

AUDIT SERVICES AGREEMENT

between

RB Rail AS
("Company")

and

SIA "Deloitte Audits Latvia"
("Contractor")

Contract registration number 1.19/LV-2022-46

CEF Contract No. CEF 1: INEA/CEF/TRAN/M2014/1045990;
CEF 2: INEA/CEF/TRANS/M2015/1129482;
CEF 3: INEA/CEF/TRANS/M2016/1360716;
CEF 6s: INEA/CEF/TRAN/M2019/2098304;
CEF 6w: INEA/CEF/TRAN/M2019/2098073;
CEF 7: INEA/CEF/TRAN/M2020/2428991;
Future Grant Agreements to be signed

Procurement procedure identification No. RBR 2022/8

Riga

2022



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

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AUDIT SERVICES AGREEMENT

This Agreement is entered into in Riga, on the date indicated on the timestamp of the last signature of the Agreement, by and between:

- (1) **RB Rail AS**, a public limited liability company registered in the Latvian Commercial Register with registration No. 40103845025 and legal address at Satekles iela 2B, Riga, LV-1050, Latvia (the "Company"), represented by Chairperson of the Management Board Agnis Driksna acting on the basis of the Regulations on Representation Rights dated 11 April 2022, on the one side, and
- (2) **SIA "Deloitte Audits Latvia"**, a company registered in the Latvian Commercial Register with registration No. 40003606960, legal address at Grēdu iela 4A, Riga, LV-1019, Latvia (the "Contractor"), represented by the Member of the Management Board Inguna Staša acting on the basis of company's statutes, on the other side,

(the Company and the Contractor referred to as the "Parties" and separately – as the "Party").

WHEREAS:

- (A) this Agreement is entered into under the Rail Baltica Global Project which includes all activities undertaken by the respective beneficiaries and implementing bodies of the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania in order to build, render operational and commercialise the Rail Baltica railway – a new fast conventional double track electrified railway line with 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 (the "Global Project");
- (B) the Company has organised a procurement procedure "Audit Services for 2022 - 2024" (identification No. RBR 2022/8) (the "Procurement Procedure") where the tender proposal submitted by the Contractor (the "Contractor's Proposal") was selected as the winning bid;
- (C) this Agreement is co-financed from the Connecting Europe Facility ("CEF"), CEF 1: INEA/CEF/TRAN/M2014/1045990, CEF 2: INEA/CEF/TRANS/M2015/1129482, CEF 3: INEA/CEF/TRANS/M2016/1360716, CEF 6s: INEA/CEF/TRAN/M2019/2098304, CEF 6w: INEA/CEF/TRAN/M2019/2098073, CEF 7: INEA/CEF/TRAN/M2020/2428991 and other recently signed grant agreements or future grant agreements (the "Grant Agreements") to be signed;

THEREFORE, the Parties agree as follows:

1. DEFINITIONS, INTERPRETATION AND ORDER OF PRECEDENCE

- 1.1. Definitions. In this Agreement, unless the context requires otherwise, the following definitions shall have the following meaning:

- 1.1.1. "Agreement" means this Agreement together with all its Annexes; whenever in the Agreement there is a reference to the Agreement, it includes a reference to all its Annexes, and reference to specific Annex following the reference to the Agreement is without prejudice to it.
- 1.1.2. "Annex" means any of the annexes enclosed to this Agreement and listed in Clause 1.3.
- 1.1.3. "Annual Audit Fee" as defined in Clause 5.1.1.
- 1.1.4. "Annual Audit Services" as defined in Clause 2.1.1.
- 1.1.5. "Applicable Laws" or "Laws" means any legislative act, regulation, decree, order, ordinance, statute, treaty, directive, judgment, or other legislative measure applicable to the Agreement, the Services, the Parties, etc. (including, but not limited to the Public Procurement Law of the Republic of Latvia).
- 1.1.6. "Approved Staff" means any person or organization listed in **Annex A** which is in a contractual relationship with the Contractor to provide a part of the Services.
- 1.1.7. "Approved Sub-Contractor" any person or organisation listed in **Annex A** which is in a contractual relationship with the Contractor to provide a part of the Services.
- 1.1.8. "Audit Standards" means the applicable international standards on auditing, assurance and quality control and the related standards of ethics, including:
 - (a) the International Standards on Auditing;

- (b) the International Standard on Related Services ('ISRS') 4400 *Engagements to perform Agreed-upon Procedures regarding Financial Information* as issued by the International Auditing and Assurance Standards Board;
- (c) the Code of Ethics for Professional Accountants issued by the International Ethics Standards Board for Accountants (IESBA).
- 1.1.9. "Auditor's Report" means the independent report of factual findings complying with the requirements of the CEF Standards, including with respect to its contents and form¹.
- 1.1.10. "BEN EE" means the Ministry of Economic Affairs and Communications of the Republic of Estonia.
- 1.1.11. "BEN LT" means the Ministry of Transport and Communications of the Republic of Lithuania.
- 1.1.12. "BEN LV" means the Ministry of Transport of the Republic of Latvia.
- 1.1.13. "Beneficiary" means each of (and together the "Beneficiaries") the following persons: (i) the Company, (ii) BEN EE, (iii) BEN LT, and (iv) BEN LV.
- 1.1.14. "Business day" means any day except Saturday, Sunday and any day which is a public holiday in the Republic of Latvia.
- 1.1.15. "CEF" as defined in the Preamble of the Agreement.
- 1.1.16. "CEF Audit" means each audit of the interim and final financial statements pursuant to the requirements of the Grant Agreements with respect to specific period of the respective Grant Agreement carried out for each respective Beneficiary.
- 1.1.17. "CEF Audit Fee" as defined in Clause 5.1.2.
- 1.1.18. "CEF Audit Services" as defined in Clause 2.1.2.
- 1.1.19. "CEF Standards" means standards, conditions and requirements in relation to CEF financing and under and in relation to the Grant Agreements, including as provided in the model documents and templates related to CEF financing.
- 1.1.20. "Company" as defined in the above list of the parties to the Agreement.
- 1.1.21. "Confidentiality Agreement" the confidentiality agreement with the form and contents enclosed in Annex B (subject to finalization prior to signing by the relevant parties and adjustments or amendments reasonably requested by the Company or the Beneficiary, or the Implementing Body).
- 1.1.22. "Contractor" as defined in the above list of the parties to the Agreement.
- 1.1.23. "Contractor's Proposal" as defined in the Preamble of the Agreement and enclosed in Annex C to the Agreement.
- 1.1.24. "Corrective Period" as defined in Clause 12.3.
- 1.1.25. "Damages" any direct cost, claim, damage, demand, loss, expense or liability incurred by the relevant person.
- 1.1.26. "Data Agreement" the personal data transfer agreement with the form and contents enclosed in Annex D (subject to finalization prior to signing by the relevant parties and adjustments or amendments reasonably requested by the Company or the Beneficiary, or the Implementing Body).
- 1.1.27. "Defect" means any error, fault, omission, defect or other non-compliance of the Deliverable or the Services with the requirements of the Agreement, the Applicable Laws, or the Good Industry Practice.
- 1.1.28. "Deliverable(s)" means any reports, materials, documents and/or other information or items which the Contractor is required to deliver to the Company or the Beneficiary as part of the Services.
- 1.1.29. "Due Date" means the date by which certain obligation of the Contractor has to be fulfilled pursuant to the Agreement, the Technical Specification or the Applicable Laws.

¹ The current version of the reports template available at: https://cinea.ec.europa.eu/connecting-europe-facility/templates-forms-2014-2020-cef-projects_en.

- 1.1.30. “EUR” and “euro” means the official currency of the eurozone, officially known as the euro area.
- 1.1.31. “Fee” as defined in Clause 5.1 of the Agreement.
- 1.1.32. “Force Majeure Event” means any of the following events:
- (a) an act of the public enemy or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;
 - (b) an act of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;
 - (c) 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);
 - (d) nuclear, chemical or biological contamination, epidemic or pandemic (except for COVID-19 pandemic);
 - (e) strike, lockout or other industrial action other than involving the Contractor or the Company.
- 1.1.33. “Global Project” as defined in the Preamble of the Agreement.
- 1.1.34. “Good Industry Practice” means, 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 the Services or services of a similar size, nature, scope, type and complexity, complying with the Applicable Laws.
- 1.1.35. “Grant Agreements” as defined in the Preamble of the Agreement and further specified in the Technical Specification, as well as any future Grant Agreements.
- 1.1.36. “Implementing Body” means each of (and together the “Implementing Bodies”) of the implementing bodies as the term is used and defined under the Grant Agreements, as well as any other entity which under the Grant Agreements is treated as an entity affiliated to any of the Beneficiaries.
- 1.1.37. “Party” or “Parties” as defined in the above list of the parties to the Agreement.
- 1.1.38. “Procurement Procedure” as defined in the Preamble of the Agreement.
- 1.1.39. “Representatives” as defined in Clause 10.4.
- 1.1.40. “Request Notice” means a notice by which the Company issues a request and instruction to the Contractor to commence specific CEF Audit Services.
- 1.1.41. “Services” as defined in Clause 2.1.
- 1.1.42. “Signing Date” means the date on which this Agreement is signed by the Parties as indicated above or, if signed with secure electronic signature, the date indicated on the timestamp of the last signature of the Agreement.
- 1.1.43. “Supplier’s Declaration” means Appendix 6² to the Common Procurement Standards and Guidelines for the Rail Baltica Project.
- 1.1.44. “Technical Specification” means Annex 1 of the Procurement Regulations attached in **Annex E** to this Agreement.
- 1.1.45. “Terms of Reference” means terms of reference for an independent report of factual findings on costs declared under a Grant Agreement financed under CEF with the form and contents enclosed in **Annex F** (subject to finalization prior to signing by the relevant parties and adjustments or amendments reasonably requested by the Company or the Beneficiary or required to comply with the CEF Standards).
- 1.1.46. “Variations” as defined in Clause 9.1.
- 1.2. Interpretation. The following interpretation rules of the provisions of this Agreement shall apply:

² https://www.railbaltica.org/wp-content/uploads/2021/06/APPENDIX-6_SUPPLIERS-DECLARATION_June_2021.pdf

- (a) The headings contained in this Agreement shall not be used in its interpretation.
- (b) References to the singular shall include references in the plural and vice versa and words denoting natural persons shall include any other Persons.
- (c) References to a treaty, directive, regulation, law or legislative provision shall be construed, at any particular time, as including a reference to any modification, extension or re-enactment of the respective treaty, directive, regulation, law or legislative provision at any time then in force and to all subordinate legislation enacted from time to time.
- (d) 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.
- (e) A reference to "writing" shall include an e-mail transmission and any means of reproducing words in a tangible and permanently visible form.
- (f) The words "include" and "including" are to be construed without limitation.
- (g) Unless indicated otherwise, all references to "days" shall mean calendar days.
- (h) 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.

1.3. Annexes. The Agreement contains the following Annexes:

- 1.3.1. Annex A: Approved Staff and Approved Sub-Contractors;
- 1.3.2. Annex B: Confidentiality Agreement;
- 1.3.3. Annex C: Contractor's Proposal;
- 1.3.4. Annex D: Data Agreement;
- 1.3.5. Annex E: Technical Specification;
- 1.3.6. Annex F: Terms of Reference.

1.4. Order of precedence. In the event of any discrepancy or inconsistency between the documents forming part of this Agreement, the following order of precedence shall apply:

- (a) this Agreement document (body text);
- (b) explanations (clarifications) of the Procurement Procedure documentation;
- (c) the Procurement Procedure documents with the annexes (including the Technical Specification);
- (d) clarifications of the Contractor's Proposal;
- (e) the Contractor's Proposal.

2. SERVICES

2.1. Services. The Company hereby engages, and the Contractor accepts such engagement and hereby undertakes to provide the services described under this Agreement (including the Technical Specification and other Annexes), consisting of (the "Services"):

- 2.1.1. the "Annual Audit Services": audits on the Company's annual financial statements for the years 2022, 2023 and 2024 as further specified in the Technical Specification; and
- 2.1.2. the "CEF Audit Services": audits on the Global Project expenditure (eligible costs) to be provided to each of the Beneficiaries as further specified in the Agreement and the Technical Specification. Nothing in this Agreement shall be considered as promise or undertaking by the Company to request any CEF Audit Services or the Contractor to rely on that any part or the entire scope of the CEF Audit Services will be requested.

2.2. Scope of the Services. The scope of the Services covers all measures, including those not explicitly listed in the Agreement required for due performance of the Services in accordance with the terms and conditions of the Agreement and achievement of the intended results. When the achievement of the aforementioned is not possible without performance of a measure not explicitly listed in the Agreement,

then performance of such a measure is considered as contractual obligation of the Contractor according to the Agreement.

- 2.3. Term of the Agreement. The Agreement enters into force when signed by the Parties and shall remain effective until complete fulfilment of the contractual obligations arising from the Agreement.
- 2.4. Term of the Services. It is intended that the Services will be provided until 31 December 2025.
- 2.5. Co-operation. The Parties shall cooperate with one another to fulfil their respective obligations under this Agreement. The Parties shall endeavour to maintain good working relationships among all key personnel engaged toward provision of the Services.
- 2.6. Meetings. The Company shall have a right, at any time during the Services provision period, to convene in person or online meetings with the Contractor for the assessment of any of the Deliverables and/or to discuss other matters relevant to any activities contemplated under this Agreement. The place and time of such meetings shall be within the sole discretion of the Company. The Contractor undertakes to act in good faith and reasonably cooperate with the Company with respect to the holding of and participating in any such meetings. If requested by the Company, the Contractor shall record meetings (also online meetings) between the Parties and prepare meeting reports within 5 (five) business days after each meeting. All meeting reports shall be confirmed by the Company.
- 2.7. Circumstances affecting performance. Each Party shall have an obligation to promptly notify the other Party in writing of any event or circumstances capable of impeding the proper or timely performance of its respective obligations under this Agreement.
- 2.8. Impediments and delays. If timely performance of the Services is affected due to impediments or delays caused by the Company or any third parties engaged by the Company:
 - (a) the Contractor shall promptly notify the Company of the circumstances and probable effects of such impediment or delay on the performance of the Services (if not notified in timely manner, the Contractor shall lose its right to make any claim in this respect); and
 - (b) the Parties shall in good faith discuss such allegation of the Contractor, and, if agreed, the duration of the Services (including the term for delivery of any pending Deliverable) shall be extended by the number of days directly affected by such impediment or delay.
- 2.9. Language and copies. Each Deliverable under this Agreement shall be in the English language (and Latvian if so required under the Technical Specification or the Applicable Laws) and delivered to the Company as required under the Technical Specification (including with respect to the required number of originals or hard copies, etc.). The Contractor shall ensure that the Deliverables as well as other documentation are prepared in high quality English language using appropriate terminology, and the Contractor shall in this respect ensure proof reading by a person proficient in the use of the English language and undertake other relevant measures prior to submission of the Deliverables (or their drafts) or the documentation to the Company.
- 2.10. Defects. During the provision of the Services, the Company is entitled to notify the Contractor of each Defect within reasonable period after the Defect is identified by the Company or notified by the Beneficiary. Upon discovering a Defect, or upon receipt by the Contractor of a notification of the Defect from the Company, the Contractor shall, at the Contractor's cost, rectify the Defect within 5 (five) days, unless otherwise reasonably specified by the Company or agreed by the Parties.
- 2.11. Limits to Review by the Company. The Company can only verify the fact of execution or provision of each Deliverable, but the Company or the Beneficiaries are not entitled to influence the contents of or refuse to accept a Deliverable that is duly executed by the Contractor in accordance with the Applicable Laws that specifically regulate the respective Services. To the extent not contradicting the Applicable Laws, the Company and the Beneficiaries are entitled to provide to the Contractor their considerations with respect to the methods or approach chosen by the Contractor in provision of the Services.
- 2.12. No Waiver. The Company's review or acceptance of the Deliverable and/or the Services or any payments under this Agreement shall not be interpreted or construed to operate as a waiver of any right or cause for action under or in relation to this Agreement.

3. ANNUAL AUDIT SERVICES

Timeline of the Annual Audit Services. The Annual Audit Services shall be performed in accordance with the following timeline:

- 3.1.1. The Contractor carries out the preliminary audit with respect to the reporting year during the last quarter of the reporting year.
- 3.1.2. By 1 October of each reporting year the Contractor submits the proposed plan for the Annual Audit Services in respect of financial statements of the reporting year. The information request for the purposes of the Annual Audit Services should be submitted at least 1 week prior to the agreed start of audit.
- 3.1.3. By 1 March of each following year the Contractor submits to the Company the auditor's report with respect to the annual financial statements of the preceding year (the draft of the report shall be submitted to management at least 3 (three) business days prior to submission of the final report).
- 3.1.4. By 15 March of each following year the Contractor submits to the Company the auditor's letter to the Company's management with respect to the annual financial statements of the preceding year.

4. CEF AUDIT SERVICES

- 4.1. Commencement of the CEF Audit Services. The CEF Audit Services shall be commenced only when the respective Request Notice is issued by the Company and in accordance with such Request Notice.
- 4.2. Request Notice. Each Request Notice specifies what CEF Audits have to be performed following the respective Request Notice with respect to the period that ended on 31 December of the respective preceding year(s) (or other reporting period pursuant to the requirements of the respective Grant Agreement). Each Request Notice may include requests for all or any number of the CEF Audits to be carried out, and the number of the Request Notices during any period is not limited.
- 4.3. Timeline of the CEF Audit Services. The CEF Audit Services shall be performed in accordance with the following timeline:
 - 4.3.1. The Company may, at the Company's sole discretion, provide the Contractor with information on the planned Request Notices and their scope (or co-ordinate the draft Request Notice(s) with the Contractor) in advance.
 - 4.3.2. The Company issues the Request Notice(s), if any, by 30 April of the respective year.
 - 4.3.3. The Contractor signs and submits to the Company the documents requested pursuant to and in accordance with Clause 4.4.
 - 4.3.4. The respective Beneficiary submits to the Contractor the respective financial statements required for the CEF Audits by 15 May of the respective year. The Beneficiary may, at its sole discretion, provide the draft financial statements sooner.
 - 4.3.5. At least 2 (two) weeks prior to commencement of the CEF Audit Services, the Contractor submits to the Company the request for information as well as the delivery plan for the respective CEF Audit Services.
 - 4.3.6. The Beneficiaries shall aim to respond to the information request and any (follow-up) requests of the Contractor within 3 (three) business days.
 - 4.3.7. The draft Auditor's Report with respect to each CEF Audit shall be submitted to the Company and the respective Beneficiary by 20 July of the respective year.
 - 4.3.8. The CEF Audit Services shall be completed, and the final Auditor's Report submitted to the Company and the respective Beneficiary by 31 July of the respective year.
- 4.4. Additional Agreements. Prior to provision of the respective Services and upon a separate request (in whatever form) of the Company, the Contractor is required to sign and deliver to the Company within 10 (ten) days following the respective request:
 - (a) the Terms of Reference with each of the Beneficiaries in relation to each CEF Audit to be provided to the respective Beneficiary;

- (b) the Confidentiality Agreement with each of the Beneficiaries, the Implementing Bodies and other relevant third parties, if any, whose financial statements (or parts of those) are subject to or relevant to the CEF Audits;
- (c) the Data Agreement with each of the Beneficiaries, the Implementing Bodies and other relevant third parties, if any, whose financial statements (or parts of those) or any other documents containing personal data are subject to or relevant to the CEF Audits;

(when it is reasonably required, including due to any changes to the Applicable Laws or their interpretation, any of the signed additional agreements shall be respectively amended upon the request of the Company, the respective Beneficiary or the respective Implementing Body).

- 4.5. Cancellation. The Company is entitled to cancel any Request Notice (entirely or partly) and/or any CEF Audit by notifying the Contractor in writing. If such notice is issued before commencement of the respective CEF Audit(s), the Company shall have no liability towards the Contractor with respect to such cancellation. If such notice is issued after the commencement of the respective CEF Audit(s) and the Contractor has commenced the work with respect to such CEF Audit, the Parties shall in good faith agree on compensation to the Contractor of the already incurred direct costs and expenses of the Contractor in relation to such already commenced CEF Audit(s), and the Company shall pay such compensation when agreed. Such compensation shall not exceed the amount of the CEF Audit Fee with respect to each already commenced CEF Audit.
- 4.6. New Conditions to Grant Agreements. The Contractor is aware that the Beneficiaries plan to sign new Grant Agreements and/or amendments to the already signed Grant Agreements. As a result of it, the requirements of the CEF Audits may change. Among other changes, certain CEF Audits may be required to be performed and completed by a date of the respective year that differs from the dates indicated in Clause 4.3. In such case the Company shall be entitled to unilaterally change the dates indicated in Clause 4.3 by providing a written notice to the Contractor, always provided that the Contractor shall have at least 30 (thirty) days for performance of the CEF Audit Services following the issuance of the Request Notice(s). With respect to such and other changes the Parties will also in good faith negotiate Variations, if any, to the Agreement to reasonably accommodate such changes.

5. FEE AND PAYMENTS

- 5.1. Fee. The Company undertakes to pay to the Contractor the following fees (the "Fee") in consideration of the due provision of:
 - 5.1.1. the Annual Audit Services: a fee in the total amount of [CONFIDENTIAL] (the "Annual Audit Fee") which is split as follows:
 - (a) [CONFIDENTIAL] for the Annual Audit Services with respect to year 2022;
 - (b) [CONFIDENTIAL] for the Annual Audit Services with respect to year 2023;
 - (c) [CONFIDENTIAL] for the Annual Audit Services with respect to year 2024;
 - 5.1.2. the CEF Audit Services: a fee for each separate CEF Audit in the amount of [CONFIDENTIAL] (the "CEF Audit Fee") payable only with respect to the actually requested and provided CEF Audit Services with the maximum aggregate amount of all the CEF Audit Fees being limited to [CONFIDENTIAL] (the "CEF Audit Total Fee").
- 5.2. VAT. The Fee excludes value added tax ("VAT") that will be charged at the rate applicable by the Applicable Laws at the time of invoicing.
- 5.3. Compliance with tax obligations. It is acknowledged and agreed by the Parties that the Fee shall include all taxes and duties payable by the Contractor in the consequence of provision of the Services, except VAT. The Contractor shall, at the sole cost and expense of the Contractor, comply with the obligation to pay all taxes and duties relevant to the provision of the Services in accordance with the Applicable Laws. In addition, the Contractor shall assume all risks associated with the payment or obligation to pay such taxes and duties, if any. The Contractor 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.
- 5.4. All-inclusive. The Fee is the all-inclusive consideration for the duly provided Services. The Fee includes reimbursement of all and any expenditure incurred by the Contractor toward performance of any steps, actions or measures contemplated in accordance with this Agreement (including, without limitation, meetings with the Company, the Beneficiaries, the Implementing Bodies or other relevant third parties, travel costs, costs of training of personnel of the Company, etc.). The Contractor agrees and

acknowledges that it shall have no right to request reimbursement by the Company of any additional expenditure whatsoever as may have been incurred by the Contractor toward provision of the services contemplated by this Agreement, unless reimbursement of such additional expenditure has been explicitly agreed between the Parties in writing.

- 5.5. Payments, costs, and commissions. Payment of the Contractor's invoices will be made in euro by bank transfer within 30 (thirty) days after completion of the respective Services and the receipt of the respective invoice in accordance with the Agreement. 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.

- 5.6. Invoice details. The Contractor's invoices shall contain the following details:

| | |
|--|---|
| Contractor: | SIA "Deloitte Audits Latvia" |
| Registration No: | 40003606960 |
| VAT payer's No or indication that the Contractor is not a VAT payer: | LV40003606960 |
| Legal address, city, Zip code, country: | Grēdu iela 4A, Riga, LV-1019 |
| Legal name of Bank: | AS "Swedbank" |
| Bank SWIFT Code: | HABALV22 |
| Bank Account No IBAN: | [CONFIDENTIAL] |
| The Company's VAT No: | LV40103845025 |
| Subject: | For provided [Annual Audit Services OR CEF Audit Services] according to the Audit Service Agreement No. 1.19/LV-2022-46 |
| Specific information for the Company: | <p>CEF 1: INEA/CEF/TRAN/M2014/1045990; CEF 2: INEA/CEF/TRANS/M2015/1129482; CEF 3: INEA/CEF/TRANS/M2016/1360716; CEF 6s: INEA/CEF/TRAN/M2019/2098304; CEF 6w: INEA/CEF/TRAN/M2019/2098073; CEF 7: INEA/CEF/TRAN/M2020/2428991; Future Grant Agreements to be signed; Company's Representatives: [CONFIDENTIAL]</p> |

- 5.7. Invoicing. The Contractor shall send the invoice to the Company electronically to the following e-mail address: invoices@railbaltica.org. The invoice is sent following the completion of the respective Annual Audit Services or the respective CEF Audit Services with respect to all CEF Audits under the respective Request Notice. In case payment for the Services (in whole or in part) will be made from more than one financing source, and upon the Company's request, the Contractor shall issue separate invoices corresponding to the amounts financed from the financing source as indicated by the Company.

- 5.8. Set-offs. The Company shall have the right to make the payments to the Contractor with set-off, retention, counterclaim, abatement, or other deduction of any kind that arises from this Agreement and from the obligations of the Contractor provided herein. If the Company uses the right to make the payments to the Contractor with set-off, retention, counterclaim, abatement, or other deduction of any kind, then the Company notifies the Contractor no later than on the due date of the respective payment stating the amount, the grounds and the basis for the use of the right to set-off, retention, counterclaim, abatement or other deduction or other right.

- 5.9. VAT payer's status. If required by the Applicable Laws, the Contractor shall obtain VAT payers status and VAT No. in the Republic of Latvia.

6. CONTRACTOR'S OTHER OBLIGATIONS AND COVENANTS

- 6.1. Standard of Performance. Without prejudice to the requirements prescribed elsewhere under the Agreement, the Contractor shall:

- 6.1.1. ensure that the Services and the Deliverables comply with (i) the specifications and requirements contained in the Agreement, including the Technical Specification, (ii) the Applicable Laws, including any requirements and recommendations of the European Union or its institutions, (iii) reasonable requirements, comments, or specific instructions of the Company or the Beneficiaries, as well as (iv) the CEF Standards, the Audit Standards and the Good Industry Practices;
- 6.1.2. 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;
- 6.1.3. ensure that with respect to the CEF Audit Services the Contractor's requests for information, including its scope and the requested methods of review, are reasonable and substantiated, without unnecessary exaggerations in this respect;
- 6.1.4. ensure that its personnel are properly qualified and competent;
- 6.1.5. act in good faith towards the Company and the Beneficiaries in respect of all matters under the Agreement;
- 6.1.6. inform the Company on any material findings as soon as reasonably practicable.
- 6.2. Maintenance of Records. During the term of the Services and for a period of 10 (ten) years from expiration or termination of this Agreement for any reason whatsoever, the Contractor shall keep and maintain clear, adequate, and accurate records and documentation evidencing, to the reasonable satisfaction of the Company, that the Services have been carried out in accordance with the Agreement. 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.
- 6.3. Access to Documentation. At all times during the term of the Services, the Company shall have access to all documentation related to the Services. This access shall be continuing and survive the termination of this Agreement for either cause or convenience. The documentation shall be kept accessible in a generally recognized format for a period of 10 (ten) years from the date of expiration or termination of this Agreement. All records forming part of such documentation shall be available to the Company' auditor, or expert appointed by the Company during the abovementioned period of time.
- 6.4. Right to Sub-Contractors and Staff. In carrying out the Services, the Contractor may rely only on the services of the Approved Sub-Contractors and the Approved Staff. In this respect:
 - 6.4.1. The list of the Approved Sub-Contractors and the Approved Staff may, from time to time, be modified or supplemented always subject to a prior written consent of the Company and in accordance with the terms and subject to the criteria contained in the Applicable Laws.
 - 6.4.2. The Contractor shall have an obligation to notify the Company in writing of any changes to Approved Sub-Contractor or the Approved Staff data occurring during the term of this Agreement and of the required information for any new Approved Sub-Contractors or the Approved Staff member which it may subsequently engage toward provision of the Services.
 - 6.4.3. The Contractor shall obtain prior written consent of the Company for the replacement of each Approved Sub-Contractor or each Approved Staff member or involvement of any additional persons. Review and evaluation of the replacement of Approved Sub-Contractors or Approved Staff shall be carried out, and the consent or refusal to give consent shall be rendered by the Company in accordance with Applicable Laws (in particular, Article 62 of the Public Procurement Law of the Republic of Latvia).
 - 6.4.4. The Contractor shall retain the complete responsibility for the proper performance of all of its obligations under this Agreement, and any act, failure to act, breach, or negligence on the part of any of its Approved Sub-Contractors or the Approved Staff shall, for the purposes of this Agreement, be deemed to be the act, failure to act, breach or negligence of the Contractor itself.
 - 6.4.5. The Contractor shall be responsible for the work of the Approved Staff and ensure that the Company has free access to the Approved Staff during the Company's working hours, including but not limited to no later than until the end of business day answer to e-mail or recall to the Company.
 - 6.4.6. The Contractor shall ensure that all Approved Staff members are fully available with respect to the Services (including the Additional Services) until the expiry of the Additional Services Period.

The Contractor shall ensure that the Approved Staff members participate in the meetings with the Company as requested by the Company from time to time.

- 6.4.7. The Contractor must replace any Approved Staff member involved in the performance of the Service if requested by the Company and supported by the reasons such as repeated careless performance of duties, incompetence or negligence, non-fulfilment of obligations or duties stipulated in the Agreement, as well as other reasons prescribed under the Agreement (including Clause 6.5 and the Technical Specification).
- 6.5. Security Clearance Requirements. The Contractor shall not involve in the performance of the Agreement a person convicted of an intentional criminal offense (employees, sub-contractors and/or any other person and personnel), regardless of the criminal record having been set aside or extinguished, and/or a person of whom there are known facts that give grounds to doubt his or her ability to retain restricted access and/or classified information, as well as a person who has or may have a conflict of interest by involving him in the performance of the obligations under this Agreement. In this respect:
- 6.5.1. At the Company's request, the Contractor shall submit to the Company a statement (certificate) from the relevant state penalty register regarding the criminal record of the natural person who will be involved in the performance of the Agreement.
- 6.5.2. In order to assess the compliance of the natural person whom the Contractor intends to involve in the performance of the Agreement with the requirements specified in this Clause 6.5, the Company has the right to organize an additional security compliance check.
- 6.5.3. The Contractor undertakes to inform the natural person involved in the performance of the Agreement about the processing of personal data performed by the Company when organizing a security compliance check.
- 6.5.4. The Contractor shall submit to the Company in writing at least 10 (ten) business days prior to the involvement of any natural person in the performance of the Agreement the following information of the person: name, surname, personal identification code (or equivalent personal identification information), place of birth, position, company name (in case involved staff of sub-contractors), the country from which the person comes. At the Company's request, the Contractor shall also submit a brief description of the role and responsibilities of the natural person in the performance of the Agreement.
- 6.5.5. The Company has the right, at its own discretion, to prohibit a natural person specified by the Contractor from performing tasks related to the performance of the Agreement by notifying the Contractor thereof in writing if the requirements referred to in this section of the Agreement are not complied with. The Parties agree that such decision of the Company is incontestable.
- 6.5.6. If the Company prohibits a natural person specified by the Contractor from performing the tasks related to the performance of the Agreement, the Contractor shall replace this natural person with another natural person by notifying the Company in accordance with the procedure laid down in Clause 6.5.4.
- 6.5.7. If the Contractor cannot replace a natural person or if its replacement would cause disproportionately high expenses to the Contractor, the Contractor shall immediately provide the Company with a motivated explanation and the Parties shall try to agree on possible conditions and procedures in which this natural person may perform tasks related to the performance of the Agreement.
- 6.5.8. The Contractor shall take all necessary actions and measures in a timely manner to ensure that a natural person is not involved in the performance of the Agreement or the involvement is immediately terminated if the natural person does not comply with this Clause 6.5, otherwise creates or may create security risks for the Company, incl. risks to the Company's information systems, information or data, as well as risks to the Company's reputation or operations.
- 6.5.9. The Contractor is obliged to:
- (a) ensure that a natural person who does not comply with the security clearance requirements is not involved in the performance of the Agreement;
 - (b) immediately replace a natural person who does not comply with the security clearance requirements in accordance with the provisions of this Agreement (and/or with the requirements of the Applicable Laws);

- (c) observe and not contest the Company's written instructions and decisions in accordance with this Clause 6.5;
 - (d) provide the Company with all the necessary information and support related to the necessity to replace a natural person.
- 6.5.10. In any case, the Contractor shall immediately notify the Company in writing of any situation that has arisen before the start and during the performance of the Agreement, as a result of which there is or may be a risk of involving a natural person who does not comply with the security clearance requirements under this Clause 6.5, as well as notify the Company in writing of the replacement of such natural person involved in the performance of the Agreement.
- 6.5.11. If the Contractor violates the conditions referred to in this Clause 6.5 and/or disregards the Company's instructions regarding security clearance requirements, then it constitutes a material breach of the Agreement and a ground for the Company to terminate the Agreement according to Section 12.
- 6.6. No Conflicting Activity. Except with the Company's knowledge and express written permission, the Contractor shall not engage in any activity or accept any employment, other agreement, interest, or contribution that would reasonably appear to compromise the Contractor's professional judgment and performance with respect to the provision of the Services. In performing the Services, the Contractor shall take all necessary measures to prevent any situation where the impartial and objective implementation of the Services is compromised for reasons involving economic interest, political or national affinity, family, or emotional ties or any other shared interest.
- 6.7. Property of the Company. Anything supplied by or paid for by the Company for the use by the Contractor towards provision of the Services, except for the audit documentation in accordance with Article 1 and Article 34 of the Law on Audit Services produced by the Service Provider during the execution of the Agreement, shall constitute the property of the Company insofar as Applicable Laws do not provide otherwise and, to the extent practicable, shall be marked by the Contractor as property of the Company.
- 6.8. Visibility requirements. At all times during performance of the Services, the Contractor undertakes to comply with each of the following requirements:
 - 6.8.1. any report, brochure, document, or information related to the Services carried out by the Contractor hereunder or any other person, or which the Contractor makes publicly available shall include each of the following:
 - (a) a funding statement which indicates that the Services are financed from CEF funds substantially in the following form: "Co-financed by the Connecting Europe Facility of the European Union";
 - (b) 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
 - (c) the flag of the Council of Europe and the European Union.
 - 6.8.2. the requirements set forth in Clauses 6.8.1(a) and 6.8.1(c) can be complied with by means of utilizing the following logo (if the Contractor uses this logo, the Contractor shall ensure that the individual elements forming part of the logo are not separated (the logo shall be used as a single unit) and sufficient free space is ensured around the logo):



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- 6.8.3. in order to comply with the latest applicable visibility requirements established by the European Union, the Contractor shall regularly monitor changes to visibility requirements; as at the Signing 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>.

- 6.9. **Reporting.** If requested by the Company, the Contractor shall, in a format and at intervals to be agreed with the Company, provide the Company with regular reports and status updates on the progress of the Services, and use reasonable endeavours to provide any other information and status updates as may be reasonably requested by the Company at any time.

7. COMPANY'S OTHER OBLIGATIONS AND COVENANTS

- 7.1. **Information.** The Company shall (and shall cause that the other Beneficiaries do), in a timely manner, provide to the Contractor any information as may reasonably be requested by the Contractor for the purposes of the Services. The Contractor shall be entitled to rely on the accuracy and completeness of information furnished by the Company or the other Beneficiaries. The Contractor shall provide prompt written notice to the Company or the respective Beneficiary if the Contractor becomes aware of any errors, omissions, or inconsistencies in the information provided by the Company or the respective Beneficiary.
- 7.2. **Access to Employees and Officers.** Upon request of the Contractor, the Company shall (and shall cause that each of the Beneficiaries) ensure access to and possibility to meet and interview the relevant employees and officers for the purposes of the Services.
- 7.3. **Decisions.** On all matters properly referred to it in writing by the Contractor, the Company shall give its decision in writing so as not to delay the provision of Services and within a reasonable time.
- 7.4. **Audit Related Obligations.** The Company undertakes to (and shall cause the Beneficiaries to do the same) prepare the respective financial statements in accordance with the Applicable Laws and the Audit Standards and/or the CEF Standards, respectively, and submit to the Contractor in accordance with the Agreement.

8. REPRESENTATIONS AND WARRANTIES

- 8.1. **Certain representations and warranties of the Parties.** Each Party represents and warrants to the other Party, as of the Signing Date, as follows:
- (a) 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;
 - (b) it has read this Agreement, understands it and agrees to be bound by it;
 - (c) 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;
 - (d) it has entered into this Agreement without having any intention or goal whatsoever to violate the Applicable Laws, its own articles of association, other constitutional documents, laws or agreements of any kind to which it is a party to;
 - (e) 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
 - (f) it has entered into this Agreement of its own volition and in good faith.
- 8.2. **Certain representations and warranties of the Contractor.** The Contractor represents and warrants to the Company, as of the Signing Date, as follows:
- (a) it has all requisite qualification, skills and competence to perform the Services on the terms and conditions of this Agreement which are no less favourable than the terms and conditions of service identified by the Contractor in any document submitted by the Contractor to the Company as part of the Procurement Procedure and on the terms of the Contractor's Proposal;
 - (b) it holds and will hold for the entire term of the Agreement all requisite accreditations, recognitions, licenses, permits, approvals and consents necessary under the Applicable Laws to enable performance by the Contractor of the Services;
 - (c) it has all requisite ability to ensure the highest quality of the Services;

- (d) it will assign competent and duly qualified personnel to carry out the Services according to the highest professional standards and the Good Industry Practices;
- (e) it is not deemed to be a person associated with the Company for the purposes of the Applicable Laws;
- (f) it is compliant with all of the requirements of the Supplier's Declaration and will continue to be compliant with all such requirements during the term of this Agreement.

9. VARIATIONS

- 9.1. Variations. Notwithstanding any provisions in this Agreement to the contrary, whenever the Company or the Contractor reasonably consider that a variation to the Agreement (the "Variations") is necessary, the Company and the Contractor shall negotiate in good faith on the terms of the intended Variations. For the avoidance of doubt, no Variation shall be effective unless and until concluded in writing by the respective Parties.
- 9.2. Scope of Variations. For the purpose of the Agreement, and at any time prior to the completion of the Services under the Agreement, as the case may be, the Variations may be concluded in respect of:
 - 9.2.1. amendments to the Agreement necessary to accommodate the new or updated requirements with respect to the CEF Audits following amendments to or signing of new Grant Agreements;
 - 9.2.2. amendments to the Agreement necessary to comply with the amendments or adjustments to the Applicable Laws from time to time, if any;
 - 9.2.3. supply of additional Services not previously foreseen under the Agreement;
 - 9.2.4. implementation of any amendments to the Agreement as initiated or approved by the Company during the provision of the Services which are necessary due to such reasons which the Company could not foresee in advance;
- 9.3. Limitations to Variations. In case of Variations due to supply of additional Services or due to reasons which the Company could not foresee in advance, the total value of the Agreement may not change by more than the maximum amount permitted under the Applicable Laws. Notwithstanding anything to the contrary contained in the Agreement, the Company and the Contractor may agree on the supply of additional Services not previously foreseen under the Agreement if they do not change the nature of the Agreement (type and purpose specified herein) and if the total value of such additional Services does not concurrently reach the thresholds specified under the Applicable Laws.
- 9.4. Variations' Fee. The fee for additional Services as a result of the Variations, if any, shall be determined taking into account the calculations and fees under the Technical Specification and the Contractor's Proposal. Furthermore, such fee shall be consistent with the market practice and proportionate to the Fee for the Services with similar scope under the Agreement, if any. Variations not resulting in additional services or works, including Variations related to the timeline of the provision of the Services, shall not result in additional fees or compensation of costs.

10. COMMUNICATION

- 10.1. Main Principles. Communication under the Agreement (e.g., information, requests, submissions, formal notifications, etc.) must:
 - (a) be carried out primarily in English;
 - (b) be made in writing (including electronic form);
 - (c) be primarily carried out between the Representatives as specified in Clause 10.4 or otherwise notified to each other.
- 10.2. Presumption of Receipt. Notices, declarations, invoices etc. shall be deemed received:
 - (a) if delivered by hand, on the first (1) business day following the delivery day;
 - (b) if sent by post, on the fifth (5) Business Day after the date of posting;
 - (c) if sent by e-mail, the same Business Day if sent prior to 17:00 o'clock and the next Business Day if sent after 17:00 o'clock (Eastern European Time); communication by e-mail is deemed made when it is sent by the sending Party to the receiving Party, unless the sending Party receives a message of non-delivery.

- 10.3. Exchange of Information. The method of exchange of the information between the Contractor and the Company, the Beneficiaries, the Implementing Bodies or other relevant persons is agreed on case by cases basis. The information may be exchanged electronically over the internet, always complying with the IT security requirements, if any, acceptable to the involved persons.
- 10.4. Representatives. The Company and the Contractor shall appoint an officer, employee or individual to serve as its representative toward the implementation of the Agreement and supply or receipt of the Services (including the request or confirmation of the Services, issuance of the Request Notice, etc.), with full authority to act on its behalf in connection with this Agreement, without the right to conclude amendments to the Agreement (the "Representative"). Any restriction placed by either Party on its Representative's authority shall be notified to the other Party in writing to be effective. The Representatives may delegate their authority by notice in writing specifying the contact information of the delegate and specifying the scope of authority so delegated. Each Party may replace or remove any Representative by notifying in writing the other Party immediately, but not later than 1 (one) business day after the replacement or the removal of the respective Representative. The initial Representatives are:
- (a) the authorised representative(s) of the Company for the Agreement fulfilment issues and procedures: [CONFIDENTIAL];
 - (b) the authorised representative(s) of the Contractor for the Agreement fulfilment issues and procedures: [CONFIDENTIAL].

11. INTELLECTUAL PROPERTY RIGHTS

All documentation forming part of the Deliverables developed under this Agreement is the property of the respective Beneficiary at the moment of creation in accordance with the Applicable Laws, with the exception of the documents that are the property of the Contractor pursuant to Article 34(1) of the Law on the Audit Services of the Republic of Latvia. The Contractor hereby acknowledges and grants, without any additional fee or financial consideration of any kind, the rights to the Company to use, publish, submit and transfer to third parties the Deliverables in order to fulfil the requirements of the Applicable Laws or the CEF Standards or the Audit Standards.

12. TERM AND TERMINATION

- 12.1. Force and Expiry. The Agreement enters into force when signed by the Parties and expires once the Parties have fulfilled their contractual obligations arising out of this Agreement, unless terminated earlier pursuant to the provisions of the Agreement.
- 12.2. Termination for material breach. It is understood by the Parties that the grounds for termination specified in this Clause 12.2 is to be considered as a "substantial reason" for the purposes of Section 3¹ of Article 29 of the Law on the Audit Services of the Republic of Latvia. Subject to the provisions of Clause 12.3, either the Company or the Contractor 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 Party of any of its obligations under this Agreement. The written notice of termination shall contain an itemized description of the breach. For the purposes of this Clause 12.1 an event of material breach shall include any of the following:
- (a) commitment by a Party of any persistent or material breach of this Agreement (which shall include failure to pay an amount of at least EUR 5,000 due to the other Party or perform any part of the Services valued at least EUR 5,000);
 - (b) failure by any Deliverable to conform to any of the material requirements to such Deliverable, provided that such failure is not capable of being remedied during the Corrective Period;
 - (c) any of the representations or warranties given by either Party under Clause 8.1 or any of the declarations, representations or warranties given by the Contractor under Clause 8.2 or the Contractor's Declaration proves to be untrue.
- 12.3. Corrective Period. In the event of a material breach by either Party of its obligations under this Agreement, the non-breaching Party shall allow the breaching Party 10 (ten) days for the corrective action or submission of a corrective action plan (the "Corrective Period"). The Corrective Period shall be counted from the date of receipt by the breaching Party of a written notice of breach. Should no satisfactory corrective action be taken, or acceptable corrective action plan provided by the breaching Party, the non-breaching Party shall have the right to terminate the Agreement. It is acknowledged and agreed by the Parties that the provisions of this Clause 12.3 shall not apply with respect to any of the events listed in Clause 12.4. In addition and for the avoidance of any doubt, the application of the

Corrective Period under this Clause 12.3 shall be without prejudice to and shall not relieve either Party from the obligation to pay any contractual penalty in accordance with the provisions of Clause 13.2 or to pay Damages incurred by the other Party in accordance with the provisions of Clause 13.1.

- 12.4. Parties' Right to Terminate Immediately. It is understood by the Parties that the grounds for termination specified in this Clause 12.4 is to be considered as a "substantial reason" for the purposes of Section 3¹ of Article 29 of the Law on the Audit Services of the Republic of Latvia. Notwithstanding anything to the contrary contained in this Agreement, the Company and the Contractor may terminate this Agreement immediately upon giving the other Party a written notice of termination explaining, in reasonable detail, the reason for termination upon occurrence of any of the following:
- (a) breach by the other Party of Clause 18.1;
 - (b) an event of Force Majeure has been continuing during more than sixty (60) days;
 - (c) the other Party had passed a resolution for winding-up (other than in order to amalgamate or reconstruct);
 - (d) the other Party is unable to pay its debts and has presented a petition for voluntary bankruptcy;
 - (e) the other Party had a bankruptcy order issued against it;
 - (f) liquidation, insolvency or legal protection proceedings have been initiated with respect to the other Party or the other Party is declared insolvent;
 - (g) the occurrence of any event analogous to the events enumerated under above paragraphs (d) - (f) under the law of any jurisdiction to which the other Party's assets and undertaking are subject.
- 12.5. Company's Right to Terminate Immediately. It is understood by the Parties that the grounds for termination specified in this Clause 12.5 is to be considered as a "substantial reason" for the purposes of Section 3¹ of Article 29 of the Law on the Audit Services of the Republic of Latvia. The Company may terminate this Agreement immediately upon giving the Contractor a written notice of termination explaining, in reasonable detail, the reason for termination, if:
- (a) CEF co-financing for further financing of the Services is not available to the Company fully or partly. In such a case, the Company shall pay the Contractor the fees in respect of the Services already provided under this Agreement up to the date of the notification of the termination of this Agreement and the Company is not obliged to pay contractual or any other penalty or damages to the Contractor;
 - (b) it is not possible to execute the Agreement due to the application of international or national sanctions, or the European Union or the North Atlantic Treaty Organization applied sanctions significantly affecting interests of financial or capital market.
- 12.6. Termination According to Public Procurement Law. The Agreement can be immediately terminated by the Company upon giving the Contractor 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 of the Republic of Latvia. In such a case, the Company shall pay the Contractor the Fee in respect of the Services already provided under this Agreement up to the date of the notification of the termination of this Agreement, but the Company shall have no other liability in this respect (including, but not limited to not being obliged to pay contractual or any other penalty or Damages to the Contractor).
- 12.7. Right to Advance. In the event the Contractor fails to fulfil any of its obligations, or fails to cure any breach in accordance with Clause 12.3 of this Agreement, and the Agreement is terminated by the Company, the Company may advance the Services to completion by employing the services of other professional service supplier(s) or by other means available to the Company. The Contractor shall be liable to the Company for any and all additional costs incurred due to failure by the Contractor to perform. The rights and remedies available to the Company set forth in accordance with this Clause shall be in addition to any and all other rights and remedies available under the Applicable Laws or this Agreement.
- 12.8. Consequences of Termination. Upon expiration or termination of this Agreement, the obligations of the Parties set forth in this Agreement shall cease, except with respect to the following:
- (a) any obligations arising as a result of any antecedent breach of this Agreement or any accrued rights; and
 - (b) the provisions stipulated in accordance with Clauses 6.2, 6.3, Section 11, Section 13, Section 15, Section 16, Section 17 and Clause 18.1 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 12.8(b).

- 12.9. Company's Obligation to Pay. Except in the event of termination by the Company occurring as a result of violation by the Contractor of Clause 18.1 or termination by the Company according to Clause 12.5 or 12.6, in the event this Agreement is terminated for any reason prior to completion of the Services, the Parties shall in good faith agree and the Company shall have an obligation to pay the Contractor the documented costs reasonably and properly incurred by the Contractor with respect to the Services up to the date of termination. The "costs" for the purposes of this Clause shall include:
- (a) salaries for the Approved Staff and other personnel in the direct employ of the Contractor in the performance of the Services or relating to the Services (including related benefits and taxes for items such as social security and other benefits for the labour and employees),
 - (b) payments to the Approved Sub-Contractors with respect to actually provided Services,
 - (c) sales, use, gross receipts or other taxes related to the Services, imposed by any governmental authority, to the extent that the Contractor is responsible for such taxes.
- 12.10. 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 the Applicable Laws.

13. LIABILITY

- 13.1. Liability of Parties. The Parties are liable to each other and the Contractor is liable to the Beneficiaries, the Implementing Bodies and other relevant third parties, if any, with whom the Contractor is required to sign additional agreements pursuant to Clause 4.4, with respect to any breach of its respective obligations under this Agreement or any additional agreement referred to in Clause 4.4, the liable Party shall compensate the other Party or other relevant person for any Damages incurred as a result of such breach, subject to the following terms:
- (a) the amount of compensation shall be limited to the amount of reasonably foreseeable Damages suffered as a result of the breach(es), but not otherwise; and
 - (b) if either Party is considered to be liable jointly with third parties to the other, the proportion of compensation payable by the liable Party shall be limited to that proportion of liability which is attributable to the breach by the liable Party.
- 13.2. Contractual Penalty.
- 13.2.1. Should the Contractor fail to meet any of the Due Dates referred to in Clause 3 or Clause 4.3 and provided that the cause of such delay is attributable to the action or inaction of the Contractor, the Company shall be entitled to request the Contractor to pay to the Company a contractual penalty of 0.1% (zero point one percent) of the amount of the fee payable for the Deliverable to which such delay relates for each day of delay, provided that each such contractual penalty shall not exceed 10% (ten percent) of the fee payable for the Deliverable to which such delay relates.
 - 13.2.2. Should the Company delay any payment in accordance with Clause 5.5, the Contractor shall be entitled to request the Company to pay a contractual penalty in the amount of 0.1% (zero point one percent) from the delayed amount for each day of delay, provided that the total amount of such contractual penalty payable by the Company under this Clause 13.2 shall not exceed 10% (ten percent) of the delayed amount.
 - 13.2.3. The contractual penalties shall be applied upon the sole discretion of the entitled Party under the Agreement considering the material consequences of the breach.
 - 13.2.4. Payment of the contractual penalty shall not release the Party from performance of any of its obligations under the Agreement.
- 13.3. Limitation of Liability. Notwithstanding anything to the contrary set forth in this Agreement, in no circumstances shall any Party be liable to the other Party or other relevant person for any loss of production, loss of profit, loss of revenue, loss of contract, liability incurred under other agreements or any indirect or consequential loss arising out of or in connection with this Agreement. The Contractor's total liability with respect to the Services carried out under this Agreement shall in no circumstances exceed the total amount of the Fee.

- 13.4. Insurance. During the validity term of the Agreement, the Contractor shall maintain valid civil liability insurance in the amounts not lower than required under the Applicable Laws. Upon the request of the Company, the Contractor shall provide a proof of its compliance with the requirements of this Clause.

14. FORCE MAJEURE

- 14.1. Effects of Force Majeure Event. Subject to the requirements set forth in accordance with Clauses 14.2 and 14.3, each Party shall be relieved from liability for non-performance of its obligations under this Agreement (other than any obligation to pay) to the extent that the Party is not able to perform such obligations due to a Force Majeure Event (i) which has occurred after the Signing Date, (ii) which the affected Party could not foresee or prevent, (iii) which was not caused by the affected Party, and (iv) which makes it impossible to fulfil the respective obligations under the Agreement.
- 14.2. Action Upon Occurrence of Force Majeure Event. Each Party shall at all times, following the occurrence of a Force Majeure Event:
- (a) take reasonable steps to prevent and mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the Force Majeure Event as soon as practicable and use reasonable endeavours in accordance with Good Industry Practice to remedy its failure to perform; and
 - (b) not be relieved from liability under this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to any failure to comply with its obligations under Clause 14.2(a).
- 14.3. Notification Requirements. Upon the occurrence of a Force Majeure Event, the affected Party shall notify the other Party as soon as reasonably practicable and in any event within 10 (ten) business days of it becoming aware of the relevant Force Majeure Event. Such notification shall give sufficient details to identify the particular event claimed to be a Force Majeure Event and shall contain detailed information relating to the failure to perform (or delay in performing), including the date of occurrence of the Force Majeure Event, the effect of the Force Majeure Event on the ability of the affected Party to perform, the action being taken in accordance with Clause 14.2(a) and an estimate of the period of time required to overcome the Force Majeure Event. The affected Party shall provide the other Party with any further information it receives or becomes aware of which relates to the Force Majeure Event and provide an update on the estimate of the period of time required to overcome its effects.
- 14.4. Notification of Resumed Performance. The affected Party shall notify the other Party as soon as practicable once the performance of its affected obligations can be resumed (performance to continue on the terms existing immediately prior to the occurrence of the Force Majeure Event).
- 14.5. Mitigation of Effects of Force Majeure Event. As soon as practicable after the notification specified pursuant to Clause 14.3, the Parties shall use reasonable endeavours to agree appropriate terms or modifications to the Services to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.

15. RIGHT TO AUDIT

- 15.1. Right to audit. Notwithstanding anything to the contrary set forth in this Agreement, the Company itself, a reputable outside independent body or expert engaged and authorized by the Company shall be entitled to inspect and/or audit the Contractor to ensure compliance with the terms of this Agreement, including inspecting and/or auditing:
- (a) the performance of any aspect of the Services; and/or
 - (b) any documentation, including all payrolls, accounts of the Contractor and/or other records used in or related to the performance of the Services.
- 15.2. Obligation to Assist. The Contractor shall provide all reasonable assistance to the Company or the independent body authorized by the Company in carrying out any inspection or audit pursuant to this Section 15. The Company shall be responsible for its own costs, or the costs incurred by the outside independent body designated by the Company, incurred toward carrying out such inspection or audit, unless, in the case of any such audit, that audit reveals that the Contractor is not compliant with the terms of this Agreement, in which case the Contractor shall reimburse the Company for all of its additional reasonable costs incurred, provided such non-compliance is material.
- 15.3. Survival of Termination. The rights and obligations of the Company set forth in accordance with this Section 15 shall survive expiration or termination of this Agreement for any reason and shall continue to

apply during the period of 10 (ten) years following expiration or termination of this Agreement for any reason whatsoever.

16. ON-THE-SPOT VISITS

- 16.1. Right to Perform On-the-spot Visits. By submitting a written notice 5 (five) business days in advance, but at the same time reserving the right of an unannounced on-the-spot visits without any advance notice, the Company may carry out on-the-spot visits to the sites and premises where the activities implemented within the Agreement are or were carried out.
- 16.2. Personnel Involved. On-the-spot visits may be carried out either directly by authorised staff or representatives of the Company or by any other outside body or third party authorised to do so on behalf of the Company. Information provided and collected in the framework of on-the-spot visits shall be treated on confidential basis. The Company shall ensure that any authorised outside body or third party shall be bound by the same confidentiality obligations.
- 16.3. Access to the Information. The Contractor shall provide to the performer of the on-the-spot visit or any other authorised outside body or third party access to all the information and documents, including information and documents in electronic format, which is requested by the authorised staff of the performer of the on-the-spot visit or any other authorised outside body or third party for the performance of an on-the-spot visit and which relates to the implementation of the Agreement, as well as shall allow the authorised staff of the performer of the on-the-spot visit or any other authorised outside body or third party the copying of the information and documents, with due respect to the confidentiality obligation.
- 16.4. 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.

17. GOVERNING LAW AND RESOLUTION OF DISPUTES

- 17.1. Governing Law. This Agreement shall be governed by and construed in accordance with law of the Republic of Latvia.
- 17.2. Resolution by Amicable Means. The Parties shall first attempt to settle any dispute, controversy or claim arising out of or relating to this Agreement through good faith debate, discussion, and negotiating prior to submitting them to mediation, arbitration, or other legal proceeding.
- 17.3. Venue for Resolution of Disputes. Should the Parties fail to settle such disputes, controversies or claims within 2 (two) months by amicable negotiations, 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.
- 17.4. Language. 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.

18. MISCELLANEOUS PROVISIONS

- 18.1. Conflict of Interest, Corruption and Fraud. Notwithstanding any penalties that may be enforced against the Contractor under the Applicable Laws, or the laws of other jurisdiction(s), the Contractor shall be deemed to have committed a breach under this Agreement and the Company shall be entitled to terminate this Agreement immediately and without any regard to the provisions of Clause 12.3, if it is shown that the Contractor is guilty of:
 - (a) offering, giving, receiving or soliciting anything of value with a view to influencing the behaviour or action of anyone, whether a public official or otherwise, directly or indirectly in the selection process or in the conduct of the Agreement; or

- (b) misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Company, including the use of collusive practices intended to stifle or reduce the benefits of free and open competition.
- 18.2. Confidentiality. On the Signing Date or as soon as possible after the Signing Date the Parties shall sign the Confidentiality Agreement.
- 18.3. Personal Data.
- 18.3.1. For the purpose of execution of this Agreement, the Parties might transfer to each other certain personal data, such as data on employees of the Parties, data on suppliers, the Global Project stakeholders and their employees etc.
- 18.3.2. The Parties acknowledge that for the purpose of the Agreement each of the Parties shall act as a controller.
- 18.3.3. 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 execution of the Agreement and other such purposes as required by Applicable laws.
- 18.3.4. The Parties agree that except where the Party has a separate legal basis for processing the personal data referred to in the Applicable Laws governing the protection of personal data, the Party shall not process the personal data for any other purpose.
- 18.3.5. Besides other obligations provided for in the Agreement, each of the Parties undertakes:
- (a) to process the personal data to the minimum extent necessary;
 - (b) not to infringe any rights of the data subjects;
 - (c) to implement and apply proper organizational and technical measures ensuring the compliance with the requirements of the law;
 - (d) to ensure the compliance with other requirements of the law governing the protection of personal data.
- 18.3.6. With respect to the personal data in relation to the CEF Audits the Parties shall on the Signing Date or as soon as possible after the Signing Date sign the Data Agreement.
- 18.4. Relationship of Parties. The relationship between the Contractor and the Company under this Agreement is that of independent contractor. The Contractor (or the Approved Sub-Contractors or Approved Staff) is not an employee of the Company, is not carrying out the regular business of the Company and is not subject to the same employment regulations as are applicable to employees of the Company. 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 Company to the Contractor, its employees, its consultants, or the employees of such consultants.
- 18.5. Severability. If any provision of this Agreement shall be held to be illegal, invalid, void or unenforceable under the 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.
- 18.6. Successors and Assigns. The Parties 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, if not directly provided otherwise under the Agreement.
- 18.7. Amendments and Variations. No amendment to or Variation of this Agreement shall be effective unless made in writing by duly authorized representatives of both Parties, if not provided otherwise herein. The Agreement can be amended in compliance with the provisions of Article 61 of the Public Procurement Law of the Republic of Latvia.
- 18.8. Entire Agreement. This Agreement, and the Annexes hereto, constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes and extinguishes all and any prior drafts, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.
- 18.9. Execution. This Agreement is executed as an electronic document.

For and on behalf of the Company:

For and on behalf of the Contractor:

Chairperson of the Management Board
Agnis Driksna

Member of the Management Board
Inguna Staša

THIS DOCUMENT IS SIGNED ELECTRONICALLY WITH A QUALIFIED ELECTRONIC SIGNATURE
AND CONTAINS TIME SEAL

Annex A: Approved Staff and Approved Sub-Contractors

[CONFIDENTIAL]

Annex B: Confidentiality Agreement

[NOTE: The version to be signed with RB Rail AS to refer and cover also the Annual Audit Services.]

CONFIDENTIALITY AGREEMENT NO. [●]

This confidentiality agreement (the "Agreement") is entered into in [place] on [date OR the date indicated on the timestamp of the last signature of the Agreement] by and between:

- (1) [●], [relevant details of the Disclosing Party] (the "Disclosing Party"), represented by [●] on the basis of [●], and
- (2) [●], a company registered in [●] under the registration No. [●], having its registered office at [●] (the "Contractor"), represented by [●] on the basis of [●],

(the Disclosing Party and the Contractor referred to as the "Parties" and separately – as the "Party").

WHEREAS:

- (A) RB Rail AS (the "Company") and the Contractor have entered in the audit services agreement (the "Services Agreement") as a result of a procurement procedure "Audit Services for 2022 - 2024" (identification No. RBR 2022/8) where the tender proposal submitted by the Contractor was selected as the winning bid.
- (B) Pursuant to the terms of the Services Agreement, the Company has engaged the Contractor to *inter alia* provide the CEF Audit Services as defined under the Services Agreement.
- (C) For the purposes of the CEF Audit Services the Disclosing Party will disclose to the Contractor certain confidential information.

THEREFORE, the Parties enter into this Agreement and agree as follows:

1. **Definitions.** Unless defined otherwise in this Agreement, or specifically stated that certain term should have the same meaning under this Agreement as under the Services Agreement, these additional terms have the following meaning in this Agreement:

"Confidential Information" means all information concerning or related to the business, operations, results of operations, assets and affairs of the Disclosing Party, including, but not limited to information related to the Global Project, or any financial and accounting information, budgets, projections, forecasts, business plans, operating methods, business strategies, product and service information, product plans, product specifications, product designs, processes, plans, drawings, concepts, research and development data and materials, systems, techniques, trade secrets, intellectual property, software programs and works of authorship, know-how, marketing and distribution plans, planning data, marketing strategies, price lists, market studies, employee lists, supplier lists, customer and prospect lists, and supplier and other customer information and data that the Disclosing Party or its Representatives or the Company on its behalf discloses (or has, prior to the date of this Agreement, disclosed) to the Contractor or its Representatives in relation to the CEF Audit Services, however documented or disclosed, together with any copies, extracts, analyses, compilations, studies or other documents prepared or received by the Contractor or its Representatives, which contain or otherwise reflect such information.

"Representatives" means the officers, directors, employees, partners, sub-contractors, members, managers, agents, advisors, subsidiaries, affiliates or representatives of a Party.

2. **Restricted Use of Confidential Information.** The Contractor agrees to use the Confidential Information provided by the Disclosing Party solely for the purpose of providing the CEF Audit Services, and for no other purpose, and further agrees to keep confidentiality and not disclose to any third party any Confidential Information. The Contractor acknowledges the confidential and proprietary nature of the Confidential Information provided by the Disclosing Party and acknowledges and agrees that it is acquiring no rights whatsoever in or to such Confidential Information.
3. **Exceptions to Confidential Information.** The Confidential Information does not include information that (i) is in the public domain through no fault of, or disclosure by, the Contractor or its Representatives, subsidiaries or affiliates, (ii) the Disclosing Party confirms in writing is not required to be treated as confidential, (iii) the Contractor can show that the Confidential Information was in its possession or known to it (by being in its use or being recorded in its files or computers or other recording media) prior to receipt from the Disclosing Party and was not previously acquired by the Contractor from the Disclosing Party or the Company or their affiliates or Representatives under an obligation of confidence.
4. **Permitted Disclosure.** The Contractor shall, without the prior written consent of the Company, be entitled to disclose Confidential Information:

- (a) solely to those of its Representatives who (i) require such material for the purpose of providing the CEF Audit Services, and (ii) are informed of the confidential nature of the Confidential Information and the obligations of this Agreement and agree to abide by the terms hereof as if they were the Contractor. The Contractor shall take all actions necessary to cause its Representatives and affiliates who receive the Confidential Information to comply with the terms of this Agreement as if they were the Contractor. The Contractor shall be responsible for any disclosure of the Confidential Information by its Representatives other than in accordance with the terms of this Agreement;
 - (b) to the extent required by the applicable laws or pursuant to an order of any court of competent jurisdiction, any parliamentary obligation or the rules of any governmental or regulatory authority having the force of law;
 - (c) to the extent the 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.
5. **Return of Materials.** Unless it is contrary to the applicable laws, all Confidential Information provided to the Contractor shall be promptly returned to the Disclosing Party, accompanied by all copies of such Confidential Information made by the Contractor, within five (5) business days after the written request and the Contractor shall use its reasonable endeavours to ensure that anyone to whom the Contractor has supplied any Confidential Information destroys or permanently erases (to the extent technically practicable) such Confidential Information and any copies made by them, in each case save to the extent that such recipients are required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body. The obligations of the Contractor contained in this Clause 5 shall be executed in a way and to the extent that this Clause 5 does not infringe the obligations of the Contractor to keep the information specified in Article 34 of the Law on Audit Services of the Republic of Latvia.
 6. **Right to Publish.** For the avoidance of any doubt, the Disclosing Party and any of the Beneficiaries (as defined under the Services Agreement) and the Implementing Bodies (as defined under the Services Agreement) shall have the right to publish any of the documents, information or data provided by the Contractor to the Disclosing Party or the Company during the provision of the CEF Audit Services.
 7. **No Press Release.** Save as required by the applicable laws, the Contractor shall not issue any press release in relation to the matters contemplated under this Agreement or the Services Agreement without the prior written consent of the Disclosing Party (such consent not to be unreasonably withheld or delayed) as to both the content and the timing of the issue of the press release.
 8. **No Rights Granted.** Nothing in this Agreement shall be construed as granting any rights under any patent, copyright or other intellectual property right of either party, nor shall this Agreement grant either party any rights in or to the other party's Confidential Information other than the limited right to review such Confidential Information solely for the purpose of providing the CEF Audit Services.
 9. **Term and Survival of Obligations.** This Agreement enters into force by signing of the Parties to this Agreement. The obligations of the Parties under this Agreement shall continue to apply during ten (10) years following expiration or termination of the Services Agreement for any reason whatsoever.
 10. **Successors and Assigns.** The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties, provided that Confidential Information of the Disclosing Party may not be assigned without the prior written consent of the Disclosing Party. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the Parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.
 11. **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the Parties agree to renegotiate such provision in good faith. In the event the Parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the remaining provisions shall be interpreted as if such provision were so excluded and (iii) the remaining provisions shall be enforceable in accordance with its terms.
 12. **Independent Contractors.** The Disclosing Party and the Contractor are independent contractors, and nothing contained in this Agreement shall be construed to constitute the Disclosing Party and the Contractor as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking.

13. **Governing Law and Dispute Resolution.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the Parties hereto shall be governed, construed and interpreted in accordance with the laws of the Republic of *[Estonia/Latvia/Lithuania depending on where the Disclosing Party is located]*, without giving effect to principles of conflicts of law. All disputes arising out of or in connection with this Agreement shall be dealt with by amicable negotiation. If the Parties are unable to reach an agreement by negotiation, then any dispute, disagreement or claim arising from this Agreement which relates to the same or any breach thereof, termination or invalidity shall be finally resolved in the light of general civil jurisdiction rules of the Republic of *[Estonia/Latvia/Lithuania depending on where the Disclosing Party is located]*.
14. **Remedies.** The Disclosing Party and the Contractor each agree that its obligations set forth in this Agreement are necessary and reasonable in order to protect the Disclosing Party and its business. The Disclosing Party and the Contractor each expressly agree that due to the unique nature of the Confidential Information, monetary damages would be inadequate to compensate the Disclosing Party for any breach by the Contractor of its covenants and agreements set forth in this Agreement. Accordingly, the Parties agree and acknowledge that any such violation or threatened violation shall cause irreparable injury to the Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the Disclosing Party shall be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach by the Contractor, without the necessity of posting a bond or other security or proving actual damages.
15. **Amendments and Waiver.** Any provision of this Agreement may be amended with the written consent of the Parties. Any amendment or waiver effected in accordance with this Clause shall be binding upon the Parties and their respective successors and assigns. Failure to enforce any provision of this Agreement by a Party shall not constitute a waiver of any term hereof by such party.
16. **Notices.** Any notice or communication provided under or relating to this Agreement shall be in writing and either hand delivered, deposited in the postal mail, certified with return receipt requested, with postage prepaid, or sent by a nationally-recognized overnight delivery service (i.e., DHL, etc.) and addressed to the Party at its address set forth above. Notices shall be deemed delivered when actually received by the intended recipient regardless of the method of delivery. A change of address by a Party must be by notice given to the other parties in the manner specified above.
17. **Authorization.** The person signing this Agreement on behalf of the undersigned has the authority to do so and to bind the undersigned to the terms hereof.
18. **Execution.** *[This Agreement is executed in 2 (two) copies, one for each Party, both having the same legal effect OR This Agreement is executed as an electronic document].*

For and on behalf of the Disclosing Party:

For and on behalf of the Contractor:

[●]

[●]

[THIS DOCUMENT IS ELECTRONICALLY SIGNED WITH A SECURE ELECTRONIC SIGNATURE AND CONTAINS A
TIME STAMP]

Annex C: Contractor's Proposal

[CONFIDENTIAL]

Annex D: Data Agreement

PERSONAL DATA TRANSFER AGREEMENT NO. [●]

This personal data transfer agreement (the "Agreement") is entered into in [place] on [date OR the date indicated on the timestamp of the last signature of the Agreement] by and between:

- (1) [●], [relevant details of the Disclosing Party] (the "Disclosing Party"), represented by [●] on the basis of [●], and
- (2) [●], a company registered in [●] under the registration No. [●], having its registered office at [●] (the "Contractor"), represented by [●] on the basis of [●],

the Disclosing Party and the Contractor referred to as the "Parties" and separately – as the "Party".

WHEREAS:

- (A) REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the "GDPR") is currently in force and directly applicable;
- (B) according to the GDPR 'personal data' means any information relating to an identified or identifiable natural person ('data subject'). An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
- (C) among other conditions, the GDPR establishes certain obligations in personal data processing area, which are related to the Disclosing Party's engagement and co-operation with the Contractor;
- (D) RB Rail AS (the "Company") and the Contractor have entered in the audit services agreement (the "Services Agreement") as a result of a procurement procedure "Audit Services for 2022 - 2024" (identification No. RBR 2022/8) where the tender proposal submitted by the Contractor was selected as the winning bid.
- (E) Pursuant to the terms of the Services Agreement, the Company has engaged the Contractor to *inter alia* provide the CEF Audit Services as defined under the Services Agreement.
- (F) For the purposes of the CEF Audit Services the Disclosing Party will disclose to the Contractor certain \ information as a result of which personal data transfer relations between two data controllers – the Disclosing Party and the Contractor, shall emerge;

THEREFORE, seeking to properly implement the requirements of the GDPR, the Parties have entered into the Agreement:

1. **Personal Data Transfer Objective and Grounds.** The personal data which is planned to be transferred by the Disclosing Party to the Contractor as on the date of this Agreement is specified in Annex 1. Upon the Contractor's request, the Disclosing Party may have to provide other data (including personal data) reasonably necessary for the fulfilment of the CEF Audit Services. The Contractor shall use personal data obtained from the Disclosing Party for purposes of execution of the CEF Audit Services and other purposes foreseen for it, while it is acting as the data controller. The Contractor shall become the controller of the personal data specified in Annex 1 hereto after such data is transferred by the Disclosing Party during the performance of the Services Agreement.
2. **Undertakings of the Disclosing Party.** When providing the personal data to the Contractor, the Disclosing Party agrees and undertakes to:
 - (a) ensure that the personal data being transferred has been collected and processed lawfully and such personal data transfer hereunder complies with the requirements of the GDPR;
 - (b) ensure that data subjects, whose personal data is transferred, are properly and timely informed about such processing of their personal data and they have been provided all information provided for by the GDPR, to the extent that it does not involve a disproportionate effort;
 - (c) ensure that the employees, which are authorized to process personal data, have committed themselves in writing to ensuring confidentiality of the personal data;
 - (d) notify about the performance of corrections in the personal data transferred, if this information is important for the Contractor for the provision of the CEF Audit Services.
3. **Undertakings of the Contractor.** When obtaining the personal data, the Contractor agrees and undertakes to:

- (a) process the personal data in compliance with the requirements specified in Annex 1;
 - (b) ensure personal data processing to be carried out in compliance with the requirements of the GDPR;
 - (c) ensure that the Contractor's employees and other persons, engaged by the Contractor in personal data processing, have committed themselves to adhere to the requirements for confidentiality and security of the personal data, which comply with the requirements of the applicable data protection laws;
 - (d) take the necessary technical and organizational measures, which shall be determined in the light of the risks arising from the processing of data, in particular the unintentional or unlawful destruction, loss, alteration, unauthorized disclosure or unauthorized access of data transmitted, stored or otherwise processed. The technical and organizational measures taken must be without prejudice to the requirements of applicable data protection laws and ensure the protection of the data subjects rights.
4. **Further Assurance.** The Parties agree to cooperate with each other and render assistance to each other upon receipt of requests or inquiries of the data subjects and/or competent institutions, related to the personal data transferred hereunder. If the Party is unable to fulfil the conditions hereof for some reason, it must immediately inform the other Party about it. The Contractor may exercise its rights as the data controller, including the right to engage the data processors for processing of the personal data transferred under data processing agreements concluded with them.
 5. **Liability.** If any Party hereto fails to fulfil or improperly fulfils its obligations to inform the data subjects about processing of their data, the Party that fails to fulfil its obligations shall compensate the other Party for all damages caused by it, including reimbursement for any sanctions which might be imposed by the supervisory authority. The Party is not liable for failure to fulfil any of its obligations if it proves that such failure had been conditioned by the circumstance beyond control of the Party and this circumstance or its consequences could not be predicted, avoided or overcome (force majeure). In any case the Party shall inform the other Party about force majeure events and, if applicable, contract suspension immediately, but not later than 7 (seven) business days after the date of occurrence of the circumstances.
 6. **Effect on Other Agreements.** The Agreement does is not meant to amend any provisions, conditions or terms of the Services Agreement or any other agreement entered into between the Disclosing Party and the Contractor, unless explicitly stated otherwise.
 7. **Force and Validity.** The Agreement shall take effect upon signing by the Disclosing Party and the Contractor and remain valid until expiry of the Services Agreement.
 8. **Amendments.** The Agreement may be altered only by a written document made by both Parties.
 9. **Execution.** *[This Agreement is executed in 2 (two) copies, one for each Party, both having the same legal effect OR This Agreement is executed as an electronic document.]*

For and on behalf of the Disclosing Party:

For and on behalf of the Contractor:

[●]

[●]

[THIS DOCUMENT IS ELECTRONICALLY SIGNED WITH A SECURE ELECTRONIC SIGNATURE AND CONTAINS A TIME STAMP]

Information on personal data

| | |
|---|-----|
| Data is transferred to the Contractor for the following purposes: | [●] |
| Categories of personal data being transferred: | [●] |
| Categories of data subjects: | [●] |
| Data processing operations carried out by the Contractor: | [●] |
| Place of data processing operations: | [●] |

For and on behalf of the Disclosing Party:

For and on behalf of the Contractor:

[●]

[●]

**TECHNICAL SPECIFICATION FOR THE OPEN COMPETITION
"AUDIT SERVICES FOR 2022 - 2024"
(ID NO RBR 2022/8)**



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

Riga
2022

1. INTRODUCTION TO RAIL BALTICA

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

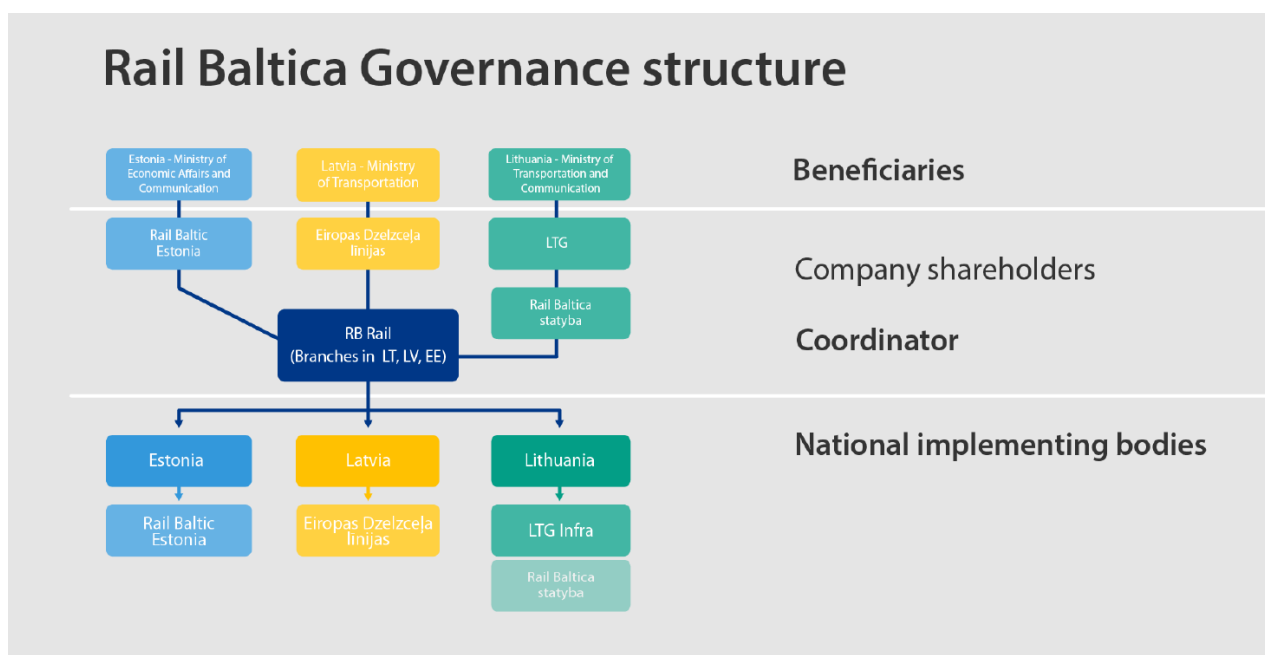
The ambitions of the Rail Baltica Global project (Global Project) are:

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

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

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

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



RBR together with governments of Estonia, Latvia and Lithuania (represented by the ministries in charge of transport policy) have applied for the CEF co-financing in 2015-2022 (seven applications in total). The applications were successful and six CINEA grants under the Connecting Europe Facility are available to support the Global Project expenses.

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

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

2. SCOPE OF THE SERVICES

The below-mentioned Services (Service Part I and Service Part II) should be provided for the annual periods 2022 – 2024.

2.1. SERVICE PART I

The Contractor undertakes to carry out an audit of the RB Rail AS (including the RB Rail AS branches in Lithuania and Estonia) financial statements for the financial year 2022, 2023 and 2024. The audit shall be carried out in accordance with the Law of Audit Services of the Republic of Latvia and the International Standards on Auditing.

All financial data of RB Rail AS branches (including invoices and other supporting documents) are available in Riga. Currently, the branch in Lithuania is obliged to submit the Corporate Income Tax return and the branch in Estonia prepares balance sheet and income statement. Currently, no formal auditor's report on any of these branch documents is required in Lithuania and Estonia.

At present the RB Rail AS prepares two sets of financial statement each year (both are subject to audit by the Contractor):

1. Statutory financial statements in line with the Law on the Annual Financial Reports and Consolidated Financial Reports of the Republic of Latvia;
2. Financial statements prepared according to International Financial Reporting Standards (IFRS) required by the shareholders.

The two principal differences in accounting policies used in those reports arise from not applying requirements of IFRS 9 and IFRS 16 in the annual reports of RB Rail AS prepared in accordance with the Law on Annual Financial Reports and Consolidated Financial Reports of the Republic of Latvia.

RB Rail AS performs monthly closing every month, but recognizes financing income once a year based on actual costs incurred for the calendar year, therefore audit of income can start only after closing costs for the year. General ledger entries are to be closed by 7th of February, draft annual reports to be prepared by 14th of February. Auditors' report on both annual reports have to be ready by 1st March and presented in Latvian and English.

RB Rail AS financial information*

| Indicator | 2020 mEUR | 2021 mEUR | 2022** mEUR | 2023** mEUR | 2024** mEUR |
|--------------------|--------------|--------------|----------------|----------------|----------------|
| Operating income | 11.8 | 16.1 | 36.9 | 40.1 | 30.1 |
| Loss | (0.06) | (0.15) | (0) | (0.1) | 0 |
| Total assets | 33.6 | 25.9 | 43.0 | 41.3 | 26.5 |
| Non-current assets | 0.6 | 0.6 | 0.6 | 0.6 | 0.6 |
| Number of staff | 132 | 194 | 262 | 293 | 297 |

*Based on accounting statements in line with the Law on the Annual Financial Statements and Consolidated Financial Statements of the Republic of Latvia.

** 2022 – budgeted, 2023-2024 -forecast

2.2. SERVICE PART II

The Contractor undertakes to carry out an audit on Rail Baltica Global Project (hereinafter - Project) to produce Auditor's independent reports of factual findings ('the Report') for the CEF grant agreements and to issue Certificates on the Financial Statements³ referred to in Article II.23.2 of the Grant Agreements concerning the Financial Statements of 2022, 2023 and 2024 drawn up by RB Rail AS and Beneficiaries of the Project (hereinafter together – Parties, please see Section 2.2.2 of the Technical specification).

The Contractor shall audit the interim and final financial statements of the Actions drawn up by the Parties (please see Section 2.2.1 and 2.2.2 of the Technical specification) in accordance with Annex VI⁴ of the CEF Grant Agreements for 2022, 2023 and 2024 (financial statements prepared by the Parties may include previous reporting periods for which a certificate on the financial statements has not been submitted). Interim and final financial statements drawn up by the Parties include incurred costs of the Beneficiaries and Implementing bodies of the Project. Financial statements prepared by the Parties will include reporting periods required by the Parties in accordance with the CEF Grant Agreements, CINEA requirements, Technical Specifications and also in accordance with the requirements of other national legislation and standards.

Only audit services for the Contracting authority described in the Service Part I is guaranteed amount of Service. Audit services under the Service Part II is subject to audit needs (please see indicative number of audits in Section 2.2.1 of the Technical specification) and audit requirements (please see information about conditions and requirements for audit in Section 2.2.3 of the Technical specification).

³ Available - <https://ec.europa.eu/inea/en/connecting-europe-facility/useful-documents-and-forms>

⁴Ibid.

2.2.1. Information about the Grant Agreements and audit needs

Up to now there are 6 (six) signed Grant Agreements financed under the CEF for the implementation of the project "Development of a 1435mm standard gauge railway line in the Rail Baltica (RB) corridor through Estonia, Latvia and Lithuania".

Please see detailed information below.

| | | | | Expected number of audits in 2022-2024* | |
|------------|---------------------------|-----------------------------|------------|--|-----|
| Action No. | | Grant Agreement No. | Signed on | Min | Max |
| 1. | 2014-EU-TMC-0560-M | INEA/CEF/TRAN/M2014/1045990 | 24.11.2015 | 4 | 11 |
| 2. | 2015-EU-TM-0347-M | INEA/CEF/TRAN/M2015/1129482 | 18.11.2016 | 2 | 6 |
| 3. | 2016-EU-TMC-0116-M | INEA/CEF/TRAN/M2016/1360716 | 13.06.2018 | 6 | 9 |
| 4. | 2019-EU-TMC-0282-S | INEA/CEF/TRAN/M2019/2098304 | 16.11.2020 | 7 | 11 |
| 5. | 2019-EU-TMC-0280-W | INEA/CEF/TRAN/M2019/2098073 | 16.11.2020 | 7 | 10 |
| 6. | 2020-EU-TMC-0076-S** | INEA/CEF/TRAN/M2020/2428991 | 19.10.2021 | 4 | 8 |
| 7. | Other Grant Agreements*** | | | | 8 |

* audit of interim financial statements is subject to condition if RBR AS submits interim payment request to CINEA in accordance with the terms of the Grant Agreement

** Grant Agreement foresees final audit which covers reporting period 01.01.2021.-31.12.2024.

***other CEF Grant Agreements may become available within the auditing period (2022-2024). Information on future Grant Agreements, audit needs and requirements is not yet readily available.

2.2.2. Information about the Parties

Beneficiaries of the Project (the Parties, within the meaning of these Regulations) are:

- RB Rail AS (RBR);
- Ministry of Transport of the Republic of Latvia (MoT-LV);
- Ministry of Transport and Communications of the Republic of Lithuania (MoTC-LT);
- Ministry of Economic Affairs and Communications of the Republic of Estonia (MoEAC – EE).

Implementing bodies designated by the Beneficiaries for the purpose of Grant Agreements are:

- Rail Baltic Estonia OU, designated by MoEAC – EE;
- SIA "Eiropas dzelzceļa līnijas", designated by MoT-LV;
- AB "LTG Infra", designated by MoTC-LT.

Please see indicative breakdown per Action and per Beneficiary of estimated eligible costs of the action (EUR)⁵: Interim and final financial statements drawn up by the Beneficiaries include incurred costs of the Beneficiaries and Implementing bodies of the Project.

| No. | Action No. | Total eligible costs, EUR | Indicative breakdown per beneficiary of estimated eligible costs of the Action, EUR* | | | |
|-----|--------------------|---------------------------|--|-------------|-------------|-------------|
| | | | RBR | MoEAC – EE | MoT-LV | MoTC-LT |
| 1. | 2014-EU-TMC-0560-M | 536 720 094 | 22 829 612 | 200 589 237 | 287 407 726 | 25 893 519 |
| 2. | 2015-EU-TM-0347-M | 153 168 872 | 1 637 582 | 12 863 955 | 579 721 | 138 087 614 |
| 3. | 2016-EU-TMC-0116-M | 129 966 867 | 12 200 353 | 1 992 449 | 4 111 449 | 111 662 616 |
| 4. | 2019-EU-TMC-0282-S | 86 145 749 | 44 340 102 | 9 623 578 | 19 654 976 | 12 527 093 |
| 5. | 2019-EU-TMC-0280-W | 128 119 171 | 6 387 463 | 34 528 122 | 65 246 192 | 21 957 394 |
| 6. | 2020-EU-TMC-0076-S | 19 646 555 | 5 437 357 | 2 871 199 | 5 393 650 | 5 944 349 |

*Expected Project expenditure (eligible costs) under Grant Agreements sets the conditions and requirements for audit needs (please see Section 2.2.3 of the Technical specification)

⁵ According to Grant Agreement, Annex III "Estimated budget of the Action", Table 2

2.2.3. *Information about conditions and requirements for audit*

In accordance with Article 4.1.2 of the CINEA Grant Agreement, at the end of at least every two reporting periods referred to in Article 4.1.1 of the CINEA Grant Agreement, the Contracting authority shall submit a request for interim payment in accordance with Article II.23.2.1. of the Grant Agreement. As well as, at the end of the last reporting period, the Contracting authority shall submit the request for payment of the balance in accordance with Article II.23.2.2. of the CINEA Grant Agreement.

In accordance with Article II.23.2.1 and II.23.2.2. of the CINEA Grant Agreement, the request for interim and final payment shall be accompanied by the Auditor's Report ("certificate on the financial statements") which shall be produced by an approved auditor and drawn up in accordance with Annex VII of the Grant Agreement. Auditor's Report shall certify that the costs declared in the interim and/or final financial statement by the beneficiary concerned, its affiliated entities or its implementing bodies for the categories of costs reimbursed on the basis of actual costs are real, accurately recorded and eligible in accordance with the Grant Agreement.

In accordance with Article II.23.2.1 and II.23.2.2. of the CINEA Grant Agreement, the certificate on the financial statements shall be produced for each beneficiary for which the total contribution in the form of reimbursement of actual costs is at least EUR 750 000 and which requests a reimbursement in that form of at least EUR 325 000 (when adding all previous reimbursements in that form for which a certificate on the financial statements has not been submitted). The beneficiary may choose to produce the certificate on the financial statements even if the abovementioned thresholds are not met.

The request for interim payment and the accompanying documents, including the certificate on the financial statements, shall be submitted within 8 (eight) months following the end of the reporting period.

The request for final payment (payment of the balance) and the accompanying documents, including the certificate on the financial statements, shall be submitted within 12 (twelve) months following the end of the Action as referred to in Article 2.2. of the Grant Agreement.

According to Annex VII of the Grant Agreement, the certificate on the financial statements is composed of two separate documents:

- 1) **the Terms of Reference** for an Independent Report of Factual Findings on costs declared under a Grant Agreement financed under the CEF to be signed by the Beneficiary and the Auditor;
- 2) **The Auditor's Independent Report of Factual Findings** ('the Report') to be issued on the Auditor's letterhead, dated, stamped and signed by the Auditor which includes the agreed-upon procedures ('the Procedures') to be performed by the Auditor, and the standard factual findings ('the Findings') to be confirmed by the Auditor.

The certificate on the financial statements must be drawn up based on the compulsory reporting templates stipulated by the European Commission prescribed by the Annex VII⁶ of the Grant Agreements.

3. SERVICE CONTRACT MANAGEMENT

3.1. Contractor's obligations

- 3.1.1. The Contractor should submit the information request to the Contracting authority (for Service Part I) and to the Parties (for Service Part II) not later than at least 2 (two) weeks before commencement of the audit.
- 3.1.2. For the provision of Services, the Contractor shall remain fully responsible for the results of its Services during and after the provision of Services. Any additional expenses arising due to the correction of the unacceptable results shall be covered solely by the Contractor.
- 3.1.3. The Contractor shall ensure necessary effort, means, resources and personnel required for the successful provision of Services.
- 3.1.4. The Contractor shall be responsible for ensuring that its experts involved in Service provision are available throughout whole Contract period.
- 3.1.5. The Contractor shall make its own arrangements for office facilities, personal computers and other facilities of appropriate performance and security standard for Service provision.

⁶Available - <https://ec.europa.eu/inea/en/connecting-europe-facility/useful-documents-and-forms>

- 3.1.6. The Contractor shall ensure that its team members (experts etc.) involved in Service provision are adequately supported and equipped. Costs for administration of service contract and office operation including telecommunication costs shall be included in the price of service proposed in the Financial proposal.

3.2. Provision of Services

- 3.2.1. The Contractor must perform the Contract in compliance with its provisions and all legal obligations under applicable EU, international and national law within the set due dates and to the highest professional, diligence and ethical standards.
- 3.2.2. The Contractor shall request and receive the documents necessary for the audit itself taking into account that audit of the CINEA financial statements of the Parties (Service Part II) includes incurred costs of the Implementing bodies of the Project as well. Parties and Implementing bodies are located in Estonia, Latvia and Lithuania (please see Section 2.2.2 of the Technical specification). Minimum time required for Parties and Implementing bodies to prepare the information for an audit request is 3 (three) business days. The auditors shall agree with the Parties on the method of exchanging information (on a case-by-case basis).
- 3.2.3. The Contractor shall carry out the tasks, prepare and provide all documents, reports and any other information, material required for the provision of the Services.
- 3.2.4. During the implementation of Services, the Contractor shall identify possible risks at early stage and propose a mitigation measures in order to successfully deliver Services on time.
- 3.2.5. During the implementation of Services Part II, Contractor shall coordinate with RBR the audit delivery schedule for each relevant person and inform about the list of accounting, legal and other documents required for the audit not later 2 (two) weeks prior to the commencement of the audit.

3.3. Confidentiality, independence and absence of conflict of interest

- 3.3.1. The Contractor is expected to ensure that its contractual and professional obligations in particular with regard to confidentiality, independence, objectivity and absence of conflict of interests are well understood and upheld throughout and after Services provision.
- 3.3.2. During the provision of Services, the Contractor shall provide independent view based on its expertise, education and experience.
- 3.3.3. During provision of Service Part II, the Contractor must be independent from the Parties (please see Section 2.2.2 of the Technical specification) and comply with independence requirements of the Code of Ethics for Professional Accountants. In particular, it must not have been involved in preparing the Beneficiary's and Implementing body's Financial Statement(s) or providing consultancy advice on the related operations and underlying transactions.

3.4. Miscellaneous

- 3.4.1. Communication with the Contracting authority under Contract (e.g. information, requests, submissions, formal notifications, etc.) must be carried out in Latvian and English.
- 3.4.2. Communication channels: e-mail, MS Teams, telecommunications etc.
- 3.4.3. All written materials shall meet the highest standards and technical terminology proficiency. The Contractor shall engage professional proofreading Services at its own expense, if needed for ensuring quality materials.
- 3.4.4. The Contractor shall include any travel expenses (if any arise) in proposed contract price. The Contracting authority will not additionally reimburse any travel expenses incurred by Contractor during the provision of Services.

3.5. Deliverables and due dates

- 3.5.1. Services shall be delivered by the Contractor according to the following due dates:

| No. | Tasks | Deliverable | Due Date | Terms of Cooperation |
|-----|---|-------------------------------------|-----------------------------------|---|
| 1 | Audit on RB Rail AS annual financial statements | Auditor's report | By 1 March of the following year | <p>Independent auditor's report on statutory financial statements shall be issued and submitted to the Contracting authority in hard (paper) format (2 (two) copies). Report shall be issued in Latvian and in English.</p> <p>Independent auditor's report on IFRS financial statements shall be issued and submitted to the Contracting authority in hard (paper) format (2 (two) copies).</p> <p>Draft of auditor's report shall be issued and submitted to the Contracting authority at least 3 (three) business days before the due date.</p> <p>Report shall be issued in English.</p> |
| | | Letter to the RB Rail AS management | By 15 March of the following year | <p>Letter to the RB Rail AS management shall be issued and submitted to the Contracting authority in hard (paper) or electronic format.</p> <p>Letter to the RB Rail AS management shall be issued in English.</p> |
| 2 | Audit on Rail Baltica Global Project expenditure (eligible costs) | Auditor's report | By 31 July of the following year | <p>The Service will be ordered on demand bases. Scope and timing will be agreed in each case separately.</p> <p>Result of the audit is the Certificate on the financial statements on costs declared under the Grant Agreements financed under the CEF, which is composed of two separate documents:</p> <ol style="list-style-type: none"> 1) The Terms of Reference to be signed by the Beneficiary and the Auditor; 2) The Auditor's Independent Report of Factual Findings to be issued on the Auditor's letterhead, dated, stamped and signed by the Auditor which includes the agreed-upon procedures to be performed by the Auditor, and the standard factual findings to be confirmed by the Auditor. <p>Certificate on the financial statements, including Independent auditor's report, shall be drawn up based on the compulsory reporting template stipulated by the Commission prescribed by the Grant Agreements.</p> <p>Result of the audit should be issued and submitted to the respective Party and Contracting authority in hard (paper) format or electronically signed with secure electronic signature and time stamp.</p> <p>Draft of Auditor's report shall be issued and submitted to the respective Party and Contracting authority electronically at least 7 (seven) business days before the due date.</p> <p>All deliverables shall be issued in English.</p> |

3.5.2. The Contracting authority will accept Services only if they will be provided fully in good and sufficient quality and will cover full scope defined in Technical specification.

Annex F: Terms of Reference

Terms of Reference for an Independent Report of Factual Findings on costs declared under a Grant Agreement financed under the Connecting Europe Facility (CEF)

This document sets out the **Terms of Reference (ToR)** under which [*Beneficiary*] ('the Beneficiary') agrees to engage [*Contractor*] ('the Auditor') to produce an independent report of factual findings ('the Report') concerning the Financial Statement(s)⁷ drawn up by the Beneficiary for the CEF grant agreement [*details of Grant Agreement*] ('the Agreement'), and to issue a Certificate on the Financial Statements' ('CFS') referred to in Article II.23.2 of the Agreement based on the compulsory reporting template stipulated by the Commission.

The Agreement has been concluded under the Connecting Europe Facility (CEF) Transport sector between the Beneficiary and the European Climate Infrastructure and Environment Executive Agency (CINEA) ('the Agency'), under the powers delegated by the European Commission ('the Commission').

The Agency is mentioned as a signatory of the Agreement with the Beneficiary only. The Agency is not a party to this engagement.

1.1. Subject of the engagement

The coordinator (RB Rail AS) must submit to the Agency the request for interim payment within 8 months following the end of the reporting period which should include, amongst other documents, a CFS for each beneficiary, each Affiliated Entity and Implementing Body, for which a total contribution of EUR 325 000 or more is requested, as reimbursement of actual eligible costs and unit costs calculated on the basis of its usual cost accounting practices (see Article II.23.2 of the Agreement). The CFS must cover all reporting periods of the Beneficiary, Affiliated Entity or Implementing Body indicated above.

The Beneficiary must submit to the coordinator the CFS covering the total declared costs for itself, its Affiliated Entity(ies) and its Implementing Body(ies), if the CFS must be included in the request for interim payment according to Article II.23.2 of the Agreement.

The CFS is composed of two separate documents:

- (a) The Terms of Reference ('the ToR') to be signed by the Beneficiary and the Auditor;
- (b) The Auditor's Independent Report of Factual Findings ('the Report') to be issued on the Auditor's letterhead, dated, stamped and signed by the Auditor (or the competent public officer) which includes the agreed-upon procedures ('the Procedures') to be performed by the Auditor, and the standard factual findings ('the Findings') to be confirmed by the Auditor.

If the CFS must be included in the interim report according to Article II.23.2 of the Agreement, the request for interim payment relating to the Agreement cannot be made without the CFS. However, the payment for reimbursement of costs covered by the CFS does not preclude the Commission, the Agency, the European Anti-Fraud Office and the European Court of Auditors from carrying out checks, reviews, audits and investigations in accordance with Article II.27 of the Agreement.

1.2. Responsibilities

The Beneficiary:

- (a) must draw up the Financial Statement(s) for the action financed by the Agreement in compliance with the obligations under the Agreement. The Financial Statement(s) must be drawn up according to the Beneficiary's accounting and book-keeping system and the underlying accounts and records;
- (b) must send the Financial Statement(s) to the Auditor;
- (c) is responsible and liable for the accuracy of the Financial Statement(s);
- (c) is responsible for the completeness and accuracy of the information provided to enable the Auditor to carry out the Procedures. It must provide the Auditor with a written representation letter supporting these statements. The written representation letter must state the period covered by the statements and must be dated;
- (d) accepts that the Auditor cannot carry out the Procedures unless it is given full access to the Beneficiary's staff and accounting as well as any other relevant records and documentation.

The Auditor is qualified to carry out statutory audits of accounting documents in accordance with Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC or similar national regulations.

⁷ By which costs under the Agreement are declared (see template 'Model Financial Statement(s)' in Annex VI to the Grant Agreement).

The Auditor:

- (a) must be independent from the Beneficiary, in particular, it must not have been involved in preparing the Beneficiary's Financial Statement(s) or providing consultancy advice on the related operations and underlying transactions;
- (b) must plan work so that the Procedures may be carried out and the Findings may be assessed;
- (c) must adhere to the Procedures laid down and the compulsory report format;
- (d) must carry out the engagement in accordance with this ToR;
- (e) must document matters which are important to support the Report;
- (f) must base its Report on the evidence gathered;
- (g) must submit the Report to the Beneficiary.

The Agency sets out the Procedures to be carried out by the Auditor. The Auditor is not responsible for their suitability or pertinence. As this engagement is not an assurance engagement, the Auditor does not provide an audit opinion or a statement of assurance.

1.3. Applicable Standards

The Auditor must comply with these Terms of Reference and with⁸:

- (a) the International Standard on Related Services ('ISRS') 4400 *Engagements to perform Agreed-upon Procedures regarding Financial Information* as issued by the International Auditing and Assurance Standards Board (IAASB);
- (b) the *Code of Ethics for Professional Accountants* issued by the International Ethics Standards Board for Accountants (IESBA). Although ISRS 4400 states that independence is not a requirement for engagements to carry out agreed-upon procedures, the Agency requires that the Auditor also complies with the Code's independence requirements.

The Auditor's Report must state that there is no conflict of interests in establishing this Report between the Auditor and the Beneficiary, and must specify - if the service is invoiced - the total fee paid to the Auditor for providing the Report.

1.4. Reporting

The Report must be written in English in accordance with Article 4.3 of the Agreement.

Under Article II.27 of the Agreement, the Commission, the Agency, the European Anti-Fraud Office and the Court of Auditors have the right to audit any work that is carried out under the action and for which costs are declared from the European Union budget. This includes work related to this engagement. The Auditor must provide access to all working papers (e.g. recalculation of hourly rates, verification of the time declared for the action) related to this assignment if the Commission, the Agency, the European Anti-Fraud Office or the European Court of Auditors requests them.

1.5. Timing

The Report must be provided by 31 July [year].

1.6. Other terms

The Audit has been carried out according to the audit services agreement No.[●] concluded between RB Rail AS and the Auditor.

With respect to the personal data, the parties shall comply with the applicable laws on personal data protection as well as the separate personal data transfer agreement, if any, signed by the parties.

[Other terms and conditions, if reasonably required.]

[signatures]

⁸ Supreme Audit Institutions applying INTOSAI-standards may carry out the Procedures according to the corresponding International Standards of Supreme Audit Institutions and code of ethics issued by INTOSAI instead of the International Standard on Related Services ('ISRS') 4400 and the Code of Ethics for Professional Accountants issued by the IAASB and the IESBA.