it does not include at least three (3) qualified Candidates who comply with the requirements of the vacancy, or the Service Provider has not submitted the Deliverable within the Milestone specified within the Agreement;
- 8.1.5 If the Candidate from the Service Providers shortlist with which the Principal has entered into an employment agreement does not withstand the probation period, as set in the employment agreement, for whatever reason, the Service Provider is obliged to repeat the Services within the scope of the Assignment without any additional Fees or compensation of Costs. In this case the Service Provider shall be obliged to repeatedly submit the Deliverable until the Milestone, where the Service Start Date would be the day following the receipt of the Principals' notice of termination of the Candidates employment agreement.

- 8.2 **Invoicing.** Following each Completion Date and provided that the Principal has approved the receipt and conformance of the Services to which the invoice is related to, the Service Provider shall deliver to the Principal an invoice specifying the amount of Fee payable, reasonable breakdown of the provided and approved Services and the time period in which the Fee is payable, which shall not be less than 30 (thirty) days following the date when the Principal has received the invoice. In the event the Principal objects to payment of any amount claimed by the Service Provider in the invoice, notice to this effect shall be given by the Principal to the Service Provider not later than five (5) Business Days before the due date for payment under this Clause. The Objection Notice shall state the amount to be withheld, the grounds for withholding the payment and the basis on which that amount is calculated. Unless such Objection Notice 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 Clause. 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 accepted by the Principal.

- 8.3 *Payment.* Subject to the provisions of Clause Section 8 8.1 and 8.2, the Principal reserves the right to make the payments to the Service Provider with set-off, retention, counterclaim, abatement or other deduction of any kind if the nature of such set-off, retention, counterclaim, abatement or other deduction arises from this Agreement and the obligations of the Service Provider provided herein (i.e. in cases of accrued contractual penalty amounts etc.). If the Principal uses the right to make the payments to the Service Provider with set-off, retention, counterclaim, abatement or other deduction of any kind, then the Principal so notifies to the Service Provider no later than on the date of the respective payment stating the amount, the grounds and the basis on the Principal uses its right to set-off, retention, counterclaim, abatement or other deduction.
- 8.4 *Costs and Commissions.* Each Party shall bear its own costs, fees, commissions and expenses incurred in connection with the transfer of any funds under this Agreement to the other Party.
- 8.5 *Compliance with Tax Obligations in Latvia.* It is acknowledged and agreed by the Parties that the Fee shall include all taxes and duties payable by the Service Provider in the consequence of provision of the Services, except value added tax (VAT). The Service Provider shall, at the sole cost and expense of the Service Provider, comply with the obligation to pay all taxes and duties relevant to the provision of the Services in Latvia and in accordance with Applicable Law of Latvia. In addition, the Service Provider shall assume all risks associated with the payment or obligation to pay such taxes and duties, if any. The Service Provider assumes all risks associated with the possible increase in the amount of the Fee arising as a result of the obligation of having to pay any such taxes or duties, except as a result of a change in law.
- 8.6 *Invoice.* The Service Provider's invoices shall contain the following Service Provider's details and details about the Agreement:

| | |
|---|---------|
| Service Provider | [●] |
| Registration No | [●] |
| VAT payer's No or (and) indication that The Service provider is not a VAT payer | [●] |
| Legal address, city, Zip code, country | [●] |
| Legal name of Bank | [●] |
| Bank SWIFT Code | [●] |
| Bank IBAN Account No | [●] |
| Subject: | CEF [●] |

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

Section IX. Termination and suspension

- 9.1 *Termination for Material Breach or Bankruptcy.* 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 itemised description of the breach. For the purposes of this Clause 9.1 an event of material breach shall include any of the following:
- 9.1.1 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 10,000 due to the other Party or perform any part of the Service valued at least EUR 10,000);
- 9.1.2 any of the representations or warranties given by either Party under Clause 2.8 or any of the representations or warranties given by the Service Provider under Clause 2.9 proving to be untrue; or

- 9.1.3 breach by the Service Provider of the undertaking contained in Clause 10.10.
- 9.2 *Right to Terminate Immediately.* Notwithstanding anything to the contrary contained in this Agreement, a Party may terminate this Agreement immediately upon giving the other Party a written notice of termination explaining, in reasonable detail, the reason for termination upon occurrence of any of the following:
- 9.2.1 breach by the other Party of Clause 19.6;
 - 9.2.2 an event of Force Majeure has been continuing during more than sixty (60) days;
 - 9.2.3 the other Party had passed a resolution for winding-up (other than in order to amalgamate or reconstruct);
 - 9.2.4 breach by the Service Provider any of the confidentiality undertakings contained in **Section X. Intellectual property rights**;
 - 9.2.5 the other Party is unable to pay its debts and has presented a petition for voluntary bankruptcy;
 - 9.2.6 the other Party had a bankruptcy order issued against it;
 - 9.2.7 the other Party has a provisional receiver or administrative receiver appointed over the whole or a substantial part of its undertaking or assets;
 - 9.2.8 liquidation, insolvency or legal protection proceedings have been initiated with respect to the other Party or the other Party is declared insolvent;
 - 9.2.9 the making by the other Party of a proposal for a voluntary arrangement with creditors; or
 - 9.2.10 the occurrence of any event analogous to the events enumerated under Clauses 9.2.5 - 9.2.9 under the law of any jurisdiction to which the other Party's assets and undertaking are subject.
- 9.3 *Principal's Right to Terminate Immediately.* The Principal may terminate this Agreement immediately upon giving the other Party a written notice of termination explaining, in reasonable detail, the reason for termination, if
- 9.3.1 CEF Co-financing for further financing of the Services is not available to the Principal;

In such a case, the Principal shall pay the Service Provider the fees in respect of the Services provided under this Agreement up to the date of the notification of the termination of this Agreement and the Principal is not obliged to pay contractual or any other penalty or Damages to the Service Provider.
 - 9.3.2 it is not possible to execute the Agreement due to the application of international or national sanctions, or European Union or North Atlantic Treaty Organization applied sanctions significantly affecting interests of financial or capital market.
- 9.4 *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 Service Provider the fees in respect of the Works provided under this Agreement up to the date of the notification of the termination of this Agreement and the Principal is not obliged to pay contractual or any other penalty or Damages to the Service Provider.
- 9.5 *Principals' Right to Terminate.* The Principal may unilaterally terminate this Agreement upon giving the other Parties a written notice of termination two (2) months in advance, indicating the reasons for termination of the Agreement. In such a case, the Principal shall pay the Service Provider the fees in respect of the Services provided under this Agreement up to the date of the notification of the termination of this Agreement and the Principal is not obliged to pay contractual or any other penalty or Damages to the Service Provider.
- 9.6 *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:

- 9.6.1 any obligations arising as a result of any antecedent breach of this Agreement or any accrued rights; and
- 9.6.2 the provisions stipulated in accordance with Clauses 3.3, 3.4, 9.7, 10.6, 10.7, 10.8, 10.9, 10.11, 10.12, and **Section XI. Confidentiality, Section XIV. Right to audit, Section XV. On-the-spot visits, Section XVI. Notices and communication, Section XVII. Liability 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 Clause 9.6.2.
- 9.7 *Partial Acceptance.* Notwithstanding anything in this Agreement to the contrary, in the event of termination of this Agreement, the Principal shall have the right, in the sole discretion of the Principal, to partially accept any Works, part of Works or part of the Services delivered to the Principal under this Agreement (the "Right of Partial Acceptance"). The Principal shall notify the Service Provider of its intention to exercise the Right of Partial Acceptance in the termination notice given in accordance with Clause 9.1 or Clause 9.2 of this Agreement, specifying, in reasonable detail, the Works, part of Works or part of the Services which the Principal would like to partially accept. In the event of receipt of such notice, the Service Provider shall reasonably cooperate with the Principal in order to ascertain transfer to the Principal of ownership in the result(s) of such Works, part of Works or part of the Services and determination of the amount of consideration payable by the Principal.
- 9.8 *Principal's Obligation to Pay.* Subject to the provisions of Clause 9.7 and except in the event of termination by the Principal occurring as a result of violation by the Service Provider of Clause 19.6, and in the event of termination by the Principal according to Clause 9.3.1 and/or Clause 9.5 in the event this Agreement is terminated for any reason prior to completion of the Services, the Principal shall have an obligation to pay the Service Provider the Costs incurred by the Service Provider up to the date of termination.
- 9.9 *No Obligation to Pay Costs Incurred Prior to Acceptance.* Notwithstanding anything set forth in this Agreement to the contrary including, without limitation, under Clause 9.7, the Principal shall have no obligation to pay any of the Costs incurred by the Service Provider with respect to the Services (or part of the Services) not deemed as having been accepted by the Principal.
- 9.10 *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.
- 9.11 *Termination of an Assignment.* In view of Clause 8.1, Principal shall be entitled to immediately terminate Assignment upon giving a written notice of termination to the Service Provider.

Section X. Intellectual property rights

- 10.1 *Proprietary Rights.* All Documentation forming part of the Deliverables developed under this Agreement is and shall become the property of the Principal regardless of whether the Services or Deliverable is produced or finally accepted. It is acknowledged and agreed by the Parties that the Principal shall be permitted to reproduce the drawings, schemes and distribute the prints in connection with the use or disposition of the Documentation without any approval of the Service Provider and without incurring obligation to pay any royalties or additional compensation whatsoever to the Service Provider.
- 10.2 *Intellectual Property in Documentation.* The Services represents and warrants that it owns all Intellectual Property required for the purposes of completing its obligations under this Agreement and in all Documentation deliverable by or on behalf of the Service Provider under this Agreement and that, to the extent any Intellectual Property in any Documentation is not owned by the Service Provider, it has obtained all requisite consents from owner(s) of all Intellectual Property in the Documentation to fulfil all of the obligations undertaken by the Service Provider under this Agreement and has fully discharged all obligations with respect to payment of any royalties or fees.
- 10.3 *Transfer of Ownership to Principal.* The Principal shall acquire legal title to and ownership in the Intellectual Property in all Documentation deliverable to the Principal under this Agreement as of the moment of delivery by the Service Provider to the Principal of the Deliverable and Documentation forming part of the Deliverable, in accordance with Clause 7.4 of this Agreement; provided, however, that the Principal has paid the Fee or other consideration payable under the terms of this Agreement with respect to the relevant part of the Services

or Deliverable. For the avoidance of any doubt, such title and ownership shall confer upon the Principal, without limitation, each of the following:

- 10.3.1 the right to reproduce the Documentation, or any part thereof, and distribute copies of the Documentation or any part thereof;
- 10.3.2 the right to modify, amend and supplement the Documentation, or any part thereof;
- 10.3.3 the right to licence the Documentation, or any part thereof, for use by others; and
- 10.3.4 the right to transfer ownership in the Documentation, or any part thereof, to others.

10.4 *Grant of Limited License to Service Provider.* Upon acceptance by the Principal of any Deliverable and Documentation forming part of any Deliverable in accordance with Clause 7.4, the Principal shall be deemed to have granted the Service Provider licence to reproduce, modify and distribute copies of any Documentation forming part of any Deliverable for the purposes of the Services and the Project, subject to the following restrictions:

- 10.4.1 the license shall apply during the term of this Agreement only;
- 10.4.2 the permitted use shall only cover the right to reproduce, modify and distribute the Documentation, or any part thereof, for the purposes of performing, implementing or modifying the Services; and
- 10.4.3 the Documentation, or any part thereof, shall not, without the prior consent by the Principal, be distributed or communicated to any third party for purposes other than those permitted in accordance with this Clause 10.4.

The license in accordance with this Clause 10.4 shall be deemed to have been granted to the Service Provider as of the Completion Date.

10.5 *No Additional Royalty.* It is acknowledged and agreed by the Parties that consideration for the transfer of ownership in the Intellectual Property shall be forming part of the Fee and no additional royalty, fee or other consideration of any kind shall be payable by the Principal to the Service Provider or to any third party in consideration of the transfer of ownership in the Intellectual Property in any Documentation.

10.6 *No Infringement.* The Service Provider represents and warrants to the Principal that no Documentation deliverable to the Principal under the terms of this Agreement will infringe any existing Intellectual Property of any third party. In the event any of the representations or warranties contained in this Clause prove to be untrue or inaccurate, the Service Provider undertakes, at its own cost and expense, to defend and settle any claim raised by any third-party alleging infringement of Intellectual Property in the Documentation. The foregoing undertaking by the Service Provider shall apply subject to the following conditions:

- 10.6.1 the Principal shall notify the Service Provider, without undue delay, of any third-party claim alleging infringement of any Intellectual Property in any Documentation;
- 10.6.2 the Principal refrains from admitting liability under any third-party claim or acting on the account of such claim without prior approval by the Service Provider; and
- 10.6.3 the exclusive control over any legal proceeding or settlement related any third-party claim shall be exercised by the Service Provider; provided, however, that the Principal shall render the Services Provider all reasonable assistance toward such proceeding or settlement, at the cost and expense of the Service Provider.

10.7 *Infringement Proceedings.* In the event the Principal is a party to legal proceedings involving allegations of infringement of any Intellectual Property in the Documentation of any third party, the Service Provider shall keep the Principal fully informed of all aspects relevant to the legal proceedings and the Principal shall have the right, at its own cost, to be represented in the legal proceedings by separate counsel. In the event the Service Provider fails to act against claims alleging infringement of any Intellectual Property in the Documentation of any third party within reasonable time but, in any event, within twenty (20) days of having been notified of such claims, the Principal shall have the right to assume legal defence against claims alleging infringement of Intellectual Property and shall be entitled to reimbursement by the Service Provider of reasonable costs and expenses incurred toward such defence.

- 10.8 *Continued Use.* In the event a court of competent jurisdiction resolves in a binding judgment that the Documentation, or any part thereof, infringe Intellectual Property of any third party, the Service Provider shall, at its own cost and expense, procure for the Principal the right of continued use of the Documentation, or part thereof infringing Intellectual Property of a third party.
- 10.9 *License in Intellectual Property of Service Provider.* The Service Provider hereby grants the Principal an irrevocable and non-exclusive license to use, reproduce, modify and/or enhance any Intellectual Property of the Service Provider, provided and to the extent Intellectual Property of the Service Provider is used by the Principal for the purposes of the Railway and/or the Project. It is agreed and acknowledged by the Parties that the license fee for the grant of license in accordance with this Clause 10.9 forms part of the Fee and such license shall continue to be valid irrespective of expiration of this Agreement following completion of the Services or termination of this Agreement for any reason.
- 10.10 *Obligation to Procure Intellectual Property Rights.* Where the Service Provider is not the legal owner of any relevant Intellectual Property of the Service Provider, the Service Provider shall use reasonable endeavours to procure for the Principal the rights specified in accordance with Clause 10.9.
- 10.11 *Obligation to Indemnify with Respect to Uses Other Than for the Purpose.* The Principal shall defend and indemnify the Service Provider from and against any and all Damages arising from the use by the Principal of any Intellectual Property of the Service Provider other than for the purposes of the Railway and/or the Project.
- 10.12 *Indemnification by the Service Provider.* The Service Provider shall defend and indemnify the Principal from and against any and all Damages arising from the use by the Principal of any Intellectual Property of the Service Provider, to the extent use by the Principal is within the scope of the license granted to the Principal in accordance with Clause 10.9.
- 10.13 *Certain Rights of Service Provider.* The Service Provider after obtaining prior written approval from the Principal shall have the right to include photographic or artistic representations of the design of the Project among the Service Provider's promotional and professional materials. The Service Provider shall be given reasonable access to the completed Project to make such representations. However, the Service Provider's materials shall not include the Principal's confidential or proprietary information regardless of whether or not the Principal has previously advised the Service Provider in writing of the specific information considered by the Principal to be confidential or proprietary.

Section XI. Confidentiality

- 11.1 *Confidential Information.* "Confidential Information" means in relation to the Principal all information of a confidential nature relating to the Principal and its Affiliates which is supplied by the Principal (whether before or after the date of this Agreement) to the Service Provider or is available to the Service Provider during the implementation of the Agreement, either in writing, orally or in any other form and includes all analyses, compilations, notes, studies, memoranda and other documents which contain or otherwise reflect or are derived from such information, but excludes information which:
- 11.1.1 the Principal confirms in writing is not required to be treated as confidential; or
 - 11.1.2 the Service Provider can show that the Confidential Information was in its possession or known to it (by being in its use or being recorded in its files or computers or other recording media) prior to receipt from the Principal and was not previously acquired by the Service Provider from the Principal under an obligation of confidence; or
 - 11.1.3 was developed by or for the Service Provider at any time independently of this Agreement, without application of the information provided to the Service Provider under this Agreement.
- 11.2 *Undertakings with Respect to Confidential Information.* Subject to Clauses Section 11 and 11.3, the Service Provider shall:
- 11.2.1 at all times keep confidential all Confidential Information received by it and shall not disclose such Confidential Information to any other Person; and

- 11.2.2 procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any Person any Confidential Information, except with the prior written consent of the Party to which such Confidential Information relates.
- 11.3 *Permitted Disclosure.* Notwithstanding anything to the contrary set forth in accordance with Clauses Section 11.1 and 11.2, the Service Provider shall, without the prior written consent of the Principal, be entitled to disclose Confidential Information:
- 11.3.1 that is reasonably required by the Service Provider in the performance of its obligations pursuant to this Agreement, including the disclosure of any Confidential Information to any employee, contractor, agent, officer, Sub-Contractor (of any tier) or adviser to the extent necessary to enable the Service Provider to perform its obligations under this Agreement;
 - 11.3.2 to enable a determination to be made pursuant to **Section XV. On-the-spot visits**;
 - 11.3.3 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;
 - 11.3.4 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
 - 11.3.5 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.
- 11.4 *Obligation of Confidentiality Pertinent to Recipients of Confidential Information.* Whenever disclosure is permitted to be made pursuant to Clause 11.3, the Service Provider shall require that the recipient of Confidential Information be subject to the same obligation of confidentiality as that contained in this Agreement.
- 11.5 *Certain Obligations on Termination of Agreement.* If this Agreement is terminated for whatsoever reason, the Service Provider shall:
- 11.5.1 return to the Principal all of the Confidential Information then within the possession or control of the Service Provider; or
 - 11.5.2 destroy such Confidential Information using a secure and confidential method of destruction.
- 11.6 *No Press Release by Service Provider.* Save as required by Applicable Law, the Service Provider shall not issue any press release in relation to the matters contemplated under this Agreement without the prior written consent of the Principal (such consent not to be unreasonably withheld or delayed) as to both the content and the timing of the issue of the press release.
- 11.7 *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 Service Provider to the Principal during provision of the Services.
- 11.8 *Remedies.* The Parties acknowledge and agree that a breach of the provisions of this may cause the owner of Confidential Information to suffer irreparable Damage that could not be adequately remedied by an action at law. Accordingly, the Service Provider agrees that the owner of Confidential Information that is disclosed in breach of Clauses 11.2, 11.4 or 11.6 may be entitled to specific performance of those provisions to enjoin a breach or attempted breach thereof and to any other remedy, including, inter alia, damages and injunctive relief, awarded by a court of competent jurisdiction.

Section XII. Data privacy

- 12.1 For the purpose of implementation of the Agreement, the Parties will eventually transfer to each other certain personal data, such as data on employees, sub-contractors and other data subjects (names, surnames, e-mail addresses, business addresses, phone numbers, a derivative of a personal identification document without

disclosing special categories of personal data such as ethnicity, documents to support qualifications of the data subjects and other data relating to the implementation of the Agreement).

- 12.2 The Parties agree and acknowledge that for the purpose of the Agreement each of the Parties shall be viewed as controllers of personal data.
- 12.3 The personal data transferred by each Party to the other Party will be processed only in accordance with the procedure, terms and conditions established in the Agreement.
- 12.4 The Party shall transfer the personal data to the other Party and such other Party shall process the personal data only for the purposes of implementation of the Agreement and other such purposes as required by laws. The Parties agree that except where the Party has a separate legal basis for processing the personal data referred to in the laws governing the protection of personal data arising outside the Agreement, they shall not process the personal data for any other purpose except as referred to in the present Clause of the Agreement.
- 12.5 Besides other obligations provided for in the Agreement and the laws, each of the Parties undertake:
 - 12.5.1 To process the personal data to the minimum extent necessary;
 - 12.5.2 Not to infringe any rights of the data subjects;
 - 12.5.3 To implement and apply proper and necessary organizational and technical measures ensuring the compliance with the requirements of the laws;
 - 12.5.4 To duly keep records of the personal data processing activities if such an obligation arises from the requirements of the laws;
 - 12.5.5 To immediately notify the other Party if, in the opinion of the notifying Party, the actions of the other Party are likely to violate the requirements of the laws governing the protection of personal data;
 - 12.5.6 To ensure the compliance with other requirements of the laws governing the protection of personal data.
- 12.6 Taking into account the level of development of technical capacities and the nature, scope, context and objectives of the processing of personal data, as well as the probability and seriousness of risks arising from data processing to rights and freedoms of data subjects concerned, each Party and the Beneficiary, prior to commencing the processing of personal data, will implement and maintain throughout the processing of personal data the appropriate technical and organizational measures necessary to ensure the protection of personal data and the protection and implementation of rights of the data subjects established in the laws.
- 12.7 In the event of personal data security violation, or if a Party reasonably suspects such a violation, such a Party or the Beneficiary shall immediately, however, in any case not later than within twenty-four (24) hours after having become aware of this, inform the other Party in writing and provide all information and data relating to such a violation. In this relevant case, the notifying Party shall provide at least the following information:
 - 12.7.1 The nature of the personal data security violation, including, if possible, categories and an approximate number of data subjects involved as well as categories and an approximate number of relevant records of personal data;
 - 12.7.2 The name and contact details of the data protection officer and the name and contact details of another person who can provide more information;
 - 12.7.3 The expected consequences of the personal data security violation;
 - 12.7.4 The measures taken or proposed to be taken in order to eliminate the personal data security violation, including, where appropriate, measures to reduce the potential negative consequences thereof.
- 12.8 The Parties shall cooperate in every possible way and assist each other in:
- 12.9 eliminating the violation of the personal data security as well as its negative consequences, and/or:

- 12.10 proving that all necessary measures have been taken to prevent and correct the violation.
- 12.11 Each Party shall properly document the fact of the personal data security violation and any actions of elimination of its consequences in order at the request of the other Party it would be possible to effectively prove that the Parties have taken all measures provided for in the laws. At the request of the other Party, the Party shall provide it with such documentation.
- 12.12 Each of the Parties shall be entitled to transfer personal data to third parties and/or to a third state or to international organization, including the transfer of personal data for the purpose of their processing, only in accordance with the procedure and conditions defined in the laws. At the request of a Party, the other Party shall provide detailed information about what personal data has been transferred to what third state or international organization.
- 12.13 In the event of a reasonable suspicion that the other Party inadequately implements the data processing requirements, the Party shall be entitled to suspend the provision of all or some personal data to the other Party until the latter eliminates the violation and presents evidence thereof and confirms its obligation to comply with this Agreement and the requirements of the laws in the future.
- 12.14 Upon the disappearance of legal grounds to process personal data established in this Agreement, each of the Parties shall undertake to terminate the processing of personal data, unless it has a separate and independent right (arising outside the Agreement) to process the personal data.

Section XIII. Force Majeure

- 13.1 *Effects of Force Majeure.* Subject to the requirements set forth in accordance with Clauses 13.2 and 13.3, 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.
- 13.2 *Action Upon Becoming Aware of Force Majeure.* Each Party shall at all times, following the occurrence of a Force Majeure Event:
- 13.2.1 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
 - 13.2.2 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 11.
- 13.3 *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 13.2 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.
- 13.4 *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).
- 13.5 *Mitigation of Effects of Force Majeure.* As soon as practicable after the notification specified pursuant to Clause 13.3, the Parties shall use reasonable endeavours to agree appropriate terms or modifications to the Scope and payment terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.

Section XIV. Right to audit

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

Section XV. On-the-spot visits

- 15.1 *Right to perform On-the-Spot visits.* By submitting a written notice five (5) 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.
- 15.2 *Personnel involved.* On-the-spot visits may be carried out either directly by authorised staff or representatives of the Principal or by any other outside body or third party authorised to do so on behalf of the Principal. Information provided and collected in the framework of on-the-spot visits shall be treated on confidential basis. The Principal shall ensure that any authorised outside body or third party shall be bound by the same confidentiality obligations.
- 15.3 *Access to the information.* Service Provider shall provide to the performer of the on-the-spot visit or any other authorised outside body or third party access to all the information and documents, including information and documents in electronic format, which is requested by the authorised staff of the performer of the on-the-spot visit or any other authorised outside body or third party for the performance of an on-the-spot visit and which relates to the implementation of the Agreement, as well as shall allow the authorised staff of the performer of the on-the-spot visit or any other authorised outside body or third party the copying of the information and documents, with due respect to the confidentiality obligation.
- 15.4 *OLAF checks and inspections.* By virtue of Council Regulation (Euratom, EC) No 2185/961 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EU) No 883/20132 of the European Parliament and the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF), OLAF may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by European Union law for the protection of the financial interests of the European Union against fraud and other irregularities. Where appropriate, OLAF findings may lead to criminal prosecution under national law.

Section XVI. Notices and communication

- 16.1 *Notices.* All notices and other communications made or required to be given pursuant to this Agreement shall be in writing and shall be deemed given if delivered personally or sent by an e-mail, or delivered by overnight

courier service, or mailed by registered or certified mail (return receipt requested), postage prepaid, to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice):

16.1.1 to the Principal: RB Rail AS
Satekles iela 2B,
Riga, LV-1050
info@railbaltica.org

16.1.2 to the Service Provider: [●]

16.2 *Changes in Address.* Either Party shall be entitled to change its address for purposes of this Section by notice to the other Party. A notice of a change of address shall be effective only upon receipt thereof.

16.3 *Communication.* Communication between the Parties during the implementation of the Agreement shall primarily be done electronically. Furthermore, the Principal shall establish and maintain a dedicated online sharing folder where the Parties shall exchange any Documentation.

Section XVII. Liability

17.1 *Liability of the Parties.* The Service Provider shall be liable to compensate Damages incurred by the Principal arising out of or in connection with this Agreement and pay contractual penalty set forth in accordance with Clause 17.2 if a breach of any of the obligations of the Service Provider under this Agreement is established against the Service Provider. The Principal shall be liable to pay the contractual penalty set forth in accordance with Clause 17.2 if a breach of payment obligations of the Principal under this Agreement is established against the Principal.

17.2 *Contractual Penalty.*

17.2.1 In the event of failure by the Service Provider to provide the Services in compliance with the terms of the Agreement, the Service Provider shall be liable to pay to the Principal a penalty of one percent (1%) of the Fee payable for respective Services for each day of delay starting from the first delayed day, however, that the total amount of the penalty payable by the Supplier under this Clause shall not exceed ten percent (10%) of the Fee payable for the respective Services;

17.2.2 In the event of failure by the Principal to pay any amount in accordance with the Clause 8.1.1, the Principal shall be liable to pay the Service Provider a penalty of one percent (1%) of the delayed amount 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 shall not exceed ten percent (10%) of the delayed amount.

17.3 *Freedom of application of a contractual penalty.* For avoidance of doubt the application of the contractual penalty under this Agreement in each particular case shall be the sole discretion of the entitled Party taking into account material consequences of the infringement. The entitled Party may apply the contractual penalty at any time until the date of expiry or termination of the Agreement by providing to the breaching Party a written notice and issuing an appropriate invoice. The breaching Party shall pay the contractual penalty within a time period of sixty (60) days following the date on which the breaching Party received the invoice

17.4 *Compensation for Damages.* Notwithstanding of and without prejudice to any contractual penalty payable in accordance with Clause 17.2 and subject to the provisions of Clause 17.6, 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:

17.4.1 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;

17.4.2 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.

- 17.5 *Attribution of Damages.* Any Damages suffered by either Party shall, for the purposes of Clause 17.4, be reduced to the extent that the Damages are caused by or contributed to by the other Party's own negligence or breach of its obligations under this Agreement.
- 17.6 *Limitation of Liability.* Notwithstanding anything to the contrary set forth in this Agreement, in no circumstances shall the Service Provider or Principal be liable to one another for any loss of production, loss of profit, loss of revenue, loss of contract, liability incurred under other agreements (with the exception of costs paid by the Principal to contractors appointed by the Principal in relation to the Services or the Project) or any indirect or consequential loss arising out of or in connection with this Agreement. The Service Provider's total liability for the Works/Services carried out under this Agreement shall in no circumstances exceed the Total Value.

Section XVIII. Governing Law and resolution of disputes

- 18.1 *Governing Law.* This Agreement shall be governed by and construed in accordance with the 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 by way of amicable negotiations 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 *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.
- 19.3 *Relationship of the Parties.* The relationship between the Service Provider to the Principal under this Agreement is that of independent contractors. The Service Provider (or the Service Provider's sub-contractors) is not an employee of the Principal, is not carrying out the regular business of the Principal and is not subject to the same employment regulations as are applicable to employees of the Principal. Each of the Parties shall be solely and entirely responsible for their own acts and the acts of their employees. No benefits, special considerations, or employer/employee-type provisions are provided by the Principal to the Service Provider, the Service Provider's employees, or the Service Provider's consultants, or the employees of such consultants.
- 19.4 *Damages Covered by Insurance.* To the extent Damages are covered by insurance, the Principal and the Service Provider waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance current as of the date of this Agreement.
- 19.5 *Successors and Assigns.* The Principal and the Service Provider each bind themselves, their successors, legal representatives, and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect to all covenants of this Agreement. Neither Party shall assign or transfer its respective interest in the Agreement without written consent of the other Party.

- 19.6 *Conflict of Interest, Corruption and Fraud.* Notwithstanding any penalties that may be enforced against the Service Provider under Applicable Law of the country of the project, or of other jurisdictions, the Principal will be entitled to terminate the Agreement in accordance with Clause 9.2 and the Service Provider shall be deemed to have breached Clause 3.14 of the Agreement, if it is shown that the Service Provider is guilty of:
- 19.6.1 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
 - 19.6.2 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.
- 19.7 *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.
- 19.8 *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 including but not limited to the provisions of Section 5 of Article 61.
- 19.9 *Execution.* This Agreement is executed [●].

Signed by:

For and on behalf of the Principal

RB Rail AS

Registration No 40103845025

Legal address: Satekles iela 2B, Rīga, LV-1050

Email: info@railbaltica.org

[●];

For and on behalf of the Service Provider

[●];

[●];

Annex A: Definitions and Common Terms

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

- (a) **"Agreement"**, this Agreement together with all Annexes thereto.
- (b) **"Applicable Law"** or **"Law"**, any legislative act, regulation, decree, order, ordinance, statute, treaty, directive, judgment, or other legislative measure applicable to the Agreement, the Services, the Parties, etc. For the avoidance of any doubt, the term "Applicable Law" shall include any legislative act or directive relevant to public procurement.
- (c) **"Approved Sub-Contractor"**, any Person or organisation listed pursuant to **Annex E: List of Approved Sub-Contractors and Approved Staff**, which is in a contractual relationship with the Service Provider to provide a part of the Services.
- (d) **"Approved Staff"** - means any person which is in a contractual relationship with the Service Provider and is mentioned in the **Annex E: List of Approved Sub-Contractors and Approved Staff** to be involved in the provision of the Services as an expert or in any other role.
- (e) **"Assignment"** – means the specific instance of Services that is requested by the Principal in accordance with the Clause 7.2 and which shall be implemented by the Service Provider in accordance with the terms of the Agreement.
- (f) **"Candidate"**, a natural person whose compliance with qualification requirements defined by the Parties within the scope of the Assignment has been established by the Service Provider and who has applied its candidacy for consideration for the respective vacancy within the scope of the Services.
- (g) **"Completion Date"**, as described in accordance with Clause 7.4, as appropriate.
- (h) **"Confidential Information"**, as defined in accordance with Section **XI. Confidentiality** of the Agreement.
- (i) **"Costs"**, direct costs reasonably incurred by the Service Provider in relation to the provision of the Services, namely Costs within the scope of the Agreement 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 Service Provider in the performance of the Services or relating to the Services;
 - (iii) salaries of the Service Provider's employees for the time that they spend in connection with the Service;
 - (iv) payments to Sub-Contractors for Work 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 Service Provider 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 or by law to be obtained or maintained by the Service Provider;
 - (x) sales, use, gross receipts or other taxes related to the Services, imposed by any governmental authority, to the extent that the Service Provider is responsible for such taxes;
 - (xi) costs of long-distance telephone calls, telephone service at the site and postage relating to the Services;

- (xii) losses and expenses, not compensated by insurance, sustained by the Service Provider in connection with the Works under this Agreement, provided they resulted from causes other than the fault or neglect of the Service Provider.
- (j) "Damages", any direct cost, claim, damage, demand, loss, expense or liability incurred by the relevant Party or Person.
- (k) "Defect" is a part of the Services or Work which is not in accordance with the terms of the Agreement, Scope, Applicable Law or Good Industry Practice.
- (l) "Deliverable", any kind of resources, information, notes, material, computer files, documents and/or other items which the Service Provider is required to deliver to the Principal as part of the Services, as further specified pursuant to **Annex B: Technical Specification**.
- (m) "Documentation", all records, correspondence, and computer files of the Service Provider, its employees, engineers, and consultants pertaining to the Services.
- (n) "Effective Date", as specified in the Preamble to this Agreement.
- (o) "EUR" and "euro", the official currency of the eurozone, officially known as the euro area.
- (p) "Fee", as specified in accordance with Clause 8.1.
- (q) "Final Acceptance Date", as defined in accordance with Clause 7.8.
- (r) "Final Acceptance Note", as described in accordance with Clause 7.8.
- (s) "Force Majeure Event", any of the following events:
 - (i) an act of the public enemy or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;
 - (ii) an act of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;
 - (iii) a natural disaster or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);
 - (iv) nuclear, chemical or biological contamination;
 - (v) pressure waves caused by devices travelling at supersonic speeds;
 - (vi) discovery of fossils, antiquities or unexploded bombs; and/or
 - (vii) strike, lockout or other industrial action other than involving the Service Provider or the Principal.
- (cc) "Good Industry Practice", in relation to the performance of any activity to which this standard is applied, the exercise of that degree of skill, diligence, prudence and foresight as would reasonably be expected to be exercised by a properly qualified and competent Person engaged in carrying out Works or services of a similar size, nature, scope, type and complexity, complying with Applicable Law, applicable standards and published codes of practice.
- (ee) "Intellectual Property", all intellectual property rights in any part of the world in respect of any documentation, or information provided by the Service Provider to the Principal, including any patent, patent application, trade mark, trade mark application, 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.
- (ff) "Intellectual Property of Service Provider", all Intellectual Property owned or licensed to the Service Provider with a right to sub-license.
- (gg) "Milestone", the date of delivery of one or more Deliverables as a part of the Assignment in compliance with the terms of the Agreement which is determined in accordance with **Annex B: Technical Specification**
- (hh) "Necessary Consents", all approvals, permissions, consents, licenses, certificates, registrations and authorizations (whether statutory or otherwise), which may be required from time to time for the purposes of carrying out the Project.
- (ii) "Party" and "Parties", the Principal and the Service Provider and include the respective successors in title, permitted assigns and permitted transferees.

- (jj) "Person" shall include any natural 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.
- (kk) "Principal", the company RB Rail AS, as further specified in the Preamble of this Agreement, which employs the services of the Service Provider, and legal successors to the Service Provider and permitted assignees of the Service Provider.
- (ll) "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).
- (mm) "Railway", new fast conventional double track electrified railway line with the maximum design speed of 240 km/h and European standard gauge (1435 mm) on the Route.
- (nn) "Residence Certificate", a certificate mentioned in Clause 2.9.8.
- (oo) "Right of Partial Acceptance", as defined in accordance with Clause 9.7.
- (pp) "Scope" the scope of Services to be provided by the Service Provider in compliance with the Agreement as further identified under **Annex B: Technical Specification**
- (qq) "Service Provider", 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 Service, and legal successors to the Principal and permitted assignees of the Principal.
- (rr) "Services", recruitment services to be provided by the Service Provider to the Principal in compliance with the Scope and this Agreement.
- (ss) "Service Provider's Proposal", as specified in accordance with the preamble of this Agreement.
- (tt) "Total Value", as defined in Clause 2.2.
- (uu) "Works", all incidental works, steps and actions, performed by the Service Provider under this Agreement for the attainment of the objectives of the Service and/or the Project in accordance with **Annex B: Technical Specification, Annex C: Technical proposal and Annex D: Financial Proposal**.
- (vv) "Working Day", any day (other than Saturday or Sunday) on which banks in the Republic of Latvia are open for conduct of business.

Annex B: Technical Specification

for Part No 1 "Recruitment services – European Union/ European Economic Area"/ Part No 2 "Recruitment services – Baltic states (Latvia, Lithuania, Estonia)

Annex C: Technical proposal

for Part No 1 "Recruitment services – European Union/ European Economic Area"/ Part No 2 "Recruitment services – Baltic states (Latvia, Lithuania, Estonia)

Annex D: Financial Proposal

for Part No 1 "Recruitment services – European Union/ European Economic Area"/ Part No 2 "Recruitment services – Baltic states (Latvia, Lithuania, Estonia)

Annex E: List of Approved Sub-Contractors and Approved Staff

for Part No 1 "Recruitment services – European Union/ European Economic Area"/ Part No 2 "Recruitment services – Baltic states (Latvia, Lithuania, Estonia)

Annex F: Representatives**Representative of the Principal**

| |
|---------------------------|
| [name, surname, position] |
| Business address: [•] |
| Mobile phone: [•] |
| E-mail: [•] |

Representative of the Service Provider

| |
|---------------------------|
| [name, surname, position] |
| Business address: [•] |
| Mobile phone: [•] |
| E-mail: [•] |

Annex G: Final Acceptance Note

Date: [INSERT DATE IN THE FORM OF 1 January 2022]

Location: [INSERT LOCATION]

For: [•] (the "Service Provider")

This Final Acceptance Note (the "Final Acceptance Note") is issued to the Service Provider by RB Rail AS, registration number 40103845025, legal address Satekles iela 2B, Riga, LV-1050 (the "Principal"), represented by [INSERT NAME OF REPRESENTATIVE ON THE BASIS OF INSERT BASIS OF REPRESENTATION].

In this Final Acceptance Note, unless the context requires otherwise, all Definitions shall have the meaning ascribed to such terms in accordance with the AGREEMENT ON RECRUITMENT SERVICES [INSERT AGREEMENT NUMBER] dated [INSERT DATE] (the "Agreement") and **Annex A: Definitions and Common Terms** of the Agreement.

Whereas:

- (A) the Principal and the Service Provider have entered into the Agreement;
- (B) all of the Assignments issued to the Service Provider within the scope of the Agreement have been duly completed;
- (C) as stipulated by Clause 7.8 of the Agreement, final acceptance shall be evidenced by means of the both Parties signing the Final Acceptance Note substantially in the form of **Annex G: Final Acceptance Note** (the "Final Acceptance Note");

The Principal is satisfied with the result of the provided Services and/or all Assignments completed and submitted, and the Principal accepts the provided Services in their entirety.

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

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

On the date on which this Final Acceptance Note is signed by the Parties, the following annexes are attached:

- 1) Annex No 1 Recruitment Log.
- 2) [•]

Signatures:

Signatures:

For and on behalf of the Principal

[•]

For and on behalf of the Service Provider

[•]