

**FRAMEWORK AGREEMENT
ON
TAX ADVISORY SERVICES**

between

RB Rail AS

and

SIA Ernst & Young Baltic

No 8/2017-122

Dated 15 December 2017

**FRAMEWORK AGREEMENT NO 8/2017-122
FOR THE PROVISION OF TAX ADVISORY SERVICES**

Riga 15 December	Contract registration number	8/2017-122
	CEF ¹ Agreement No INEA/CEF/TRAN/M2014/1045990	A34

This Framework agreement ("**Agreement**") between:

RB Rail AS (a joint stock company registered in the Latvian Commercial Register, uniform registration No 40103845025, legal address at K. Valdemāra iela 8-7, Riga, LV-1010, Latvia ("**Company**"), represented by Chairperson of the Management Board Baiba Anda Rubesa, Management Board Member Kaspars Rokens, both acting on the basis of the power of attorney No 9/2017-9, dated September 4, 2017, on the one side,

and

SIA Ernst & Young Baltic, registration No 40003593454, legal address at Muižas iela 1a ("**Firm**"), represented by authorized person Ilona Butane, acting under Power of Attorney issued on 1 January 2017, on the other side ("**Service Provider**")

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

WHEREAS:

- (A) the Contracting authority is implementing the European standard track width project Rail Baltica, within the scope of which the Contracting authority needs Tax advisory services;
- (B) The Contracting authority has organised the procurement "Tax advisory services" (identification No RBR 2017/23) ("Procurement") in which the Contractor's proposal ("Proposal") was selected as the winning bid;
- (C) Procurement is co-financed by the Contracting authority and Connecting Europe Facility (CEF).

NOW, THEREFORE, the Parties hereby enter into this Framework agreement ("**Agreement**") on the following terms and conditions:

1. SUBJECT OF THE AGREEMENT

- 1.1. This Agreement sets out the rights and obligations, terms and conditions that apply to the Parties of the Agreement where the Service Provider (definition "Service Provider" applies also to Expert unless it is specified otherwise) is contracted by the Company to provide tax advisory services for the Company for the successful implementation of the Rail Baltica project.
- 1.2. The range of tax advisory services to be provided by the Service Provider to the Company is described in Annex 3 of the Procurement (Annex A of this Agreement) and includes, but is not limited to, counselling, preparation of documents, representation (**tax advisory services**). The procedure for the provision of Tax advisory services is provided in Clause 3 of this Agreement.
- 1.3. The purpose of the Agreement is to define the terms and conditions under which the Service Provider shall provide tax advisory services to the Company **on-demand** basis. The Agreement is framework-based and does not impose an obligation on the Company to appoint the Service Provider to provide services and does not guarantee any exclusive right to the Service Provider to provide tax advisory services to the Company. This Agreement entitles the Service Provider to participate in mini-competitions. The Service Provider is solely responsible for its costs and expenses incurred in connection with participation in the mini-competitions.

¹ Grant Agreement under the Connecting Europe Facility (CEF) -Transport Sector Agreement No INEA/CEF/TRAN/M2014/1045990

- 1.4. For every assignment, a separate assignment order (based on Draft for Assignment order included in Annex C of this Agreement) ("**Assignment order**") shall be issued by the Company and confirmed by the Service Provider.
- 1.5. The Service Provider shall provide services only on basis of a confirmed Assignment Order, the conditions thereof become binding on both parties: the Service Provider and the Company.
- 1.6. If the Service Provider refuses or fails to duly complete the assignment after the Assignment order has been confirmed between the Parties, the Service Provider is obligated to pay a contractual penalty to the Company at the Company's request of the amount corresponding to the double (2x) of the total sum of the tax advisory fee according to the Assignment order.
- 1.7. All Assignment orders and this Agreement shall form a single agreement between the Parties. The provisions of this Agreement constitute an integral part of each Assignment order. In the event of any inconsistency between the provisions of this Agreement and Assignment order, the Assignment order shall prevail.

2. FRAMEWORK AGREEMENT VALUE AND PERIOD

- 2.1. The Framework agreements with Service Providers are on-demand based with no fixed work-load and/or fixed overall value.
- 2.2. The total allocated amount for the procurement of tax advisory services for all Framework agreements concluded as a result of the Procurement is: 41 999,99 EUR (forty-one thousand nine hundred ninety nine *euros*, 99 cents), excluding VAT.
- 2.3. However, this does not bind the Company to purchase tax advisory services through the Framework agreement for the estimated amount.
- 2.4. The Agreement period is twelve (12) months starting from the Commencement date.
- 2.5. The Agreement terminates after Agreement period expires or until the maximum Agreement amount is reached and after the all Assignment orders are fully completed by the Service Provider and approved by the Company.

3. MINI COMPETITION

- 3.1. In order to receive tax advisory services, the Company shall select the Service Provider and conclude an Assignment order. The Assignment shall be allocated by conducting a mini-competition between all Service Providers.
- 3.2. The Company invites all Service Providers to implement an assignment by sending an Assignment order specifying the task, interests of the Company, timeline, and other information it deems relevant.
- 3.3. The Service Provider is prohibited from participating in the mini-competition in case of Conflict of Interests (Clause 16).
- 3.4. After receiving such invitation, within one (1) business day or the latest by the deadline specified in Assignment order the Service Provider shall respond by sending its proposal to implement an assignment. Failing to respond to the invitation within the required time period shall be considered as rejection to participate in a mini-competition;
- 3.5. Mini-competition proposals received from all Service Providers are evaluated and ranked. The most economically advantageous proposal shall be awarded for the implementation of an assignment;
- 3.6. The Company will choose the winner(s) of the mini-competition for the provision of the particular assignment by comparing the proposals based on the following criteria (listed in no particular order and containing no specific value):
 - (a) amount of tax advisory fees and time necessary for providing the particular assignment;
 - (b) credibility and experience of the Service Provider and its staff for providing the particular assignment;
 - (c) potential quality of providing the particular assignment by the Service Provider, taking into account among others the potential workload to be invested for the provision of the particular assignment;

- (d) cooperation experience with the provider in previous provision of tax advisory services based on KPI mentioned in the Section 9 of Terms of Reference / Technical Specification of the Procurement (Annex A) ("Terms of Reference").
- 3.7. The Company shall inform all Service Providers on the results of the mini-competition;
- 3.8. The Service Provider with most economically advantageous proposal shall be invited to sign the Assignment order. After this invitation to implement an assignment (including corresponding Assignment order) is accepted by the Service Provider, the conditions set in the Assignment order and the proposal of mini-competition become binding upon the Parties. The Service Provider first signs the Assignment order.
- 3.9. The Assignment order shall include details of the tax advisory services to be carried out by the Service Provider (as specified in Draft Assignment order - Annex No 3), i.e. required Service line, estimated workload, starting date, deadline etc.
- 3.10. The Company reserves the right not to invite the Service Provider to participate in a mini-competition based on results of KPI. The Company will regularly review the quality of completed assignment and the cooperation with the Service Provider according to Section 9 of the Terms of Reference. The Company shall not invite the Service Provider to the next mini-competition, if the conditions stipulated in Section 9 of the Terms of Reference occur.
- 3.11. The Service Provider has a right to reject Company's invitation to implement an assignment only in exceptional cases related to the availability of involved Experts, or when the Service Provider envisages that the implementation of a particular Assignment order would result in a conflict with requirements set in the Framework agreement, or in case of a Conflict of Interests (Clause 16). The decision of the Service Provider to reject the Company's invitation to implement an assignment shall be provided in writing by stating the actual reasons for such decision.
- 3.12. The Service Provider has the right to request reasonable explanatory information from the Company regarding the specifics of provision of an assignment via email. If the Company finds it necessary to respond, the Company has the right to disclose information provided to the Service Provider also to other Providers.
- 4. PERFORMANCE OF THE AGREEMENT**
- 4.1. The Service Provider must perform the Agreement in compliance with its provisions, the instructions given by the Company, under the specific terms agreed in an Assignment order and all legal obligations applicable under EU, international and national law.
- 4.2. The Service Provider and the Expert providing the tax advisory services to the Company must comply with the relevant professional diligence and the provision of tax advisory services must be of consistently high quality that is necessary to achieve the purpose of the particular Assignment order agreed between the Parties in particular Assignment order.
- 4.3. The Service Provider shall, within reason and in the scope of tax advisory services, endeavour to carry out all activities that would reasonably assist and aid the Company, always act in the best interests of the Company and use its best endeavours to engage all legal means reasonably available in achieving the result of the particular assignment specified in the particular Assignment order.
- 4.4. The Company shall deliver to the Service Provider relevant essential information necessary for the provision of tax advisory services. The Company understands that the proper provision of tax advisory services requires the Company to give to the Service Provider all the information relevant to the particular assignment, and to inform the Service Provider of any changes to that information.
- 4.5. The Company shall have the final and exclusive right in the negotiations, terms, decisions, agreements, etc. and in any and all matters related to advisory services, including but not limited to the final right to decide whether or not to conclude any agreement(s), litigate, submit documents etc.
- 4.6. The Service Provider shall provide the Company with all and any information and documentation in its possession or control relating to the tax advisory services provided to the Company. The Service Provider shall return original documents to the Company immediately at the Company's request.

- 4.7. The Service Provider shall carry out the tasks, prepare and provide all documents, reports and any other information material (i.e. provide Deliverables²) specified in an Assignment order and in accordance with Terms of Reference.
- 4.8. The Company reserves the right to ask the Service Provider (or its corresponding Expert) to provide intermediate results (deliverables) of an Assignment order in short notice, in order to check the progress of the implementation of an Assignment order. The Service Provider (or its corresponding Expert) shall provide the Company with the information, status of the progress including proof thereof, such as intermediate documentation, reports, etc. within the short notice period. This confirmation does not imply the implementation of any additional assignments (reports etc.), but confirms progress of the implementation of the Assignment order. Failing to do so within the short notice period or by providing information that shows that the assignment will not be completed within specified time in the Assignment order, the Company reserves the right to cancel the implementation of the Assignment order and to proceed with the procedures for terminating the Agreement.
- 4.9. As a part of the Deliverables, the Service Provider shall prepare information material in a fully comprehensive and understandable³ way, by providing explicit and full source details (initial information, evidences etc.) used for the analysis and provision of Deliverables.
- 4.10. The Company shall have no responsibility over any content of Deliverables provided by the Service Provider.
- 4.11. Approval by the Company of the Deliverables of the corresponding Assignment order shall not mean the approval of the outcome results (reports, agreements, procedural documents, summary, advice, decisions etc.) delivered by the Service Provider. Service Provider shall bear full responsibility of the Deliverables provided.

5. RIGHTS AND OBLIGATIONS

- 5.1. The Service Provider shall be responsible for the availability of its Experts implementing Assignment orders.
- 5.2. The Service Provider shall be responsible for ensuring that its Experts included in the Agreement fulfil the requirements thereof as long as it comes to Experts' responsibility.
- 5.3. The Service Provider shall remain fully responsible for the results (including Company's losses incurred due to such results) of its services after the completion of an Assignment order. Any additional expenses arisen due to the correction of unacceptable outcome results shall be covered solely by the Service Provider. The Company reserves the right to request the Service Provider to correct the results of its services regardless whether it is necessary during the implementation of an Assignment order or after it was completed and approved.
- 5.4. No subcontracting in any kind or form is allowed for implantation of an Assignment order. Only the Expert specified in an Assignment order is allowed to implement the tasks defined therein.
- 5.5. The Service Provider must keep records and other supporting documentation (original supporting documents) as evidence that the Assignment order is correctly performed and the expenses were actually incurred until 1 April 2027. These must be available for review upon the Company's request.
- 5.6. The Company is obliged to pay for the services of the Service Provider in accordance with the Assignment order and based on the approved Deliverables of the Service Provider pursuant to the payment request.
- 5.7. The Service Provider is obliged to ensure a valid professional risk indemnity insurance agreement with limit of liability in the amount of at least 1 000 000,00 EUR (one million *euro*) for any insurance claim covering all period of validity of the Agreement. The Service Provider is obliged to submit to the Company a copy of a renewed insurance agreement or a new insurance agreement including the above-mentioned provisions within five (5) working days before the date of expiry of the previous insurance agreement.

6. PAYMENTS

- 6.1. Service Provider must make a request for payment to obtain its remuneration for services and reimbursement of expenses agreed in the Agreement. After acceptance of Deliverables by the

² Definition "Deliverables" shall include all tasks (including, but not limiting to, actions and information material, agreements, opinions, memorandums, presentations, procedural and other documents) to be carried out by the Service provider in order to fully implement the corresponding Assignment order.

³ The information provided in the Deliverables shall be understandable to the average-level lawyer or manager with no particular experience in a specific topic concerned.

Company, the Service Provider must submit the invoice within 30 calendar days or at another time agreed between the Parties in the Assignment order.

- 6.2. Invoices should be sent to the e-mail invoices@railbaltica.org and should include the following details about the Agreement: Identification number RBR 2017/23, and name of the contact person Anita Pūka.
- 6.3. The Company shall make the payment after 15 (fifteen) days from the date on which the Company receives properly prepared payment request (invoice) on the accepted Deliverable.
- 6.4. The Company may suspend the payment at any time if:
- 6.4.1. the Deliverable is not accepted by the Company;
 - 6.4.2. invoice supporting documents are missing;
 - 6.4.3. the invoice is incorrect;
 - 6.4.4. the Company has to make further checks to verify details of invoice.
- 6.5. The Company shall reject the invoice (parts of) if it does not fulfil the conditions of the Agreement and particular Assignment order.
- 6.6. The Company may reduce the fee if the Service Provider is in breach of any of its other obligations under the Agreement (including unsatisfactory implementation of any Assignment orders). The Company must formally notify the Service Provider of its intention, include the reasons why, and invite the Service Provider to submit any observations within 15 days of receiving notification. If the Company does not accept these observations, it will formally notify confirmation of the rejection or reduction.
- 6.7. Payments are subject to the Company's approval of Deliverable(s) and of the invoice(s). Approval does not mean recognition of compliance, authenticity, completeness or correctness of content.
- 6.8. The Company may at any point suspend the payment deadline, if an invoice cannot be processed because it does not comply with the Agreement's provisions. The Company must formally notify the Service Provider of the suspension and the reasons for it. After the condition for suspending the payment deadline is mitigated, the suspension will be lifted — and the remaining payment period will resume.
- 6.9. If the payment deadline has been suspended due to the non-compliance with the Agreement's conditions and the Service Provider fails to rectify the outcome of the corresponding Assignment order within the reasonable period of time, the Company may also terminate the Agreement.
- 6.10. In the event of failure by the Service Provider to meet any deadline and/or supply any Deliverable by the date stipulated in the particular Assignment order, the amount of fee payable by the Company to the Service Provider under the corresponding Assignment order with respect to the relevant time period shall be reduced by 0.1 % of the amount of such fee for each day of delay.
- 6.11. Payments will be made in euros.
- 6.12. Payment of the Service provider's invoices will be made in euro, by bank transfer to the following bank account:

Service provider	SIA „Ernst & Young Baltic“
Registration No	40003593454
VAT payer's No	LV40003593454
Address	Muitas iela 1a, Rīga, Latvia, LV-1010
Name of Bank	Swedbank AS
Bank Code	HABALV22
Bank Account No	LV73HABA0551002716061

- 6.13. The Contractor's invoices shall contain the following Company's details and details about the Agreement:

Company	RB Rail AS
Registration No	40103845025

VAT payer's No	LV40103845025
Address	K. Valdemāra iela 8-7, Rīga, LV-1010, Latvia
Subject:	For the provision of Tax Advisory services according to the Tax Advisory services Agreement No 8/2017-122 (CEF Agreement No INEA/CEF/TRAN/M2014/1045990), Identification number RBR 2017/23, activity manager Anita Pūka.

- 6.14. The tax advisory fees described in Proposal (Annex B of this Agreement) and in the Assignment order are exclusive of VAT. The VAT treatment for the supply of tax advisory services under an Assignment order shall be determined pursuant to the VAT laws of the jurisdiction where a taxable transaction for the VAT purposes is deemed to take place. If VAT is payable on any contractual amounts, the Company shall pay to the Service Provider an amount equal to the VAT at the rate applicable from time to time, provided that such amount shall only be required to be paid after the Service Provider provides the Company with a valid VAT invoice in relation to that amount. Each Party shall, on request, provide the other Party with any additional VAT invoices or other documentation required for VAT purposes.

7. TAX ADVISORY FEES

- 7.1. The Service Provider shall act as an independent contractor on its own cost and for its own account and the Company shall not be obliged to pay to the Service Provider any royalties or fees other than the fees and/or rates expressly agreed upon in the Assignment order or to compensate any other kind of costs or expenses of the Service Provider. The Company shall remunerate to the Service Provider the fees and costs stated in the Assignment order.
- 7.2. The applicable tax advisory fees of the Service Provider are included in the Proposal. The tax advisory fees offered by the Service Provider in mini-competitions at the request of the Company for providing a particular Assignment may not be higher than the tax advisory fees offered by the Service Provider in the Proposal and the offered fees are final. If the Service Provider is in breach of the previous sentence, the Company refuses the Service Provider's proposal for providing of an assignment.

8. REIMBURSEMENT OF TRAVEL EXPENSES

- 8.1. The Company shall reimburse the travel expenses incurred by the Service Provider during the provision of services only in the following cases:
- 8.1.1. travel expenses are indicated and agreed in the corresponding Assignment order;
 - 8.1.2. travel expenses incurred for the implementation of the corresponding Assignment order;
 - 8.1.3. travel expenses are justified by documents.
- 8.2. In case the Principal for the implementation of a particular Assignment order requires the Expert to travel from his/her place of residence or Service Provider's office (whatever is applicable) for more than 200 km one way, the Company shall reimburse incurred travel⁴ expenses for the Expert included in a particular Assignment order.
- 8.3. For the implementation of a particular Assignment order where traveling is included, Expert shall ensure average level economical travel and accommodation expenses. The Company reserves the right to choose the accommodation.
- 8.4. The following travel expenses are subject to reimbursement:
- 8.4.1. Bus travel expenses if distance of less than 400 km one-way;
 - 8.4.2. Second-class rail travel expenses if distance of less than 400 km one-way;
 - 8.4.3. Economy class air travel expenses if distance of more than 400 km one-way;
 - 8.4.4. A travel expense (a return ticket) shall not exceed 500 EUR. Travel expense exceeding 500 EUR on return ticket will be reimbursed at 500 EUR max.

⁴ The point of departure shall be limited to the location in Europe.

9. OWNERSHIP AND USE OF THE RESULTS (INCLUDING INTELLECTUAL PROPERTY RIGHTS)

- 9.1. The Company will fully and irrevocably acquire the ownership of the results under this Agreement including any rights in any of the results listed in this Agreement, including copyright and other intellectual or industrial property rights, and all technological solutions and information contained therein, produced in performance of the Agreement.
- 9.2. The Company will acquire all rights and obligations in this Clause 9 from the moment the Deliverables (results) are delivered by the Service Provider and are not limited in time and will be valid after the expiry of the Agreement and/or the individual Assignment order.
- 9.3. The copyright fee has been included in the tax advisory fee (Clause 7). The transfer of copyright shall also remain valid if the Agreement is prematurely terminated for any reason and/or terminated without the complete delivery of the Deliverables.
- 9.4. The Company has the right to publish material submitted by the Service Provider without the Service Provider's permission, as well as to require the Service Provider to change it, to redo it, to divide it into parts. If the Service Provider and the Company cannot agree on the execution of this work, the Company is entitled to involve another Service Provider in carrying out the said task.
- 9.5. The Service Provider shall undertake to ensure that the Services, the execution of Services or the use of the any of the Deliverables not violate the rights, including copyright, of third persons.
- 9.6. If the Services, the execution of the Services or the use of the Deliverables or other deliverables produced while rendering the Services violate the rights of third persons, the Service Provider shall be liable for the violation. The Service Provider shall be obliged to compensate the damage caused to third persons and satisfy any claims for the compensation of damage filed against the Company by third persons.

10. ON-THE-SPOT VISITS

- 10.1. 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 Union law for the protection of the financial interests of the Union against fraud and other irregularities. Where appropriate, OLAF findings may lead to criminal prosecution under national law.
- 10.2. By giving a written notice five (5) business days in advance, but in case of an unannounced check without an advance notice, the Company may carry out independent on-the-spot visits to the sites and premises where the activities implemented within the Agreement are or were carried out.
- 10.3. On-the-spot visits may be carried out either directly by the authorised staff of the Company or by any other outside body authorised to do so on behalf of the Company. Information provided in the framework of on-the-spot visits shall be treated on confidential basis. The Company shall ensure that any outside body authorised shall be bound by the confidentiality obligation.
- 10.4. The Service Provider shall ensure that the performer of the on-the-spot visit or any other outside body authorised has 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 outside body authorised 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 outside body authorised copying of the information and documents, with due respect to the confidentiality obligation.

11. AMENDING THE AGREEMENT; TERMINATION OF THE AGREEMENT

- 11.1. The Agreement can be amended in compliance with the provisions of Article 61 of the Public Procurement Law including but not limited to the provisions of point 5 of Section 2 of Article 61.
- 11.2. If after the conclusion of the Agreement amendments are made to the existing laws and regulations and in consequence the costs of Service Provider's Tax advisory services increase or decrease and when a prior warning has been given, then, after a mutual agreement by the Parties, the Fee is amended.

- 11.3. Amendments to the Agreement are proposed by the Party who sees a need for the amendments by submitting a justification for the proposal of amendments.
- 11.4. Amendments and supplements to the Agreement shall be valid only when they have been prepared in writing and signed by the Parties; they shall be enclosed to this Agreement and become an integral part of it.
- 11.5. When deciding on amending the Agreement, compliance with Public Procurement Law of the Republic of Latvia, Procurement and requirements under its Regulation must be ensured.
- 11.6. This Agreement may be terminated by a Party by giving the other Party sixty (60) days prior written notice of termination ("**Regular Termination**"). In the event of Regular Termination, the Agreement shall remain legally binding on the Parties until, but only in respect of, all rights and obligations already created or existing prior to the date of the Regular Termination are fully performed by both Parties.
- 11.7. The Company reserves the right to terminate the Agreement within 10 (ten) business days after sending a written notice to the Service Provider due to the following reasons:
 - 11.7.1. The Service Provider has committed substantial errors, irregularities or fraud, or is in serious breach of its obligations under the procurement procedure or under the Agreement, including false declarations and obligations relating;
 - 11.7.2. The Service Provider breaches conditions of the Agreement and does not cure the breach within 20 (twenty) business days of written notice of same;
 - 11.7.3. Service Provider and/or its Expert poorly performs his/her tasks defined in the corresponding Assignment order.
- 11.8. The Parties reserve the right to terminate the Agreement at any time after sending a written notice if:
 - 11.8.1. the Company fails to make a payment where such failure has not been eliminated within thirty (30) calendar days after receipt of a written notice of failure to pay from the Service Provider;
 - 11.8.2. a Party is dissolved, declares bankruptcy, becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
 - 11.8.3. a breach of confidentiality (Clause 15) occurs;
 - 11.8.4. a breach of obligation to avoid Conflict of Interests (Clause 16) occurs;
 - 11.8.5. The Service Provider fails to submit a valid professional risk indemnity insurance agreement within a time mentioned in Clause 5.7.
- 11.9. The Company reserves the right to terminate a particular Assignment order if the services specified thereof are no longer required. In such a case, the costs incurred by the Service Provider up to the notification of the termination of an Assignment order are subject to the reimbursement by the Company.
- 11.10. If the Company has unilaterally terminated the Agreement due to non-fulfilment of the obligations undertaken in the Agreement by the Service Provider, the Company has the right to disqualify the Service Provider from participation in any tenders organized by the Company during 12 (twelve) months from the date of the termination of the Agreement.
- 12. FORCE MAJEURE**
 - 12.1. 'Force majeure' means any situation or event that:
 - 12.1.1. prevents either Party from fulfilling their obligations under the Agreement;
 - 12.1.2. was unforeseeable, exceptional and beyond the Parties' control;
 - 12.1.3. was not due to error or negligence on their part; and
 - 12.1.4. proves to be inevitable in spite of exercising due diligence.
 - 12.2. A force majeure must be immediately and formally notified to the other Party.
 - 12.3. Notification must include details of the situation's nature, likely duration and expected effects.
 - 12.4. The Party faced with a force majeure will not be held in breach of its Agreement obligations if the force majeure has prevented it from fulfilling them.

13. COMMUNICATION BETWEEN THE PARTIES

- 13.1. Communication under the Agreement (e.g. information, requests, submissions, formal notifications, etc.) must:
- 13.1.1. be carried out in English;
 - 13.1.2. be carried out between the contact persons specified in the corresponding Assignment order;
 - 13.1.3. be made in writing (including electronic form); and
 - 13.1.4. bear the Agreement's and Assignment order's number.
- 13.2. During the implementation of the Assignment order, the communication via e-mail shall be executed between the persons indicated in the corresponding Assignment order. Additionally, all copies of those e-mail messages shall be sent also to Parties' e-mail addresses anita.puka@railbaltica.org and sergejs.batjuskovs@lv.ey.com.
- 13.3. Communications by e-mail are deemed made when they are sent by the sending Party and receipt is confirmed by the receiving Party, unless the sending Party receives a message of non-delivery. Sending Party is responsible to get the confirmation that a message (with all its contents) sent via e-mail was received.
- 13.4. Assignment orders, notices, declarations and invoices shall be deemed received:
- 13.4.1. if delivered by hand, on the first business day following the delivery day;
 - 13.4.2. if sent by post, on the fifth (5th) business day after the date of posting;
 - 13.5. if sent by email and received "out of office reply" or similar on the day of sending if sent before 17:00 on a business day, or otherwise at 09:00 on the first business day following such sending (Latvian time applies)
- 13.6. If the final day of a time period referred to in this Agreement is Saturday, Sunday or a holiday prescribed by law, the following working day shall be considered the final day of the time period.
- 13.7. The Parties agree that information may be exchanged electronically over the internet.

14. EXPERT CHANGE

- 14.1. Only in exceptional cases Experts, included in the Agreement, can be replaced and by signing an amendment to the Agreement.
- 14.2. The proposed Expert's qualifications must be equivalent to or higher than those of the replaced Expert. The qualifications must be proven by submitting the same qualification documents/information as for the selected Expert within the procurement process.
- 14.3. The Company reserves the right to request the Service Provider to replace an Expert in case of any of the following reasons:
- 14.3.1. repeated careless performance of duties;
 - 14.3.2. incompetence or negligence;
 - 14.3.3. non-fulfilment of obligations or duties stipulated in the Agreement;
 - 14.3.4. poor knowledge of English language (unsatisfactory presentation, writing skills in English);
 - 14.3.5. termination of employment relations or cooperation agreement with the Service Provider.
- 14.4. Failing of the Service Provider to propose another Expert with equivalent or better qualifications within 10 (ten) business days period might lead to the termination of the Agreement by the Company according to the procedure set in Clause 11.8.
- 14.5. The Company shall approve or reject the replacement of an Expert as soon as possible, but no later than within 5 (five) business days after the receipt of all information and documents necessary for a decision in accordance with the provisions in this Agreement.

15. CONFIDENTIALITY

- 15.1. Each Party undertakes to keep confidential the terms and conditions of the Agreement and Assignment order(s) and not to use or disclose any and all information of any kind or nature

whatsoever, whether written or oral or whatsoever form, including, but not limited to, financial information, trade secrets, customer lists, any and all information and documents related to the negotiations and the subsequent performance of the Agreement between the Parties, which is not known to the general public ("**Confidential Information**").

- 15.2. The Service Provider and Experts (including but not limited to attorneys) of the Service Provider shall maintain confidentiality of the fact that the Company has requested the Service Provider to provide Tax advisory services as well as of the information that has become known to the Service Provider in the provision of tax advisory services. The Service Provider shall use the Confidential Information only for the provision of the Tax advisory services agreed between the Parties in the Assignment order or to perform its other obligations under the Agreement and to restrict disclosure of the Confidential Information solely to those representatives who have to know the Confidential Information in order to carry out the Tax advisory services or perform Service Provider's obligations under the Agreement.
- 15.3. A Party has the right to disclose Confidential Information only if it is explicitly required to do so by law or pursuant to any order of court or other competent authority or tribunal or if such disclosure has been agreed by the other Party in writing.
- 15.4. The Company reserves the right to request the Service Provider and/or Expert to sign a confidentiality agreement for the implementation of a particular Assignment order.
- 15.5. The confidentiality obligation shall not expire in time.
- 15.6. If the Service Provider violates its confidentiality obligation, then it shall be liable to pay to the Company a contractual penalty in the amount corresponding to thrice (3x) the total sum of tax advisory fee according to the Assignment orders if the breach took place in relation with the performance of the assignment, but not less than 10 000 EUR (ten thousand euros) for each breach of such obligation.

16. SERVICE PROVIDER AND EXPERTS' INDEPENDENCE AND ABSENCE OF CONFLICT OF INTEREST

- 16.1. If the Service Provider provides or will provide tax advisory services to any person whose interests are or probably will be in conflict with the interests of the Company in relation with providing the assignment (in the past, in the present and in the foreseeable future) to the Company, or in case of any circumstances, which harm or may harm the possibility of the Service Provider to act solely in the interests of the Company ("**Conflict of Interests**"), the Service Provider has the obligation to refrain from providing the assignment to the Company. For example, if the assignment involves the drafting of documentation for a procurement, the Service Provider would have to refrain from providing the assignment to the Company if the Service Provider provides or probably will provide tax advisory services to persons that have an interest in that procurement.
- 16.2. As part of the obligation of the Service Provider to avoid Conflict of Interest, the Service Provider must also refrain from providing tax advisory services to any person whose interests are or probably will be in conflict with the interests of the Company in relation with providing the Assignment (in the past, in the present and in the foreseeable future) to the Company. For example, if the assignment provided by the Service Provider involves the drafting of documentation for a procurement, the Service Provider would have to refrain from providing the tax advisory services to persons that have an interest in that procurement.
- 16.3. The Service Provider immediately has to notify the Company before taking up any assignments, if there can be doubts whether such are permissible pursuant to the obligation to avoid Conflict of Interests set forth in this Agreement. In case of doubt, the Company has the right to decide whether a Conflict of Interests situation occurs or not.
- 16.4. If the Service Provider violates its obligation to avoid Conflict of Interests or fails to comply with it, it shall be liable to pay to the Company a contractual penalty in the amount corresponding to thrice (3x) the total sum of tax advisory fee according to the Assignment order if the breach took place in relation with the performance of the assignment, but not less than 10 000 EUR (ten thousand euros) for each breach of such obligation.

17. VISIBILITY REQUIREMENTS

- 17.1. The Service Provider is obliged to comply with the following visibility requirements:

17.1.1. Any reports, brochures, other documents or information connected with Deliverables which the Service Provider produces and submits to the Company or makes publicly available must include the following:

- (i) a funding statement stating that the Company is the recipient of the funding from the CEF: "Rail Baltica is co-financed by the European Union's Connecting Europe Facility";
- (ii) (for printed materials) a disclaimer releasing the European Union from any liability in terms of the content of the dissemination materials: "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." This disclaimer in all European Union official languages can be seen at the website: <https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos>;
- (iii) the European Union flag.

17.1.2. Requirements set in Clauses 17.1.1(i) - 17.1.1(iii) can be fulfilled by using the following logo:



Co-financed by the European Union
Connecting Europe Facility

If the Service Provider shall use this logo, the Service Provider shall ensure that elements of the logo will not be separated (the logo will be used as one whole unit) and enough free space around the logo shall be ensured;

17.1.3. The Service Provider is obliged to comply with the latest visibility requirements set by the European Union. For that purpose, the Service Provider shall follow the changes in the visibility requirements on its own. On the date of conclusion of this Agreement the visibility requirements are published on the following website: <https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos>.

18. TECHNICAL, LEGAL AND FINANCIAL CHECKS AND AUDITS

- 18.1. By giving a written notice 5 (five) working days in advance, but in case of an unannounced check or audit without an advance notice, the Company may carry out technical, legal and financial checks and audits in relation to the implementation of the Contract.
- 18.2. Checks and audits may be carried out either directly by the authorized staff of the Company or by any other outside body authorised to do so on Company's behalf.
- 18.3. Information and documents obtained in the framework of checks or audits shall be treated on a confidential basis. Company shall ensure that its staff and any outside body authorised by the Company be bound by the confidentiality obligation.
- 18.4. The Service Provider shall ensure that the performer of the check or audit or any other outside body authorised has access to all the information and documents, including information in electronic format, which is requested by the performer of the check or audit or any other outside body authorised for the performance of the check or audit and which relates to the implementation of the contract, as well as shall allow the performer of the check or audit or any other outside body authorised by it copying of the information and documents with due respect to the confidentiality obligation.

19. GOVERNING LAW; RESOLUTION OF DISPUTES

- 19.1. The rights of the Parties hereto and the validity, interpretation and implementation of this Agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of Latvia. In the event of any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach, termination or invalidity hereof or thereof, the disputing Party shall provide written notice thereof to the other Party. The Parties shall attempt in the first instance to resolve such dispute through amicable consultations.
- 19.2. When any dispute occurs, and is the subject of amicable consultations, the Parties shall continue to exercise their remaining respective rights, and fulfil their remaining respective obligations, under this Agreement.

- 19.3. If the dispute is not resolved by amicable consultation within thirty (30) days after notice of a dispute is given by a Party, then any Party may submit the dispute for final resolution by a competent court of the Republic of Latvia.

20. MISCELLANEOUS

- 20.1. The payment of any contractual penalty hereunder shall not relieve either Party from the responsibility to perform any of the obligations of such Party set forth in the Agreement or deriving from the applicable law.
- 20.2. Any amendments to the Agreement shall be valid if made in writing and signed by the respective authorized persons of both Parties. Any amendments must not make changes to the Agreement that might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers participated in this procurement.
- 20.3. If at any time, any clause of the Agreement becomes illegal, invalid or unenforceable, in any respect, under the applicable law, neither the legality, validity nor enforceability of the remaining provisions of the Agreement shall in any way be affected or impaired thereby. The Parties shall, in good faith, utilize their best efforts to replace any illegal, invalid or unenforceable clause with such that is legal, valid and enforceable and comes as close as possible to the invalid clause as regards its economic intent.
- 20.4. The Company cannot be held liable for any damage caused or sustained by the Service Provider or a third party during or as a consequence of performing the Agreement, except in the event of the Company's wilful misconduct or gross negligence.
- 20.5. In the event of any inconsistency between the terms of this Agreement and any of the Annexes, the text of this Agreement shall take precedence over any term set forth in any of the Annexes. In the event of any inconsistency between the terms of any of the Annexes, the order of precedence of the text of such Annexes (including any calculation) shall be established according to the sequence of listing in Clause 21.
- 20.6. The Agreement is concluded in 2 (two) copies, one for each, all having the same legal effect.

21. ANNEXES

Annex A – Terms of Reference on 5 (five) pages;

Annex B – Tenderers' Proposal (financial proposal and expert's application) on 9 (nine) pages;

Annex C – Draft Assignment order on 1 (one) page;

Annex D – Service Provider's declaration on 2 (two) pages.

22. PARTY REQUISITES AND SIGNATURE BY AUTHORIZED REPRESENTATIVES OF THE PARTIES

Company:

RB Rail AS

Uniform registration No 40103845025

address: K.Valdemāra iela 8-7, Riga, Latvia,

LV-1010

Account details:

bank: Nordea Bank AB Latvijas filiāle

SWIFT code: NDEALV2X

Account number: LV73NDEA0000084270995

Service provider:

SIA Ernst & Young Baltic

Uniform registration No 40003593454

address: Muižas iela 1a, Riga, Latvia, LV-1010

Account details:

Bank: Swedbank AS

SWIFT code: HABALV22

Account number: LV73HABA0551002716061

Baiba A. Rubesa
Chairperson of the Management Board

Ilona Butane
Authorized person

Kaspars Rokens
Member of the Management Board