# SERVICE AGREEMENT

between

**RB Rail AS**

and

**Compensa Vienna Insurance Group ABD Latvian branch**

| | |
|---|---|
| Contract registration number | 1.19/LV-2021-22 |
| CEF[1] Contract No | INEA/CEF/TRAN/M2014/1045990;<br>INEA/CEF/TRAN/M2015/1129482;<br>INEA/CEF/TRAN/M2016/1360716;<br>INEA/CEF/TRAN/M2019/2098304 |
| Procurement identification No | RBR 2021/6 |

[1] Grant Agreement under the Connecting Europe Facility

## SERVICE AGREEMENT

This Service Agreement, together with all Annexes thereto, (the "Agreement") enters into force on the day of its signing by both Parties. Considering that the Agreement has been signed by representatives of both Parties via a secure digital signature, the day of signing of the Agreement is considered as the date when the specific electronic file containing the Agreement has been duly signed with a secure digital signature by all required representatives of both Parties (i.e. the timestamp of the last digital signature required to enter into this Agreement shall be used as signing date (the "Effective Date")). Agreement is entered into force 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 "Policyholder"), represented by Chairperson of the Management Board Agnis Driksna acting on the basis of the Regulations on Representation Rights dated 20 July 2020, on the one side,

and

**Compensa Vienna Insurance Group ABD Latvian branch**, a foreign merchant branch organized and existing under Latvian law with registration number 40103942087, having its registered address at Vienības gatve 87H, Riga, LV-1004, Latvia (the "Insurer"), represented by a person authorized to represent the merchant activities related to a branch Aigars Freimanis acting on the basis of statutes and an attorney Jānis Lasis acting on the basis of the Power of Attorney dated 1 March 2019, on the other side.

WHEREAS:

(A) This Agreement is entered into under the Global Project which includes all activities undertaken by the respective beneficiaries and implementing bodies of the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania in order to build, render operational and commercialise the Rail Baltica railway – a new fast conventional double track electrified railway line according TSI INF P2-F1 criteria and European standard gauge (1435mm) on the route from Tallinn through Pärnu-Riga-Panevėžys-Kaunas to Lithuanian-Polish border, with the connection of Kaunas – Vilnius, and related railway infrastructure in accordance with the agreed route, technical parameters and time schedule;

(B) The Policyholder has organised procurement "Directors and Officers Liability Insurance" (identification No RBR 2021/6) (the "Procurement") whereby the Insurer's proposal (the "Insurer's Proposal") was selected as the winning bid;

(C) This Agreement is co-financed from the Connecting Europe Facility (CEF).

### 1. Subject of the Agreement

1.1. The Policyholder shall order and pay, but the Insurer shall undertake to perform insurance of directors and officers liability of the Policyholder for the period 12 (twelve) calendar months as specified in Clause 2.1 and issue an insurance policy (the "Policy") in accordance with the Technical specification (Annex B "Technical specification") and financial proposal of the Insurer for the Procurement (Annex C "Insurer's Proposal"), as well as the terms and conditions of this Agreement, which shall become as integral parts of this Agreement, hereinafter - the "Service".

1.2. On the day of entering into the Agreement the Insurer shall issue a Policy to the Policyholder, which shall become as an integral part of this Agreement and shall come into force on 25 April 2021, 00:00 o'clock (Eastern European Time). Together with the Policy the Insurer shall sign and submit the declaration of insurer enclosed as in Annex A "Declaration of Insurer".

1.3. The terms and conditions of the Policy shall not be contrary to the terms and conditions of this Agreement. In case of contradiction or discrepancies, the terms and conditions of the Agreement and Technical specification shall prevail.

1.4. Upon signing this Agreement, the Insurer confirms that equal insurance coverage and limits of responsibility shall be ensured for the whole period of the Agreement and it shall not be entitled to terminate the Agreement during its validity term.

### 2. Validity Period and Validity of the Agreement

2.1. This Agreement shall be valid for 12 months 24 (twenty-four) hours per day until the date of expiry of the Policy. **The validity period of the Policy** shall be from **25 April 2021 at 0:00 o'clock until 24 April 2022 at 23:59 o'clock (Eastern European time).**

2.2. Upon mutual agreement, the Parties shall be entitled to terminate this Agreement at any time.

2.3. The Policyholder shall be entitled to unilaterally terminate this Agreement before the expiry thereof by warning the Insurer on that in writing 15 (fifteen) calendar days in advance, if:

2.3.1. the Insurer fails to fulfil the liabilities set in this Agreement or fulfils them in a part;
2.3.2. the Insurer has been declared as insolvent, undergoes the restructuring, winding-up proceedings or bankruptcy proceeding under the court judgement;
2.3.3. a licence for performance of insurance has been annulled for the Insurer;
2.3.4. the contractual penalty calculated for the Insurer has reached the maximum amount set in the Agreement - 10% (ten percent) from the amount of the Premium referred to in Clause 3.1 of the Agreement;
2.3.5. in other special cases, having reasonable grounds for that, by informing the Insurer on that in writing at least 30 (thirty) calendar days in advance.

2.4. The Insurer shall be entitled to unilaterally terminate this Agreement before expiry thereof by warning the Policyholder on that in writing 15 (fifteen) calendar days in advance, if:
2.4.1. the Policyholder undergoes the winding-up proceedings;
2.4.2. the contractual penalty calculated for the Policyholder has reached the maximum amount set in the Agreement - 10% (ten percent) from the amount of the Premium referred to in Clause 3.1 of this Agreement.

2.5. Upon terminating the Agreement in an unilateral manner, in accordance with Clauses 2.3 and 2.4 of the Agreement, the Insurer shall pay back to the Policyholder a part of the unused Premium, which shall be proportional with the remaining validity period of the Policy, without deducting expenses for administrative expenses, by making the repayment within 10 (ten) working days from the day of receipt of the submission of the Policyholder.

2.6. In case of need the Policyholder may request to prolong the insurance period for 1 (one) calendar month and in total not exceeding 10% from the amount referred to in Clause 3.1 of this Agreement.

## 3. Insured Amount and Premium

3.1. The Policyholder shall pay to the Insurer the annual insurance premium (the "Premium") in the amount of EUR 15 666,66 (fifteen thousand six hundred sixty-six euros sixty-six cents) and the Insurer, upon occurrence of the insured event, shall pay the insurance indemnity.

3.2. The Policyholder shall pay the Premium for the Service provided by the Insurer - insurance of liability of directors and officials, excluding VAT, in accordance with Section 52, Paragraph 1, Clause 20 of the Value Added Tax Law of the Republic of Latvia.

3.3. In case if regulatory enactments of the Republic of Latvia changes during the validity period of the Agreement and the services provided by insurers are taxable with VAT, the Policyholder shall pay them in addition, and the amounts included in the Agreement shall be considered as the ones that exclude the value added tax.

3.4. The Premium shall include all expenses in relation to provision with insurance, except for expenses of the event stipulated in Clause 3.3 of the Agreement.

3.5. The Policyholder shall pay the Premium within 30 (thirty) calendar days after conclusion of the Agreement and the day of receipt of the invoice issued by the Insurer, to the current account specified in the invoice.

3.6. The Insurer's invoices shall contain the following Policyholder's details and details about the Agreement:

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| Insurer | Compensa Vienna Insurance Group ABD Latvian branch |
| Registration No | 40103942087 |
| VAT payer's No or indication that the Insurer is not a VAT payer | LV40103942087 |
| The Principal's VAT No | LV40103845025 |
| Legal address (street, house, area, country, postcode) | Vienības gatve 87H, Riga, LV-1004, Latvia |
| Name of Bank (legal name) | [CONFIDENTIAL] |
| Bank SWIFT Code | [CONFIDENTIAL] |
| IBAN | [CONFIDENTIAL] |

3.7. The day on which the payment made by Policyholder is registered with the bank shall be deemed to be the day of execution of the payment (payment date).

3.8. The Insurer shall send the invoice to the Policyholder electronically to the following e-mail address: invoices@railbaltica.org. The Parties agree that the invoices should be submitted only electronically and that the invoice should not contain the requisite "*signature*".

## 4. Rights and Obligations of the Parties

4.1. The Policyholder shall:
- 4.1.1. comply with the terms and conditions of the Agreement;
- 4.1.2. undertake to provide the Insurer with all information necessary for fulfilment of the Agreement;
- 4.1.3. pay the Premium referred to in Clause 3.1 of this Agreement, in accordance with the terms and conditions of this Agreement;
- 4.1.4. be entitled to attract expert for evaluation of the insured event;
- 4.1.5. in case if the Policyholder has not showed any objections regarding the decision taken on indemnity within 10 (ten) calendar days from the receipt of the decision made, it shall be deemed that it agrees with the decision made;
- 4.1.6. the Policyholder shall, within 10 (ten) workings days after occurrence of the insured event has come to the attention of the management board of the Policyholder, notify the Insurer on the occurrence of the insured event by sending information on the insured event to e-mail address of the Insurer.

4.2. The Insurer shall:
- 4.2.1. ensure proper quality of the Service, in accordance with the Proposal submitted to the Policyholder and provisions of the present Agreement;
- 4.2.2. undertake to precisely comply with and fulfil the provisions of the Agreement in a timely manner;
- 4.2.3. pay the insurance indemnity, in accordance with the amount, procedure and terms set in the Insurance Contract Law of the Republic of Latvia and this Agreement;
- 4.2.4. in case of occurrence of the insured event, make a decision regarding disbursement of the insurance indemnity and disburse the insurance indemnity within 30 (thirty) calendar days after the day of receipt of all necessary documents, which prove the occurrence of the insured event and the amount of losses;
- 4.2.5. in case of termination of the Policy in accordance with the procedure referred to in Clause 2.5 of the Agreement the Insurer shall pay back a part of the unused Premium in proportion with the remaining validity period of the Policy, without deducting expenses for administrative expenses;
- 4.2.6. provide that the insurance conditions (attached as part of Annex C) shall remain unchanged for the whole validity period of the Agreement;
- 4.2.7. not be entitled to refuse to disburse the insurance indemnity within the term set in Clause 4.2.4 of the Agreement;
- 4.2.9. receive the Premium, in accordance with the provisions of Clause 3.1 of the Agreement;
- 4.2.10. if the Policyholder fails to agree with the amount of losses calculated by the Insurer pursuant to agreement between the Parties, the Insurer may disburse a part of the insurance indemnity up to the amount that is not disputed by any of the Parties, until making payment of loss in full.

## 5. Responsibility of the Parties

5.1. The Policyholder and the Insurer confirm by mutual signing of the Agreement that there are no circumstances prohibiting the Parties to enter into this Agreement.

5.2. The Insurer confirms of having all necessary rights in order to provide the Service in accordance with the terms and conditions of this Agreement.

5.3. Upon entering into the present Agreement, the Insurer confirms of being informed and evaluated all risks covered.

5.4. The Parties shall be responsible for failure to fulfil the Agreement or improper fulfilment thereof, as well as for losses caused to the other Party, if they have occurred as a result of activity or inactivity of one Party or employees thereof, as well as activities or neglect caused as a result of gross negligence and evil intent. The Party at fault shall compensate to the other Party the occurring losses.

5.5. The Insurer shall have an obligation to prove any circumstances, exempting it from the liabilities set in the Agreement to disburse the insurance indemnity.

5.6. If the Insurer fails to provide the Service, in accordance with the terms and conditions of the Agreement, which is reflected in non-compliance of the terms set in this Agreement, the Insurer shall pay to the Policyholder a contractual penalty in the amount of 0.1% (one tenth of a percent) from the annual Premium for each day of delay. The total amount of the contractual penalty shall not exceed 10 % (ten percent) from the amount of the Premium.

5.7. If the Policyholder fails to make the payment of the Premium, in accordance with the terms and conditions of this Agreement, the Policyholder shall pay to the Insurer a contractual penalty in the amount of 0.1% (one tenth of a percent) from the Premium of the Agreement for each day of delay. The total amount of the contractual penalty shall not exceed 10 % (ten percent) from the amount of the Premium.

5.8. Payment of the contractual penalty shall not exempt the Parties from fulfilment of liabilities of this Agreement.

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

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

6.2. By submitting a written notice five (5) working days in advance, the Policyholder may carry out on-the-spot visits to the sites and premises where the activities implemented within the Agreement are or were carried out with having an access to all the information and documents, including information and documents in electronic format, which is requested by the authorised staff of the performer of the on-the-spot visit, as well as shall allow the authorised staff of the performer of the on-the-spot visit the copying of the information and documents, with due respect to the confidentiality obligation.

## 7. Governing law and resolution of disputes

7.1. This Agreement shall be governed by and construed in accordance with the law of the Republic of Latvia.

7.2. The Parties shall first attempt to settle any dispute, controversy or claim arising out of or relating to this Agreement by way of amicable negotiations.

7.3. Should the Parties fail to agree by means of amicable negotiations within the time period of thirty (30) days from the date of serving of the respective written complaint to the other Party, the Parties shall submit all their disputes arising out of or in connection with this Agreement to the exclusive jurisdiction of the courts of the Republic of Latvia.

## 8. Force Majeure

8.1. Subject to the requirements set forth in accordance with Clause 8.2 and 8.3, each Party shall be relieved from liability for non-performance of its obligations under this Agreement (other than any obligation to pay) to the extent that the Party is not able to perform such obligations due to a Force Majeure Event.

8.2. Each Party shall at all times, following the occurrence of a Force Majeure Event:
   8.2.1. take reasonable steps to prevent and mitigate the consequences of such an event upon the performance of its obligations under this Agreement;
   8.2.2. resume performance of its obligations affected by the Force Majeure Event as soon as practicable and use reasonable endeavours in accordance with Good Industry Practice to remedy its failure to perform; and
   8.2.3. not be relieved from liability under this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to any failure to comply with its obligations under Clause 8.1 of this Agreement.

8.3. Upon the occurrence of a Force Majeure Event, the affected Party shall notify the other Party as soon as reasonably practicable and in any event within three (3) working days of it becoming aware of the relevant Force Majeure Event. Such notification shall give sufficient details to identify the particular event claimed to be a Force Majeure Event and shall contain detailed information relating to the failure to perform (or delay in performing), including the date of occurrence of the Force Majeure Event, the effect of the Force Majeure Event on the ability of the affected Party to perform, the action being taken in accordance with Clause 8.2 of the Agreement and an estimate of the period of time required to overcome the Force Majeure Event. The affected Party shall provide the other Party with any further information it receives or becomes aware of which relates to the Force Majeure Event and provide an update on the estimate of the period of time required to overcome its effects.

8.4. The affected Party shall notify the other Party as soon as practicable once the performance of its affected obligations can be resumed (performance to continue on the terms existing immediately prior to the occurrence of the Force Majeure Event).

8.5. As soon as practicable after the notification specified pursuant to Clause 8.4 of the Agreement, the Parties shall use reasonable endeavours to agree appropriate terms or modifications to the scope of Service to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.

## 9. Confidentiality

9.1. The Parties shall undertake not to use and not to disclose to third parties the confidential information (any written or verbal information, including financial information, commercial secrets, lists of customers, any information and documents with regard to discussion of the Agreement between the Parties and other information that is not publicly available).

9.2. All information that the Insurer has received from the Policyholder within the framework of the Agreement or acquired from other persons is confidential. The Insurer shall not be entitled to disclose any such information to

third parties, without a written consent of the Policyholder, neither during the validity period of the Agreement, nor after expiry of the validity period of the Agreement.

## 10. Visibility Requirements

10.1. At all times during provision of the Service, the Insurer undertakes to comply with each of the following requirements:

10.1.1. Any report, brochure, document or information related to the Service provided by the Insurer to the Policyholder or any other person or which the Insurer makes publicly available shall include each of the following:

10.1.1.1. a funding statement which indicates that the Service is financed from CEF funds substantially in the following form: "Co-financed by the Connecting Europe Facility of the European Union";

10.1.1.2. with respect to printed materials, a disclaimer releasing the European Union from liability with respect to any contents of any distributed materials substantially in the form as follows: "The sole responsibility of this publication lies with the author. The European Union is not responsible for any use that may be made of the information contained therein". The disclaimer in all official languages of the European Union can be viewed on the website https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos; and

10.1.1.3. the flag of the Council of Europe and the European Union.

10.1.2. Requirements set forth in Clause 10.1.1.1 and 10.1.1.3 of the Agreement can be fulfilled by using the following logo:

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

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

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

## 11. Authorised Persons of the Parties

11.1. During the control of fulfilment of the Agreement the responsible person of the Policyholder shall be: Baiba Zauere, telephone number +371 22033033, e-mail address: baiba.zauere@railbaltica.org.

11.2. During the control of fulfilment of the Agreement the responsible person of the Insurer shall be: [CONFIDENTIAL] telephone number [CONFIDENTIAL], e-mail address: [CONFIDENTIAL].

## 12. Final Provisions

12.1. In case if any of the provisions of the Agreement becomes void as a result of amendment to regulatory enactments, this Agreement shall not become void with regard to other Clauses thereof. In such a case the Parties shall apply the Agreement in accordance with the effective regulatory enactments.

12.2. In case if details for any of the Parties or contact persons of the Parties or contact information thereof set in Section 11 of the Agreement are changed, the relevant Party shall notify the other Party on that in writing within five (5) working days from the day of occurrence of such changes. After receipt of the notification it shall become as an integral part of the Agreement. If the Party fails to fulfil the provisions of the present Clause, it shall be deemed that the other Party has fulfilled its liabilities in full by using the information available in this Agreement regarding the other Party.

12.3. In case of reorganisation of the Parties, this Agreement shall remain valid and the provisions thereof shall be binding to the legal successor thereof. The Party shall warn the other Party in writing on the occurrence of such circumstances ten days in advance.

12.4. The Parties shall agree in writing on amendments or supplementations to the Agreement, except for the case of information change referred to in Clause 12.2 of this Agreement. The written agreements shall be signed and prepared in two copies, one copy for each of the Parties, and shall be enclosed with this Agreement as an integral part thereof.

12.5. Information exchange between the Parties may be performed also by using e-mails, which shall become as integral parts of the Agreement, except for terms and conditions of the Agreement, which provides for information exchange in the written form.
12.6. The Parties shall not be entitled to deliver their rights and obligations related to this Agreement and arising from that to third persons.
12.7. Annexes to this Agreement shall become as an integral part of this Agreement.
12.8. This Agreement is prepared on 49 (forty-nine) pages in two copies, including the Insurer's proposal together on 32 (thirty-two) pages. Both copies of this Agreement shall have the same legal force.

## 13. Details and Signatures of the Parties

| For and on behalf of the Policyholder: | | For and on behalf of the Insurer: | |
|---|---|---|---|
| Name, title: | Agnis Driksna,<br>Chairperson of the Management Board | Name, title: | Aigars Freimanis,<br>Person authorized to represent the merchant activities related to a branch |
| | | Name, title: | Jānis Lasis,<br>Attorney |
| Bank details: | Luminor Bank AS Latvijas filiāle<br>NDEALV2X<br>LV73NDEA0000084270995 | Bank details: | AS "SEB banka"<br>UNLALV2X<br>LV84UNLA0003031467640 |

THIS DOCUMENT IS SIGNED ELECTRONICALLY WITH A SAFE ELECTRONIC SIGNATURE AND CONTAINS A TIME STAMP

**Annex A: Declaration of Insurer**

I, the undersigned duly authorised representative, on behalf of Compensa Vienna Insurance Group ABD Latvian branch undertake:

1. To respect the freely-exercised right of workers, without distinction, to organise, further and defend their interests and to bargain collectively, as well as to protect those workers from any action or other form of discrimination related to the exercise of their right to organise, to carry out trade union activities and to bargain collectively;
2. Not to use forced or compulsory labour in all its forms, including but not limited to not employ people against their own free will, nor to require people to lodge 'deposits' or identity papers upon commencing employment;
3. Not to employ: (a) children below 15 years of age or, if higher than that age, the minimum age of employment permitted by the law of the country or countries where the performance, in whole or in part, of a contract takes place, or the age of the end of compulsory schooling in that country or countries, whichever is higher; and (b) persons under the age of 18 for work that, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of such persons;
4. To ensure equality of opportunity and treatment in respect of employment and occupation without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin and such other ground as may be recognised under the national law of the country or countries where the performance, in whole or in part, of a contract takes place;
5. To ensure the payment of wages in legal fashion, at regular intervals no longer than one month, in full and directly to the workers concerned; to keep an appropriate record of such payments. Deductions from wages will be conducted only under conditions and to the extent prescribed by the applicable law, regulations or collective agreement, and the workers concerned shall be informed of such deductions at the time of each payment. The wages, hours of work and other conditions of work shall be not less favourable than the best conditions prevailing locally (i.e., as contained in: (i) collective agreements covering a substantial proportion of employers and workers; (ii) arbitration awards; or (iii) applicable laws or regulations), for work of the same character performed in the trade or industry concerned in the area where work is carried out;
6. To ensure that: (a) the workplaces, machinery, equipment and processes under their control are safe and without risk to health; (b) the chemical, physical and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken; and (c) where necessary, adequate protective clothing and protective equipment are provided to prevent risk of accidents or of adverse effects to health;
7. To support and respect the protection of internationally proclaimed human rights and not to become complicit in human rights abuses;
8. To create and maintain an environment that treats all employees with dignity and respect and will not use any threats of violence, sexual exploitation or abuse, verbal or psychological harassment or abuse. No harsh or inhumane treatment coercion or corporal punishment of any kind is tolerated, nor is there to be the threat of any such treatment;
9. To have an effective environmental policy and to comply with existing legislation and regulations regarding the protection of the environment; wherever possible support a precautionary approach to environmental matters, undertake initiatives to promote greater environmental responsibility and encourage the diffusion of environmentally friendly technologies implementing sound life-cycle practices;
10. To identify and manage chemical and other materials posing a hazard if released to the environment to ensure their safe handling, movement, storage, recycling or reuse and disposal;
11. To monitor, control and treat as required prior to discharge or disposal wastewater and solid waste generated from operations, industrial processes and sanitation facilities;
12. To characterise, monitor, control and treat as required prior to discharge or disposal air emissions of volatile organic chemicals, aerosols, corrosives, particulates, ozone depleting chemicals and combustion by-products generated from operations;
13. To reduce or eliminate at the source or by practices, such as modifying production, maintenance and facility processes, materials substitution, conservation, recycling and re-using materials, waste of all types, including water and energy;
14. To adhere to the highest standards of moral and ethical conduct, to respect local laws and not engage in any form of corrupt practices, including but not limited to extortion, fraud, or bribery;
15. To disclose (a) any situation that may appear as a conflict of interest, such as but not limited to: where an Insurer or an undertaking related to the Insurer has advised a Beneficiary or Implementing Body or has otherwise been involved in the preparation of the procurement procedure; and (b) if any Beneficiaries' or Implementing Bodies' official, professional under contract with Beneficiary or Implementing Body or sub-contractor may have a direct or indirect interest of any kind in the Insurer's business or any kind of economic ties with the Insurer;
16. Not to offer any benefit such as free goods or services, employment or sales opportunity to a Beneficiary's and Implementing Body's staff member in order to facilitate the Insurers' business with Beneficiaries or Implementing Bodies;

17. Within a period set in the applicable national legislation following separation from service or award of a contract, as the case may be, to refrain from offering employment to any Beneficiaries' and Implementing Bodies' staff in service and former Beneficiaries' and Implementing Bodies' staff members who participated in the procurement process and to whom a legal restriction to receive material benefits from or be employed by an Insurer which participated in a procurement procedure or restrictions with similar effect applies;
18. To promote the adoption of the principles set forth in this Insurer's Declaration by my potential business partners and promote the implementation of the principles set forth in this document towards own suppliers;
19. Not procure goods, works and services from other suppliers:
    a) who, or its member of the Management Board or the Supervisory Board or procurator of such supplier, or a person having the right to represent such supplier in activities related to a subsidiary, has been found guilty in any of the following criminal offences by a such punishment prescription of prosecutor or a judgement of a court that has entered into effect and is non-disputable and not subject to appeal:
        i. bribetaking, bribery, bribe misappropriation, intermediation in bribery, taking of prohibited benefit or commercial bribing, management of criminal organisation;
        ii. fraud, misappropriation or laundering, human trafficking;
        iii. evading payment of taxes and payments equivalent thereto,
        iv. terrorism, financing of terrorism, invitation to terrorism, terrorism threats or recruiting and training of a person for performance of terror acts;
    b) who, by such a decision of a competent authority or a judgment of a court which has entered into effect and has become non-disputable and not subject to appeal, has been found guilty of an infringement of employment rights which means:
        i. employment of such one or more citizens or nationals of countries, which are not citizens or nationals of the European Union Member States, if they reside in the territory of the European Union Member States illegally;
        ii. employment of one person without entering into a written employment contract, not submitting an informative declaration regarding employees in respect of such person within a time period laid down in the laws and regulations, which is to be submitted regarding persons who commence work;
    c) who, by such a decision of a competent authority or a judgment of a court which has entered into effect and has become non-disputable and not subject to appeal, has been found guilty of infringement of competition rights manifested as a vertical agreement aimed at restricting the opportunity of a purchaser to determine the resale price, or horizontal cartel agreement, except for the case when the relevant authority, upon determining infringement of competition rights, has released the candidate or tenderer from a fine or reduced fine within the framework of the co-operation leniency programme;
    d) whose insolvency proceedings have been announced (except the case where a bailout or similar set of measures is applied within insolvency proceedings oriented towards prevention of possible bankruptcy and restoration of solvency of the debtor, in which case I shall evaluate the possibility of such supplier to participate in the tender), economic activity of such supplier has been suspended or discontinued, proceedings regarding bankruptcy of such supplier have been initiated or such supplier will be liquidated;
    e) who has tax debts in the country where the procurement is organised or a country where such supplier is registered or permanently residing, including debts of State social insurance contributions, in total exceeding an amount which is common threshold in public procurements in the respective country.

**Aigars Freimanis,**
Person authorized to represent the merchant activities related to a branch

**Jānis Lasis,**
Attorney

THIS DOCUMENT IS SIGNED ELECTRONICALLY WITH A SAFE ELECTRONIC SIGNATURE AND CONTAINS A TIME STAMP

# TECHNICAL SPECIFICATION FOR THE PROCUREMENT "DIRECTORS AND OFFICERS LIABILITY INSURANCE" (ID NO. RBR 2021/6)

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

Riga

2021

## 1. INTRODUCTION TO RAIL BALTICA

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

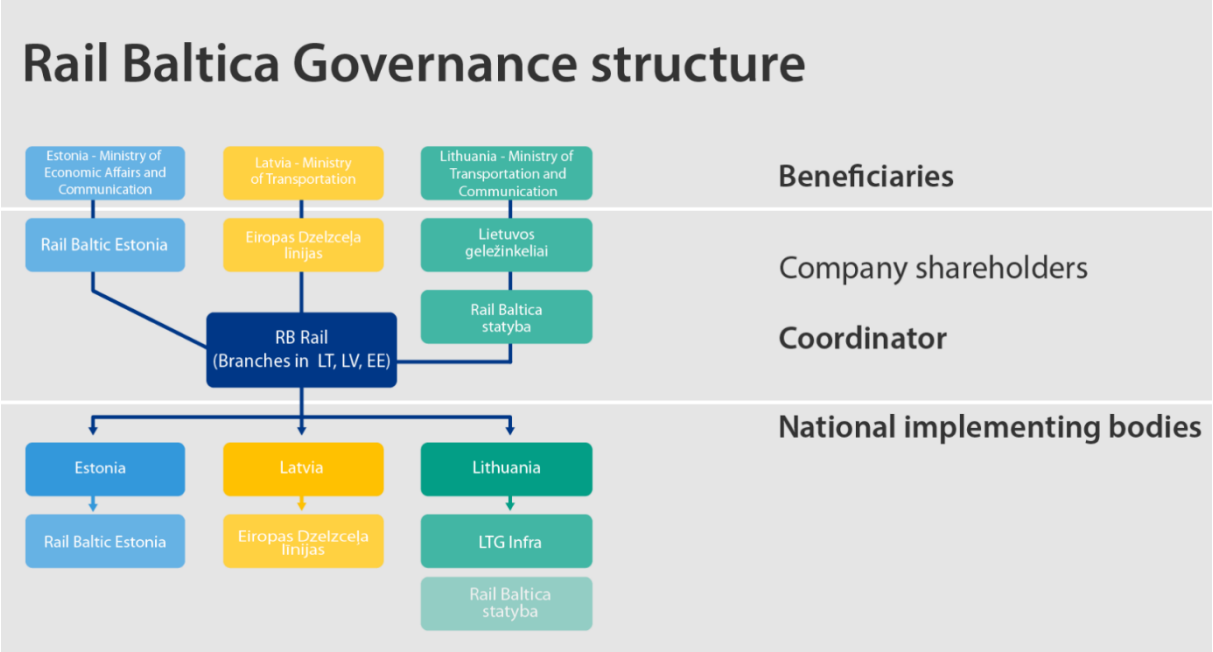
The ambitions of the Rail Baltica Global project (Global Project) are:

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

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

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

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




RBR together with governments of Estonia, Latvia and Lithuania (represented by the ministries in charge of transport policy) have applied for the CEF co-financing in 2015, 2016, 2017 and 2020 (five applications in total). The applications were successful and INEA grants are available to support the Global Project expenses.

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

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

## 2. FRAMEWORK OF ASSIGNMENT

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

Tenderer offering insurance have to envisage that Directors and Officers liability insurance should cover any financial loss (including, but not limited to expenditures, financial loses, damages, compensations, costs of expertise, law services for advocacy, other litigation costs and sums payable as a result of settlements) which arises by any claim against any Insured Person (as defined below) with respect to the Insurance Cover.

Detailed information regarding the Services:

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| **Type** | Directors and Officers Liability Insurance |
| **Policyholder** | RB RAIL AS |
| **Policyholder's legal address** | Krišjāņa Valdemāra iela 8-7, Riga, LV-1010 |
| **Policy Period** | 12 (twelve) months starting from 25 April 2021, 0:00 o'clock (Eastern European Time) till 24 April 2022, 23:59 o'clock (Eastern European Time), 24 hours in day. |
| **Insurance coverage scope** | A. Insured Person's liability cover |

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| | B. Policyholder's reimbursement cover (Policyholder's expenses for claims against Insured Person) |
| **Limit of Liability** | EUR 10 000 000 any one claim and in the aggregate for the Policy Period with the following exception: the coverage for the Policyholder's Supervisory Board (*padome*) members ("SB Members") and Policyholder's Shareholders' representatives ("SH Representatives") is in the amount of EUR 1 000 000 for any single claim and EUR 6 000 000 in the aggregate.<br>In the event that the Limit of Liability is exhausted during the Policy Period, then it shall be reinstated once for the amount equal to EUR 1 000 000 for any single claim and EUR 6 000 000 in the aggregate. |
| **Insured Persons** | Insured Person means:<br>• any natural person who was or is, or becomes Policyholder's Management Board (*valde*) member ("MB Member"), SB Member, SH Representative or manager of any of the Policyholder's branches;<br>• any natural person who was or is, or becomes a director or officer of the Policyholder and/or its branches;<br>• any employee of the Policyholder and/or its branches only if and to the extent a claim is made against him or her for a wrongful act when named as a co-defendant with an Insured Person;<br>• any employee while acting in a managerial capacity at the Policyholder and/or its branches, or who is deemed to be performing any activity normally carried out by an Insured Person (including, but not limited to the Policyholder's chief accountant, legal counsel and members of a procurement commission established by the Policyholder, and those employees of the Policyholder and the Policyholder's branches who are members of any procurement commission established by Rail Baltic Estonia OÜ (reg. No 12734109), Sabiedrība ar ierobežotu atbildību Eiropas dzelzceļa līnijas (reg. No 40103836785), Akcine bendrove Lietuvos geležinkeliai (reg. No 110053842), AB "LTG Infra" (reg No 305202934), UAB "Rail Baltica statyba" (reg. No 303227458), Estonian Transport Administration (*Transpordiamet*) (reg. No. 70001490);<br>• any employee of the Policyholder and/or its branches in respect of an employment wrongful act;<br>• any natural person who was or is, or becomes a non-executive director of the Policyholder;<br>• any spouse or domestic partner or civil partner of any natural person who falls within the scope of definition of Insured Person above, but only in respect of an action to enforce a judgment obtained against such person against the property of that spouse or domestic partner or civil partner arising from a claim covered by this Directors and Officers Liability Insurance.<br>Insured Person does not include any external auditor or liquidator or administrator or receiver or administrative receiver or legal or other professional adviser of the Policyholder and/or its branches. |
| **Insurance Cover** | Third Party liability for losses resulting from a claim against Insured Person in relation to wrongful acts they have committed (actual or alleged breach of duty, negligence, error, misstatement, omission, a conflict of interest, accounting inaccuracies, power of attorney misuse, false statements, false recommendations, expenses, damages, compensations and other payments the Insured Person is or will be obliged to pay in connection with any Third Party claim which incurred in connection with the performance of duties and passing decisions at Policyholder and/or Policyholder's branches, as well as reimbursement of expertise, legal, litigation and other expenses for the Insured Person against third-party claims, including sums as a result of a settlement, etc.). |

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| **Exclusions** | Limited to exclusions commonly included in Directors and Officers Liability Insurance according to the market practice in Europe. |
| **Notification** | If a claim is made against the Insured Person during the Policy Period, the Policyholder shall provide a written notice as soon as practicable after the MB Member of the Policyholder becomes aware of such claim.<br>If the Insured Person first becomes aware of a wrongful act or first becomes aware of a situation or circumstance that the Insured Person reasonably considers may become a claim, the Insured Person or the Policyholder provides a written notice of that as soon as practicable ("Circumstance Notification"). If such Circumstance Notification is made during the Policy Period, any claim that is subsequently made will be treated as having been made during the Policy Period. |
| **Third Party** | Any individual or legal entity, including without limitation, a state authority, RB Rail AS, RB Rail AS branches and RB Rail AS shareholders who have suffered losses in the result of the insurable event. |
| **Minimum Insurance cover extensions and sub-limits** | Defence costs – up to full policy limit.<br>Emergency costs – sub-limited at least up to EUR 250,000 of the policy limit.<br>Regulatory crisis response expenses - sub-limited at least up to EUR 250,000 of the policy limit.<br>Reputation recovery costs – sub-limited at least up to EUR 250,000 of the policy limit.<br>Loss mitigation costs – sub-limited at least up to EUR 250,000 of the policy limit.<br>Assets and Liberty costs – sub-limited at least up to EUR 250,000 of the policy limit.<br>Extradition costs – sub-limited at least up to EUR 250,000 of the policy limit.<br>Insolvency hearing costs – sub-limited at least up to EUR 100,000 of the policy limit.<br>Personal liability for corporate taxes – sub-limited at least up to EUR 1,000,000 of the policy limit.<br>Environmental and Pollution claims defence costs – sub-limited at least up to EUR 250,000 of the policy limit.<br>Civil fines, Administrative fines and Penalties Extension – sub-limited at least to EUR 500,000 in the aggregate.<br>Advancement costs extension.<br>Retired Insured discovery period extension.<br>Discovery period extension as defined below. |
| **Retroactive Date** | 28 October 2014 |
| **Discovery Period** | Extended Discovery Period 90 days with no additional premium, but 3 years, in the case if this Policy is neither renewed nor replaced with the Insurer for any reason or the Limit of Liability will be reduced.<br>The Policyholder may purchase additional Discovery Period for the additional premium of:<br>up to 100% of the annual premium for the 12 months Discovery Period;<br>up to 150% of the annual premium for the 24 months Discovery Period;<br>up to 200% of the annual premium for the 36 months Discovery Period. |
| **Retired Directors** | The Insurer will provide an unlimited extended Discovery Period for any Insured Person who retires or resigns, other than by reason of a transaction or insolvency, during the Policy Period, provided that:<br>(i) this Policy is not renewed or replaced with any other Insured Person liability cover; or<br>(ii) where this Policy is renewed or replaced with any other Insured Person liability cover, such renewal or replacement policy does not |

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| | provide an extended discovery period of at least 6 (six) years for such retired Insured Persons. |
| **Past Insured** | An Insured Person who during the Policy Period has retired from or ceased to hold an office as Insured Person other than an individual disqualified by an official, regulatory or judicial body or authority or court or arbitration, provided that there is no merger or acquisition and the Policyholder is not insolvent.<br>The Insurer will pay to or on behalf of a Past Insured any loss arising from any claim first made against them following the expiry date of the Policy Period for a wrongful act committed before the Insured Person ceases to hold the office of an Insured Person, provided that such a Past Insured is not covered by any other policy affording Directors and Officers or Management Liability Cover which renews or replaces this Policy further to its expiration.<br>Any claim shall be allocated to the last Policy Period and the remaining Limit of Liability shall apply. |
| **Insurance Territory** | Worldwide, excluding USA/Canada. |
| **Trigger** | Under this insurance, the grounds for indemnification must be any written demand for monetary or non-monetary relief or any civil (including arbitration and other alternative dispute resolution), criminal, regulatory or administrative proceeding against an Insured Person for a wrongful act, deemed to be made upon receipt by or service upon the Insured Person, whichever is earlier within the Insurance Period or Extended Reporting (discovery) Period (if it is in force) - claims made policy. |
| **Representation** | Representative of Insured Person (sworn advocate) against the third-party claims shall be selected by the Insured Person. |
| **Payment of Insurance premium** | The Insurance Premium payment shall be made within 30 (thirty) calendar days from the conclusion of the Procurement contract and after receipt of all necessary documents (including but limited – Insurer's invoice). |
| **Payment of Insurance indemnity** | The Insurance Indemnity payment shall be made within 30 (thirty) days from the moment the Insurer has received all requested and necessary documents and information. |
| **Deductibles** | Nil euros (EUR 0,00) for Insured Person's liability;<br>Nil euros (EUR 0,00) Policyholder's reimbursement cover. |
| **Jurisdiction** | Policy (including without limitation any issues arising out of or in connection with negotiation, validity, enforceability or other non-contractual disputes) is in all respects to be construed in accordance with and governed by Latvian law only. |
| **Policyholder's financial information** | RB Rail AS Annual Report 2019 - https://www.railbaltica.org/wp-content/uploads/2020/05/RB-Rail-AS-Annual-report-2019-LV-statutory-in-English.pdf |
| **Additional notes** | Verbatim of proposed insurance terms and definitions might differ from those in the Regulations for this Procurement, however the alternative verbatim shall not be narrower in scope than the terms of these Regulations or for this Procurement and should be aligned with and reflect the terms of the Regulations for this Procurement and its annexes (including this Technical Specification). In the event of discrepancies, the terms and definitions set herein shall prevail. |

## Annex C: Insurer's Proposal

[CONFIDENTIAL]

## Annex D: Warranty statement

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