

# REGULATIONS

FOR THE OPEN COMPETITION

**“AUDIT SERVICES FOR 2019 - 2021”**

(IDENTIFICATION NO RBR 2019/8)



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

Riga  
2019

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## 1. ABBREVIATIONS AND TERMS

- 1.1. **Common procurement vocabulary (CPV)** – a nomenclature approved by the European Union which is applied in public procurement procedures;
- 1.2. **Contract** - signed agreement between Contracting authority and a Contractor to provide services defined in this agreement;
- 1.3. **Contracting authority** (also the Contracting entity) - the joint stock company RB Rail AS, registration number 40103845025, legal address: Kr. Valdemāra iela 8-7, Rīga, LV-1010, Latvia;
- 1.4. **Contractor** - service provider awarded the right to enter into the Contract in Open competition to provide services in accordance with requirements stipulated in Regulations and Contract;
- 1.5. **Identification number** – designation which includes the abbreviation of the name of the Contracting authority (the first capital letters), the relevant year and the procurement sequence number in ascending order (RBR 2019/8);
- 1.6. **Open competition** (also the Procurement) - a procurement procedure "Audit services for 2019 - 2021" (identification number: RBR 2019/8) in which all interested Suppliers are entitled to submit their Proposals;
- 1.7. **Procurement commission** – commission the composition of which has been established by the joint stock company RB Rail AS, order No 11/2019-43 dated 13 June 2019, issued by the Management Board of joint stock company RB Rail AS;
- 1.8. **Proposal** - documentation package the Tenderer submits to participate in the Open competition;
- 1.9. **Regulations** – regulations of the Open competition "Audit services for 2019 - 2021" (identification number: RBR 2019/8), as well as all the enclosed annexes;
- 1.10. **Supplier** – a natural person or a legal person, a group or association of such persons in any combination thereof which offers to perform works, supply products or provide services accordingly;
- 1.11. **Tenderer** – a Supplier which has submitted a Proposal.

## 2. GENERAL INFORMATION

- 2.1. The identification number of the Open Competition is No RBR 2019/8.
- 2.2. The Open competition is co-financed by the Contracting authority and Connecting Europe Facility (CEF).
- 2.3. Open competition is organized in accordance with the Public Procurement Law of the Republic of Latvia (hereinafter – Public Procurement Law) in effect on the date of publishing the contract notice.
- 2.4. Open competition is carried out using E-Tenders system (<https://www.eis.gov.lv/EKEIS/Supplier>) which is subsystem of the Electronic Procurement System (<https://www.eis.gov.lv/EIS/>).
- 2.5. The Regulations is freely available on Contracting authority's profile in the E-Tenders system at webpage <https://www.eis.gov.lv/EKEIS/Procurement/24880> and the webpage of the Contracting authority <http://railbaltica.org/tenders/>.
- 2.6. Amendments to the Regulations and answers to Suppliers' questions shall be published on Contracting authority's profile in the E-Tenders system at webpage <https://www.eis.gov.lv/EKEIS/Procurement/24880> and the Contracting authority's webpage <http://railbaltica.org/tenders/>. It is the Supplier's responsibility to constantly follow the information published on the webpages and to take it into consideration in preparation of its Proposal.
- 2.7. Contact person of the Contracting authority for Open competition is Procurement specialist - lawyer, Vineta Ezergaile, telephone: +371 29352018, e-mail address: [vineta.ezergaile@railbaltica.org](mailto:vineta.ezergaile@railbaltica.org).
- 2.8. The exchange of information between the Procurement commission and the Supplier shall be in writing (by sending documents electronically via e-mail or using E-Tenders system) in English (if information is submitted in Latvian, it shall be accompanied by a translation into English).
- 2.9. If the Supplier does not have access to the E-Tenders system, the Supplier shall follow the guidance for obtaining access to the system available on the Contracting authority's website at <http://www.railbaltica.org/procurement/e-procurement-system/>.

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

### 3. THE RIGHTS OF THE PROCUREMENT COMMISSION

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

### 4. THE OBLIGATIONS OF THE PROCUREMENT COMMISSION

- 4.1. The Procurement commission ensures the process documentation of the Open competition.
- 4.2. The Procurement commission ensures free and direct electronic access to the Open competition documents on Contracting authority's profile at the E-Tenders system's webpage <https://www.eis.gov.lv/EKEIS/Procurement/24880> and on the webpage of the Contracting authority <http://railbaltica.org/tenders/>.
- 4.3. If an interested Supplier has in a timely fashion in writing by post or electronically (including via E-Tenders system), or delivering in person requested additional information about the requirements included in Open competition documents regarding the preparation and submission of the Proposal or regarding the selection of Tenderers, the Procurement commission provides a response electronically within 5 (five) business days but not later than 6 (six) days before the deadline for submitting Proposals. Simultaneously with sending this information to the Supplier who had asked the question, the Contracting authority publishes this information on Contracting authority's profile in the E-Tenders system's webpage <https://www.eis.gov.lv/EKEIS/Procurement/24880> and on its webpage <http://railbaltica.org/tenders/> where Open competition documents are available, indicating the question asked.
- 4.4. If the Contracting authority has amended the Open competition documents, it publishes this information on Contracting authority's profile in the E-Tenders system's webpage <https://www.eis.gov.lv/EKEIS/Procurement/24880> and on the Contracting authority's webpage <http://railbaltica.org/tenders/> where Open competition documents are available, no later than 1 (one)

day after the notification regarding the amendments has been submitted to Procurement Monitoring Bureau for publication. If Supplier wishes to receive relevant updates/notifications by email regarding the Procurement exercise (e.g. when amendments to the procurement package documentation are published), Supplier shall register as an interested supplier on the E-Tenders system for the particular Procurement exercise accordingly.

- 4.5. The exchange and storage of information is carried out in such a way that all data included in the Proposals is protected and the Contracting authority can check the content of the Proposals only after the expiration of the deadline for their submission. During the time from the deadline of submission of Proposals until the opening of the Proposals the Contracting authority does not disclose any information regarding the existence of other Proposals therefore. During the time of Proposal assessment, the Contracting authority does not disclose any information regarding the assessment process until the announcement of the results.
- 4.6. The Procurement commission assesses the Tenderers and their Proposals based on the Public Procurement Law, Open competition documents, as well as other applicable regulatory enactments.
- 4.7. The Procurement commission prepares a report on the Open competition and publishes it on Contracting authority's profile in the E-Tenders system's webpage <https://www.eis.gov.lv/EKEIS/Procurement/24880> and on the Contracting authority's webpage <http://railbaltica.org/tenders/> within 5 (five) business days from the day when the decision about the results of the Open competition is made.

## 5. THE RIGHTS OF THE TENDERER

- 5.1. The Tenderer has the right to submit registration documents for the Electronic Procurement System (if the Tenderer is not registered in Electronic Procurement System) in State Regional Development Agency (please see information here <http://www.railbaltica.org/procurement/e-procurement-system/>).
- 5.2. The Tenderer can request and within 3 (three) business days after submitting the request receive a copy of the Proposal opening sheet which is an annex to the Proposal opening session minutes.
- 5.3. If the Contracting authority gets the necessary information about the Tenderer directly from a competent institution, through data bases or other sources and the Tenderer's submitted information differs from information obtained by the Contracting authority, the Tenderer in question has the right to submit evidence to prove the correctness of the information the Tenderer has submitted, if the information obtained by the Contracting authority does not conform to the factual situation.
- 5.4. If a Tenderer believes that its rights have been violated or such violation is possible due to possible violation of the regulatory enactments of the European Union or other regulatory enactments, the Tenderer has the right to submit a complaint to the Procurement Monitoring Bureau according to the procedure stipulated in the Section 68 of Public Procurement Law regarding the Tenderer selection requirements, Technical specification or other requirements relating to Open competition, or relating to the activities by the Contracting authority or the Procurement commission during the Open competition.

## 6. SUBJECT-MATTER OF THE OPEN COMPETITION

- 6.1. The subject-matter of the Procurement is provision of audit services for RB Rail AS financial statements for the financial year 2019, 2020 and 2021 as well as provision of audit services on Rail Baltica Global Project expenditure (eligible costs) declared by the RB Rail AS and Beneficiaries of Rail Baltica Global Project (hereinafter – Services). Services must be provided in accordance with Annex No 1 "Technical specification".
- 6.2. The applicable CPV code is 79212300-6 (Statutory audit services).
- 6.3. The subject-matter is not divided into parts. The Tenderer shall submit a Proposal for the entire Procurement.
- 6.4. The delivery of the Services will take place in Latvia, Estonia and Lithuania.
- 6.5. Period of provision of Services is till 31 August 2022.
- 6.6. The Tenderer is not allowed to submit variants of the Proposal. If variants of the Proposal are submitted, then the Proposal will not be reviewed.

## 7. TENDERER

### 7.1. The Proposal can be submitted by:

7.1.1. A Supplier who is a legal or natural person (hereinafter – the Tenderer) which offers on the market to perform works, supply products or provide services accordingly and who complies with the selection criteria for Tenderers;

7.1.2. A group of Suppliers (hereinafter also – the Tenderer, partnership) which offer on the market to perform works, supply products or provide services accordingly and who complies with the selection criteria for Tenderers:

7.1.2.1. A group of Suppliers who have formed a partnership for Open competition. In this case all the members of the partnership shall be listed in Annex No 2 “Application for participating in the Open competition”. If it will be decided to award contracting rights to such partnership, then prior to concluding the Contract the partnership shall at its discretion either enter into a partnership agreement (within the meaning of the Civil Law of the Republic of Latvia, Sections 2241-2280) and shall submit one copy of this agreement to the Contracting authority or establish a general or limited partnership (within the meaning of the Commercial Law of the Republic of Latvia (hereinafter – the Commercial Law), Division IX and X) and notify the Contracting authority in writing;

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

## 8. SELECTION CRITERIA FOR TENDERERS

### 8.1. Exclusion grounds

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

No	Requirement	Documents to be submitted <sup>1</sup>
1.	<p>Within previous 3 (three) years before submission of the Proposal the Tenderer or a person who is Tenderer’s management board or supervisory board member, person with representation rights or a procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a branch, has been found guilty of or has been subjected to coercive measures for committing any of the following criminal offences by such a public prosecutor’s order regarding punishment or a court judgement that has entered into force and may not be challenged and appealed:</p> <p>a) establishment, management of, involvement in a criminal organization or in an organized group included in the criminal organization or other criminal formation, or participation in criminal offences committed by such an organization,</p> <p>b) bribe-taking, bribery, bribe misappropriation, intermediation in bribery, unauthorized participation in property transactions, taking of prohibited benefit,</p>	<ul style="list-style-type: none"> <li>- For a Tenderer and a person who is Tenderer’s management board or supervisory board member, person with representation rights or a procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a branch, who is registered or residing in Latvia, the Contracting authority shall verify the information itself in publicly available databases.</li> <li>- For a Tenderer and a person who is Tenderer’s management board or supervisory board member, person with representation rights or a procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a branch, who is registered or residing outside of Latvia the Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence.</li> </ul>

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

No	Requirement	Documents to be submitted <sup>1</sup>
	commercial bribing, unlawful claiming of benefits, accepting or providing of benefits, trading influences, c) fraud, misappropriation or money-laundering, d) terrorism, terrorism funding, creation or organization of a terrorist group, traveling for terrorist purposes, justification of terrorism, calling to terrorism, terrorism threats or recruiting or training a person in performance of acts of terrorism, e) human trafficking, f) evasion from payment of taxes or similar payments.	
2.	It has been detected that on the last day of Proposal submission term or on the day when a decision has been made on possible granting of rights to conclude the procurement contract, the Tenderer has tax debts in Latvia or a country where it has been incorporated or is permanently residing, including debts of mandatory state social insurance contributions exceeding 150 euro in total in any of the countries.	<ul style="list-style-type: none"> <li>- For a Tenderer registered or residing in Latvia Contracting authority shall verify the information itself in publicly available databases.</li> <li>- For a Tenderer registered or residing outside of Latvia Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence.</li> </ul>
3.	Tenderer's insolvency proceedings have been announced, the Tenderer's business activities have been suspended, the Tenderer is under liquidation.	<ul style="list-style-type: none"> <li>- For a Tenderer registered or residing in Latvia Contracting authority shall verify the information itself in publicly available databases.</li> <li>- For a Tenderer registered or residing outside of Latvia Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence.</li> </ul>
4.	A person who drafted the procurement procedure documents (Contracting authority's official or employee), Procurement commission member or expert is related to the Tenderer or is interested in selection of some Tenderer and the Contracting authority cannot prevent this situation by measures that cause less restrictions on Tenderer. A person who drafted the procurement procedure documents (Contracting authority's official or employee), Procurement commission member or expert is presumed to be related to the Tenderer in any of the following cases: a) If he or she is a current and/or an ex-employee, official, shareholder, procura holder or member of a Tenderer or a subcontractor which is legal person and if such relationship with the legal person was terminated within the last 24 (twenty-four) months;	No obligation to submit documents, unless specifically requested by the Procurement commission.

No	Requirement	Documents to be submitted <sup>1</sup>
	<p>b) If he or she is the father, mother, grandmother, grandfather, child, grandchild, adoptee, adopter, brother, sister, half-brother, half-sister or spouse (hereinafter – relative) of a Tenderer's or subcontractor's, which is a legal person, shareholder who owns at least 10% of the shares in a joint-stock company, shareholder in a limited liability company, procure holder or an official;</p> <p>c) If he or she is a relative of a Tenderer or a subcontractor which is a natural person.</p> <p>If the Tenderer is a partnership, consisting of natural or legal persons, a relation to the Tenderer is presumed also if a person who drafted the procurement procedure documents (Contracting authority's official or employee), Procurement commission member or expert is related to a member of a partnership in any of the above-mentioned ways.</p>	
5.	<p>The Tenderer has an advantage that limits competition in the procurement procedure if it or its related legal person consulted the Contracting authority or otherwise was involved in preparing the Open competition, and the advantage cannot be prevented by less restrictive measures, and the Tenderer cannot prove that its or its related legal person's participation in preparing the procurement procedure documents does not restrict competition.</p>	<p>No obligation to submit documents, unless specifically requested by the Procurement commission.</p>
6.	<p>Within the previous 12 (twelve) months before submission of the Proposals by such a decision of a competent authority or a court judgment which has entered into force and may not be challenged and appealed Tenderer has been found guilty of violating competition laws manifested as a horizontal cartel agreement, except for the case when the relevant authority, upon detecting violation of competition laws, has released the Tenderer from a fine or has decreased the fine for cooperation within a leniency program.</p>	<ul style="list-style-type: none"> <li>- For a Tenderer registered or residing in Latvia Contracting authority shall verify the information itself in publicly available databases.</li> <li>- For a Tenderer registered or residing outside of Latvia Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence or other objective proof of good standing. For example, a link to the database of the competent authority's public database (website) listing all its decisions and validity thereof (provided that access to any such database/website is free of charge to the Contracting authority).</li> </ul>
7.	<p>Within the previous 3 (three) years before submission of the Proposals by such a decision of a competent authority, a court judgment or a public prosecutor's order which has entered into force and may not be challenged and appealed Tenderer has been found guilty and is punished for a violation manifested as employment of one or more persons who do not possess the required employment permit</p>	<ul style="list-style-type: none"> <li>- For a Tenderer registered or residing in Latvia Contracting authority shall verify the information itself in publicly available databases.</li> <li>- For a Tenderer registered or residing outside of Latvia Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence.</li> </ul>

No	Requirement	Documents to be submitted <sup>1</sup>
	or if it is illegal for such persons to reside in a Member State of the European Union.	
8.	Within the previous 12 (twelve) months before submission of the Proposals by such a decision of a competent authority, a court judgment or a public prosecutor's order which has entered into force and may not be challenged and appealed Tenderer has been found guilty and is punished for a violation manifested as employment of a person without a written employment contract, by failing within the term specified in regulatory enactments to submit an informative employee declaration regarding this person, which must be submitted about persons, who start working.	<ul style="list-style-type: none"> <li>- For a Tenderer registered or residing in Latvia Contracting authority shall verify the information itself from publicly available databases.</li> <li>- For a Tenderer registered or residing outside of Latvia Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence.</li> </ul>
9.	The Tenderer has provided false information to prove its compliance with provisions of this Section 8.1 of the Regulations or qualification criteria, or has not provided the required information at all.	No obligation to submit documents, unless specifically requested by the Procurement commission.
10.	The Tenderer is a registered offshore <sup>2</sup> company (legal person) or offshore association of persons.	<ul style="list-style-type: none"> <li>- For a Tenderer which is registered in Latvia Contracting authority shall verify the information itself in publicly available databases.</li> <li>- For the Tenderer and each member of the partnership (if Tenderer is an unregistered partnership) which is a legal person registered abroad – a copy of a valid registration certificate or a similar document issued by a foreign authority in charge of the registration of legal persons in the country of their residence wherefrom at least the fact of registration.</li> </ul>
11.	The owner or shareholder (with more than 25% of share capital) of the Tenderer who is registered in Republic of Latvia, is a registered offshore company (legal person) or offshore association of persons.	<ul style="list-style-type: none"> <li>- For a Tenderer which is registered in Latvia:                             <ul style="list-style-type: none"> <li>• Contracting authority shall verify the information itself in publicly available databases;</li> <li>• if such information by publicly available data bases is not provided, Tenderer shall submit self – declaration which approves fact that there are no registered owners or shareholders of the Tenderer (with more than 25% of share capital) who are registered offshore.</li> </ul> </li> </ul>
12.	The subcontractors indicated by the Tenderer whose share of services is equal to or exceeds	- For a subcontractor whose share of services is equal to or exceeds 10% of the Contract price

<sup>2</sup> **Offshore:** low tax or tax-free country or territory in accordance with Corporate income tax law of the Republic of Latvia except Member States of EEA (European Economic Area) or its territories, Member States of the World Trade Organization Agreement on State Treaties or territories and such countries and territories with which European Union and Republic of Latvia has international agreements for open market in public procurement area.

No	Requirement	Documents to be submitted <sup>1</sup>
	10% of the Contract price or person on whose capacities Tenderer is relying, is a registered offshore company (legal person) or offshore association of persons.	<p>or person on whose capacities Tenderer is relying which is registered in Latvia Contracting authority shall verify the information itself in publicly available databases;</p> <ul style="list-style-type: none"> <li>- For a subcontractor or person on whose capacities Tenderer is relying which is a legal person registered abroad (with its permanent place of residence abroad) – a copy of a valid registration certificate or a similar document issued by a foreign authority in charge of the registration of legal persons in the country of their residence wherefrom at least the fact of registration.</li> </ul>
13.	<p>International or national sanctions or substantial sanctions by the European Union (EU) or the North Atlantic Treaty Organization (NATO) Member State affecting the interests of the financial and capital market has been imposed to the:</p> <p>a) Tenderer or a person who is the Tenderer's management board or supervisory board member, beneficial owner<sup>3</sup>, person with representation rights or a procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a branch,</p> <p>b) member of the partnership or a person who is the partnership's management board or supervisory board member, beneficial owner<sup>4</sup>, person with representation rights or a procura holder (if the Tenderer is a partnership),</p> <p>and such sanctions can affect the execution of the Procurement contract.</p>	<ul style="list-style-type: none"> <li>- For a Tenderer registered or residing in Latvia Contracting authority shall verify the information itself from the Register of Enterprises of the Republic of Latvia.</li> <li>- For a Tenderer registered or residing outside of Latvia Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence with all the information necessary for the examination regarding the Tenderer or a member of the partnership (if the Tenderer is a partnership), including but not limited, information about beneficial owner or the fact that there is no possibility to find out the beneficial owner.</li> </ul>

## 8.2. Legal standing and suitability to pursue the professional activity

No	Requirement	Documents to be submitted
1.	The Tenderer or all members of the partnership (if the Tenderer is a partnership) must be registered in	<ul style="list-style-type: none"> <li>- For a Tenderer (or a member of a partnership), a person on whose capacity Tenderer relies, subcontractor which is a legal person registered in</li> </ul>

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

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

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

<sup>4</sup> Ibid.

No	Requirement	Documents to be submitted
	the Registry of Enterprises or Registry of Inhabitants, or an equivalent register in their country of residence, if the legislation of the respective country requires registration of natural or legal persons.	Latvia Contracting authority shall verify the information itself in publicly available databases. <ul style="list-style-type: none"> <li>- For a Tenderer (or a member of a partnership), a person on whose capacity Tenderer relies, subcontractor who is a natural person – a copy of an identification card or passport.</li> <li>- For a Tenderer (or a member of a partnership), a person on whose capacity Tenderer relies, a subcontractor which is a legal person registered abroad (with its permanent place of residence abroad) – a copy of a valid registration certificate or a similar document issued by a foreign authority in charge of the registration of legal persons in the country of their residence wherefrom at least the fact of registration, shareholders, officials and procura holders (if any) can be determined.</li> <li>- If a Proposal is submitted by a partnership, the Proposal shall include an agreement (or letter of intent to enter into agreement) signed by all members on the participation in the Procurement which lists responsibilities of each and every partnership members and a joint commitment to fulfil the Contract and which authorizes one key member to sign the Proposal and other documents, to receive and issue orders on behalf of the partnership members, and with whom all payments will be made. In this document Tenderer additionally indicates the member of the partnership on whose capacity it relies to certify its financial and economic performance and who will be financially and economically responsible for the fulfilment of the Contract.</li> <li>- If the Proposal or any other document, including any agreement, is not signed by the legal representative of the Tenderer, members of the partnership, person on whose capacity Tenderer relies or subcontractors, then a document certifying the rights of the persons who has signed the Proposal or any other documents to represent the Tenderer, a member of the partnership, a person on whose capacity Tenderer is relying, or a subcontractor (powers of attorney, authorization agreements etc.) shall be included.</li> </ul>
2.	The representative of the Tenderer, or a member of a partnership, or a person on whose capacity Tenderer relies who has signed documents contained in the Proposal has the right of signature, i.e., it is an official having the right of signature or a person authorized by the Tenderer.	<ul style="list-style-type: none"> <li>- A document confirming the right of signature (representation) of the representative of the Tenderer or a member of a partnership, or a person on whose capacity Tenderer relies who signs the Proposal. For a Tenderer (or a member of a partnership), a person on whose capacity Tenderer relies which is a legal person registered in Latvia the Contracting authority shall verify the information itself in publicly available databases.</li> <li>- If the Tenderer (or a member of a partnership), or a person on whose capacity Tenderer relies, submits a power of attorney (original or a copy certified by the Tenderer) there shall be additionally submitted documents confirming</li> </ul>

No	Requirement	Documents to be submitted
		that the issuer of the power of attorney has the right of signature (representation) of the Tenderer.

### 8.3. Economic and financial standing

No	Requirement	Documents to be submitted
1.	<p>Tenderer's or all members of the partnership together (if the Tenderer is a partnership and confirms the average financial turnover jointly) average financial turnover within the last 3 (three) financial years (2016, 2017, 2018) is not less than 380 000 EUR (three hundred eighty thousand euros) per year.</p> <p>In the event the average annual financial turnover of a limited partner of the limited partnership (within the meaning of The Commercial Law, Division X) exceeds its investment in the limited partnership, the average financial turnover shall be recognized in the amount of the investment in the limited partnership.</p> <p>In the event the Tenderer or a member of a partnership (if the Tenderer is a partnership) has operated in the market for less than 3 (three) financial years, the requirement shall be met during the Tenderer's actual operation period.</p>	<ul style="list-style-type: none"> <li>- Filled and signed Annex No 3 "Confirmation of Tenderer's financial standing".</li> <li>- Audited or self-approved (if the annual financial statement is not required by the law of the country of residence of the Tenderer) annual financial statements for financial years 2016, 2017, 2018, showing the turnover of the Tenderer or each member of the partnership on whose capacity Tenderer is relying to certify its financial and economic performance and who will be financially responsible for the fulfilment of the Contract (if the Tenderer is a partnership), or other entity on whose capacity Tenderer is relying to certify its financial and economic performance and who will be financially responsible for the fulfilment of the Contract.</li> <li>- If annual financial statement for financial year 2018 is not available yet, Tenderer shall submit other documents showing the annual financial turnover and values of the Tenderer for the financial year 2018.</li> <li>- For a limited partnership (within the meaning of the Commercial Law, Division X) - an additional document evidencing the amount of the investment by the limited partner (the partnership agreement or a document with a similarly binding legal effect).</li> <li>- If the previous 3 (three) reporting years of the Tenderer differ from the years specified in this Section 8.3.1 of the Regulations (2016, 2017, 2018), the financial turnover necessary must be indicated for the Tenderer's previous 3 (three) reporting years.</li> <li>- If the Proposal is submitted by a partnership, Tenderer shall indicate the member of the partnership on whose capacity Tenderer is relying to certify its financial and economic performance and who will be financially and economically responsible for fulfilment of the Contract including this information in the agreement of cooperation (or letter of intent to enter into agreement) stipulated in Section 8.2.1 of the Regulations.</li> <li>- If the Tenderer is relying on any other entity's capacity to certify its financial and economic performance and this entity will be financially and economically responsible for the fulfilment of the Contract, Tenderer along with the Proposal submits confirmation or agreement on cooperation and/or</li> </ul>

No	Requirement	Documents to be submitted
		passing of resources to the Tenderer, signed between such entity and the Tenderer (please see the Section 9 of the Regulations for detailed information).
2.	The Tenderer and each member of the partnership (if the Tenderer is a partnership) on whose capacity Tenderer is relying to certify its financial and economic performance and who will be financially and economically responsible for the fulfilment of the Contract and other entity on whose capacity Tenderer is relying to certify its financial and economic performance and who will be financially and economically responsible for the fulfilment of the Contract, shall have stable financial and economic performance, namely, in the last financial year (2018) liquidity ratio (current assets divided by short-term liabilities) shall be equal to or exceed 1 (one) and shall have positive equity.	<ul style="list-style-type: none"> <li>- Filled and signed Annex No 3 "Confirmation of Tenderer's financial standing".</li> <li>- Audited or self-approved (if the audited annual financial statement is not required by the law of the country of residence of the Tenderer) annual financial statement for financial year 2018, showing the balance and calculation that proves liquidity ratio and positive equity.</li> <li>- If annual financial statement for financial year 2018 is not available yet, Tenderer shall submit other documents showing the annual financial turnover and values of the Tenderer for the financial year 2018.</li> <li>- If the Tenderer is a partnership, Tenderer shall indicate the member of the partnership on whose capacity it relies to certify its financial and economic performance and who will be financially and economically responsible for the fulfilment of the Contract, including this information in the agreement of cooperation or letter of intent to enter into agreement or in any other similar document, signed by all parties involved and submits it along with the Proposal (please see Section 9 of the Regulations for detailed information).</li> <li>- If the Tenderer is relying on any other entity's capacity to certify its financial and economic performance and this entity will be financially and economically responsible for the fulfilment of the Contract, Tenderer along with the Proposal submits confirmation or agreement on cooperation and/or passing of resources to the Tenderer, signed between such entity and the Tenderer (please see Section 9 of the Regulations for detailed information).</li> </ul>
3.	Tenderer or at least one member of the partnership (if the Tenderer is a partnership) shall have a valid professional risk indemnity insurance: <ul style="list-style-type: none"> <li>- with limit of liability at least in the amount set in Section 42, Paragraph 1 (for individual) or Paragraph 2 (for legal person) of the Law on Audit Services of Republic of Latvia;</li> <li>- limit mentioned before shall be for any insurance claim and in the aggregate for the policy period</li> </ul>	Documentation that proves its possession of a valid insurance certificate that meets requirements set in Section 8.3.3 of the Regulations or a written statement <u>of an insurance institution</u> specifying that in case the Tenderer is awarded the Contract, the insurance institution will issue the insurance certificate that meets requirements set in Section 8.3.3 of the Regulations.

No	Requirement	Documents to be submitted
	during whole term of performance of the Contract.	

#### 8.4. Technical and professional ability

No	Requirement	Documents to be submitted
1.	The Tenderer is included in the Register of Certified Auditors of the Latvian Association of Certified Auditors and validity of its certificate has not been suspended and certificate has not been cancelled (for individual) or Tenderer is included in the Register of Companies of Certified Auditors of the Latvian Association of Certified Auditors and validity of its license has not been suspended and licence has not been cancelled (for legal person).	The Contracting authority shall verify the information itself in publicly available databases.
2.	In the past 3 (three) years (2016, 2017 and 2018) until the submission date of the Proposal Tenderer has provided audit services to at least 1 (one) company where (both requirements must be met within the framework of a single company audit): <ul style="list-style-type: none"> <li>- audit of company's financial report was carried out in accordance with International Standards on Auditing;</li> <li>- audited company's balance sheet value in the audited year was at least 10 (ten) million euros and turnover in the audited year – at least 15 (fifteen) million euros.</li> </ul>	Filled and signed Annex No 4 "Description of the Tenderer's experience" where the Tenderer's experience is clearly specified.
3.	In the past 3 (three) years (2016, 2017 and 2018) until the submission date of the Proposal Tenderer has audited at least 1 (one) European Union funded project with total project value at least EUR 10 000 000 (ten million euros).	Filled and signed Annex No 4 "Description of the Tenderer's experience" where the Tenderer's experience is clearly specified.
4.	<i>Intentionally deleted</i>	<i>Intentionally deleted</i>
5.	The impartiality and neutrality of the Tenderer or any of involved experts will not be jeopardised during the provision of audit services and the Tenderer or any of involved experts will not be in a conflict of interest when providing audit services.	No obligation to submit documents, unless specifically requested by the Procurement commission.
6.	The Tenderer should propose a team consisting of the following key experts*: <p><small>* Note that only roles of Sworn auditor and Team manager can be combined, if the expert meets requirements for both key experts.</small></p>	
A	<b>Sworn auditor</b> meeting the following requirements:	
	(a) Included in the Register of Certified Auditors of the Latvian Association of Certified Auditors and validity of its certificate has not been suspended and certificate has not been cancelled.	The Contracting authority shall verify the information itself in publicly available databases.

No	Requirement	Documents to be submitted
	(b) Has the Association of Chartered Certified Accountants (ACCA) qualification or equivalent qualification.	A certified copy of certificate or any other document proving relevant qualification.
	(c) In the past 3 (three) years (2016, 2017 and 2018) until the submission date of the Proposal has gained experience in the audit of at least 1 (one) transport infrastructure and/ or energy infrastructure company.	Filled in Annex No 5 "Description of the Expert's experience" and signed by the Sworn auditor.
	(d) In the past 3 (three) years (2016, 2017 and 2018) until the submission date of the Proposal has gained experience in the audit of at least 1 (one) European Union funded project with project value at least EUR 1 000 000 (one million euros).	Filled in Annex No 5 "Description of the Expert's experience" and signed by the Sworn auditor.
	(e) English language skills (at least B <sub>2</sub> Level - based on Common European Framework of Reference for Languages <sup>5</sup> ) in communication, presentation, negotiation and report writing.	Self-declared information about language skills filled in Annex No 5 "Description of the Expert's experience" and signed by the Sworn auditor.
<b>B</b>	<b>Team manager</b> meeting the following requirements:	
	(a) Has the Association of Chartered Certified Accountants (ACCA) qualification or equivalent qualification.	A certified copy of certificate or any other document proving relevant qualification.
	(b) In the past 3 (three) years (2016, 2017 and 2018) until the submission date of the Proposal has gained experience in the audit of at least 1 (one) transport infrastructure and/ or energy infrastructure company.	Filled in Annex No 5 "Description of the Expert's experience" and signed by the Team manager.
	(c) In the past 3 (three) years (2016, 2017 and 2018) until the submission date of the Proposal has gained experience in the audit of at least 1 (one) European Union funded project with project value at least EUR 1 000 000 (one million euros).	Filled in Annex No 5 "Description of the Expert's experience" and signed by the Team manager.
	(d) In the past 3 (three) years (2016, 2017 and 2018) until the submission date of the Proposal has gained experience in the audit of at least 1 (one) client who is subject of Public Procurement Law of the Republic of Latvia.	Filled in Annex No 5 "Description of the Expert's experience" and signed by the Team manager.
	(e) English language skills (at least B <sub>2</sub> Level - based on Common European Framework of Reference for Languages <sup>6</sup> ) in communication, presentation, negotiation and report writing.	Self-declared information about language skills filled in Annex No 5 "Description of the Expert's experience" and signed by the Team manager.
<b>C</b>	<b>Senior associate</b> meeting the following requirements:	

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

<sup>6</sup>See <http://euopass.cedefop.europa.eu/resources/european-language-levels-cefr>

No	Requirement	Documents to be submitted
	(a) Has the Association of Chartered Certified Accountants (ACCA) qualification or equivalent qualification.	A certified copy of certificate or any other document proving relevant qualification.
	(b) In the past 3 (three) years (2016, 2017 and 2018) until the submission date of the Proposal has gained experience in the audit of: <ul style="list-style-type: none"> <li>- at least 1 (one) transport infrastructure and/ or energy infrastructure company or</li> <li>- at least 1 (one) European Union funded project with project value at least EUR 1 000 000 (one million euros).</li> </ul>	Filled in Annex No 5 "Description of the Expert's experience" and signed by the Senior associate.
	(c) English language skills (at least B <sub>2</sub> Level - based on Common European Framework of Reference for Languages <sup>7</sup> ) in communication, presentation, negotiation and report writing.	Self-declared information about language skills filled in Annex No 5 "Description of the Expert's experience" and signed by the Senior associate.

- 8.5. Information, provided in the Proposal to prove the compliance with above-mentioned requirements for Economic and financial standing (Section 8.3 of the Regulations), Technical and professional ability (Section 8.4 of the Regulations) shall be clear and understandable without any additional analysis or external proof of the submitted information. The Contracting authority shall not be obliged to use additional sources of information to decide regarding Tenderer's compliance with the qualification requirements. The Tenderer shall remain fully responsible for the provision of sufficiently detailed information in the Proposal required to confirm clearly the compliance with qualification requirements set in the Regulations.
- 8.6. Notices and other documents mentioned in the Section 8.1 of the Regulations which are issued by Latvian competent institutions are accepted and recognized by the Procurement commission, if they are issued no earlier than 1 (one) month prior to the date of submission of particular notices and documents. Notices and other documents mentioned in the Section 8.1 of the Regulations which are issued by foreign competent institutions are accepted and recognized by the Procurement commission, if they are issued no earlier than 6 (six) month prior to the date of submission of notices and documents, if the issuer of the notice or document has not set shorter period of validity.
- 8.7. If the documents with which a Tenderer registered or permanently residing abroad can certify its compliance with the requirements of Section 8.1 of the Regulations are not issued or these documents are insufficient, such documents can be replaced with an oath or, if the regulatory enactments of the country in question do not allow for an oath, - with a certification by the Tenderer or by another person mentioned in Section 8.1 of the Regulations before a competent executive governmental or judicial institution, a sworn notary or a competent organization of a corresponding industry in their country of registration (permanent residence). Regarding all documents submitted based on an oath given under law (e.g. sworn-statements, declarations on oath etc.), the Tenderer must provide (indicate) legal grounds to law or enactment in accordance with such statements or declarations on oath have been given.
- 8.8. If the Tenderer complies with any of the exclusion grounds mentioned in Section 8.1 of the Regulations (except Section 8.1.2, 8.1.10 – 8.1.13 of the Regulations), the Tenderer indicates this fact in Annex No 2 "Application for participating in the Open competition".
- 8.9. The Tenderer to certify that it complies with the selection criteria for Tenderers may submit the European single procurement document (hereinafter - ESPD) as initial proof. This document must be submitted electronically and for each person upon whose capacity Tenderer relies to certify its compliance with the requirements stipulated in the Regulations, and for each of their indicated subcontractors the share of whose work is equal to or exceeds 10 % (ten percent) of the value of the

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

Contract but if the Tenderer is a partnership – for each member thereof. To fill in the ESPD the Tenderer uses the "ESPD.xml" file at the Internet webpage <http://espd.eis.gov.lv/>.

## 9. RELIANCE ON THE CAPACITY OF OTHER PERSONS

- 9.1. For the fulfilment of the specific contract, to comply with the selection requirements for the Tenderers relating to the economic and financial standing and technical and professional capacity, Tenderer may rely on the capacity of other persons regardless of the legal nature of their mutual relationship. In this case:
- 9.1.1. The Tenderer indicates in the Proposal all persons on whose capacity it relies by filling in the table which is attached as Annex No 6 "A list of other entities on whose capacity Tenderer relies" and proves to the Contracting authority that the Tenderer shall have available all the necessary resources for the fulfilment of the Contract by submitting a signed confirmation or agreement on cooperation and/or passing of resources to the Tenderer between such persons and the Tenderer. The confirmations and agreements on cooperation and passing of resources can be replaced by the Tenderer with any other type of documents with which the Tenderer is able to prove that the necessary resources will be available to the Tenderer and will be used during the term of fulfilment of the Contract.
  - 9.1.2. Documents on cooperation and passing of resources must be sufficient to prove to the Contracting authority that the Tenderer will have the ability to fulfil the Contract, as well as that during the validity of the Contract Tenderer will in fact use the resources of such person upon whose capacity it relies.
  - 9.1.3. The Contracting authority shall require joint and several liability for the execution of the Contract between the:
    - 9.1.3.1. Tenderer and a person on whose capacity Tenderer is relying to certify its financial and economic performance and who will be financially and economically responsible for fulfilment of the Contract;
    - 9.1.3.2. Each member of the partnership (if the Tenderer is a partnership) on whose capacity Tenderer is relying and who will be financially and economically responsible for fulfilment of the Contract.
- 9.2. The Contracting authority shall evaluate the person on whose capacity Tenderer to whom the rights to conclude the Contract should be assigned is relying according to Section 8.1.1 - 8.1.8 and Section 8.1.12 - 8.1.13 of the Regulations. In case such person will comply with any of the exclusion grounds which are mentioned in Section 8.1.1- 8.1.8, 8.1.12 and 8.1.13 of the Regulations the Contracting authority shall request Tenderer to change such person. If the Tenderer shall not submit documents about another person which complies with the selection criteria within 10 (ten) business days from the date when the request was issued or sent to the Tender, the Contracting authority shall exclude such Tenderer from further participation in the Open competition.

## 10. SUBCONTRACTING

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

## 11. FINANCIAL PROPOSAL

- 11.1. The Financial proposal shall be submitted as part of Annex No 8 "Financial proposal".
- 11.2. The proposed contract price shall include all taxes, fees and payments, and all costs related to the fulfilment of the specific services, that can be reasonably estimated, except Value Added Tax (hereinafter – VAT), including but not limited to:
  - 11.2.1. cost of business trips, time of consultants and daily allowance,
  - 11.2.2. field research,
  - 11.2.3. purchase of external materials and researches,
  - 11.2.4. purchase of external experts if applicable.
- 11.3. Tenderer shall include any travel expenses (if any arise) in proposed contract price. Contracting authority won't additionally reimburse any travel expenses incurred by Tenderer during the provision of Services.
- 11.4. The costs shall be specified in EUR.
- 11.5. The costs must be calculated and indicated with an accuracy of 2 (two) decimal places after comma. If more than 2 (two) decimal places after comma will be indicated, then only the first two decimal places will be considered.

## 12. CONTENTS AND FORM OF THE PROPOSAL

- 12.1. Proposal must be submitted electronically in E-Tenders subsystem of the Electronic Procurement System in accordance with the following options for the Tenderer:
  - 12.1.1. by using the available tools of E-Tenders subsystem, filling the attached forms of the E-Tenders subsystem for Procurement procedure;
  - 12.1.2. by preparing and filling the necessary electronic documents outside the E-Tenders subsystem and attaching them to relevant requirements (in this situation the Tenderer takes responsibility for the correctness and compliance of the forms to requirements of documentation and form samples);
  - 12.1.3. by encrypting electronically prepared Proposal outside of E-Tenders subsystem with data protection tools provided by third parties, and protection with electronic key and password (in this situation, Tenderer takes responsibility for the correctness and compliance of the forms to requirements of documentation and form samples as well as ensuring capability to open and read the document by the Contracting authority).
- 12.2. During preparation of the Proposal, Tenderer shall respect the following requirements:
  - 12.2.1. Each document mentioned in Section 12.3 of the Regulations must be filled separately, each in a separate electronic document in line with forms attached to Procurement on Contracting authority's profile in E-Tenders subsystem (<https://www.eis.gov.lv/EKEIS/Procurement/24880>) in a Microsoft Office 2010 (or later) format and attached to the Procurement;
  - 12.2.2. Upon submission, the Tenderer signs the Proposal with secure electronic signature and time-stamp or with electronic signature provided by Electronic Procurement System. The Tenderer can use secure electronic signature and time-stamp and sign Application form, Financial proposal and other documents separately. Proposal (its parts, if signed separately) are signed by authorized person, including authorization document (e.g. power of attorney).
- 12.3. Documents to be included in the Proposal:
  - 12.3.1. Application for participating in the Open competition in accordance with Annex No 2;
  - 12.3.2. Financial proposal in accordance with Annex No 8;
  - 12.3.3. Information and documents confirming compliance of the Tenderer with the selection criteria for the Tenderers (set in Section 8 of the Regulations), or the corresponding ESPD;
  - 12.3.4. Information and documents relating to other entities on whose capacity Tenderer is relying (in accordance with Annex No 6), or the corresponding ESPD;

12.3.5. Information and documents relating to subcontractors (in accordance with Annex No 7) and/or the corresponding ESPD.

- 12.4. The Proposal may contain original documents or their derivatives (e.g. copies). In the Proposal or in reply to a request of the Procurement commission Tenderer shall submit only such original documents which have legal force. For the document to gain legal force it must be issued and formatted in accordance with the Law on Legal Force of Documents of the Republic of Latvia (<https://likumi.lv/ta/en/id/210205-law-on-legal-force-of-documents>) but public documents issued abroad shall be formatted and legalized in accordance with the requirements of the Document Legalization Law of the Republic of Latvia (<https://likumi.lv/ta/en/en/id/155411-document-legalisation-law>). Public documents issued abroad can be self-approved by the Tenderer, if it is applicable by the legislation of the respective country. When submitting the Proposal, the Tenderer has the right to certify the correctness of all submitted documents' derivatives and translations with one certification.
- 12.5. The Proposal must be signed by a person who is legally representing the Tenderer or is authorized to represent the Tenderer in this Open competition.
- 12.6. The Tenderer shall prepare Proposal in electronic form using the E-Tenders system available at <https://www.eis.gov.lv/EKEIS/Procurement/24880>.
- 12.7. The Proposal must be submitted in a written form in English or Latvian (if submitted in Latvian, translation in English of the Proposal must be provided together with the Proposal).

### 13. ENCRYPTION OF THE PROPOSAL INFORMATION

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

### 14. SUBMISSION OF A PROPOSAL

- 14.1. The Proposal (documents referred to in the Section 12.3 of the Regulations) shall be submitted electronically using the E-Tenders system available at <https://www.eis.gov.lv/EKEIS/Procurement/24880> by:

**17 October 2019 till 15:00 o'clock.**

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

### 15. OPENING OF PROPOSALS

- 15.1. The Proposals will be opened on the E-Tenders system on **17 October 2019** starting at **15:00** Latvian time during the opening session. On the E-Tenders system it is possible to follow the opening of submitted Proposals online.
- 15.2. The Proposals are opened by using the tools offered by E-Tenders system. The proposed price and other information that characterizes the Proposal (excluding confidential information) shall be published in the E-Tenders system.
- 15.3. The information regarding the Tenderer, the time of Proposal submission, the proposed price and other information that characterizes the Proposal is generated at the opening of the Proposals by E-Tenders system and written down in the Proposal opening sheet which shall be published on E-Tenders system and Contracting authority's webpage.

## 16. VERIFICATION OF PROPOSALS FOR COMPLIANCE

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

## 17. VERIFICATION OF FINANCIAL PROPOSALS

- 17.1. The Procurement commission verifies whether Tenderers have completed Annex No 8 "Financial proposal" in accordance with the requirements.
- 17.2. The Procurement commission verifies whether there are any arithmetical errors, whether an abnormally low Proposal has been received, as well as assesses and compares the contract prices proposed.
- 17.3. The Procurement commission informs the Tenderer whose arithmetical errors have been corrected about the correction of arithmetical errors and the corrected Financial proposal.
- 17.4. When evaluating the Financial proposal, Procurement commission takes corrections into account.
- 17.5. The Procurement commission has the right to demand that the Tenderer explains the calculation upon which the Financial proposal is based and other related aspects to ascertain the objectivity of the Financial proposal and whether an abnormally low Proposal has been submitted.

## 18. CONTRACT AWARD CRITERIA

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

No	Evaluation criteria	Maximum possible score
1.	<b>Financial proposal for Service Part I</b> "Audit on RB Rail AS financial statements" which will be evaluated in accordance with Section 18.3 sub-section a) of the Regulations	50
2.	<b>Financial proposal for Service Part II</b> "Audit on Rail Baltica Global Project expenditure (eligible costs)" which will be evaluated in accordance with Section 18.3 sub-section b) of the Regulations	50
<b>Total:</b>		<b>100</b>

- 18.3. Financial proposals for each Service part shall receive points in accordance with the following formulas:

- a) Financial proposal for Service Part I "Audit on RB Rail AS financial statements":

$$points = \frac{\text{lowest proposed price from the compliant proposals}}{\text{Tenderer's proposed price}} \times 50$$

- b) Financial proposal for Service Part II "Audit on Rail Baltica Global Project expenditure (eligible costs)":

$$\text{points} = \frac{\text{lowest proposed price from the compliant proposals}}{\text{Tenderer's proposed price}} \times 50$$

- 18.4. The Procurement commission shall obtain the final score for each Proposal by summing up points that particular Proposal obtained in accordance with the procedure set out in Section 18.3 sub-section a) and b) of the Regulations. Contract shall be awarded to the Tenderer whose Proposal obtains the highest final score according to Section 18.2 and 18.3 of the Regulations.
- 18.5. In case several Tenderers will obtain equal highest final score (points), Procurement commission shall award the right to conclude the Contract to the Tenderer which will obtain higher score for its Financial proposal for Service Part I "Audit on RB Rail AS financial statements". If still several Tenderers will have equal score for Financial proposal for Service Part I "Audit on RB Rail AS financial statements", Procurement Commission will invite representatives of those particular Tenderers and organize a draw. In situation, when representatives of Tenderers chose to not be present at the draw, Procurement commission will carry out the draw without representatives of Tenderers present.

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

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

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

- 20.1. The Procurement commission selects Tenderers in accordance with the set selection criteria for Tenderers, verifies the compliance of the Proposals with the requirements stipulated in the Regulations and chooses the Proposal in accordance with the contract award criteria as described in Section 18 of the Regulations.
- 20.2. Within 3 (three) business days from the date of decision about the Open competition results Procurement commission informs all Tenderers about the decision made by sending the information by post or electronically (including via the E-Tenders system) and keeping the evidence of the date and means of sending the information. The Procurement commission announces the name of the successful Tenderer, indicating:
  - 20.2.1. to the refused Tenderer - the reasons for refusing its Proposal;
  - 20.2.2. to the Tenderer who has submitted an eligible Proposal - the characterization of the successful Proposal and the relative advantages;
  - 20.2.3. the deadline by which the Tenderer may submit a complaint to the Procurement Monitoring Bureau regarding violations of the public procurement procedure.
- 20.3. If only 1 (one) Tenderer complies with all Tenderer selection requirements, Procurement commission prepares and includes in the Open competition report a justification of the fact that the set requirements for Tenderer selection are objective and commensurate. If the Procurement commission cannot justify that the set requirements for Tenderer selection are objective and commensurate, Procurement commission makes the decision to terminate the Procurement.
- 20.4. If the Procurement is terminated, Procurement commission within 3 (three) business days simultaneously informs all Tenderers about all the reasons because of which the Open competition is terminated and informs about the deadline within which a Tenderer may apply regarding the violations of the public procurement procedure to the Procurement Monitoring Bureau.
- 20.5. The Procurement commission when informing about the results has the right not to disclose specific/confidential information, if it may infringe upon public interests or if the Tenderer's legal commercial interests or the conditions of competition would be violated.
- 20.6. As soon as possible but not later than within 5 (five) working days from day when the decision about the results of the Open competition is taken, Procurement commission prepares a report on the Open competition and publishes it on the Contracting authority's profile in E-Tenders system's webpage <https://www.eis.gov.lv/EKEIS/Procurement/24880> and on Contracting authority's webpage <http://railbaltica.org/en/procurements>.
- 20.7. **The selected Tenderer upon receiving the notification from Procurement commission must:**
  - 20.7.1. within 5 (five) business days – to submit to the Contracting authority a copy of partnership agreement or notification regarding the establishment of the partnership, if required pursuant to requirements under Section 7.1.2.1 of the Regulations;
  - 20.7.2. within 5 (five) business days – to submit to the Contracting authority a copy valid insurance certificate that meets the requirements set in Section 8.3.3 of the Regulations;
  - 20.7.3. within 10 (ten) days upon receiving the invitation - to sign the Contract.
- 20.8. The Contract is concluded based on the selected Tenderer's Proposal and in accordance with Annex No 9 "Draft contract".
- 20.9. The Procurement commission has the right to choose the next most economically advantageous proposal, if the Tenderer in the time stipulated by the Regulations:
  - 20.9.1. refuses to conclude a partnership contract or to establish the partnership in the cases and deadlines defined by the Regulations or in the cases and deadlines defined by the Regulations does not submit a copy of the partnership contract, or does not inform of the founding of a partnership company;
  - 20.9.2. in the cases and deadlines defined by the Regulations does not submit a copy of valid insurance certificate that meets the requirements set in Section 8.3.3 of the Regulations;

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

**ANNEXES:**

1. Technical specification on 7 (seven) pages;
2. Application for participation in the Open competition on 2 (two) pages;
3. Confirmation of the Tenderer's financial standing on 2 (two) pages;
4. Description of the Tenderer's experience on 1 (one) page;
5. Description of the Expert's experience on 2 (two) pages;
6. A list of other entities on whose capacity Tenderer relies on 1 (one) page;
7. A list of the subcontractors on 1 (one) page;
8. Financial proposal on 1 (one) page;
9. Draft contract on 38 (thirty-eight) pages.

**ANNEX NO 1: TECHNICAL SPECIFICATION**

**TECHNICAL SPECIFICATION FOR THE OPEN COMPETITION**  
**"AUDIT SERVICES FOR 2019 - 2021"**  
**(ID NO RBR 2019/8)**



Riga  
2019

## 1. INTRODUCTION TO RAIL BALTICA

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

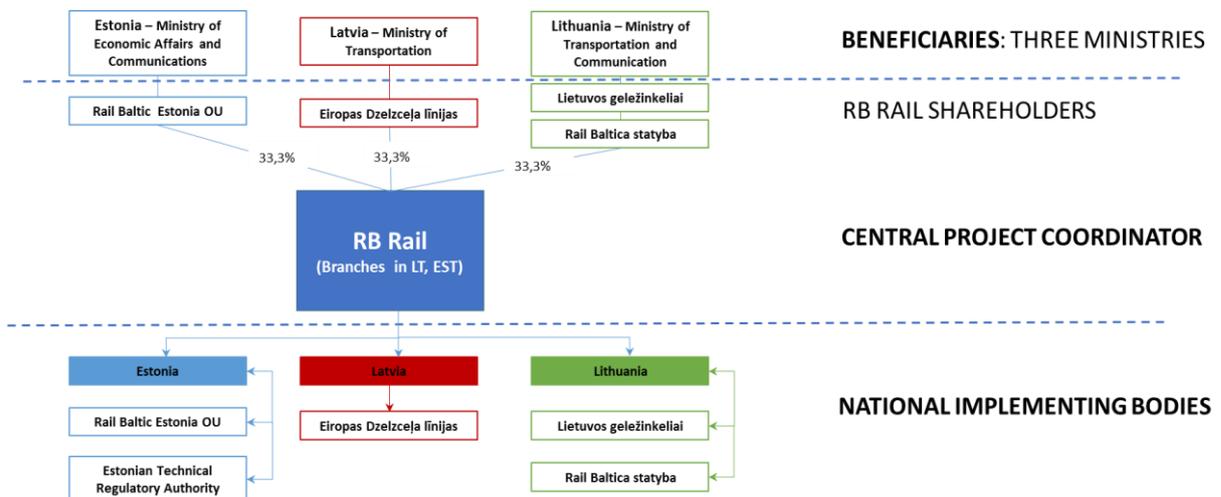
The ambitions of the Rail Baltica Global project (Global Project) are:

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

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

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

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



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

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

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

## 2. SCOPE OF THE SERVICES

The below-mentioned Services (Service Part I and Service Part II) should be provided for the annual periods 2019 – 2021.

### 2.1. SERVICE PART I

Contractor undertakes to carry out an audit of the RB Rail AS (including the RB Rail AS branch in the Lithuania and Estonia) financial statements for the financial year 2019, 2020 and 2021. 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:

1. Statutory financial statements in line with the Law on the Annual Financial Statements and Consolidated Financial Statements of the Republic of Latvia;

2. Financial statements prepared according to International Financial Reporting Standards (IFRS) required by the shareholders.

### 2.1.1. RB Rail AS financial information

Indicator	2018 mEUR	2019 mEUR	2020* mEUR	2021* mEUR
Operating income	5.6	13.1	12.7	12.5
Loss	(3.4)	(5.3)	(5.3)	(5.3)
Assets	9.3	7.4	7.4	7.4
Fixed assets	0.2	0.2	0.2	0.2

\*Numbers may change by 50-70% as a result of conclusion of new Grant Agreements.

## 2.2. SERVICE PART II

Contractor undertakes to carry out an audit on Rail Baltica Global Project (hereinafter - Project) expenditure (eligible costs) declared by RB Rail AS and Beneficiaries of the Project (hereinafter together – Parties, see Note 1 below) in the interim and final INEA financial statements of 2019, 2020 and 2021 drawn up in accordance with Annex VI of the Grant Agreements (see Notes 2 & 3 below) after each financial year.

Audit must be carried out in accordance with the model Terms of Reference for an Independent Report of Factual Findings on costs declared under a Grant Agreement financed under the Connecting Europe Facility (CEF) (see Note 3 below). Contractor shall audit the INEA financial statements of the Parties which include incurred costs of the Implementing bodies of the Project as well.

The independent report of factual findings must be drawn up in the format prescribed by the Annex VII<sup>8</sup> of the Grant Agreements referred to below.

**Note 1.** Within the meaning of these Regulations, the Parties 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).

**Note 2.** Project expenditure (eligible costs) are declared by the Parties in the interim and final INEA financial statements for 2019, 2020 and 2021 drawn up in accordance with Annex VI<sup>9</sup> of the CEF Grant Agreements (see Note 3 below).

**Note 3.** Grant Agreements under the CEF funded project "Development of a 1435mm standard gauge railway line in the Rail Baltic / Rail Baltica (RB) corridor through Estonia, Latvia and Lithuania":

- Action No. 2014-EU-TMC-0560-M (Grant Agreement INEA/CEF/TRAN/ M2014/1045990),
- Action No. 2015-EU-TM-0347-M (Grant Agreement INEA/CEF/TRAN/M2015/1129482),
- Action No. 2016-EU-TMC0116-M (Grant Agreement INEA/CEF/TRAN/M2016/1360716) and
- other CEF Grant Agreements that will become available within the auditing period.

### 2.2.1. Information about the Parties

	Eligible costs and expected audit necessity*					
	2019 mEUR**	Audit***	2020 mEUR**	Audit***	2021 mEUR**	Audit***
2014-EU-TMC-0560-M						
MoEAC-EE	24.5	Yes	50.5	Yes	85.5	Yes
MoT-LV	24.7	Yes	68.7	Yes	82.5	Yes
MoTC-LT	2.6	Yes	9.3	Yes	9.8	Yes
RBR	6.6	Yes	7.5	Yes	6.0	Yes

<sup>8</sup> Available - <https://ec.europa.eu/inea/en/connecting-europe-facility/useful-documents-and-forms>

<sup>9</sup> Available - <https://ec.europa.eu/inea/en/connecting-europe-facility/useful-documents-and-forms>

2015-EU-TM-0347-M						
MoEAC-EE	0.8	Yes	0.1	No	0	No
MoT-LV	0.015	No	0	No	0	No
MoTC-LT	1.4	Yes	1.5	Yes	81.3	Yes
RBR	0.6	Yes	0	No	0	No
2016-EU-TMC0116-M						
MoEAC-EE	0	No	1.9	Yes	0	No
MoT-LV	0.8	Yes	2.3	Yes	0.4	Yes
MoTC-LT	4.9	Yes	0.7	Yes	16.3	Yes
RBR	7.3	Yes	1.5	Yes	0.1	No

\*Only audit services for RBR is guaranteed amount of service. Audit services for MoEAC-EE, MoT-LV and MoTC-LT will be needed, if requested by Contracting authority.

\*\*Expected Project expenditure (eligible costs) under Grant Agreements sets the conditions and requirements for audit needs.

\*\*\*Audit is necessary in case eligible costs exceed 0,35m EUR per year (or cumulatively for all previous years). Information on future Grant Agreements and expected yearly expenditure and audit needs is not yet available.

### 3. SERVICE CONTRACT MANAGEMENT

#### 3.1. Contractor's obligations

- 3.1.1. The Contractor should submit the information request to the RB Rail AS (for Service Part I) and to the Parties (for Service Part II) not later than at least 3 (three) 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 included in Contract are available throughout the Service provision 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.
- 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 offered 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. Contractor shall request and receive the documents necessary for the audit itself taking into account that audit of the INEA financial statements of the Parties (Service Part II) include incurred costs of the Implementing bodies of the Project as well. Parties and Implementing bodies are located in Estonia, Latvia and Lithuania.
- 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, Contractor shall identify possible risks at early stage and propose a mitigation measures in order to successfully deliver Services on time.

### 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, Contractor shall provide independent view based on its expertise, education and experience.

### 3.4. Miscellaneous

3.4.1. Communication with 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, Skype, 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. Contractor shall include any travel expenses (if any arise) in proposed contract price. 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 statement	Auditor's report	By 15 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 (4 (four) copies). Report shall be issued in Latvian.</p> <p>Independent auditor's report on IFRS financial statements shall be issued and submitted to the Contracting authority in hard (paper) format (5 (five) copies).</p> <p>Draft of auditor's report shall be issued and submitted to the Contracting authority at least 7 (seven) days before the due date.</p> <p>Report shall be issued in English.</p>
		Letter to the RB Rail AS management	By 15 May of the following year	<p>Letter to the RB Rail AS management shall be issued and submitted to the Contracting authority in hard (paper) format.</p> <p>Letter to the RB Rail AS management shall be issued in English.</p>
2	Audit on Rail Baltica Global Project	Auditor's report	By 10 August of the following year	Result of the audit is the independent report of factual findings on costs declared under the Grant Agreements financed under the CEF.

	expenditure (eligible costs)			<p>Independent auditor's report shall be drawn up in the format prescribed by the Annex VII<sup>10</sup> of the Grant Agreements and issued and submitted to the Contracting authority in hard (paper) format.</p> <p>Draft of auditor's report shall be issued and submitted to the Contracting authority electronically by sending it to email <a href="mailto:info@railbaltica.org">info@railbaltica.org</a> or in hard (paper) format by 30 June of the following year.</p> <p>Draft and final auditor's report shall be issued in English.</p>
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3.5.2. Contracting authority will accept Services only if it is provided fully in good and sufficient quality and covers full scope defined in Technical specification.

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<sup>10</sup> Available - <https://ec.europa.eu/inea/en/connecting-europe-facility/useful-documents-and-forms>

**ANNEX NO 2: APPLICATION**

**APPLICATION FOR PARTICIPATION IN THE OPEN COMPETITION  
"AUDIT SERVICES FOR 2019 - 2021"  
(ID NO RBR 2019/8)**

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

By submitting the Proposal, the Tenderer hereby:

1. Confirms participation in the Open competition "Audit services for 2019 - 2021", ID No RBR 2019/8;
2. Informs that the following entities and/or persons comply with the following exclusion grounds (if any):

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

3. Confirms that, if the Tenderer will be awarded the Contract, Tenderer will provide the services in accordance with the requirements of the Annex No 1 "Technical specification";
4. Confirms that Regulations is clear and understandable, that it does not have any objections and complaints and that in the case of granting the right to enter into a Contract it shall fulfil all conditions of the Regulations as well as enter into a Contract in accordance with the Draft contract enclosed with the Regulations (Annex No 9);
5. Confirms that in the preparation and submission of its Proposal, Tenderer has fully considered all the clarifications issued by the Contracting authority;

6. Agrees that the Contracting authority reserves itself the right to reject any or all Proposals and cancel the procurement process before entry into Contract on the grounds specified in the Regulations or the law;
7. Guarantees that all information and documents provided are true;
8. **Confirms<sup>11</sup> that meets the criteria of (please indicate by ticking relevant box):**

a small                       medium                       other

sized enterprise<sup>12</sup> as defined in the Article 2 of the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprise.<sup>13</sup>

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[date of signing]

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[name and position of the representative of the Tenderer]

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<sup>11</sup> Tenderer must indicate size of enterprise for each member of the partnership, if the Tenderer is a partnership.

<sup>12</sup> The information on the size of the Tenderer is used solely for statistical purposes and is not in any way whatsoever used in the evaluation of the Tenderer or the Proposal.

<sup>13</sup> Available here - [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2003.124.01.0036.01.ENG&toc=OJ:L:2003:124:TOC](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2003.124.01.0036.01.ENG&toc=OJ:L:2003:124:TOC)

### ANNEX NO 3: CONFIRMATION OF FINANCIAL STANDING

**CONFIRMATION OF TENDERER'S FINANCIAL STANDING FOR THE OPEN COMPETITION**  
**"AUDIT SERVICES FOR 2019 - 2021"**  
**(ID NO RBR 2019/8)**

**1. Section 8.3.1 of the Regulations**

Tenderer's or all members of the partnership together (if the Tenderer is a partnership and confirms the average financial turnover jointly) average financial turnover within the last 3 (three) financial years (2016, 2017, 2018) is not less than 380 000 EUR (three hundred eighty thousand euros) per year.

In the event the average annual financial turnover of a limited partner of the limited partnership (within the meaning of the Commercial Law, Division X) exceeds its investment in the limited partnership, the average financial turnover shall be recognized in the amount of the investment in the limited partnership.

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

No	Year	Total Turnover in EUR	Notes
The Tenderer or member of the partnership (if the Tenderer is a partnership) on whose capacity Tenderer is relying to certify its financial and economic performance (Section 8.3.1 of the Regulations) and who will be financially and economically responsible for fulfilment of the Contract or other entity on whose capacity Tenderer is relying (if the Tenderer is relying on other entity's capacity) to certify its financial and economic performance and who will be financially and economically responsible for fulfilment of the Contract:			
Name of the Tenderer/member of a partnership/other entity			
1.	2018		
2.	2017		
3.	2016		
<b>Average annual turnover within the last 3 (three) financial years</b>			

**2. Section 8.3.2 of the Regulations**

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

\_\_\_\_\_  
 Name of the Tenderer/member of partnership/other entity

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

*equity = total assets – total liabilities = \_\_\_\_\_*

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[date of signing]

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[name and position of the representative of the Tenderer]

**ANNEX NO 4: EXPERIENCE OF THE TENDERER**

**DESCRIPTION OF THE TENDERER'S EXPERIENCE FOR THE OPEN COMPETITION**  
**"AUDIT SERVICES FOR 2019 - 2021"**  
**(ID NO RBR 2019/8)**

**TABLE NO 1 (SECTION 8.4.2 OF THE REGULATIONS)**

No	Client, client's contact information for references (name of representative, phone, e-mail) <sup>14</sup>	Period of the contract (month/year – month/year)	Audit carried out in accordance with International Standards on Auditing (indicate by "Yes"/ "No")	Client's balance sheet value in the audited year	Client's turnover in the audited year	Description of the services
1.						
2.						
n+1						

**TABLE NO 2 (SECTION 8.4.3 OF THE REGULATIONS)**

No	Client, client's contact information for references (name of representative, phone, e-mail) <sup>15</sup>	Period of the contract (month/year – month/year)	Audited project	Audited project's funding source	Project's value (EUR)	Description of the services
1.						
2.						
n+1						

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 [date of signing]

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 [name and position of the representative of the Tenderer]

<sup>14</sup> In case of doubt, the Contracting authority has the right to contact the Client to verify that the services specified complies with the requirements set in Section 8.4.2 of the Regulations.

<sup>15</sup> In case of doubt, the Contracting authority has the right to contact the Client to verify that the services specified complies with the requirements set in Section 8.4.3 of the Regulations.

**ANNEX NO 5: EXPERIENCE OF THE EXPERT**

**DESCRIPTION OF THE EXPERT’S EXPERIENCE FOR THE OPEN COMPETITION  
“AUDIT SERVICES FOR 2019 - 2021”  
(ID NO RBR 2019/8)**

**GENERAL INFORMATION:**

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

**TABLE NO 1 (SECTION 8.4.5 A(C), B(B) OR C(B) OF THE REGULATIONS)**

No	Client, client’s contact information for references (name of the representative, phone, e-mail) <sup>16</sup>	Period of provision of services (month/year – month/year)	Description of the services	Client’s profile (indicating is Client a transport infrastructure company or energy infrastructure company)
1.				
2.				
n+1				

**TABLE NO 2 (SECTION 8.4.5 A(D), B(C) OR C(B) OF THE REGULATIONS)**

No	Client, client’s contact information for references (name of representative, phone, e-mail) <sup>17</sup>	Period of the contract (month/year – month/year)	Audited project	Audited project’s funding source and value of the project	Description of the services
1.					
2.					
n+1					

<sup>16</sup> In case of doubt, the Contracting authority has the right to contact the Client to verify that the services specified complies with the requirements set in Section 8.4.5 A (C), B(B) or C(B) of the Regulations.

<sup>17</sup> In case of doubt, the Contracting authority has the right to contact the Client to verify that the services specified complies with the requirements set in Section 8.4.5 A(D), B(C) or C(B) of the Regulations.



**ANNEX NO 6: OTHER ENTITIES ON WHOSE CAPACITY TENDERER RELIES**

**A LIST OF OTHER ENTITIES ON WHOSE CAPACITY TENDERER RELIES TO MEET THE REQUIREMENT OF  
 THE OPEN COMPETITION  
 "AUDIT SERVICES FOR 2019 - 2021"  
 (ID NO RBR 2019/8)**

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

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 [date of signing]

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 [name and position of the representative of the Tenderer]

**ANNEX NO 7: SUBCONTRACTORS**

**A LIST OF THE SUBCONTRACTORS FOR THE OPEN COMPETITION**  
**"AUDIT SERVICES FOR 2019 - 2021"**  
**(ID NO RBR 2019/8)**

No	Name of the sub-contractor (registration No., legal address)	Description of the sub-contracted task	Sub-contracted tasks		Size of the enterprise <sup>20</sup>
			Amount, EUR (without VAT)	% from the proposed price	
<b>I</b>	<b>Total amount of the sub-contracted tasks is equal to or exceeds 10% from the proposed contract price</b>				
1					
2					
n+1					
<b>Total:</b>					
<b>II</b>	<b>Total amount of the sub-contracted tasks is smaller than 10% from the proposed contract price</b>				
1					
2					
n+1					
<b>Total:</b>					
<b>Total (I+II)</b>					

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 [date of signing]

---

 [name and position of the representative of the Tenderer]

<sup>20</sup> Please indicate the size of enterprise (small, medium or other) as defined in the Article 2 of Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprise. Available here: [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2003.124.01.0036.01.ENG&toc=OJ:L:2003:124:TOC](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2003.124.01.0036.01.ENG&toc=OJ:L:2003:124:TOC)

**ANNEX NO 8: FINANCIAL PROPOSAL**

**FINANCIAL PROPOSAL FOR THE OPEN COMPETITION**  
**"AUDIT SERVICES FOR 2019 - 2021"**  
**(ID NO RBR 2019/8)**

The Tenderer [*name of the Tenderer*] offers to deliver services in accordance with the Annex No 1 "Technical specification" for the following costs<sup>21</sup>:

**SERVICE PART I**

No	Service	Price (EUR without VAT)
1.	Audit on RB Rail AS financial statement of financial year 2019	
2.	Audit on RB Rail AS financial statement of financial year 2020	
3.	Audit on RB Rail AS financial statement of financial year 2021	
<b>TOTAL PRICE (EUR) EXCL. VAT</b>		*

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

\* Financial proposal that will be evaluated in accordance with Section 18.3 subsection a) of the Regulations.

**SERVICE PART II**

No.	Service	Unit	Amount**	Price (EUR without VAT)
1.	Audit on Rail Baltica Global Project expenditure (eligible costs)	INEA financial statement	1	***

Price EUR (excl. VAT) in words: \_\_\_\_\_.

\*\* Indicative amount of necessity audits of INEA financial statements has been indicated in the Section 2.2.1 of the Technical specification. Additionally, Tenderer must take into account that other CEF Grant Agreements will become available within the auditing period.

\*\*\* Financial proposal that will be evaluated in accordance with Section 18.3 subsection b) of the Regulations.

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

\_\_\_\_\_  
[name and position of the representative of the Tenderer]

<sup>21</sup> When preparing the Financial proposal, the rules of Section 11 of the Regulations shall be considered.

**ANNEX NO 9: DRAFT CONTRACT**

**SERVICE AGREEMENT**  
**for Audit services for 2019 - 2021**  
**between**

**RB Rail AS**

**and**

**[•]**

Contract registration number 8/2019-[•]  
CEF<sup>22</sup> Contract No INEA/CEF/TRAN/M2014/1045990 A34,  
CEF Contract No INEA/CEF/TRAN/M2015/1129482 B18  
CEF Contract No INEA/CEF/TRAN/M2016/1360716 C09  
Procurement procedure identification No RBR 2019/8

Riga

Dated [•] [•] 2019

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<sup>22</sup> Grant Agreement under the Connecting Europe Facility

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## SERVICE AGREEMENT

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

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

and

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

WHEREAS:

- (A) This Agreement is entered into under the Global Project which includes all activities undertaken by the respective beneficiaries and implementing bodies of the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania in order to build, render operational and commercialise the Rail Baltica railway – a new fast conventional double track electrified railway line according TSI INF P2-F1 criteria and European standard gauge (1435mm) on the route from Tallinn through Pärnu-Riga-Panevėžys-Kaunas to Lithuanian-Polish border, with the connection of Kaunas – Vilnius, and related railway infrastructure in accordance with the agreed route, technical parameters and time schedule;
- (B) The Principal has organised procurement procedure "Audit services for 2019 - 2021" (identification No RBR 2019/8) (the "Procurement Procedure") whereby the Service Provider's tender proposal (the "Service Provider's Proposal") was selected as the winning bid;
- (C) This Agreement is co-financed from the Connecting Europe Facility (CEF), CEF Contract No INEA/CEF/TRAN/ M2014/1045990, Activity 34, Action No: A5.1.1: "Project implementation support measures (RBR)", CEF Contract No INEA/CEF/TRAN/ M2015/1129482, Activity 18, Action: "Global project management" and CEF Contract No INEA/CEF/TRAN/ M2016/1360716, Activity 9, Action No: C5.1.2: "Global project and Action project implementation support measures (RB Rail, EE, LV, LT)".

### Section I DEFINITIONS AND INTERPRETATION

- 1.1. *Definitions.* In this Agreement, unless the context requires otherwise, all Definitions shall have the meanings as described to such terms in accordance with *Annex A: Definitions and common terms*.
- 1.2. *Interpretation.*
  - (a) The headings contained in this Agreement shall not be used in its interpretation.
  - (b) References to the singular shall include references in the plural and vice versa, words denoting a gender shall include any other gender where the context requires, and words denoting natural persons shall include any other Persons.
  - (c) References to a treaty, directive, regulation, law or legislative provision shall be construed, at any particular time, as including a reference to any modification, extension or re-enactment of the respective treaty, directive, regulation, law or legislative provision at any time then in force and to all subordinate legislation enacted from time to time.
  - (d) In the event there arises a conflict between provisions of the Agreement, the last provision to have been written chronologically shall take precedence.
  - (e) Any reference in this Agreement to a Person acting under the direction of another Person shall not include any action that is taken in contravention of any Applicable Law or Standards, unless the relevant Person can demonstrate that an explicit instruction or direction was given to take the relevant action.
  - (f) Unless expressly stated to the contrary, any reference in this Agreement to the right of consent, approval or agreement shall be construed such that the relevant consent, approval or agreement shall not be unreasonably delayed or withheld. The Parties agree and acknowledge as follows:

- (i) neither Party shall be required to seek or apply for any consent, approval or agreement by any Person which would place the respective Party in breach of the Applicable Law, Standards or any Good Industry Practice; and
  - (ii) nothing in this Agreement shall require the Principal to give or procure the giving of any consent or approval which would be contrary to the protection, safety and efficient operation of the Railway and the Project.
  - (g) A reference to "writing" shall include an e-mail transmission and any means of reproducing words in a tangible and permanently visible form.
  - (h) The words "include" and "including" are to be construed without limitation.
  - (i) Unless indicated otherwise, all references to "days" shall mean calendar days.
  - (j) The words in this Agreement shall bear their natural meaning, except for any Definitions in accordance with *Annex A: Definitions and common terms*.
- 1.3. *Order of Precedence*. In the event of any discrepancy or inconsistency between the documents forming part of this Agreement, the following order of precedence shall apply:
- (a) This Agreement document;
  - (b) Explanations (clarifications) of the procurement documentation;
  - (c) Procurement documents with the annexes (including Technical specification (Scope of Service));
  - (d) Clarifications of the Service Provider's Proposal;
  - (e) Service Provider's Proposal;
  - (f) All other Annexes of the Agreement.

## Section II GENERAL TERMS AND CONDITIONS

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

Principal all Deliverables as described in *Annex B: Technical Specification*, configured according to this Agreement.

### Section III OBLIGATIONS OF SERVICE PROVIDER

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

(iii) to the extent so authorized, cause the obligations of any third party to be adjusted or modified, subject to obtaining the prior approval of the Principal to any adjustment or modification which can have a material effect on Costs, quality or time (except in any emergency when the Service Provider shall inform the Principal as soon as practicable).

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

- (a) the fact that the Service has been and is being carried out in accordance with Applicable Law and Good Industry Practice and, to the extent applicable, conditions of any Necessary Consents; and
- (b) title or license of the Service Provider with respect to any object code forming part of or embedded in Service Provider Software used in the performance of the Service.

In addition to the obligations set forth in accordance with this Clause 3.3, the Service Provider shall have an obligation, during the term of this Agreement, to retain copies of the object code of all software used in the design and production of the Service Provider software, if such software shall be used.

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

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

3.5 *Right to Sub-Contract and Staff.*

- (a) In performing the Services in accordance with the Scope of Service and subject to the provisions of Clause 3.14 and this Clause, the Service Provider may only rely on the services of those Approved Sub-Contractors and Staff listed in *Annex D: List of Approved Sub-Contractors and Staff*, as such list may, from time to time, be modified or supplemented in agreement with the Principal and in accordance with the terms and subject to the criteria contained in the applicable Public Procurement Law of the Republic of Latvia. Parties shall specify the name, contact details and legal representative(s) of each Approved Sub-Contractor as of the Effective Date in *Annex D: List of Approved Sub-Contractors and Staff*. The Service Provider shall have an obligation to notify the Principal in writing of any changes to Sub-Contractor or Staff data specified in *Annex D: List of Approved Sub-Contractors and Staff* occurring during the term of this Agreement and of the required information for any new Sub-Contractors or Staff member which it may subsequently engage toward performing the Service.
- (b) Pursuant to the Public Procurement Law of the Republic of Latvia the Service Provider shall obtain prior written consent of the Principal for the replacement of each Sub-Contractor or each Staff member, or each key personnel indicated in *Annex D: List of Approved Sub-Contractors and Staff* and involvement of additional Sub-Contractors or Staff members, or key personnel.
- (c) Review and evaluation of the replacement of Sub-Contractors or Staff shall be carried out, and the consent or refusal to give consent shall be rendered by the Principal in accordance with Section 62 of the Public Procurement Law of the Republic of Latvia.
- (d) The Service Provider shall not involve employee and/or staff (including but not limited to key office-holders, key personnel (including but not limited to Sworn auditor, Team manager, Senior associate) who have a criminal record, in the implementation of the Agreement.
- (e) The Service Provider shall submit to the Principal the name, surname, personal code (identification number), professional title (job position) of every natural person that will implement the Agreement and/or will be present on site at least ten (10) Working Days prior involvement of this person in the implementation of the Agreement and/or its presence on site.

The Service Provider shall provide a brief (concise) description of duties towards the implementation of the Agreement of the persons, and, if requested by the Principal.

- (f) The Principal has a right to demand dismissal of such a natural person non-compliant with the security clearance requirements stipulated in this Clause 3.5 at the Principal's sole discretion on the basis of the Principal's written request for dismissal. Parties agree that such Principal's decision is in-contestable.
- (g) The Service Provider shall replace the Sub-Contractor and/or Staff member which, during the effectiveness of this Agreement, meets any of the compulsory grounds for exclusion of tenderers (or Sub-Contractors) that were verified during the Procurement Procedure and/or the Principal has demanded his/her dismissal according to Clause 3.5(f) and to prevent (i) involvement of such a natural person in the implementation of the Agreement and (ii) the presence of this person in the real estate, ~~construction site~~ or any other site of the Principal. The Service Provider shall immediately undertake all the necessary actions and measures to ensure that any risk of involvement of such a natural person in the implementation of the Agreement is promptly and duly eliminated.
- (h) In case mentioned in Clause 3.5(f) the Service Provider is obliged:
  - (i) to immediately replace the dismissed person according to Section 62 of the Public Procurement Law of the Republic of Latvia and the Agreement, and
  - (ii) to comply with the Principal's written instructions pursuant to this Clause 3.5 and not to challenge these instructions, and
  - (iii) to inform the Principal about dismissal or replacement proceedings pursuant to this Clause.

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

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

- 3.6 *Responsibility for Performance by Sub-Contractors and Staff.* The Service Provider shall retain the complete responsibility for the proper performance of all of its obligations under this Agreement, and any act, failure to act, breach or negligence on the part of any of its Approved Sub-Contractors and Staff shall, for the purposes of this Agreement, be deemed to be the act, failure to act, breach or negligence of the Service Provider.
- 3.7 *Property of Principal.* Anything supplied by or paid for by the Principal for the use by the Service Provider toward provision of the Service under this Agreement, **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 Principal **insofar as Applicable Laws do not provide otherwise** and, to the extent practicable, shall be marked by the Service Provider as property of the Principal. For the avoidance of any doubt, such delivery shall not be forming part of *Annex B: Technical Specification* and the terms of the delivery shall be agreed between the Principal and the Service Provider separately.
- 3.8 *Reservation of Certain Approval Rights.* Nothing in this Agreement shall require the Principal to give or procure the giving of any consent or approval which would be contrary to or inconsistent with the interests of protection, safety and efficient operation of the Railway or the Project and the safety of persons or property.
- 3.9 *Acceptance Not a Waiver.* The Principal's review, approval, acceptance, or payment with respect to any part of the Service provided by the Service Provider shall not be interpreted or construed to operate as a waiver of any rights or cause for action arising out of the Service Provider's performance of the Service under this Agreement. The Service Provider shall remain liable to the Principal as allowed under this Agreement and under Applicable Law for any and all Costs and/or Damages caused by the Service Provider's negligent performance of any part of the Works and Service furnished under this Agreement.

- 3.10 *Obligations of Service Provider on Termination.* In the event of issue or receipt of a notice of termination of the Agreement under Clause 10.1, the Service Provider shall:
- (a) take immediate steps to bring an end to the performance of the Service in an orderly manner;
  - (b) make arrangements to minimize the expenditure under this Agreement as rapidly as possible; and
  - (c) pass to the Principal a complete set of any documents, manuals or other information that the Principal may require in connection with the Project and the Railway and which, at the time of termination, are in the possession or under the control of the Service Provider.
- 3.11 *Compliance with Laws.* The Service Provider shall review the Applicable Law that is applicable to the Service Provider's services. ~~In carrying out any activities forming part of the Service, the Service Provider shall, at all times, ensure compliance with requirements imposed by supra-national and/or governmental authorities having jurisdiction over the Project.~~
- 3.12 *No Material Interference.* The Service Provider agrees that non-Principal activities undertaken by the Service Provider will be managed so as not to materially interfere with the Service Provider's obligations to the Principal under this Agreement.
- 3.13 *No Conflicting Activity.* Except with the Principal's knowledge and express written permission, the Service Provider shall not engage in any activity, or accept any employment, other agreement, interest, or contribution that would reasonably appear to compromise the Service Provider's professional judgment and performance with respect to the Service and/or the Project. In performing the Service, the Service Provider shall take all necessary measures to prevent any situation where the impartial and objective implementation of the Service is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest.
- 3.14 *Certain Negative Covenants.* In carrying out the Service, the Service Provider undertakes not to procure goods or services of any kind from any person meeting any of the following criteria:
- (a) the Person who is a member of the Management Board or Supervisory Board of an Approved Sub-Contractor or procurator of an Approved Sub-Contractor, or is authorised to represent or act on behalf of an Approved Sub-Contractor with respect to any activity related to any subsidiary company of such Approved Sub-Contractor, and such Person has been accused of commitment of any of the following criminal offences pursuant to an order issued by a public prosecutor or was found to be guilty of commitment of any of the following criminal offences in accordance with a court judgment that has entered into legal force, is non-disputable and non-appealable:
    - (i) formation, organisation, leading or involvement in the criminal organisation or another criminal formation, or participation in the criminal acts of such organisation or formation;
    - (ii) accepting a bribe, giving of a bribe, misappropriation of a bribe, intermediation toward giving or taking of a bribe, acceptance of a prohibited benefit or commercial bribing, unauthorized participation in property transactions, unlawful claiming of benefits, accepting or providing benefits, trading influences;
    - (iii) fraud, misappropriation of funds or money laundering;
    - (iv) tax evasion or evasion of payments equivalent to tax;
    - (v) terrorism, financing of terrorism, creation or organization of terrorist group, traveling for terrorist purpose, justification of terrorism, instigation of acts of terrorism, terrorist threats or recruitment and training of a person with the aim of committing acts of terrorism;
    - (vi) human trafficking;
  - (b) the Person has, by decision of a competent authority or judgment of a court which has entered into legal force and is non-disputable and non-appealable, been found guilty of violation of labour law in any of the following manners:
    - (i) employment of one or more citizens or nationals of countries who are not citizens or nationals of a Member State of the European Union and are residing in the territory of a Member State of the European Union unlawfully;
    - (ii) employment of one or more persons without having entered into written employment agreement with such persons, or without having submitted an employee declaration with

respect to such persons within a period of time stipulated in accordance with applicable laws and regulations applicable to persons that enter into salaried employment;

- (c) the Person who, by decision of a competent authority or in accordance with judgment of a competent court which has entered into legal force, is non-disputable and non-appealable, has been held guilty of violation of applicable rules of competition law manifested as a vertical agreement aimed at restricting the ability of one or more purchasers to determine the resale price, or a horizontal cartel agreement, with the exception of instances where the relevant authority, upon having established the fact of violation of applicable rules of competition law, has discharged the candidate or participant in a tender offer from imposition of a fine or has reduced the amount of fine as a part of co-operation leniency programme;
- (d) the Person who has insolvency proceedings initiated against it (except in the circumstances where a bailout or a similar set of measures are applied within the insolvency proceedings and are aimed at preventing the bankruptcy and restoring the debtor back to solvency, in which case the Service Provider shall evaluate the possibility of participation by such Person in performing the Service), economic activity of the Person has been suspended or discontinued, bankruptcy proceedings have been initiated against the Person or the Person is subject to a liquidation;
- (e) the Person has unpaid tax indebtedness in the country where the procurement is organised or in the country where the Person is registered or permanently residing as a tax payer, including the indebtedness with respect to State social insurance contributions, in the total amount exceeding EUR 150 in each individual country; in such case, the Service Provider can, within its sole discretion, prompt the Approved Sub-Contractor to pay or discharge all outstanding tax indebtedness within 10 (ten) Working Days and, upon such payment or discharge, allow the Person to continue performance of the Service;
- (f) the Person is an entity registered offshore;
- (g) International or national sanctions or substantial sanctions by the European Union or the North Atlantic Treaty Organization Member State affecting the interests of the financial and capital market has been imposed to the Person and such sanctions can affect the execution of the Contract; and
- (h) any of the above-mentioned criteria shall apply to all members of a group of persons if the Person is a group of persons.

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

- (a) any report, brochure, document or information related to the Service provided by the Service Provider to the Principal or any other Person, or which the Service Provider makes publicly available shall include each of the following:
  - (i) a funding statement which indicates that the Service is financed from CEF funds substantially in the following form: "Co-financed by the Connecting Europe Facility of the European Union";
  - (ii) with respect to printed materials, a disclaimer releasing the European Union from liability with respect to any contents of any distributed materials substantially in the form as follows: "The sole responsibility of this publication lies with the author. The European Union is not responsible for any use that may be made of the information contained therein". The disclaimer in all official languages of the European Union can be viewed on the website <https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos>; and
  - (iii) the flag of the Council of Europe and the European Union.
- (b) the requirements set forth in Clauses 3.15(a)(i) and 3.15(a)(iii) of this Agreement can be complied with by means of utilizing the following logo:



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

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

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

### Section IV OBLIGATIONS OF PRINCIPAL

- 4.1. *Acting in Good Faith and Supply of Information.* At all times during the term of this Agreement, the Principal undertakes to act in good faith toward the Service Provider in respect of all matters under this Agreement. The Principal shall, so as not to delay the Service and within a reasonable time, supply to the Service Provider free of cost all information in the power of the Principal to obtain which pertains to the Service, the Project and the Railway. The Principal shall, free of any Costs to the Service Provider, to the extent not explicitly stated otherwise in this Agreement, comply with all of its obligations under this Agreement, including with respect to carrying out any action or providing any information identified and specifically requested by the Service Provider, as reasonably necessary to enable the Service Provider to progress the Service. Information or instructions provided to the Service Provider by or on behalf of the Principal in connection with the Railway or the Project shall be prepared and given in such a diligent and professional manner and with such clarity, in such detail and in a timely manner as is necessary to enable the Service Provider to comply with its obligations under this Agreement.
- 4.2. *Decisions by Principal.* On all matters properly referred to it by the Service Provider in writing the Principal shall give its decision in writing so as not to delay the Service and within a reasonable time. The Principal is not limited to provide any answer and information to the Service Provider by e-mail.
- 4.3. *Assistance and Cooperation by Principal.* In each country of the Railway and in respect of the Service Provider, its personnel and dependents, as the case may be, the Principal shall have an obligation to do all in its power to reasonably assist the Service Provider and reasonably cooperate with the Service Provider with respect to each of the following matters:
- (a) providing unobstructed access wherever access is required for purposes of enabling, establishing or providing the Service; and
  - (b) providing access to other organizations to enable collection of information which is to be obtained by the Service Provider.
- 4.4. *No Material Interference.* The Principal agrees that non-Service Provider activities undertaken by the Principal will be managed so as not to materially interfere with the Principal's obligations to the Service Provider under this Agreement.
- 4.5. *Action Upon Becoming Aware of Defects.* In the event the Principal observes or otherwise becomes aware of any error, fault, omission, or defect in the Service or non-conformance of any action forming part of the Service with the Documentation or information, the Principal shall give prompt notice thereof to the Service Provider. The Service Provider shall have the obligation to correct such error, fault, omission, or defect in the Service or non-conformance of any action forming part of the Service.
- 4.6. *Specific obligations in relation to audit services.* Pursuant the Applicable Laws and Standards, including but not limited to "Standard on Auditing 210 Agreeing the Terms of Audit Engagements", by signing this Agreement the Principal undertakes the following obligations:
- (a) prepare Principal's financial statements in accordance with Latvian law and IFRS and INEA financial statements and provide them to the Service Provider;

- (b) provide the Service Provider with complete and fair documentation and information required for completion of the audit, to the full extent and in due time to permit meeting a previously agreed audit plan (schedule).

## Section V REPRESENTATIONS AND WARRANTIES

- 5.1 *Certain Representations and Warranties by Parties.* Each Party represents and warrants to the other Party, as of the Effective Date, as follows:
- (a) it has entered into this Agreement with the aim of attaining all of the objectives and performing in all material respects all of the obligations and commitments herein set forth;
  - (b) it has entered into this Agreement without having any intention or goal whatsoever to violate the Applicable Law, its own Statutes, other constitutional documents, laws or agreements of any kind to which it is a party;
  - (c) it is not bankrupt and is not the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, it is not in an arrangement with creditors, where its business activities are suspended, or it is in any analogous situation arising from a similar procedure under the laws of the country where it is registered and submits its tax accounts; and
  - (d) it has entered into this Agreement of its own volition and in good faith.
- 5.2. *Certain Representations and Warranties by Service Provider.* The Service Provider represents and warrants to the Principal, as of the Effective Date, as follows:
- (a) it has all requisite qualification, skills and competence to provide the Service to the Principal on the terms and conditions of this Agreement which are no less favorable than the terms and conditions of service identified by the Service Provider in any document submitted by the Service Provider to the Principal as part of the Procurement Procedure and on the terms of the Service Provider's Proposal identified in accordance with Service Provider's Proposal;
  - (b) it holds all requisite licenses, permits, approvals and consents necessary to enable performance of the Service according to the specifications contained in this Agreement and *Annex B: Technical Specification*;
  - (c) it has all requisite ability to ensure the highest quality of the Service;
  - (d) it will assign competent and duly qualified personnel to carry out the Service set out in this Agreement according to the highest professional Standard and Good Industry Practice;
  - (e) it is not deemed to be a person associated with the Principal for the purposes of Applicable Law;
  - (f) it has not been registered as a VAT payer in the Republic of [COUNTRY] [IF APPLICABLE];
  - (g) it is compliant with all of the requirements of the Service Provider's Declaration contained in *Annex H: Declaration of Service Provider*;
  - (h) and will continue to be compliant with all such requirements during the term of this Agreement;
  - (i) the income mentioned in this Agreement will not derive through permanent establishment or fixed base maintained by the Service Provider in the Republic of Latvia. The Service Provider agrees to submit to the Principal four (4) copies of "Residence Certificate–Application for Reduction of or Exemption from Latvian anticipatory taxes withheld at source from payments (management and consultancy fees, leasing fees and certain other types of income), paid to residents of the [COUNTRY]" (the "Residence Certificate") confirmed by Competent Authority of the [COUNTRY] and the Latvian State Revenue Service. The Residence Certificate shall be submitted to the Principal prior the Principal will due to make a payment of the fee or other payments to the Service Provider. Otherwise the Principal will withhold withholding tax at the rate of 20% from the fee and payments made to the Service Provider. The Principal is entitled to make any deductions from the payments due to the Service Provider if the Service Provider doesn't comply with this provision [IF APPLICABLE].

## Section VI PERSONNEL AND REPRESENTATIVES

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

- 6.2. *Representatives.* Each Party shall appoint an officer, employee or individual to serve as its representative toward supply or receipt of the Service with full authority to act on its behalf in connection with this Agreement (hereinafter, the "Representative"), the initial Representatives having been identified in accordance with *Annex F: Representatives*. Any restriction placed by either Party on its Representative's authority shall be notified to the other Party in writing in order to be effective. The Representatives may delegate their authority by notice in writing specifying the identity of the delegate and specifying the scope of authority so delegated. In addition to the appointment of a Representative in accordance with this Clause 6.2, to the extent required by the Principal, the Service Provider shall designate an individual to liaise with the Representative of the Principal in each country where the Project is implemented.
- 6.3. *Changes in Personnel.* To the extent necessary to replace any Person among personnel or Representative of either Party engaged toward provision or receipt of the Service, the Party responsible for the appointment of such Person shall immediately arrange for replacement of the appointed Person by another Person of comparable competence. The costs of such replacement shall be borne by the Party responsible for the appointment, except that if the replacement is requested by the other Party,
- (a) such request shall be made in writing and state the reason for the request; and
  - (b) the Party making the request shall bear the costs of replacement, unless misconduct or inability to perform is satisfactorily established as the reason for the replacement.
- 6.4. *Supplemental Personnel.* To the extent necessity arises to supplement the personnel of the Service Provider engaged toward provision of the Service with additional personnel, the Service Provider shall immediately arrange for engagement of such supplemental personnel. The costs of such engagement shall be borne by the Service Provider. For the avoidance of any doubt, the engagement of supplemental personnel under this Clause 6.4 shall not require approval by the Principal, provided that this personnel complies with the Applicable Law, including the Public Procurement Law of the Republic of Latvia, and this Agreement.

## Section VII SERVICE MEETINGS, REPORTING AND RISK REDUCTION

- 7.1 *Service Meetings.* The Service Provider shall arrange meetings if requested by the Principal, at which appropriate personnel of the Service Provider and the Principal and the Representatives of each Party shall be present. Service Provider shall record all meetings (also online meetings) between Parties and prepare meeting reports within five (5) Working Days after each meeting. All meeting reports shall be harmonized by Principal.
- 7.2 *Reporting.* The Service Provider shall, in a format and at intervals to be agreed with the Principal:
- (a) provide the Principal with regular reports and status updates on the progress of the Works;
  - (b) report on any changes to the *Annex B: Technical Specification*, *Annex C: Schedule of Service*, which the Service Provider considers may be needed in order to fulfil the objectives set out in the *Annex B: Technical Specification* and *Annex C: Schedule of Service*; and
  - (c) use reasonable endeavors to provide any other information and status updates as may be reasonably requested by the Principal at any time.
- In order to avoid any doubt, any change to the above-mentioned documentation can be made only pursuant to this Agreement, if agreed by both Parties, and, if the proposed changes are compliant with the Public Procurement Law of the Republic of Latvia.
- 7.3 *Early Warnings.* Each Party undertakes to give an early warning by notifying the other Party as soon as such Party becomes aware of any matter that is capable of producing any of the following effects:
- (a) delay any Due Date of supply of any Deliverable specified in accordance with *Annex B: Technical Specification*; or
  - (b) impair the usefulness of the Service to the Service Provider.

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

- 7.4 *Risk Reduction Meetings.* Either Party may instruct the other Party to attend a risk reduction meeting at which appropriate personnel of each Party and, to the extent practicable, the Representatives of

each Party, shall be present, in order for those who attend to co-operate with respect to any of following matters:

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

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

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

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

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

8.1 *Service Commencement.* The Service Provider shall commence provision of the Service from Service Start Date as identified in accordance with *Annex C: Schedule of Service* and shall ensure that the Deliverables are furnished on or before each relevant Due Date set in the *Annex B: Technical Specification*. The Service Provider shall render the Service timely and with due diligence having due regard to any applicable Due Date and any other key dates for performance of the Service set out in the Agreement and the applicable Annexes, as may be amended from time to time with the consent of the Principal or in accordance with this Agreement and Public Procurement Law of the Republic of Latvia.

8.2 *Impediments and Delays.* If the Service, or any part thereof, is impeded or delayed by the Principal or any third party engaged by the Principal so as to increase the duration of the Service or any of the applicable Due Dates:

- (a) the Service Provider shall inform the Principal of the circumstances and probable effects of such impediment or delay upon the agreed schedule of Service specified in accordance with *Annex C: Schedule of Service*; and
- (b) the duration of the Service shall be increased, and any Due Date affected by the impediment or delay shall be extended accordingly.

8.3 *Defects and Defects Date.* Until the Defects Date specified in accordance with *Annex C: Schedule of Service* the Principal shall notify the Service Provider of each Defect of any kind as soon as Defect is identified by the Principal and the Service Provider shall have an obligation to notify the Principal of each Defect as soon as Defect is identified by the Service Provider. Upon discovering a Defect, or upon receipt by the Service Provider of a notification of Defect from the Principal, the Service Provider shall have period to remedy the Defect as set in accordance with *Annex C: Schedule of Service* (the "Cure Period"). In the event of inability or failure by the Service Provider to remedy the Defect within the Cure Period, the Principal shall be entitled, at the sole and exclusive discretion of the Principal, to do any of the following:

- (a) allow the Service Provider an additional time period for remedying the Defect, such time period to be determined in the sole discretion of the Principal;

- (b) remedy the Defect at own cost of the Principal (including by means of relying on the services of a third Person) and demand reimbursement by the Service Provider of Costs incurred by the Principal as a result of having to pay other Persons toward carrying out any work or action;
- (c) terminate the Agreement according to *Section X TERMINATION AND SUSPENSION*; or
- (d) remedy the Defects, irrespective of the extent or nature of the Defects, in accordance with Clause 8.3 (b) and terminate the Agreement pursuant to *Section X TERMINATION AND SUSPENSION*.

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

- 8.4 *Delivery and Acceptance*. The Parties agree that **generally** the acceptance of ~~each Deliverable~~ **Deliverables** will be confirmed by a mutual signing of the delivery-acceptance deed (*Annex E: Form of Delivery-Acceptance Deed*). The Principal will sign the delivery-acceptance deed only if the Deliverable complies with *Annex B: Technical Specification*.

The audit reports (form of Deliverable specified in *Annex C: Schedule of Service*) will not be subject to the general delivery and **acceptance procedure of this Clause 8.4, instead, taking into account the specific nature of the Service and the statutory independence and professional diligence obligations imposed on the Service Provider as an auditor by Applicable Law, the issued audit reports will be considered as adequate and sufficient proof of delivery of the Service, thus the signing of the delivery-acceptance deed for these specific Deliverables will not be required.**

**In order to dispel any doubts about the requirements of this Clause 8.4 the Parties agree that the Principal does not have material objections against the quality of the particular Deliverable. If the can only verify the fact of execution or provision of each Deliverable, yet is neither accepted nor rejected within seven (7) days, the unable to influence the contents of or refuse to accept a Deliverable will be deemed to have been accepted by the Principal without change or comment. The Principal may also request an extension to the ten (10) day acceptance period, which will not be unreasonably withheld that is duly executed by the Service Provider unless it affects the schedule defined in Annex B: Technical Specification, which could then trigger a change request that may impact the Service provision timeline, resources and/or cost in accordance with the Applicable Laws that specifically regulate the Service.**

## Section IX INTELLECTUAL PROPERTY RIGHTS

- 9.1 *Proprietary Rights*. All Documentation forming part of the Deliverables developed under this Agreement is ~~and shall become~~ the property of the ~~Principal~~ **Service Provider** at the moment of creation **in accordance with the Applicable Laws** regardless of whether the Service or Deliverable is produced or finally accepted. ~~It is acknowledged~~ **The Service Provider hereby acknowledges and grants, without any additional royalties fee or financial considerations of another kind, the authorisation to the Principal to use, submit and agreed by the Parties that the Principal shall be permitted to reproduce the drawings and schemes and distribute transfer to third parties the prints Deliverables in connection with order to fulfil the use or disposition requirements of the Documentation without any approval of Applicable laws as well as addition requirements that may arise out the Service Provider and without incurring obligation to pay any royalties or additional compensation whatsoever to nature of the Service Provider Project.**
- ~~9.2—Intellectual Property in Documentation. The Service Provider represents and warrants that it owns all Intellectual Property required for the purposes of completing its obligations under this Agreement and in all Documentation deliverable by or on behalf of the Service Provider under this Agreement and that, to the extent any Intellectual Property in any Documentation is not owned by the Service Provider, it has obtained all requisite consents from owner(s) of all Intellectual Property in the Documentation to fulfil all of the obligations undertaken by the Service Provider under this Agreement and has fully discharged all obligations with respect to payment of any royalties or fees.~~
- ~~9.3—Transfer of Ownership to Principal. The Principal shall acquire legal title to and ownership in the Intellectual Property in all Documentation deliverable to the Principal under this Agreement as of the moment of delivery by the Service Provider to the Principal of the delivery acceptance deed, together with the Deliverable and Documentation and information forming part of the Deliverable, in accordance with Clause 8.4 of this Agreement; provided, however, that the Principal has paid the Fee or other consideration payable under the terms of this Agreement with respect to the relevant part of~~

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

- ~~(a) — the right to reproduce the Documentation and information, or any part thereof, and distribute copies of the Documentation and information or any part thereof;~~
- ~~(b) — the right to modify, amend and supplement the Documentation and information, or any part thereof;~~
- ~~(c) — the right to licence the Documentation and information, or any part thereof, for use by others; and~~
- ~~(d) — the right to transfer ownership in the Documentation and information, or any part thereof, to others.~~

~~9.4 — Grant of Limited License to Service Provider. Upon acceptance by the Principal of any Deliverable and Documentation forming part of any Deliverable in accordance with Clause 8.4, the Principal shall be deemed to have granted the Service Provider an irrevocable and exclusive licence to reproduce, modify and distribute copies of any Documentation forming part of any Deliverable for the purposes of the Service and the Project, subject to the following restrictions:~~

- ~~(a) — the license shall apply during the term of this Agreement only;~~
- ~~(b) — the permitted use shall only cover the right to reproduce, modify and distribute the Documentation and information, or any part thereof, for the purposes of performing, implementing or modifying the Service; and~~
- ~~(c) — the Documentation and information, or any part thereof, shall not, without the prior consent by the Principal, be distributed or communicated to any third party for purposes other than those permitted in accordance with this Clause 9.4.~~

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

~~9.5 — No Additional Royalty. It is acknowledged and agreed by the Parties that consideration for the transfer of ownership in the Intellectual Property shall be forming part of the Fee and no additional royalty, fee or other consideration of any kind shall be payable by the Principal to the Service Provider or to any third party in consideration of the transfer of ownership in the Intellectual Property in any Documentation.~~

~~9.6 — No Infringement. The Service Provider represents and warrants to the Principal that no Documentation and information deliverable to the Principal under the terms of this Agreement will infringe any existing Intellectual Property of any third party. In the event any of the representations or warranties contained in this Section IX INTELLECTUAL PROPERTY RIGHTS prove to be untrue or inaccurate, the Service Provider undertakes, at its own cost and expense, to defend and settle any claim raised by any third party alleging infringement of Intellectual Property in the Documentation and information. The foregoing undertaking by the Service Provider shall apply subject to the following conditions:~~

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

~~9.7 — Infringement Proceedings. In the event the Principal is a party to legal proceedings involving allegations of infringement of any Intellectual Property in the Documentation of any third party, the Service Provider shall keep the Principal fully informed of all aspects relevant to the legal proceedings and the Principal shall have the right, at its own cost, to be represented in the legal proceedings by separate counsel. In the event the Service Provider fails to act against claims alleging infringement of any Intellectual Property in the Documentation and information of any third party within reasonable time but, in any event, within twenty (20) days of having been notified of such claims, the Principal shall have the right to assume legal defence against claims alleging infringement of Intellectual Property~~

and shall be entitled to reimbursement by the Service Provider of reasonable costs and expenses incurred toward such defence.

- 9.8 ~~Continued Use.~~ In the event a court of competent jurisdiction resolves in a binding judgment that the Documentation and information, or any part thereof, infringe Intellectual Property of any third party, the Service Provider shall, at its own cost and expense, procure for the Principal the right of continued use of the Documentation and information, or part thereof infringing Intellectual Property of a third party.
- 9.9 ~~License in Intellectual Property of the Service Provider.~~ The Service Provider hereby grants the Principal an irrevocable and non-exclusive license to use, reproduce, modify and/or enhance any Intellectual Property of the Service Provider, provided and to the extent Intellectual Property of the Service Provider is used by the Principal for the purposes of the Railway and/or the Project. It is agreed and acknowledged by the Parties that the license fee for the grant of license in accordance with this Clause 9.9 forms part of the Fee and such license shall continue to be valid irrespective of expiration of this Agreement following completion of the Service or termination of this Agreement for any reason.
- 9.10 ~~Obligation to Procure Intellectual Property Rights.~~ Where the Service Provider is not the legal owner of any relevant Intellectual Property of the Service Provider, the Service Provider shall use reasonable endeavours to procure for the Principal the rights specified in accordance with Clause 9.8.
- 9.11 ~~Obligation to Indemnify with Respect to Uses Other Than for the Purpose.~~ The Principal shall defend and indemnify the Service Provider from and against any and all Damages and Costs arising from the use by the Principal of any Intellectual Property of the Service Provider other than for the purposes of the Railway and/or the Project.
- 9.12 ~~Indemnification by the Service Provider.~~ The Service Provider shall defend and indemnify the Principal from and against any and all Damages arising from the use by the Principal of any Intellectual Property of the Service Provider, to the extent use by the Principal is within the scope of the license granted to the Principal in accordance with Clause 9.9.
- 9.13 ~~Certain Rights of Service Provider.~~ The Service Provider shall have the right to include photographic or artistic representations of the design of the Project among the Service Provider’s promotional and professional materials after obtaining prior written approval from the Principal. The Service Provider shall be given reasonable access to the completed Project to make such representations. However, the Service Provider’s materials shall not include the Principal’s confidential or proprietary information regardless of whether or not the Principal has previously advised the Service Provider in writing of the specific information considered by the Principal to be confidential or proprietary. These materials also shall not contain any information or data that shall be used in accordance to any conditions and requirements set forth by the Principal or other entity; in this case the Service Provider shall comply with such conditions and requirements.

## Section X TERMINATION AND SUSPENSION

- 10.1 *Termination for Material Breach or Bankruptcy.* Subject to the provisions of Clause 10.2, either Party shall be entitled to terminate this Agreement upon giving a written notice of termination to the other Party in the event of material breach by the other Party of any of its obligations under this Agreement. **It is understood by the Parties that a material breach is to be considered as a “substantial reason” for the purposes of Section 3 of Article 29 of the Law on Audit Services.** The written notice of termination shall contain an itemized description of the breach. For the purposes of this Clause 10.1 an event of material breach shall include any of the following:
- (a) commitment by a Party of any persistent or material breach of this Agreement (which shall include failure to pay an amount of at least EUR 5,000 due to the other Party or perform any part of the Service valued at least EUR 5,000);
  - ~~(b) failure by the Service Provider to duly address any of the matters raised in the delivery-acceptance deed given by the Principal in accordance with Clause 8.4;~~
  - (b) failure by any Deliverable to conform to any of the material requirements to such Deliverable contained in *Annex B: Technical Specification* and/or *Annex C: Schedule of Service*, provided that such failure is not capable of being remedied during the Cure Period within the Corrective Period;
  - (c) failure by the Principal to make any payment to the Service Provider in accordance with this Agreement within at least fourteen (14) Working Days from the date of payment falling due;

- (d) any of the representations or warranties given by either Party under Clause 5.1 or any of the representations or warranties given by the Service Provider under Clause 5.2 proving to be untrue; ~~or.~~
- ~~(e) breach by the Service Provider of any of the representations or warranties contained in Clause 9.6 of the undertaking contained in Clause 9.10.~~
- 10.2. *Corrective Period.* In the event of breach: (i) by the Service Provider of its obligation under this Agreement, the Principal shall allow the Service Provider seven (7) days, if the Principal did not set otherwise for corrective action or submission of a corrective action plan; (ii) by the Principal of its obligations under this Agreement, the Service Provider shall allow the Principal seven (7) days for corrective action or submission of a corrective action plan (the "Corrective Period"). The Corrective Period shall be counted from the date of receipt by the breaching Party of a written notice of breach. Should no satisfactory corrective action be taken, or acceptable corrective action plan provided by the breaching Party, the non-breaching Party shall have the right to terminate the Agreement. It is acknowledged and agreed by the Parties that the provisions of this Clause 10.2 shall not apply with respect to any of the events enumerated in accordance with Clause 10.6. In addition, and for the avoidance of any doubt, the application of the Corrective Period under this Clause 10.2 shall be without prejudice to and shall not relieve either Party from the obligation to pay any contractual penalty in accordance with the provisions of Clause 11.2 or to pay Damages incurred by the other Party in accordance with the provisions of Clause 11.3.
- 10.3. *Alteration Not Material Breach.* It is agreed and acknowledged by the Parties that, for the purposes of Clause 10.1, no Alteration agreed by the Parties shall constitute a "material breach", provided that such Alteration is objectively justified and indispensable to attain objectives of the Project, is carried out in accordance with applicable Public Procurement Law of the Republic of Latvia and relates to any of the following matters:
- (a) modification of the terms and conditions of this Agreement in a manner altering the terms and conditions set forth in documents forming part of the Procurement Procedure, provided that necessity of such modification is due to no fault of the Service Provider; or
  - (b) substitution of a supplier or Approved Sub-Contractor selected during the Procurement Procedure with another supplier or Sub-Contractor in accordance with applicable Public Procurement Law of the Republic of Latvia.
- 10.4. *Right to Terminate Immediately.* It is understood by the Parties that the grounds for termination specified in this Clause 10.4 is to be considered as a "substantial reason" for the purposes of Section 3 of Article 29 of the Law on Audit Services. Notwithstanding anything to the contrary contained in this Agreement, a Party may terminate this Agreement immediately upon giving the other Party a written notice of termination explaining, in reasonable detail, the reason for termination upon occurrence of any of the following:
- (a) breach by the other Party of Clause 17.3;
  - (b) an event of Force Majeure has been continuing during more than sixty (60) days;
  - (c) the other Party had passed a resolution for winding-up (other than in order to amalgamate or reconstruct);
  - (d) breach by the Service Provider any of the confidentiality undertakings contained in *Section XIII CONFIDENTIALITY*;
  - (e) the other Party is unable to pay its debts and has presented a petition for voluntary bankruptcy;
  - (f) the other Party had a bankruptcy order issued against it;
  - (g) liquidation, insolvency or legal protection proceedings have been initiated with respect to the other Party or the other Party is declared insolvent;
  - (h) the occurrence of any event analogous to the events enumerated under Clauses 10.4(e)-(g) under the law of any jurisdiction to which the other Party's assets and undertaking are subject.
- 10.5. *Principal's Right to Terminate Immediately.* It is understood by the Parties that the grounds for termination specified in this Clause 10.5 is to be considered as a "substantial reason" for the purposes of Section 3 of Article 29 of the Law on Audit Services. The Principal may terminate this Agreement immediately upon giving the other Party a written notice of termination explaining, in reasonable detail, the reason for termination, if:

- (a) CEF Co-financing for further financing of the Service are not available to the Principal fully or partly;
- In such a case, the Principal shall pay the Service Provider the fees in respect of the Service provided under this Agreement up to the date of the notification of the termination of this Agreement and the Principal is not obliged to pay contractual or any other penalty or damages to the Service Provider.
- (a) it is not possible to execute the Agreement due to the application of international or national sanctions, or European Union or North Atlantic Treaty Organization applied sanctions significantly affecting interests of financial or capital market.
- 10.6 *Termination according to Public Procurement Law.* The Agreement can be immediately terminated upon giving the other Party a written notice of termination explaining, in reasonable detail, the reason for termination upon occurrence of any of the provisions mentioned in the Section 64 of the Public Procurement Law of the Republic of Latvia. In such a case, the Principal shall pay the Service Provider the fees in respect of the Works and Service provided under this Agreement up to the date of the notification of the termination of this Agreement and the Principal is not obliged to pay contractual or any other penalty or damages to the Service Provider.
- 10.7 *Right to Advance to Completion.* In the event the Service Provider fails to fulfil any of its obligations or fails to cure any breach in accordance with Clause 10.2, and the Agreement is terminated by the Principal, the Principal may advance the Service to completion by employing the services of other professional service supplier(s) or by other means available to the Principal. The Service Provider shall be liable to the Principal for any and all additional costs incurred due to failure by the Service Provider to perform. The rights and remedies available to the Principal set forth in accordance with this Clause 10.7 shall be in addition to any and all other rights and remedies available under Applicable Law.
- 10.8 *Consequences of Termination.* Upon expiration or termination of this Agreement, the obligations of the Parties set forth in this Agreement shall cease, except with respect to the following:
- (a) any obligations arising as a result of any antecedent breach of this Agreement or any accrued rights; and
- (b) the provisions stipulated in accordance with Clauses 3.2, 3.4, 8.3, ~~9.5, 9.6, 9.7, 9.8, 9.9, 9.11, 9.12, 10.9~~, 11.1, 11.2, 11.3, 11.5, 11.6, 11.7, 17.3, 17.8, 17.9 and *Section XIII CONFIDENTIALITY, Section XIV RIGHT TO AUDIT, Section XV ON-THE-SPOT-VISITS and Section XVI GOVERNING LAW AND RESOLUTION OF DISPUTES* which shall survive the termination or expiry of this Agreement and continue in full force and effect along with any other Clauses of or Annexes hereof which are necessary to give effect to the clauses specifically identified in this Clause 10.8(b).
- ~~10.9 *Partial Acceptance.* Notwithstanding anything in this Agreement to the contrary including, without limitation, the provisions of Clause 8.4 and in the event of termination of this Agreement, the Principal shall have the right, in the sole discretion of the Principal, to partially accept any Works, part of Works or any Service or part of the Service delivered to the Principal under this Agreement (the "Right of Partial Acceptance"). The Principal shall notify the Service Provider of its intention to exercise the Right of Partial Acceptance in the termination notice given in accordance with Clause 10.1 or Clause 10.4 of this Agreement, specifying, in reasonable detail, the Works, part of Works or part of the Service which the Principal would like to partially accept. In the event of receipt of such notice, the Service Provider shall reasonably cooperate with the Principal in order to ascertain transfer to the Principal of ownership in the result(s) of such Works, part of Works or part of the Service and determination of the amount of consideration payable by the Principal.~~
- 10.9 *Principal's Obligation to Pay.* ~~Subject to the provisions of Clause 10.9 and except~~ **Except** in the event of termination by the Principal occurring as a result of violation by the Service Provider as set in Clause 11.2, and/or termination by the Principal according to Clause 10.5 and/or 10.6 in the event this Agreement is terminated for any reason prior to completion of the Service, the Principal shall have an obligation to pay the Service Provider the following:
- (a) the Costs incurred by the Service Provider up to the date of termination; and
- (b) except where termination is due to negligence of the Service Provider, due to the application of international sanctions, breach by the Service Provider, insolvency of the Service Provider or a Force Majeure Event under *Section XII FORCE MAJEURE*:

- (i) an amount equal to the costs reasonably and properly incurred by the Service Provider as a result of or in connection with such termination; and
  - (ii) such additional amount as is required to put the Service Provider in the same after-tax position (taking into account the amount of any relief, allowance, deduction, set-off or credit relating to tax available to the Service Provider in respect of the payment received) as it would have been in if the payment had not been a taxable receipt in the hands of the Service Provider.
- 10.10 *No Obligation to Pay Costs Incurred Prior to Acceptance.* Notwithstanding anything set forth in this Agreement to the contrary ~~including, without limitation, under Clause 10.9,~~ the Principal shall have no obligation to pay any of the Costs incurred by the Service Provider with respect to any Works or the Service (or part of any Works or the Service) not deemed as having been accepted by the Principal in accordance with Clause 8.4.
- 10.11 *No Prejudice to Other Rights.* The right to terminate this Agreement shall be without prejudice to any other right of either Party which has accrued prior to or as a result of such termination or to any remedy available to either Party under the terms of this Agreement or in accordance with Applicable Law.
- 10.12 *Reporting.* If the Principal unilaterally terminates the Agreement in accordance with Clauses 10.1, 10.4, or 10.5 the Principal shall notify the Latvian Ministry of Finance and the Latvian Association of Sworn Auditors.

## Section XI LIABILITY

- 11.1 *Liability of the Parties.* The Service Provider shall be liable to compensate Damages incurred by the Principal arising out of or in connection with this Agreement and pay contractual penalty set forth in accordance with Clause 11.2 if a breach of any of the obligations of the Service Provider under this Agreement is established against the Service Provider. The Principal shall be liable to pay the contractual penalty set forth in accordance with Clause 11.2 if a breach of payment obligations of the Principal under this Agreement is established against the Principal.
- 11.2 *Contractual Penalty.* In the event of failure by the Service Provider to supply any Deliverable **insofar as the cause of the delay is attributable to the action or inaction of the Service Provider,** the Service Provider shall be liable to pay to the Principal a penalty of zero point five percent (0.5%) of the amount of fee payable for specific Deliverable with respect to the relevant Service period for each day of delay starting from the first delayed day with meeting any of the Due Dates and/or supplying any of the Deliverables set forth in accordance with *Annex C: Schedule of Service* provided, however, that the total amount of penalty payable by the Service Provider under this Clause 11.2 for the relevant Works, as specified according to *Annex C: Schedule of Service* shall not exceed ten percent (10%) of the total amount of the Fee payable in consideration of such Works and Service. In the event of failure by the Principal to pay any amount in accordance with Clause 18.1, the Principal shall be liable to pay the Service Provider a penalty of zero point five percent (0.5%) of the amount of the amount invoiced for each day of delay with meeting the payment obligation; provided, however, that the total amount of penalty payable by the Principal under this Clause 11.2 shall not exceed ten percent (10%) of the total amount remaining unpaid under the relevant invoice.
- 11.3 *Compensation for Damages.* Notwithstanding of and without prejudice to any contractual penalty payable in accordance with Clause 11.2 and subject to the provisions of Clause 11.5 in the event it is established that either Party is liable to the other Party with respect to any breach of its respective obligations under this Agreement, the liable Party shall compensate the other Party for any Damages incurred as a result of such breach, subject to the following terms:
- (a) the amount of compensation shall be limited to the amount of reasonably foreseeable Damages suffered as a result of the breach(es), but not otherwise; and
  - (b) if either Party is considered to be liable jointly with third parties to the other, the proportion of compensation payable by the liable Party shall be limited to that proportion of liability which is attributable to the breach by the liable Party.
- 11.4 *Attribution of Damages.* Any Damages suffered by either Party shall, for the purposes of Clause 11.3, be reduced to the extent that the Damages are caused by or contributed to by the other Party's own negligence or breach of its obligations under this Agreement.
- 11.5 *Limitation of Liability.* Notwithstanding anything to the contrary set forth in this Agreement, in no circumstances shall the Service Provider or Principal be liable to one another for any loss of production,

loss of profit, loss of revenue, loss of contract, liability incurred under other agreements (with the exception of costs paid by the Principal to Service Providers appointed by the Principal in relation to the Service or the Project) or any indirect or consequential loss arising out of or in connection with this Agreement. The Service Provider's total liability for the Works carried out under this Agreement shall in no circumstances exceed 380 000 EUR (three hundred eighty thousand euros).

- 11.6 *Liability Cap.* Subject to the provisions of Clause 11.5 the maximum aggregate liability of each Party to the other Party for any reason arising under, or in connection with, this Agreement or the Project including but not limited to breach of the Agreement, or for breach of Applicable Law shall not exceed an amount equal to 380 000 EUR (three hundred eighty thousand euros). Notwithstanding the above limitation, where, in respect of the same event, a Party recovers any amount of money under an insurance policy, it shall immediately pay such amounts to the other Party. Each Party shall use reasonable endeavors to make such recovery under any insurance policy (which shall include an obligation to make and diligently pursue a claim but shall not include an obligation upon the Party to take legal action).
- 11.7 *Non-Applicability of Liability Cap.* The provisions of Clause 11.6 shall not apply to Damages incurred by either Party as a result of:
- (a) any liability in respect of death or personal injury resulting from a negligent act or omission or breach of statutory duty by the liable Party or any employee of the liable Party;
  - (b) the fraud, fraudulent misrepresentation, reckless misconduct or gross negligence of the liable Party or, in the case of the Service Provider, any Approved Sub-Contractor of the Service Provider; and/or
  - (c) infringement of any Intellectual Property of a third party.
- 11.8 *Insurance Against Liability.* The Service Provider shall:
- (a) insure against its commercial liability under Clause 11.2 and/or Clause 11.3;
  - (b) insure against public/third party liability (Professional risk indemnity insurance).
- 11.9 *Obligation to Effect Insurance.* The Service Provider undertakes to effect such insurance with an insurer and on terms and conditions acceptable to the Principal. The limit of Professional risk indemnity insurance liability (Clause 11.8) for the insurance coverable shall be no less than limit of liability at least in the amount set in Section 42, Paragraph 1 (for individual) or Paragraph 2 (for legal person) of the Law on Audit Services of Republic of Latvia per claim/occurrence during the whole period of performance of the Agreement. The costs of such insurance shall be at the expense of the Service Provider.
- 11.10 *Insurance Certificate.* Before entering into the Agreement, the Service Provider shall provide certificate from its insurer or broker stating that the insurance required under this *Section XI LIABILITY* are in full force and effect. The Service Provider shall maintain it in force as long as it is necessary to accomplish any obligations according to this Agreement. In addition, the Service Provider shall provide not less than thirty (30) days prior written notice to the Principal of any cancellation or material reduction in the insurance. The Service Provider is obliged to submit to the Principal a copy of a renewed insurance certificate or a new insurance certificate including the provisions set in Clause 11.8 within five (5) Working Days before the date of expiry of the previous insurance certificate.

## Section XII FORCE MAJEURE

- 12.1 *Effects of Force Majeure.* Subject to the requirements set forth in accordance with Clauses 12.2 and 12.3, each Party shall be relieved from liability for non-performance of its obligations under this Agreement (other than any obligation to pay) to the extent that the Party is not able to perform such obligations due to a Force Majeure Event.
- 12.2 *Action on Becoming Aware of Force Majeure.* Each Party shall at all times, following the occurrence of a Force Majeure Event:
- (a) take reasonable steps to prevent and mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the Force Majeure Event as soon as practicable and use reasonable endeavors in accordance with Good Industry Practice to remedy its failure to perform; and

- (b) not be relieved from liability under this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to any failure to comply with its obligations under Clause 12.1.
- 12.3 *Notification Requirements.* Upon the occurrence of a Force Majeure Event, the affected Party shall notify the other Party as soon as reasonably practicable and in any event within five (5) Working Days of it becoming aware of the relevant Force Majeure Event. Such notification shall give sufficient details to identify the particular event claimed to be a Force Majeure Event and shall contain detailed information relating to the failure to perform (or delay in performing), including the date of occurrence of the Force Majeure Event, the effect of the Force Majeure Event on the ability of the affected Party to perform, the action being taken in accordance with Clause 12.2(a) and an estimate of the period of time required to overcome the Force Majeure Event. The affected Party shall provide the other Party with any further information it receives or becomes aware of which relates to the Force Majeure Event and provide an update on the estimate of the period of time required to overcome its effects.
- 12.4 *Notification of Resumed Performance.* The affected Party shall notify the other Party as soon as practicable once the performance of its affected obligations can be resumed (performance to continue on the terms existing immediately prior to the occurrence of the Force Majeure Event).
- 12.5 *Mitigation of Effects of Force Majeure.* As soon as practicable after the notification specified pursuant to Clause 12.3, the Parties shall use reasonable endeavors to agree appropriate terms or modifications to the Service to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.

### Section XIII CONFIDENTIALITY

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

- (d) to the extent required by Applicable Law or pursuant to an order of any court of competent jurisdiction, any parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law;
  - (e) to register or record any Necessary Consents and to affect any property registration that may be required;
  - (f) in order to fulfil its license obligations or assist in the planning or execution of other maintenance, renewal or enhancement projects; or
  - (g) to the extent Confidential Information has become available to the public other than as a result of any breach of an obligation of confidence; provided that any such disclosure is made in good faith.
- 13.4 *Obligation of Confidentiality Pertinent to Recipients of Confidential Information.* Whenever disclosure is permitted to be made pursuant to Clauses 13.3(a) or (c), the Service Provider shall require that the recipient of Confidential Information be subject to the same obligation of confidentiality as that contained in this Agreement.
- 13.5 *Certain Obligations on Termination of Agreement.* If this Agreement is terminated for whatsoever reason, the Service Provider shall have an obligation to do all of the following:
- (a) return to the Principal all of the Confidential Information then within the possession or control of the Service Provider; or
  - (b) destroy such Confidential Information using a secure and confidential method of destruction.
- The obligations of the Service Provider contained in this Clause 13.5 shall be executed in a way and to the extent that this Clause 13.5 does not infringe the obligations of the Service Provider to keep the information specified in Article 34 of the Law on Audit Services.
- 13.6 *No Press Release by Service Provider.* Save as required by Applicable Law, the Service Provider shall not issue any press release in relation to the matters contemplated under this Agreement without the prior written consent of the Principal (such consent not to be unreasonably withheld or delayed) as to both the content and the timing of the issue of the press release.
- 13.7 *Right to Publish.* For the avoidance of any doubt, the Principal and any of the Beneficiaries and Implementing Bodies shall have the right to publish any of the documents, information or data provided by the Service Provider to the Principal during provision of the Service.
- 13.8 *Remedies.* The Parties acknowledge and agree that a breach of the provisions of this *Section XIII CONFIDENTIALITY* may cause the owner of Confidential Information to suffer irreparable Damages that could not be adequately remedied by an action at law. Accordingly, the Service Provider agrees that the owner of Confidential Information that is disclosed in breach of Clauses 13.2, 13.4 or 13.6 may be entitled to specific performance of those provisions to enjoin a breach or attempted breach thereof and to any other remedy, including, inter alia, damages and injunctive relief, awarded by a court of competent jurisdiction.

#### Section XIV RIGHT TO AUDIT

- 14.1 *Right to Audit.* Notwithstanding anything to the contrary set forth in this Agreement including, the Principal itself, a reputable outside independent body or expert engaged and authorized by the Principal shall be entitled to inspect and/or audit the Service Provider to ensure compliance with the terms of this Agreement, including inspecting and/or auditing:
- (a) the performance of any aspect of the Service; and/or
  - (b) any documentation, including all payrolls, accounts of the Service Provider and/or other records used in or related to the performance of the Services.
- 14.2 *Obligation to Assist.* The Service Provider shall provide all reasonable assistance to the Principal or the independent body authorized by the Principal in carrying out any inspection or audit pursuant to this *Section XIV RIGHT TO AUDIT*. The Principal shall be responsible for its own costs, or the costs incurred by the outside independent body designated by the Principal, incurred toward carrying out such inspection or audit, unless, in the case of any such audit, that audit reveals that the Service Provider is not compliant with the terms of this Agreement, in which case the Service Provider shall reimburse the Principal for all of its additional reasonable costs incurred, provided such non-compliance is material.

- 14.3 *Survival of Termination.* The rights and obligations of the Principal set forth in accordance with this Section XIV RIGHT TO AUDIT shall survive expiration or termination of this Agreement for any reason and shall continue to apply during ten (10) years following expiration or termination of this Agreement for any reason whatsoever.

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

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

#### Section XVI GOVERNING LAW AND RESOLUTION OF DISPUTES

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

#### Section XVII MISCELLANEOUS PROVISIONS

- 17.1 *Capacity.* Each Party warrants to the other Party that it has full power to enter into and perform this Agreement, and the person signing this Agreement on its behalf has been duly authorized and empowered to enter into such agreement. Each Party further acknowledges that it has read this Agreement, understands it and agrees to be bound by it.
- 17.2 *Assignability.* The Service Provider shall not without the prior written consent of the Principal assign any of the rights or benefits from the Agreement, provided that the consent by the Principal shall not be unreasonably withheld or delayed. Neither Party shall assign any of the obligations under the

Agreement without the prior written consent of the other Party, ~~provided, however, that the Principal shall be entitled, at any time, to assign any of the rights under this Agreement to any of the Beneficiaries or Implementing Bodies without consent of the Service Provider.~~

- 17.3 *Conflict of Interest, Corruption and Fraud.* Notwithstanding any penalties that may be enforced against the Service Provider under Applicable Law, or the laws of other jurisdiction(s), the Service Provider shall be deemed to have committed a breach under this Agreement and the Principal shall be entitled to terminate this Agreement immediately and without any regard to the provisions of Clause 3.14, if it is shown that the Service Provider is guilty of:
- (a) offering, giving, receiving or soliciting anything of value with a view to influencing the behavior or action of anyone, whether a public official or otherwise, directly or indirectly in the selection process or in the conduct of the Agreement; or
  - (b) misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Principal, including the use of collusive practices intended to stifle or reduce the benefits of free and open competition.
- 17.4 *Notices.* All notices and other communications made or required to be given pursuant to this Agreement shall be in writing and shall be deemed given if delivered personally or by facsimile transmission (if receipt is confirmed by the facsimile operator of the recipient), or **if sent via email and signed by secure digital signature, or** delivered by overnight courier service, or mailed by registered or certified mail (return receipt requested), postage prepaid, to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice):
- (a) to the Principal: RB Rail AS,  
Kr. Valdemāra iela 8-7, Rīga,  
LV-1010, Latvia;  
[info@railbaltica.org](mailto:info@railbaltica.org)
  - (b) to the Service Provider: .....
- 17.5 *Changes in Address.* Either Party shall be entitled to change its address for purposes of the Clause 17.4 by notice to the other Party. A notice of a change of address shall be effective only upon receipt thereof.
- 17.6 *Damages Covered by Insurance.* To the extent Damages are covered by insurance, the Principal and the Service Provider waive all rights against each other and against the Service Providers, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance current as of the date of this Agreement.
- 17.7 *Relationship of the Parties.* The relationship between the Service Provider to the Principal under this Agreement is that of independent Service Providers. The Service Provider (or the Service Provider's Sub-Contractors) is not an employee of the Principal, is not carrying out the regular business of the Principal and is not subject to the same employment regulations as are applicable to employees of the Principal. Each of the Parties shall be solely and entirely responsible for their own acts and the acts of their employees. No benefits, special considerations, or employer/employee-type provisions are provided by the Principal to the Service Provider, the Service Provider's employees, or the Service Provider's consultants, or the employees of such consultants.
- 17.8 *Severability.* If any provision of this Agreement shall be held to be illegal, invalid, void or unenforceable under Applicable Laws, the legality, validity and enforceability of the remainder of this Agreement shall not be affected, and the legality, validity and enforceability of the whole of this Agreement shall not be affected.
- 17.9 *Successors and Assigns.* The Principal and the Service Provider each bind themselves, their successors, legal representatives, and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect to all covenants of this Agreement. Neither Party shall assign or transfer its respective interest in the Agreement without written consent of the other Party.
- 17.10 *Waivers.* No waiver by either Party of any default by the other Party in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default, irrespective of the character of such default. No failure or delay by either Party in exercising any of its rights, power or privileges under this Agreement shall operate as a waiver thereof, nor shall any single

or partial exercise by that Party of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege.

- 17.11 *Amendments and Variations.* No amendment to or variation of this Agreement shall be effective unless made in writing and signed by duly authorized representatives of both Parties. The Agreement can be amended in compliance with the provisions of Section 61 of the Public Procurement Law of the Republic of Latvia.
- 17.12 *Entire Agreement.* This Agreement, and the Annexes hereto, constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes and extinguishes all and any prior drafts, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.
- 17.13 *Execution.* This Agreement may be executed in two counterparts to be held by each Party which counterparts, taken together, shall constitute one and the same instrument.
- 17.14 *Personal data.* 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, Project stakeholders and their employees etc. The Parties acknowledge that for the purpose of the Agreement each of the Parties shall act as a controller.

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

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.

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.

## Section XVIII FEE AND PAYMENT

- 18.1 *Fee.* In consideration of provision of the Service, the Service Provider is entitled to receive a Fee in the amount set forth in accordance with *Annex C: Schedule of Service* according to the schedule set forth in *Annex C: Schedule of Service*. It is acknowledged and agreed by the Parties that the Fee shall include all Costs and expenses incurred by the Service Provider and Approved Sub-Contractors toward performing and successfully completing the Agreement. The Fee specified in accordance with this Clause excludes value added tax that will be charged at the rate applicable in accordance with Applicable Law at the time of invoicing.
- 18.2 *Invoicing.* According to *Annex C: Schedule of Service* and following signing of the delivery-acceptance deed by both Parties, **except for audit reports as specified in Clause 8.4 of the Agreement where no such deed is necessary and the audit report itself serves as a proof of delivery of such a Deliverable**, the Service Provider shall deliver to the Principal an invoice specifying the amount of the Fee payable and the Deliverable with respect to which the Fee is payable. In the event the Principal objects to payment of any amount claimed by the Service Provider in the invoice, notice in the form chosen by the Principal to this effect shall be given by the Principal to the Service Provider not later than five (5) days before the Due Date for payment under this Clause 18.2. This notice of objection shall state the amount to be withheld, the grounds for withholding the payment and the basis on which that amount is calculated. Unless such notice of objection is made by the Principal, the amount to be paid is that stated in the invoice which shall become due and payable in accordance with this Agreement. For the avoidance of any doubt, the Principal shall not be required to pay any amount under this Agreement with respect to any part of the Service that has not been **delivered by the Service Provider or** accepted by the Principal in accordance with Clause 8.4.
- 18.3 *Payment.* Subject to the provisions of Clause 18.1, the Principal reserves the rights to make the payments to the Service Provider with set-off, retention, counterclaim, abatement or other deduction of any kind that arises from this Agreement and from the obligations of the Service Provider provided

herein (i.e. in cases of accrued contractual penalty amounts, in case if the Principal haven’t received residence certificate as stipulated in this Agreement, etc.). If the Principal uses the right to make the payments to the Service Provider with set-off, retention, counterclaim, abatement or other deduction of any kind, then the Principal so notifies to the Service Provider no later than on the date of the respective payment stating the amount, the grounds and the basis on the Principal uses its right to set-off, retention, counterclaim, abatement or other deduction or other right. Invoices shall be paid within thirty (30) days after the date of issue of the invoice. For the avoidance of any doubt, the Principal shall not be required to pay any amount with respect to any invoice in the absence of the delivery-acceptance deed (where such a deed is required by this Agreement) duly signed by the Principal, taking into account that the Service shall be accepted by the Principal in accordance with Clause 8.4. Additionally, for the situations prescribed in Clause 8.4 of this Agreement in relation to audit reports where no delivery-acceptance deeds will be issued, the Principal shall not be required to pay any amount with respect to any invoice in the absence of a delivered audit report.

- 18.4 *Costs and Commissions.* Each Party shall bear its own costs, fees, commissions and expenses incurred in connection with the transfer of any funds under this Agreement to the other Party.
- 18.5 *Compliance with Tax Obligations in [COUNTRY].* It is acknowledged and agreed by the Parties that the Fee shall include all taxes and duties payable by the Service Provider in the consequence of provision of the Service, except value added tax (the “VAT”). The Service Provider shall, at the sole cost and expense of the Service Provider, comply with the obligation to pay all taxes and duties relevant to the provision of the Service in [COUNTRY] and in accordance with Applicable Law of [COUNTRY]. In addition, the Service Provider shall assume all risks associated with the payment or obligation to pay such taxes and duties, if any. The Service Provider assumes all risks associated with the possible increase in the amount of the Fee arising as a result of the obligation of having to pay any such taxes or duties.
- 18.6 *Invoice.* The Service Provider’s invoices shall contain the following Service Provider’s details and details about the Agreement:

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

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

Signed by:

For and on behalf of the Principal:

Signature: .....

Name, title: .....

Signature: .....

Name, title: .....

Bank details:

.....  
.....For and on behalf of the Service Provider:

Signature: .....

Name, title: .....

Bank details:

.....  
.....

## Annex A: Definitions and common terms

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

- (a) "Agreement", this Agreement, together with all Annexes thereto.
- (b) "Alteration", any material changes to the *Annex B: Technical specification, Annex C: Schedule of Service or Due Date* which is not the result of the ordinary process of developing the scope and detail of the Project.
- (c) "Alteration Request", as defined in accordance with Clause 2.3 of the Agreement.
- (d) "Applicable Law" or "Law", any legislative act, regulation, decree, order, ordinance, statute, treaty, directive, judgment, or other legislative measure. For the avoidance of any doubt, these terms shall include any legislative act or directive relevant to public procurement.
- (e) "Approved Staff", any person or organization listed pursuant to *Annex D: List of Approved Sub-Contractors and Staff*, which is in a contractual relationship with the Service Provider to provide a part of the Service.
- (f) "Approved Sub-Contractor", any person or organisation listed pursuant to *Annex D: List of Approved Sub-Contractors and Staff*, which is in a contractual relationship with the Service Provider to provide a part of the Service.
- (g) "Confidential Information", as defined in accordance with Clause 13.1 of the Agreement.
- (h) "Costs", direct costs reasonably incurred in relation to the Project. Specifically, the Cost shall include any of the following:
  - (i) costs of all materials and supplies forming part of the Service, including transportation and storage expenses (discounts for cash or prompt payments will not reduce these costs);
  - (ii) salaries for personnel in the direct employ of the Service Provider in the performance of the Service or relating to the Service;
  - (iii) salaries of the Service Provider's employees for the time that they spend in connection with the Service;
  - (iv) payments to Service Provider, Sub-Contractors for Works relating to the Service;
  - (v) costs of all employee benefits and taxes for items such as social security and other benefits for the labour and employees;
  - (vi) costs, including transportation and maintenance, of equipment and hand tools not owned by workmen employed by the Service Provider which are employed or consumed toward the Service;
  - (vii) payments for rental charges for machinery, equipment, facilities and tools used in connection with the Service, and payments for installations, repairs, replacements, dismantling, removal, lubrication, transportation and delivery of those rental items;
  - (viii) other transportation costs incurred in connection with the Service;
  - (ix) that portion attributable to this Agreement of premiums for insurance that is required by this Agreement (if applicable) or by law to be obtained or maintained by the Service Provider;
  - (x) sales, use, gross receipts or other taxes related to the Service, imposed by any governmental authority, to the extent that the Service Provider is responsible for such taxes;
  - (xi) costs of long-distance telephone calls, telephone service at the site and postage relating to the Service;
  - (xii) costs of any data processing services used in connection with the performance of the Work required under this Agreement; and
  - (xiii) costs associated with any alteration as to which the Service Provider is entitled to payment hereunder;
  - (xiv) losses and expenses, not compensated by insurance, sustained by the Service Provider in connection with the Works under this Agreement (if applicable), provided they resulted from causes other than the fault or neglect of the Service Provider.

- (i) "Corrective Period", as defined in accordance with Clause 10.2 of the Agreement.
- (j) "Cure Period", as defined in accordance with Clause 8.3 of the Agreement.
- (k) "Damages", any cost, claim, damage, demand, loss, expense or liability incurred by the relevant Party or Person.
- (l) "Defect", a part of the Service which is not in accordance with *Annex B: Technical Specification*, Applicable Law or Good Industry Practice.
- (m) "Defects Date", a date specified in accordance with *Annex C: Schedule of Service* by which the Principal or the Service Provider is obliged to notify about each Defect in the Service.
- (n) "Deliverable", any information, notes, material, drawings (including drawings in 3D model), records, computer files, documents and/or other information or items which the Service Provider is required to deliver to the Principal as part of the Service, as further specified pursuant to *Annex C: Schedule of Service*.
- (o) "Documentation", all records, correspondence, and computer files of the Service Provider, its employees, engineers, and consultants pertaining to the Project.
- (p) "Due Date", the date for delivery of one or more Deliverables, as set out in the *Annex B: Technical Specification*, *Annex C: Schedule of Service* and Applicable Law.
- (q) "Effective Date", as first above specified in the Preamble to this Agreement.
- (r) "EUR" and "euro", the official currency of the eurozone, officially known as the euro area.
- (s) "Fee", as specified in accordance with *Annex C: Schedule of Service*.
- (t) "Force Majeure Event", any of the following events:
  - (i) an act of the public enemy or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;
  - (ii) an act of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;
  - (iii) a natural disaster or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);
  - (iv) nuclear, chemical or biological contamination;
  - (v) pressure waves caused by devices travelling at supersonic speeds;
  - (vi) discovery of fossils, antiquities or unexploded bombs; and/or
  - (vii) strike, lockout or other industrial action other than involving the Service Provider or the Principal.
- (u) "Good Industry Practice", in relation to the performance of any activity to which this standard is applied, the exercise of that degree of skill, diligence, prudence and foresight as would reasonably be expected to be exercised by a properly qualified and competent person engaged in carrying out Works or services of a similar size, nature, scope, type and complexity, complying with Applicable Law, applicable Standards and published codes of practice.
- (v) "Intellectual Property", all intellectual property rights in any part of the world in respect of any documentation or information provided by the Service Provider to the Principal, including any patent, patent application, trade mark, trade mark application, registered design, registered design application, utility model, trade name, discovery, invention, process, formula, specification, copyright (including all neighbouring rights, rights in computer software and database and topography rights), know how or unregistered design right.
- (w) "Intellectual Property of the Service Provider", all Intellectual Property owned or licensed to the Service Provider with a right to sub-license.
- (x) "Necessary Consents", all approvals, permissions, consents, licenses, certificates, registrations and authorizations (whether statutory or otherwise), which may be required from time to time for the purposes of carrying out the Project.
- (y) "Mandatory Alteration", any Alteration necessitated by:

- (i) any specific change in Law; and/or
- (ii) any Change in Standards for safety reasons.
- (z) "Party" and "Parties", the Principal and the Service Provider and include their respective successors in title, permitted assigns and permitted transferees.
- (aa) "Person" shall include any person, company, body corporate, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the foregoing.
- (ee) "Principal", the company RB Rail AS, as further specified in the Preamble of this Agreement, which employs the services of the Service Provider, and legal successors to the Service Provider and permitted assignees of the Service Provider.
- (bb) "Project", development of a 1435 mm standard gauge railway line in the Rail Baltica (RB) corridor through Estonia, Latvia and Lithuania aimed at eliminating the technical bottleneck due to the gauge differences (1,520 mm vs. the EU standard of 1,435 mm).
- (cc) "Railway", a new fast conventional double track electrified railway line according TSI INF P2-F1 criteria and European standard gauge (1435 mm) on the Route.
- (dd) "Residence Certificate", a certificate mentioned in Clause 5.2(i) of the Agreement.
- ~~(ee) "Right of Partial Acceptance", as defined in accordance with Clause 10.9 of the Agreement.~~
- (ee) "Service" Services mentioned in the *Annex B: Technical Specification* and this Agreement.
- (ff) "Service Provider", the company [·], as further specified in the Preamble of this Agreement, which is employed by the Principal as an independent professional Service Provider to perform the Service, and legal successors to the Principal and permitted assignees of the Principal.
- (gg) "Service Provider's Software", the object code versions of any downloadable software owned by or duly licensed to the Service Provider solely for the purpose of accessing the Service, including but not limited to an agent, together with the updates, new releases or versions, modifications or enhancements, owned or licensed to and provided by the Service Provider to the Principal pursuant to this Agreement, together with all pertinent Documentation and other instructions related to such software.
- (hh) "Standards", CEF Standards and Grant Agreement Standards.
- (ii) "VAT", value added tax.
- (jj) "Working Day", any day (other than Saturday or Sunday) on which banks in the Republic of Latvia are open for conduct of business.
- (kk) "Works", all incidental works, steps and actions performed by the Service Provider for the attainment of the objectives of the Service.

## Annex B: Technical Specification

### Annex C: Schedule of Service

**"Fee".** Service fee consist of:

- a) Total price for audit on RB Rail AS financial statement of financial year 2019, 2020 and 2021 in amount of EUR [●]; and
- b) Price for audit on Rail Baltica Global Project expenditures (eligible costs) based on the number of INEA financial statements actually audited multiplied by Service Provider's indicated price for audit of one INEA financial statement – EUR [●]

and

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

1. Service Start Date: From the date of signing of the Agreement.
2. Schedule of payment of Fee: after delivery of the following Deliverables and acceptance by signing of the delivery-acceptance deed the Principal shall pay following amount of the Fee:

No	Task	Deliverable	Due Date <sup>23</sup>	Defects Date (days after submission of particular Deliverable)	Cure Period
1.	Audit on RB Rail AS annual financial statement	Auditor's report	By 15 March of the following year	7 calendar days	48 hours starting from the next Working Day if the Principal did not set otherwise
		Letter to the RB Rail AS management	By 15 May of the following year	7 calendar days	48 hours starting from the next Working Day if the Principal did not set otherwise
2.	Audit on Rail Baltica Global Project expenditure (eligible costs)	Auditor's report	By 10 August of the following year	7 calendar days	48 hours starting from the next Working Day if the Principal did not set otherwise

Payment Schedule:

No	Deliverable	Time	Amount (EUR), excl. VAT
1.	Auditor's report + Letter to the RB Rail AS management regarding the	After acceptance	[●]

<sup>23</sup> In accordance with Clause 3.5.1 of the Annex B (*Technical Specification*).

	Audit on RB Rail AS annual financial statement 2019		
2.	Auditor's report regarding the Audit on Rail Baltica Global Project expenditure (eligible costs) of 2019	After acceptance	In accordance with Financial proposal of Service Provider and actually done (number of statements audited)
3.	Auditor's report + Letter to the RB Rail AS management regarding the Audit on RB Rail AS annual financial statement 2020	After acceptance	[●]
4.	Auditor's report regarding the Audit on Rail Baltica Global Project expenditure (eligible costs) of 2020	After acceptance	In accordance with Financial proposal of Service Provider and actually done (number of statements audited)
5.	Auditor's report + Letter to the RB Rail AS management regarding the Audit on RB Rail AS annual financial statement 2021	After acceptance	[●]
6.	Auditor's report regarding the Audit on Rail Baltica Global Project expenditure (eligible costs) of 2021	After acceptance	In accordance with Financial proposal of Service Provider and actually done (number of statements audited)

3. The Principal will accept all Deliverables as described in Clause 8.4 of the Agreement only if they will be provided fully in good and enough quality and covers full scope defined in *Annex B: Technical Specification*.

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

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

## Annex E: Form of Delivery-Acceptance Deed

### DELIVERY – ACCEPTANCE DEED

[•].[•].2019

We refer to Service Agreement for Audit services for 2019-2021 No 8/2019- [•] between RB Rail AS, a joint stock company registered in the Latvian Commercial Register with registration No 40103845025, legal address at Krišjāņa Valdemāra iela 8-7, Riga, LV-1010, Latvia (the "Principal"),

and

[•], a [•] company organized and existing under [•] law, with registration number [•], having its registered address at [•] (the "Service Provider"),

under which Service Provider has agreed to provide the Principal with the Services set out in the mentioned Agreement. All defined terms used in this deed shall bear the same meaning as in the Agreement.

The following Services have been provided and Deliverable delivered by the Service Provider in good quality and are accepted by the Principal:

Description of the Services		Amount in Euro
[•]		[•]
VAT	21%	[•]
<b>Total:</b>		[•]

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

**For and on behalf of the Service Provider:**

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Name:  
Title:

**Annex F: Representatives**

[SPECIFY REPRESENTATIVES]

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

[INSERT SERVICE PROVIDER'S PROPOSAL]

## Annex H: Declaration of Service Provider

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

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

12. To characterize, monitor, control and treat as required prior to discharge or disposal air emissions of volatile organic chemicals, aerosols, corrosives, particulates, ozone depleting chemicals and combustion by-products generated from operations;
13. To reduce or eliminate at the source or by practices, such as modifying production, maintenance and facility processes, materials substitution, conservation, recycling and re-using materials, waste of all types, including water and energy;
14. To adhere to the highest standards of moral and ethical conduct, to respect local laws and not engage in any form of corrupt practices, including but not limited to extortion, fraud, or bribery;
15. To disclose (a) any situation that may appear as a conflict of interest, such as but not limited to: where a Service Provider or an undertaking related to the Service Provider has advised a Beneficiary or Implementing Body or has otherwise been involved in the preparation of the procurement procedure; and (b) if any Beneficiaries' or Implementing Bodies' official, professional under contract with Beneficiary or Implementing Body or Sub-Contractor may have a direct or indirect interest of any kind in the Service Provider's business or any kind of economic ties with the Service Provider;
16. Not to offer any benefit such as free goods or services, employment or sales opportunity to a Beneficiary's and Implementing Body's staff member in order to facilitate the Service Providers' business with Beneficiaries or Implementing Bodies;
17. Within a period set in the applicable national legislation following separation from service or award of a contract, as the case may be, to refrain from offering employment to any Beneficiaries' and Implementing Bodies' staff in service and former Beneficiaries' and Implementing Bodies' staff members who participated in the procurement process and to whom a legal restriction to receive material benefits from or be employed by a Service Provider which participated in a procurement procedure or restrictions with similar effect applies;
18. To promote the adoption of the principles set forth in this Service Provider's Declaration by my potential business partners and promote the implementation of the principles set forth in this document towards own Service Providers;
19. Not procure goods, works and services from other Service Providers:
  - a. Who, or its member of the Management Board or the Supervisory Board or procurator of such Service Provider, or a person having the right to represent such Service Provider in activities related to a subsidiary, has been found guilty in any of the following criminal offences by a such punishment prescription of prosecutor or a judgement of a court that has entered into effect and is non-disputable and not subject to appeal:
    - i. bribetaking, bribery, bribe misappropriation, intermediation in bribery, taking of prohibited benefit or commercial bribing;
    - ii. fraud, misappropriation or laundering;
    - iii. evading payment of taxes and payments equivalent thereto,
    - iv. terrorism, financing of terrorism, invitation to terrorism, terrorism threats or recruiting and training of a person for performance of terror acts;
  - b. who, by such a decision of a competent authority or a judgment of a court which has entered into effect and has become non-disputable and not subject to appeal, has been found guilty of an infringement of employment rights which means:
    - i. employment of such one or more citizens or nationals of countries, which are not citizens or nationals of the European Union Member States, if they reside in the territory of the European Union Member States illegally;
    - ii. employment of one person without entering into a written employment contract, not submitting an informative declaration regarding employees in respect of such person within a time period laid down in the laws and regulations, which is to be submitted regarding persons who commence work;
  - c. who, by such a decision of a competent authority or a judgment of a court which has entered into effect and has become non-disputable and not subject to appeal, has been found guilty of

infringement of competition rights manifested as a vertical Contract aimed at restricting the opportunity of a purchaser to determine the resale price, or horizontal cartel Contract, except for the case when the relevant authority, upon determining infringement of competition rights, has released the candidate or tenderer from a fine or reduced fine within the framework of the co-operation leniency programme;

- d. whose insolvency proceedings have been announced (except the case where a bailout or similar set of measures is applied within insolvency proceedings oriented towards prevention of possible bankruptcy and restoration of solvency of the debtor, in which case I shall evaluate the possibility of such Service Provider to participate in the tender), economic activity of such Service Provider has been suspended or discontinued, proceedings regarding bankruptcy of such Service Provider have been initiated or such Service Provider will be liquidated;
- e. who has tax debts in the country where the procurement is organised or a country where such Service Provider is registered or permanently residing, including debts of State social insurance contributions, in total exceeding an amount which is common threshold in public procurements in the respective country.

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