

REGULATION

OPEN COMPETITION

"Recruitment Services"

(IDENTIFICATION NO RBR 2018/15)



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

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REGULATION

1. ABBREVIATIONS AND TERMS

- 1.1. **Common procurement vocabulary (CPV)** – a nomenclature approved by the European Union, which is applied in public procurement procedures;
- 1.2. **Identification number** – designation, which includes the abbreviation of the name of the Contracting Authority (the first capital letters), the relevant year and the procurement sequence number in ascending order (RBR 2018/15);
- 1.3. **Contracting Authority** - (also, the Contracting entity) means the joint stock company RB Rail AS, registration number 40103845025, registered address: Kr.Valdemara iela 8-7, Riga, LV-1010, Latvia;
- 1.4. **Open Competition** - a procurement procedure „Recruitment Services” (identification number: RBR 2018/15) in which all interested Suppliers are entitled to submit their Proposals;
- 1.5. **Supplier** – a natural person or a legal person, a group or association of such persons in any combination thereof, which offers to perform works, supply products or provide services accordingly;
- 1.6. **Tenderer** – a Supplier, which has submitted a Proposal;
- 1.7. **Proposal** - documentation package the Tenderer submits to participate in Open Competition;
- 1.8. **Procurement Commission** - commission which composition has been established by the joint stock company RB Rail AS, order No 11/2018-47 dated 8 August 2018, issued by the Management Board of joint stock company RB Rail AS;
- 1.9. **Regulations** – regulations of Open Competition „Recruitment Services” (identification number: RBR 2018/15), as well as all the enclosed Annexes;
- 1.10. **Contract** - signed agreement between Contracting Authority and a contractor to provide services defined in this agreement.
- 1.11. **Contractor** - service provider awarded the right to enter into the Contract in Open Competition to provide services in accordance with requirements stipulated in Regulations and Contract.

2. GENERAL INFORMATION

- 2.1. The identification number of this Open Competition is No RBR 2018/15.
- 2.2. The applicable CPV code is 79600000-0 (Recruitment services and Human Resource management service).
- 2.3. The Contracting entity is joint stock company RB Rail AS, legal address: Kr. Valdemāra iela 8 - 7, Riga, LV-1010, Latvia (hereinafter – Contracting Authority).
- 2.4. The Open Competition is co-financed by the Contracting Authority and Connecting Europe Facility (CEF).
- 2.5. The subject -matter of the open competition has been divided in 2 (two) parts:

No	Subject-matter	CPV code
Part No 1	„Recruitment Services” (Baltic states – Latvia, Lithuania, Estonia)	79600000-0
Part No 2	„Recruitment Services” (European Union)	79600000-0

- 2.6. The estimated value of the contract for procurement part 1 „Recruitment Services (Baltic states – Latvia, Lithuania, Estonia)” shall not exceed 79 000,00 EUR (seventy-nine thousand *euros*), excluding value added tax (hereinafter – VAT).
- 2.7. The estimated value of the contract for procurement part 2 „Recruitment Services (European Union)” shall not exceed 48 000,00 EUR (forty-eight thousand *euros*) excl.VAT.

- 2.8. This Open Competition is organised in accordance with the Public Procurement Law of Latvia in effect on the date of publishing the contract notice.
- 2.9. This Open Competition is carried out using E-Tenders system which is subsystem of the Electronic Procurement System (<https://www.eis.gov.lv/EKEIS/Supplier>).
- 2.10. Regulations are freely available in Contracting Authority's profile in the E-Tenders system at webpage <https://www.eis.gov.lv/EKEIS/Supplier> and the Internet webpage of the Contracting Authority <http://railbaltica.org/tenders/>.
- 2.11. Amendments to the Regulations and answers to Suppliers' questions shall be published on the E-Tenders system's webpage <https://www.eis.gov.lv/EKEIS/Supplier> and the Contracting Authority's Internet webpage <http://railbaltica.org/tenders/>. It is the Supplier's responsibility to constantly follow the information published on the webpage and to take it into consideration in its Proposal.
- 2.12. Contact persons of the Contracting Authority for this Open Competition:
- (a) In administrative aspects of the Open Competition: Procurement specialist - lawyer, Linda Kalniņa, telephone: +371 26178057, e-mail address: linda.kalnina@railbaltica.org;
 - (b) In aspects concerning subject-matter of Procurement: Head of Administration and HR, Vija Vitola, telephone: +371 29230079, e-mail address: vija.vitola@railbaltica.org.
- 2.13. The Procurement Commission and the Supplier exchange information shall be in writing in English (if information is submitted in Latvian, it shall be accompanied by a translation into English), by sending documents electronically via e-mail or using E-Tenders system.
- 2.14. If the Supplier does not have access to the E-Tenders system, the Supplier shall follow the guidance for obtaining access to the system, available on the Contracting Authority website at <http://www.railbaltica.org/procurement/e-procurement-system/>.
- 2.15. The Supplier can request additional information regarding the Regulations. Additional information can be requested in writing via the E-Tendering system, or (in case the Supplier does not yet have access to the system), by sending it to the Procurement Commission electronically via e-mail (see Clause 2.11. (a); (b)). Any additional information must be requested in a timely fashion by the Supplier – no later than 6 (six) days prior to the deadline of the Proposal submission, so that the Procurement Commission can give it a reply in time. The Procurement Commission shall provide response within 5 (five) business days from the day of receipt of the request from the Supplier.
- 2.16. The Supplier covers all expenses, which are related to the preparation of the Proposal and its submission to the Contracting Authority. Under no circumstances will the Contracting Authority be liable for compensation of any costs and damages related to the preparation and submission of the Proposal (including, *inter alia*, costs associated with any site visits) or the Supplier's participation in the procurement exercise.

3. THE RIGHTS OF THE PROCUREMENT COMMISSION

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

The Contracting Authority has the right to reject all applications/Proposals which are found not to comply with the requirements of the procurement documentation.

4. THE OBLIGATIONS OF THE PROCUREMENT COMMISSION

- 4.1. The Procurement Commission ensures the documenting the process of the Open Competition procedure.
- 4.2. The Procurement Commission ensures free and direct electronic access to the Open Competition procedure documents in Contracting Authority's profile at the E-Tenders system's webpage <https://www.eis.gov.lv/EKEIS/Supplier> and at the Internet webpage of the Contracting Authority <http://railbaltica.org/tenders/>.
- 4.3. If an interested Supplier has in a timely fashion in writing by post or electronically, or delivering in person, requested additional information about the requirements included in Open Competition procedure documents regarding the preparation and submission of the Proposal or regarding the selection of Tenderers, the Procurement Commission provides a response electronically within 5 (five) business days, but not later than 6 (six) days before the deadline for submitting Proposals. Simultaneously with sending this information to the Supplier who had asked the question, the Contracting Authority publishes this information in Contracting Authority's profile on the E-Tenders system's webpage <https://www.eis.gov.lv/EKEIS/Supplier> and on its Internet webpage <http://railbaltica.org/tenders/>, where Open Competition procedure documents are available, indicating the question asked.
- 4.4. If the Contracting Authority has amended the Open Competition procedure documents, it publishes this information in Contracting Authority's profile on the E-Tenders system's webpage <https://www.eis.gov.lv/EKEIS/Supplier> and on the Contracting Authority's Internet webpage <http://railbaltica.org/tenders/>, where Open Competition procedure documents are available, no later than 1 (one) day after the notification regarding the amendments has been submitted to Procurement Monitoring Bureau for publication. If Supplier wishes to receive relevant updates/notifications by email regarding the procurement exercise (e.g. when amendments to the procurement package documentation are published), Supplier shall register as an interested supplier on the E-tenders system for the particular procurement exercise accordingly.
- 4.5. The exchange and storage of information is carried out in such a way that all data included in the Proposals is protected and the Contracting Authority can check the content of the Proposals only after the expiration of the deadline for their submission. During the time period from the deadline of submission of Proposals until the opening of the Proposals the Contracting Authority does not disclose any information regarding the existence of other Proposals therefore. During the time period of Proposal assessment, the Contracting Authority does not disclose any information regarding the assessment process until the announcement of the results.
- 4.6. The Procurement Commission assesses the Tenderers and their submitted Proposals based on the Public Procurement Law, Open Competition procedure documents, as well as other applicable regulatory enactments.
- 4.7. The Procurement Commission prepares a report on the Open Competition procedure and publishes it in Contracting Authority's profile on the E-Tenders system's webpage <https://www.eis.gov.lv/EKEIS/Supplier> and on the Contracting Authority's webpage <http://railbaltica.org/tenders/> within 5 (five) business days from the day when the decision about the results of the Open Competition is made.

5. THE RIGHTS OF THE TENDERER

- 5.1. The Tenderer has the right to submit Tenderer's Electronic Procurement System registration documents (if the Tenderer is not registered in Electronic Procurement System) in State Regional Development Agency (please see information here <http://www.railbaltica.org/procurement/e-procurement-system/>).
- 5.2. The Tenderer can request and within 3 (three) business days after submitting the request receive a copy of the Proposal opening sheet, which is an Annex to the Proposal opening meeting minutes.
- 5.3. If the Contracting Authority gets the necessary information about the Tenderer directly from a competent institution, through data bases or other sources and the Tenderer's submitted information differs from information obtained by the Contracting Authority, the Tenderer in question has the right

to submit evidence to prove the correctness of the information the Tenderer has submitted, if the information obtained by the Contracting Authority does not conform to the factual situation.

- 5.4. If a Tenderer believes that its rights have been violated or such violation is possible due to possible violation of the regulatory enactments of the European Union or other regulatory enactments, the Tenderer has the right to submit a complaint to the Procurement Monitoring Bureau according to the procedure stipulated in the Section 68 of Public Procurement Law regarding the Tenderer selection requirements, technical specification or other requirements relating to this Open Competition, or relating to the activities by the Contracting Authority or the Procurement Commission during the Open Competition procedure.

6. SUBJECT-MATTER OF THE OPEN COMPETITION

- 6.1. The procurement is organised in order to procure a provider to manage recruitment process on behalf of RB Rail AS in accordance with Technical Specification (Annex No 8) (hereinafter – Services).
- 6.2. The delivery of the Services will take place in Latvia.
- 6.3. Period of provision of Services: 18 (eighteen) months after commencement day.

7. TENDERER

- 7.1. The Proposal can be submitted by:
- 7.1.1. A Supplier, who is a legal or natural person (hereinafter – the Tenderer) which offers on the market to perform works, supply products or provide services accordingly and who complies with the selection criteria for Tenderers;
- 7.1.2. A group of Suppliers (hereinafter also – the Tenderer, partnership) which offer on the market to perform works, supply products or provide services accordingly and who complies with the selection criteria for Tenderers:
- (a) A group of Suppliers who have formed a partnership for this Open Competition. In this case all the members of the partnership shall be listed in Annex 1 "Application". If it will be decided to award contracting rights to such partnership, then prior to concluding the Contract the partnership shall at its discretion either enter into a partnership agreement (within the meaning of Latvian Civil Law Sections 2241-2280) and shall submit one copy of this agreement to the Contracting Authority or establish a general or limited partnership (within the meaning of Latvian Commercial Law, Chapter IX and X) and notify the Contracting Authority in writing.
 - (b) An established and registered partnership (a general partnership or a limited partnership, within the meaning of Latvian Commercial Law, Chapter IX and X) (hereinafter also – Tenderer) which complies with the selection criteria for Tenderers.

8. SELECTION CRITERIA FOR TENDERERS

Exclusion grounds

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

No	Requirement	Documents to be submitted (no obligation to submit documents, unless specifically requested by the Procurement Commission)
1.	Within previous 3 (three) years before submission of the Proposal the Tenderer or a person who is the Tenderer's board or council member, person with representation rights or a procura holder, or a person who is authorised to represent	- For a Tenderer and a person who is the Tenderer's board or council member, person with representation rights or a procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a

No	Requirement	Documents to be submitted (no obligation to submit documents, unless specifically requested by the Procurement Commission)
	<p>the Tenderer in operations in relation to a branch, has been found guilty of or has been subjected to coercive measures for committing any of the following criminal offences by such a public prosecutor's order regarding punishment or a court judgement that has entered into force and may not be challenged and appealed:</p> <p>a) establishment, management of, involvement in a criminal organisation or in an organised group included in the criminal organisation or other criminal formation, or participation in criminal offences committed by such an organisation,</p> <p>b) bribe-taking, bribery, bribe misappropriation, intermediation in bribery, unauthorised participation in property transactions, taking of prohibited benefit, commercial bribing, unlawful claiming of benefits, accepting or providing of benefits, trading influences,</p> <p>c) fraud, misappropriation or money-laundering,</p> <p>d) terrorism, terrorism funding, calling to terrorism, terrorism threats or recruiting or training a person in performance of acts of terrorism,</p> <p>e) human trafficking,</p> <p>f) evasion from payment of taxes or similar payments.</p>	<p>branch, which are registered or residing in Latvia, the Contracting Authority shall verify the information itself in publicly available databases.</p> <p>For a Tenderer, who is registered in Latvia and a person who is the Tenderer's board or council member, person with representation rights or a procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a branch is registered or residing outside of Latvia, the Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence.</p> <p>- For a Tenderer and a person who is the Tenderer's board or council member, person with representation rights or a procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a branch, which are registered or residing outside of Latvia the Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence.</p>
2.	<p>It has been detected that on the last day of Proposal submission term or on the day when a decision has been made on possible granting of rights to conclude the procurement contract, the Tenderer has tax debts in Latvia or a country where it has been incorporated or is permanently residing, including debts of mandatory state social insurance contributions exceeding 150 euro in total in any of the countries.</p>	<p>- For a Tenderer which is registered or residing in Latvia, the Contracting Authority shall verify the information itself in publicly available databases.</p> <p>- For a Tenderer which is registered or residing outside of Latvia the Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence.</p>
3.	<p>Tenderer's insolvency proceedings have been announced, the Tenderer's business activities have been suspended, the Tenderer is under liquidation.</p>	<p>- For a Tenderer which is registered or residing in Latvia, the Contracting Authority shall verify the information itself in publicly available databases.</p> <p>- For a Tenderer which is registered or residing outside of Latvia the Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence.</p>

No	Requirement	Documents to be submitted (no obligation to submit documents, unless specifically requested by the Procurement Commission)
4.	<p>In case a person who drafted the procurement procedure documents (Contracting Authority's official or employee), Procurement Commission member or expert is related to the Tenderer, or is interested in selection of some Tenderer, and the Contracting Authority cannot prevent/resolve this situation by measures that cause less restrictions on Tenderers (such a Tenderer shall be excluded from the procurement procedure). A person who drafted the procurement procedure documents (Contracting Authority's official or employee), Procurement Commission member or expert is presumed to be related to the Tenderer in any of the following cases:</p> <ul style="list-style-type: none"> - If he or she is a current or and ex-employee, official, shareholder, procura holder or member of a Tenderer or a subcontractor which are legal persons and if such relationship with the legal person terminated within the last 24 months; - If he or she is the father, mother, grandmother, grandfather, child, grandchild, adoptee, adopter, brother, sister, half-brother, half-sister or spouse (hereinafter – relative) of a Tenderer's or subcontractor's, which is a legal person, shareholder who owns at least 10% of the shares in a joint-stock company, shareholder in a limited liability company, procure holder or an official; - or if he or she is a relative of a Tenderer or a subcontractor which is a natural person. <p>If the Tenderer is a partnership, consisting of natural or legal persons, a relation to the Tenderer is presumed also if a person who drafted the procurement procedure documents (Contracting Authority's official or employee), Procurement Commission member or expert is related to a member of a partnership in any of the above-mentioned ways.</p>	<p>No obligation to submit documents, unless specifically requested by the Procurement Commission.</p>
5.	<p>The Tenderer has an advantage that limits competition in the procurement procedure if it or its related legal person consulted the Contracting Authority or the Tenderer was otherwise involved in</p>	<p>No obligation to submit documents, unless specifically requested by the Procurement Commission.</p>

No	Requirement	Documents to be submitted (no obligation to submit documents, unless specifically requested by the Procurement Commission)
	preparing the Open Competition, and the advantage cannot be prevented by less restrictive measures, and the Tenderer cannot prove that its or its related legal person's participation in preparing the procurement procedure does not restrict competition.	
6.	Within previous 12 (twelve) months before submission of the Proposal, by such a decision of a competent authority or a court judgment which has entered into force and may not be challenged and appealed, the Tenderer has been found guilty of violating competition laws manifested as a horizontal cartel agreement, except for the case when the relevant authority, upon detecting violation of competition laws, has released the Tenderer from a fine or has decreased the fine for cooperation within a leniency program.	<ul style="list-style-type: none"> - For a Tenderer which is registered or residing in Latvia, the Contracting Authority shall verify the information itself in publicly available databases. - For a Tenderer which is registered or residing outside of Latvia the Tenderer shall submit an appropriate evidence from the competent authority of the country of registration or residence regarding the (non)existence of such exclusion grounds.
7.	Within previous 3 (three) years before submission of the Proposal, by such a decision of a competent authority or a court judgment which has entered into force and may not be challenged and appealed, the Tenderer has been found guilty of a violation manifested as employment of one or more persons which do not possess the required employment permit or if it is illegal for such persons to reside in a Member State of the European Union.	<ul style="list-style-type: none"> - For a Tenderer which is registered or residing in Latvia, the Contracting Authority shall verify the information itself in publicly available databases. - For a Tenderer which is registered or residing outside of Latvia the Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence regarding the (non)existence of such exclusion grounds.
8.	Within previous 12 (twelve) months before submission of the Proposal, by such a decision of a competent authority or a court judgment which has entered into force and may not be challenged and appealed, the Tenderer has been found guilty of a violation manifested as employment of a person without a written employment contract, by failing within the term specified in regulatory enactments to submit an informative employee declaration regarding this person, which must be submitted about persons, who start working.	<ul style="list-style-type: none"> - For a Tenderer which is registered or residing in Latvia, the Contracting Authority shall verify the information itself in publicly available databases. - For a Tenderer which is registered or residing outside of Latvia the Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence regarding the (non)existence of such exclusion grounds.
9.	The Tenderer has provided false information to prove its compliance with provisions of this Section 8.1., or qualification criteria, or has not provided the required information at all.	No obligation to submit documents, unless specifically requested by the Procurement Commission.

No	Requirement	Documents to be submitted (no obligation to submit documents, unless specifically requested by the Procurement Commission)
10.	The Tenderer is offshore ¹ legal entity or association of persons.	<ul style="list-style-type: none"> - For a Tenderer which is registered in Latvia, the Contracting Authority shall verify the information itself by using the information system laid down by the Cabinet of Ministers, obtaining information from the Enterprise register; - For a Tenderer which is registered outside of Latvia the Tenderer shall submit a copy of a valid registration certificate or a similar document issued by a competent authority, wherefrom at least the fact of registration country of the Tenderer can be determined.
11.	The owner or keeper of more than 25 percent of share capital (share) of a Tenderer, which is registered in Latvia, is offshore legal entity or association of persons.	<ul style="list-style-type: none"> - For a Tenderer which is registered in Latvia: <ul style="list-style-type: none"> - the Contracting Authority shall verify the information itself in publicly available databases; - if the Tenderer is a joint stock company, Tenderer additionally shall submit self – declaration which approves fact that there are no owners or keepers of more than 25 percent of share capital (share) of a Tenderer, which are registered offshore.
12.	Anyone of subcontractors indicated by the Tenderer or person on whose capabilities Tenderer is relying, is a registered offshore company (legal person) or offshore association of persons.	<ul style="list-style-type: none"> - For a subcontractors or person on whose capabilities Tenderer is relying, which is registered in Latvia, the Contracting Authority shall verify the information itself in publicly available databases. - For a subcontractors or person on whose capabilities Tenderer is relying, which is a legal person registered abroad (with its permanent place of residence abroad) – a copy of a valid registration certificate or a similar document issued by a foreign authority in charge of the registration of legal persons in the country of their residence wherefrom at least the fact of registration.

¹ With the assignment of definition "Offshore" here and for all references to "Offshore" Procurement Commission understands: low tax or tax-free country or territory in accordance with Corporate income tax law of the Republic of Latvia except Member States of EEA (European Economic Area) or its territories, Member States of the World Trade Organization Agreement on State Treaties or territories and such countries and territories with which European Union and Republic of Latvia has international agreements for open market in public procurement area.

No	Requirement	Documents to be submitted (<i>no obligation to submit documents, unless specifically requested by the Procurement Commission</i>)
13.	International or national sanctions or substantial sanctions by the European Union or the North Atlantic Treaty Organization Member State affecting the interests of the financial and capital market has been imposed to the Tenderer or a person who is the Tenderers board or council member, person with representation rights or a procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a branch and such sanctions can affect the execution of the procurement contract.	<ul style="list-style-type: none"> - No obligation to submit documents, unless specifically requested by the Procurement Commission.

8.1. **Legal standing and suitability to pursue the professional activity**

No	Requirement	Documents to be submitted
1.	The Tenderer or all members of the partnership (if the Tenderer is a partnership) must be registered in the Registry of Enterprises or Registry of Inhabitants, or an equivalent register in their country of residence, if the legislation of the respective country requires registration of natural or legal persons.	<ul style="list-style-type: none"> - For a Tenderer which is a legal person (or a member of a partnership), a person on whose abilities a Tenderer relies, subcontractor registered in Latvia the Contracting Authority shall verify the information itself in publicly available databases. - For a Tenderer which is a natural person (or a member of a partnership, a person on whose abilities a Tenderer relies, a subcontractor – a copy of an identification card or passport. - For a Tenderer (or a member of a partnership, a person on whose abilities a Tenderer relies, a subcontractor which is a legal person registered abroad (with its permanent place of residence abroad) – a copy of a valid registration certificate or a similar document issued by a foreign authority in charge of the registration of legal persons in the country of their residence wherefrom at least the fact of registration, shareholders, officials and procura holders (if any) can be determined. - If a Proposal is submitted by a partnership, the Proposal shall include an agreement (or letter of intent to enter into agreement) signed by all members on the participation in the procurement, which lists responsibilities of each

No	Requirement	Documents to be submitted
		<p>and every partnership members and a joint commitment to fulfil the procurement contract, and which authorises one key member to sign the Proposal and other documents, to receive and issue orders on behalf of the partnership members, and with whom all payments will be made. The Tenderer additionally indicates (in this document) the member of the partnership on whose abilities it relies to certify it's financial and economic performance and who will be financially and economically responsible for the fulfilment of the procurement contract.</p> <ul style="list-style-type: none"> - If the Proposal or any other document, including any agreement, is not signed by the legal representative of the Tenderer, members of the partnership, person on whose capabilities the Tenderer relies or sub-contractors, then a document certifying the rights of the persons who have signed the Proposal or any other documents, to represent the Tenderer, a member of the partnership, a person on whose capabilities the Tenderer is relying, or a sub-contractor (powers of attorney, authorization agreements etc.) must be included.
2.	<p>The representative of the Tenderer, or a member of a partnership, or a person on whose abilities a Tenderer relies, who has signed documents contained in the Proposal, has the right of signature, i.e., it is an official having the right of signature or a person authorised by the Tenderer.</p>	<ul style="list-style-type: none"> - A document confirming the right of signature (representation) of the representative of the Tenderer, or a member of a partnership, or a person on whose abilities a Tenderer relies, who signs the Proposal. For a Tenderer which is a legal person (or a member of a partnership, a person on whose abilities a Tenderer relies, registered in Latvia the Contracting Authority shall verify the information itself in publicly available databases. - If the Tenderer, or a member of a partnership, or a person on whose abilities a Tenderer relies, submits a power of attorney (original or a copy certified by the Tenderer) there shall be additionally submitted documents confirming that the issuer of the power of attorney has the right of signature (representation) of the Tenderer.

8.2. Economic and financial standing

No	Requirement	Documents to be submitted
1.	<p>The Tenderers` or all members of the partnership together (if the Tenderer is a partnership and confirms the average financial turnover jointly), average financial turnover within the last 3 (three) financial years, i.e. 2015, 2016, 2017, is not less than 158 000,00 EUR (one hundred fifty-eight thousand euros) <i>(relevant for procurement part 1))</i>.</p> <p>The Tenderers` or all members of the partnership together (if the Tenderer is a partnership and confirms the average financial turnover jointly), average financial turnover within the last 3 (three) financial years, i.e. 2015, 2016, 2017, is not less than 96 000,00 EUR (ninety-six thousand euros) <i>(relevant for procurement part 2))</i>.</p> <p>In the event the average financial turnover of a limited liability member of a limited partnership (within the meaning of Latvian Commercial Law, Chapter X) exceeds its investment in the limited partnership, the average financial turnover shall be recognised in the amount of the investment in the limited partnership.</p> <p>In the event the Tenderer or a member of a partnership (if the Tenderer is a partnership) has operated in the market for less than 3 (three) financial years, the requirement shall be met during the Tenderer's actual operation period.</p>	<ul style="list-style-type: none"> - Filled and signed Annex No 7. - Audited or self-approved (if the audited Annual report is not required by the law of the country of residence of the Tenderer) Annual reports for financial years 2015, 2016, 2017, showing the turnover of the Tenderer or each member of the partnership on whose abilities the Tenderer is relying to certify its financial and economic performance and who will be financially responsible for the fulfilment of the Contract (if the Tenderer is a partnership), or entity on whose abilities the Tenderer is relying to certify its financial and economic performance and who will be financially responsible for the fulfilment of the Contract. - If Annual report for financial year 2017 is not available yet, Tenderer has to submit other documents showing the annual financial turnover and values for calculating liquidity ratio and equity ratio of the Tenderer for the financial year 2017. - For a limited partnership (within the meaning of Latvian Commercial Law, Chapter X) an additional document evidencing the amount of the investment by the limited liability partner (the partnership agreement or a document with a similarly binding legal effect). - If an application is submitted by a partnership, the Tenderer shall indicate the member of the partnership on whose abilities the Tenderer is relying to certify its financial and economic performance and who will be financially and economically responsible for fulfilment of the procurement contract including this information in the agreement of cooperation (or letter of intention to enter into agreement) stipulated in Section 8.3.
2.	<p>The Tenderer and each member of the partnership (if the Tenderer is a partnership) on whose abilities the Tenderer is relying to certify it's financial and economic performance and who will be financially and economically responsible for the fulfilment of the Contract and entity on whose abilities the Tenderer is relying to certify it's financial and economic performance and who will be financially and economically responsible for the fulfilment of the Contract, shall have stable financial and economic performance, namely, in the last financial year 2017 liquidity ratio (current assets divided by</p>	<ul style="list-style-type: none"> - Filled and signed Annex No 7. - Audited or self-approved (if the audited Annual report is not required by the law of the country of residence of the Tenderer) Annual report for financial year 2017, showing the balance and calculation that proves liquidity ratio and positive equity. - If Annual report for financial year 2017 is not available yet, Tenderer has to submit other documents showing the balance

No	Requirement	Documents to be submitted
	short-term liabilities) shall be equal to or exceed 1 and shall have positive equity <i>(relevant for both procurement parts)</i> .	<p>and calculation that proves liquidity ratio and positive equity.</p> <ul style="list-style-type: none"> - If the Tenderer is a partnership, it indicates each member of the partnership on whose abilities it relies to certify its financial and economic performance and who will be financially and economically responsible for the fulfilment of the Contract, including this information in the agreement of cooperation or letter of intention to enter into agreement or in any other similar document, signed by all parties involved and submits it along with the Proposal <i>(please see Section 9 for detailed information)</i>. - If the Tenderer is relying on any other entities' abilities to certify its financial and economic performance and who will be financially and economically responsible for the fulfilment of the Contract, the Tenderer along with the Proposal submits confirmation or agreement on cooperation and/or passing of resources to the Tenderer, signed between such entity and the Tenderer <i>(please see Section 9 for detailed information)</i>.

8.3. Technical and professional ability

No	Requirement	Documents to be submitted
8.3.1.	The Tenderer within the previous 5 (five) years (2013, 2014, 2015, 2016, 2017 including 2018 until the date of submission of the Proposal) had successful international ² experience in recruitment line level management positions and high level expert positions at least for 3 (three) projects (clients) and at least 1 (one) project must be related to infrastructure and/or transport sector (to cover required area of recruitment, experience can be combined from more than one project) <i>(only relevant if the Tenderer submits a tender for procurement part 1))</i> .	<ul style="list-style-type: none"> - A description of experience where the Tenderers experience is clearly specified according to Annex No 3 and at least 1 (one) positive reference from Client, which shall correspond to required qualification criteria in Section 8.3.1.
8.3.2.	<p>The Tenderer within last 5 (five) years (2013, 2014, 2015, 2016, 2017 including 2018 until the date of submission of the Proposal):</p> <p>(a) had experience in developing job profiles and descriptions (position purpose, essential job functions, required qualifications and</p>	<ul style="list-style-type: none"> - A description of experience where the Tenderers experience is clearly specified according to Annex No 3.

² At least 1 (one) project must be in other EU states outside of Baltic states.

No	Requirement	Documents to be submitted
	<p>competencies) in accordance with the organizational structure and business aims of the Customer <i>(relevant for both procurement parts);</i></p> <p>(b) had experience using recruitment methods and tools (resourcing, headhunting, assessments methods etc.) <i>(relevant for both procurement parts);</i></p> <p>(c) had experience using mental ability, personality, logical or other relevant assessment tools, which are adopted in each Baltic Country <i>(relevant for procurement part 1);</i></p> <p>(d) had experience using mental ability, personality, logical or other relevant assessment tools, which are adopted in 3 (three) European Union states <i>(relevant for procurement part 2).</i></p>	
8.3.3.	<p>The Tenderer:</p> <p>a) has access to European Recruitment databases and can ensure recruitment process in Europe and/or worldwide <i>(only relevant if the Tenderer submits a tender for procurement part 2).</i></p>	- Self - declared information.
8.3.4.	The Tenderer shall have Pan-Baltic representation (i.e. offices, affiliate's branches) in all three Baltics countries <i>(only relevant if the Tenderer submits a tender for procurement part 1).</i>	- List with information about representation in Baltics countries, naming company name, registration number, address, e-mail, telephone number, name of the contact person, phone number of the contact person.
8.3.5.	Can ensure effective communication channels of the contractors <i>(only relevant if the Tenderer submits a tender for procurement part 2).</i>	- Self-declared information.
8.3.6.	The Tenderer shall involve for the provision of services a Specialist (main contact person) (one for each country – Latvia, Lithuania, Estonia)³ with the following qualification <i>(only relevant if the Tenderer submits a tender for procurement part 1):</i>	- Filled and signed Annex No 4.
8.3.6.1.	Bachelor's degree in human resource management, organization psychology, business administration, law;	<ul style="list-style-type: none"> - Filled in and signed Specialist application (Annex No 4); - a copy of diploma proving relevant level education.

³ The Tenderer shall propose 3 (three) Specialists of following countries – Latvia, Lithuania and Estonia.

No	Requirement	Documents to be submitted
8.3.6.2.	within last 5 (five) years (2013, 2014, 2015, 2016, 2017 including 2018 until the date of submission of the Proposal) has experience in full recruiting process (attraction, screening, interviewing, testing, references, selection, etc.), including development of job specification with qualification and competence criteria);	- Filled and signed Annex No 4.
8.3.6.3.	excellent knowledge of English (at least C1 Level verbal and presentation and written English language skills – based on Common European Framework of Reference for Languages). ⁴	- Self-declared information about Specialist language skills filled in Annex No 4 and signed by the relevant Specialist.
8.3.7.	The Tenderer shall involve for the provision of services a Specialist ⁵ (main contact person) with the following qualification (<i>only relevant if the tenderer submits a tender for procurement part 2</i>):	- Filled in and signed Annex No 4.
8.3.7.1.	Bachelor's degree in human resource management, organization psychology, business administration, law;	- Filled in and signed Specialist application (Annex No 4); - A copy of diploma proving relevant level education.
8.3.7.2.	Within last 5 (five) years (2013, 2014, 2015, 2016, 2017 including 2018 until the date of submission of the Proposal) has experience in full recruiting process (attraction, screening, interviewing, testing, references, selection, etc.), including development of job specification with qualification and competence criteria);	- Filled in and signed Annex No 4.
8.3.7.3.	Excellent knowledge of English (at least C1 Level verbal and presentation and written English language skills – based on Common European Framework of Reference for Languages).	- Self-declared information about Specialist language skills filled in Annex No 4 and signed by the relevant Specialist.

8.4. Information, provided in the Proposal to prove the compliance with above-mentioned requirements for Economic and financial standing (Section 8.3), Technical and professional ability (Section 8.4) shall be clear and understandable without any additional analysis or external proof of the submitted information. The Contracting authority shall not be obliged to use additional sources of information to decide regarding Tenderer's compliance with the qualification requirements. The Tenderer shall remain fully responsible for the provision of sufficiently detailed information in the Proposal required to confirm clearly the compliance with qualification requirements set in the Regulation.

8.5. Notices and other documents, which are issued by Latvian competent institutions, are accepted and recognized by the Procurement Commission, if they are issued no earlier than 1 (one) month prior to the date of submission of particular notices and documents. Notices and other documents, which are issued by foreign competent institutions, are accepted and recognized by the Procurement

⁴ see <http://europass.cedefop.europa.eu/resources/european-language-levels-cefr>

⁵ The Tenderer shall propose 1 (one) Specialist

Commission, if they are issued no earlier than 6 (six) month prior to the date of submission of notices and documents, if the issuer of the notice or document has not set shorter period of validity.

- 8.6. If the documents, with which a Tenderer registered or permanently residing abroad can certify its compliance with the requirements of Section 8.1, are not issued or these documents are insufficient, such documents can be replaced with an oath or, if the regulatory enactments of the country in question do not allow for an oath, - with a certification by the Tenderer or by another person mentioned in Section 8.1 before a competent executive governmental or judicial institution, a sworn notary or a competent organization of a corresponding industry in their country of registration (permanent residence). **Regarding all documents submitted based on an oath given under law (e.g. sworn-statements, declarations on oath etc.), the Tenderer must provide (indicate) legal grounds to law or enactment in accordance with such statements or declarations on oath have been given.**
- 8.7. If the Tenderer complies with any of the exclusion grounds mentioned in Section 8.1 (except Section 8.1 (2), 8.1 (10) – 8.1 (13)), the Tenderer indicates this fact in Annex No 1.
- 8.8. The Tenderer, to certify that it complies with the selection criteria for Tenderers, may submit the European single procurement document as initial proof. This document must be submitted electronically and for each person upon whose capabilities the Tenderer relies to certify it's compliance with the requirements stipulated in Regulation, and for each of their indicated subcontractors, the share of whose work is equal to or exceeds 10 % (ten per cent) of the value of the Contract, but if the Tenderer is a partnership – for each member thereof. To fill in the European single procedure document the Tenderer uses the "ESPD.xml" file at the Internet webpage <https://ec.europa.eu/tools/espd/filter?lang=en>.

9. RELIANCE ON THE CAPABILITIES OF OTHER PERSONS

- 9.1. For the fulfilment of the specific contract, to comply with the selection requirements for the Tenderers relating to the economic and financial standing and technical and professional ability, the Tenderer may rely upon the capabilities of other persons, regardless of the legal nature of their mutual relationship.
- In this case:
- 9.1.1. The Tenderer indicates in the Proposal all persons upon whose capabilities it relies by filling in the table which is attached as Annex No 5 and proves to the Contracting Authority that the Tenderer shall have available all the necessary resources for the fulfilment of the Contract, by submitting a signed confirmation or agreement on cooperation and/or passing of resources to the Tenderer between such persons and the Tenderer. The confirmations and agreements on cooperation and passing of resources can be replaced by the Tenderer with any other type of documents with which the Tenderer is able to prove that the necessary resources will be available to the Tenderer and will be used during the term of fulfilment of the Contract.
- 9.1.2. Documents on cooperation and passing of resources must be sufficient to prove to the Contracting Authority that the Tenderer will have the ability to fulfil the Contract, as well as that during the validity of the contract the Tenderer will in fact use the resources of such person upon whose capabilities the Tenderer relies.
- 9.1.3. The Contracting authority shall require joint and several liabilities for the execution of the Contract between the:
- (a) Tenderer and a person on whose capabilities the Tenderer is relying to certify it's financial and economic performance and who will be financially and economically responsible for fulfilment of the Contract;
 - (b) each member of the partnership (if the Tenderer is a partnership) on whose capabilities the Tenderer is relying and who will be financially and economically responsible for fulfilment of the Contract.
- 9.2. The Contracting authority shall evaluate the person, on whose capabilities the Tenderer to whom the rights to conclude the Contract should be assigned is relying according to Section 8.1(1) to 8.1(8) and 8.1(12) to 8.1 (13) In case such person will comply with any of the exclusion grounds which are mentioned in Section 0(1) to 0(8) and 8.1 (13) the Contracting authority shall request the Tenderer to change such person. If the Tenderer shall not submit documents about another person which

complies with the selection criteria within 10 (ten) business days from the date when the request was issued or sent to the Tender, the Contracting authority shall exclude such Tenderer from further participation in the open competition. In case such person will comply with the exclusion ground which is mentioned in Section 0(12), the Contracting authority shall exclude such Tenderer from further participation in the open competition with no rights to change such person.

10. SUBCONTRACTING

- 10.1. The Tenderer shall indicate in the Proposal all subcontractors of the Tenderer by filling in the table which is attached as Annex No 6.
- 10.2. The Contracting authority shall evaluate the subcontractor of the Tenderer to whom the rights to conclude the Contract should be assigned according to Sections 8.1 (2) to 8.1 (8) and 8.1 (12) to 8.1 (13). In case such subcontractor, whose share of work is equal to or exceeds 10% of the Contract price, will comply with any of the exclusion grounds which are mentioned in Section 8.1 (2) to 8.1 (8) and 8.1 (13), the Contracting authority shall request the Tenderer to change such subcontractor. If the Tenderer shall not submit documents about another subcontractor which complies with the selection criteria within 10 (ten) business days from the date when the request was issued or sent to the Tender, the Contracting authority shall exclude such Tenderer from further participation in the open competition. In case such person will comply with the exclusion ground which is mentioned in Section 8.1 (12), the Contracting authority shall exclude such Tenderer from further participation in the open competition with no rights to change such person.

11. FINANCIAL PROPOSAL

- 11.1. The Financial Proposal shall be submitted as part of Annex No 2 for each of open competition part (Part No 1 and Part No 2) separately.
- 11.2. The costs shall be specified in EUR, (excluding VAT).
- 11.3. The costs are to be calculated and indicated with an accuracy of 2 (two) decimal places after comma. If more than 2 (two) decimal places after comma are indicated, then only the first two decimal places will be considered.

12. TECHNICAL PROPOSAL

- 12.1.1. The Tenderer offers to deliver services in accordance with the Technical specification (Annex No 8).
- 12.1.2. Description of the Recruitment Services proposal shall confirm with Technical specification as detailed in the Annex No 8.

13. CONTENTS AND FORM OF THE PROPOSAL

- 13.1. Proposal must be submitted electronically in E-Tenders subsystem of the Electronic Procurement System, in accordance with the following options for the Tenderer:
 - 13.1.1. by using the available tools of E-Tender subsystem, filling the attached forms of the E-Tender subsystem for this procurement procedure;
 - 13.1.2. by preparing and filling the necessary electronic documents outside the E-Tenders subsystem and attaching them to relevant requirements (in this situation, the Tenderer takes responsibility for the correctness and compliance of the forms to requirements of documentation and form samples);
 - 13.1.3. by encrypting electronically prepared Proposal outside subsystem of E-Tenders with data protection tools, provided by third parties, and protection with electronic key and password (in this situation, the Tenderer takes responsibility for the correctness and compliance of the forms to requirements of documentation and form samples as well as ensuring capability to open and read the document by the Contracting Authority);
- 13.2. During preparation of the Proposal, the Tenderer shall respect the following requirements:

- 13.2.1. Application form and financial Proposal must be filled separately, each in a separate electronic document, in line with forms attached to procurement process of E-Tenders subsystem in a Microsoft Office 2010 (or later) format and attached to the designated part of the procurement procedure;
- 13.2.2. Upon submission, the Tenderer signs the Proposal with secure electronic signature and time-stamp or with electronic signature provided by Electronic Procurement System. The Tenderer can use secure electronic signature and time-stamp and sign Application form, Technical Proposal and Financial Proposal separately. Proposal (its parts, if signed separately) are signed by authorized person, including authorization document (e.g. power of attorney).
- 13.3. Documents to be included in the Proposal:
 - 13.3.1. Application in accordance with Annex No 1.
 - 13.3.2. Financial proposal in accordance with Annex No 2.
 - 13.3.3. Information and documents confirming compliance of the Tenderer with the selection criteria for the Tenderers (set in Section 8), or the corresponding European single procurement documents.
 - 13.3.4. Information and documents relating to entities on whose capabilities the Tenderer is relying, or the corresponding European single procurement documents.
 - 13.3.5. Information and documents relating to subcontractors and/or the corresponding European single procurement documents.
 - 13.3.6. Technical proposal prepared in accordance with Section 12.
- 13.4. The Tenderer is not permitted to submit variants of the Proposal. If variants of the Proposal shall be submitted, the Proposal will not be reviewed.
- 13.5. The Tenderer can submit a Proposal for the entire volume of the procurement or for any separate of parts indicated in paragraph 2.5. of the Regulations.
- 13.6. The Proposal may contain original documents or their derivatives (e.g. copies). In the Proposal or in reply to a request of the Procurement Commission the Tenderer shall submit only such original documents which have legal force. For the document to gain legal force it must be issued and formatted in accordance with the Law on Legal Force of Documents (<https://likumi.lv/ta/en/id/210205-law-on-legal-force-of-documents>) but public documents issued abroad shall be formatted and legalized in accordance with the requirements of the Document Legalization Law (<https://likumi.lv/doc.php?id=219491>). Public documents issued abroad can be self-approved by the Tenderer, if it is applicable by the legislation of the respective country. When submitting the Proposal, the Tenderer has the right to certify the correctness of all submitted documents' derivatives and translations with one certification.
- 13.7. The Proposal must be signed by a person who is legally representing the Tenderer or is authorized to represent the Tenderer in this Open Competition procedure.
- 13.8. The Tenderer shall prepare Proposal in electronic form using the E-Tenders system available at <https://www.eis.gov.lv/EKEIS/Supplier>.
- 13.9. The Proposal must be submitted in a written form in English or Latvian (if submitted in Latvian, translation in English of the Proposal must be provided together with the Proposal).
- 14. ENCRYPTION OF THE PROPOSAL INFORMATION**
 - 14.1. E-Tender system which is a subsystem of the Electronic Procurement System ensures first level encryption of the information provided in the Proposal documents.
 - 14.2. If the Tenderer applied additional encryption to the information in the Proposal (according to Section 14.1), Tender must provide the Procurement Commission with the electronic key with the password to unlock the information not later than in 15 (fifteen) minutes after the deadline of the Proposal submission.
- 15. SUBMISSION OF A PROPOSAL**
 - 15.1. The Proposal (documents referred to in the Section 13) shall be submitted electronically using the E-Tenders system available at <https://www.eis.gov.lv/EKEIS/Supplier> by:

27 September 2018 till 15:00 o'clock.

- 15.2. The Tenderer may recall or amend its submitted Proposal before the expiry of the deadline for the submission of Proposals by using the E-Tenders system.

- 15.3. Only Proposals submitted to the E-Tenders system will be accepted and evaluated for participation in the procurement procedure. Any Proposal submitted outside the E-Tenders system will be declared as submitted in a non-compliant manner and will not participate in the procurement procedure.

16. OPENING OF PROPOSALS

- 16.1. The Proposals will be opened in the E-Tenders system 27 September 2018 starting at 15:00 Latvian time during the open meeting. It is possible to follow the opening of submitted proposals online in the E-Tenders system.

- 16.2. The Proposals are opened by using the tools offered by E-Tenders system, the proposed price and other information that characterizes the Proposal (excluding confidential information) shall be published in the E-Tenders system.

- 16.3. The information regarding the Tenderer, the time of Proposal submission, the proposed price and other information that characterizes the Proposal is generated at the opening of the Proposals by E-Tenders system and written down in the Proposal opening sheet, which shall be published in E-Tenders system and Contracting authorities web page.

17. VERIFICATION OF PROPOSALS FOR COMPLIANCE

- 17.1. Following of the opening of Proposals each part (Part No 1 and Part No 2) of open competition will be evaluated separately.

- 17.2. Procurement Commission shall proceed with the verification of compliance of Proposals received and opened in accordance with the opening procedure.

- 17.3. Procurement Commission verifies whether the submitted Proposals comply with the requirements stipulated in Section 13 and whether all required information and documents is submitted and selects for further evaluation the compliant Proposals.

- 17.4. The Procurement Commission verifies whether the submitted Technical Proposals comply with the requirements stipulated in Section 12 and selects for further evaluation the compliant Technical Proposals.

18. VERIFICATION OF FINANCIAL PROPOSALS

- 18.1. The Procurement Commission verifies whether Tenderers have completed Annex No 2 „Financial Proposal” in accordance with the requirements.

- 18.2. The Procurement Commission verifies whether there are any arithmetical errors, whether an abnormally low Proposal has been received, as well as assesses and compares the contract prices proposed.

- 18.3. The Procurement Commission informs the Tenderer whose mathematical errors have been corrected about the correction of mathematical errors and the corrected financial Proposal.

- 18.4. When evaluating the financial Proposal, the Procurement Commission takes corrections into account.

- 18.5. The Procurement Commission has the right to demand that the Tenderer explains the calculation upon which the financial Proposal is based and other related aspects to ascertain the objectivity of the financial Proposal and whether an abnormally low Proposal has been submitted.

- 18.6. The Procurement Commission further evaluates the compliant Proposals which have not been declared as abnormally low Proposals.

19. CONTRACT AWARD CRITERIA

- 19.1. The Proposal selection criterion is the most economically advantageous Proposal, according to the evaluation methodology described in this Section below (*relevant for both procurement parts*).

- 19.2. The economically most advantageous Proposal shall be the Proposal which will receive the highest sum of scores for the following criteria:

Evaluation criteria:		Points:
19.2.1.	Financial proposal , which will be evaluated in accordance with Selection 19.7.	60
19.2.2.	Technical proposal , which will be evaluated in accordance with Section 19.6.	40
Total:		100

- 19.3. When assessing the criterion „Technical proposal“, the Procurement commission shall consider Tenderer’s proposed approach to service provision. This description should be no longer than 4 (four) pages and includes:
- a) Recruitment process, key milestones and time line;
 - b) Sourcing strategies and channels;
 - c) Candidate assessment and interview methods;
 - d) Reports and cooperation with Company.
- 19.4. The Procurement Commission shall sum up the points for each Tenderer and the Contract shall be awarded to the Tenderer whose Proposal obtains the highest scores.
- 19.5. In case several Tenderers will obtain equal number of points, the procurement Commission will invite representatives of those Tenderers and organize a draw. In situation, when representatives of Tenderers choose to not be present at the draw, procurement commission will carry out the draw without representatives of Tenderers present.
- 19.6. **Evaluation of the quality of the Technical Proposal (relevant for both procurement parts)**
- 19.6.1. The Quality of the Technical Proposal will be evaluated against the following criteria:

No	Criteria	Points
1.	<p>Outstanding level of detail</p> <p>The Tenderer has produced a clear, structured and well-argued description of their technical proposal. It includes the necessary information as described in Section 19.3 and proposes application of in-depth candidate assessment methods. The Tenderer proposes an innovative approach to the recruitment process in line with the best industry practices.</p> <p>The technical proposal includes a clear description of the planned cooperation and communication with the Company as well as reporting process.</p> <p>The technical proposal provides clear description and evidence of the Tenderer’s conformity to each of the requirements and their ability to perform all tasks contained within the role. Demonstrates professional ability and experience to provide search in the designated search area.</p>	40
2.	<p>Good level of detail</p> <p>The Tenderer has produced a clear, structured and reasonable description of their proposal, including the necessary information contained in Section 19.3 and provides adequate candidate assessment methods.</p>	30

No	Criteria	Points
	<p>The Tenderer has provided an overall description of the planned cooperation and communication with the Company.</p> <p>The technical proposal provides clear description and evidence of the Tenderer's conformity to each of the requirements and their ability to perform all tasks contained within the role. Demonstrates professional ability and experience to provide search in the designated search area.</p>	
3.	<p>Low level of detail</p> <p>The Tenderer description of technical proposal and proposed approach for working with the Contracting Authority in it is vague and unclear, but includes the necessary information contained in Section 19.3.</p> <p>The Tenderer has produced a minimum description of recruitment process without any details. Key milestones are described very general and time line consist of only few most important stages of recruitment process. Recruitment stages, channels and methods are only indicated but not described.</p> <p>There is no clear plan how communications with the Company will be carried out.</p>	20
4.	<p>Insufficient⁶ level of details</p> <p>The Tenderer has failed to produce sufficient information and evidence to demonstrate its understanding of the requirements of the Technical Specification.</p> <p>The Tenderers technical proposal doesn't include the necessary information contained in Section 19.3 or includes it partly fails to clearly describe the process, miles stones and employed methods and methodology. There is no plan as to how communications with the Company will be carried out.</p> <p>If Tenderers technical proposal shall obtain Insufficient level of details proposal shall be considered as incompliant and will be rejected.</p>	0

19.6.2. The Procurement Commission shall obtain the final score for each Technical Proposal in this criterion by summing up all points scored by the Procurement Commission members for the Technical Proposal in this criterion and dividing the sum with the number of members of the Procurement Commission which participated in the evaluation of the Technical Proposals. The result shall comprise the points for the Technical Proposal for the purposes of Section 19.3.

19.7. Evaluation of the Financial Proposal (relevant for procurement part No 1)

19.7.1. The Proposal selection criterion is the most economically advantageous proposal, according to the evaluation methodology described in this Section below.

19.7.2. The economically most advantageous proposal shall be the Proposal which will receive the highest sum of scores for the following criteria:

⁶ **Insufficient** here and elsewhere means a description, which partly meets the required quality and performance set out in the Regulations in some areas but with some major issues negatively deviating from the Technical specification and very limited or no additional analysis or substantiation including by considering the tasks of this project.

No	Criteria	Points	Calculation methodology
1.	P1	15	$Score = \frac{\text{Lowest proposed price}}{\text{Proposed price under evaluation}} \times 15$
2.	P2	15	$Score = \frac{\text{Lowest proposed price}}{\text{Proposed price under evaluation}} \times 15$
3.	P3	15	$Score = \frac{\text{Lowest proposed price}}{\text{Proposed price under evaluation}} \times 15$
4.	Human resource consulting	15	$Score = \frac{\text{Lowest proposed price}}{\text{Proposed price under evaluation}} \times 15$
Total		60	

19.7.3. The procurement commission shall estimate the final score for each financial proposal by summing up all points received for the financial proposal.

19.7.4. The Contract shall be awarded to the Tenderer whose Proposal receives the highest score.

19.8. Evaluation of the Financial Proposal (relevant for procurement part No 2)

19.8.1. The Proposal selection criterion is the most economically advantageous proposal, according to the evaluation methodology described in this Section below.

19.8.2. The economically most advantageous proposal shall be the Proposal which will receive the highest sum of scores for the following criteria:

No	Criteria	Points	Calculation methodology
1.	P4	30	$Score = \frac{\text{Lowest proposed price}}{\text{Proposed price under evaluation}} \times 30$
2.	P5	30	$Score = \frac{\text{Lowest proposed price}}{\text{Proposed price under evaluation}} \times 30$
Total		60	

19.8.3. The procurement commission shall estimate the final score for each financial proposal by summing up all points received for the financial proposal.

19.8.4. The Contract shall be awarded to the Tenderer whose Proposal receives the highest score.

20. TENDERER CHECK PRIOR TO MAKING THE DECISION REGARDING THE CONCLUSION OF THE CONTRACT

20.1. Prior to making the decision about assigning rights to conclude the Contract, the Procurement Commission performs a check regarding the existence of grounds of exclusion for Tenderers, members of a partnership (if the Tenderer is a partnership), persons on whose capabilities the Tenderer is relying to certify it's compliance with the requirements and subcontractors.

20.2. If, in accordance with the information published on the day of the last data update in a public database, on the last day of Proposal submission or on the day when the decision regarding the possible assignment of rights to conclude a Contract is made, the Tenderer, member of a partnership (if the Tenderer is a partnership), a subcontractor whose share of work is equal to or exceeds 10% of the Contract price or a person on whose capabilities the Tenderer is relying to certify it's compliance with the requirements, have tax debts, including state mandatory insurance contributions debts, the

total sum of which exceeds 150 euro, the Procurement Commission informs the Tenderer and sets a deadline – 10 days from the day of issuing or receiving information – for the submission of a statement evidencing absence of tax debt, including state mandatory insurance contributions debts, the total sum of which exceeds 150 euro, on the last day of Proposal submission or on the day when the decision regarding the possible assignment of rights to conclude a Contract was made.

- 20.3. If the Tenderer fails to submit required evidence about itself before the deadline, the Procurement Commission excludes the Tenderer from participation in the Open Competition.
- 20.4. Change of persons on whose capabilities the Tenderer is relying to certify its compliance with the requirements, or subcontractors whose share of work is equal to or exceeds 10% of the Contract price is performed in accordance with Sections 9.2 and 10.2 respectively.
- 20.5. In the event the Tenderer or partnership member (if the Tenderer is a partnership) fails to comply with requirements stipulated in Section 8.1 and has indicated this in the Proposal, upon request by the Procurement Commission it submits an explanation about the implemented measures in order to restore reliability and prevent occurrences of the same or similar violations in future, as well as attaches evidence which proves the implemented measures, such as but not limited to evidence about compensating damages, on cooperation with investigating authorities, implemented technical, organisational or personnel measures, an assessment of a competent authority regarding the sufficiency of the implemented measures etc. The Procurement Commission assesses such information. If the Procurement Commission deems the measures taken to be sufficient for the restoration of reliability and the prevention of similar cases in the future, it makes the decision not to exclude the Tenderer from participation in the Open Competition. If the measures taken are insufficient, the Procurement Commission makes the decision to exclude the Tenderer from further participation in the Open Competition procedure. If the Tenderer, within the indicated time, does not submit the requested information, the Procurement Commission excludes the Tenderer from participation in the Open Competition.

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

- 21.1. The Procurement Commission selects the Tenderers in accordance with the set selection criteria for Tenderers, verifies the compliance of the Proposals with the requirements stipulated in the Regulation and chooses the Proposal in accordance with the contract award criteria as described in Section 19. The 1 (one) Tenderer whose proposal shall receive the best score shall be selected for open competition Part 1 and 1 (one) Tenderer whose Proposal shall receive the best score shall be selected for open competition Part 2.
- 21.2. Within 3 (three) business days from the date of decision about the Open Competition results the Procurement Commission informs all the Tenderers about the decision made by sending the information by post or electronically and keeping the evidence of the date and means of sending the information. The Procurement Commission announces the name of the successful Tenderer, indicating:
 - 21.2.1. to the refused Tenderer the reasons for refusing its Proposal;
 - 21.2.2. to the Tenderer who has submitted an eligible Proposal, the characterization of the successful Proposal and the relative advantages;
 - 21.2.3. the deadline by which the Tenderer may submit a complaint to the Procurement Monitoring Bureau regarding violations of the public procurement procedure.
- 21.3. If only 1 (one) Tenderer complies with all the Tenderer selection requirements, the Procurement Commission prepares and includes in the Open Competition procedure report a justification of the fact that the set requirements for Tenderer selection are objective and commensurate. If the Procurement Commission cannot justify that the set requirements for Tenderer selection are objective and commensurate, it makes the decision to terminate the public procurement procedure in relevant part.
- 21.4. If the public procurement procedure is terminated partly or in total, the Procurement Commission within 3 (three) business days simultaneously informs all Tenderers about all the reasons because of which the Open Competition procedure partly or in total is terminated and informs about the deadline within which a Tenderer may apply regarding the violations of the public procurement procedure to the Procurement Monitoring Bureau.

- 21.5. The Procurement Commission, when informing of the results, has the right not to disclose specific/confidential information, if it may infringe upon public interests or if the Tenderer's legal commercial interests or the conditions of competition would be violated.
- 21.6. As soon as possible, but not later than within five (5) working days from day when the decision about the results of the Open Competition is taken, the Procurement Commission prepares a report on the Open Competition procedure and publishes it on the E-procurement system's webpage <https://www.eis.gov.lv/EKEIS/Supplier> and on Contracting Authority's webpage <http://railbaltica.org/en/procurements>.
- 21.7. **The selected Tenderer upon receiving the notification from procurement commission must:**
- 21.7.1. within 5 (five) business days submit cooperation or partnership agreement if required pursuant to requirements under Section 8.2.1.
- 21.7.2. within 10 (ten) days upon receiving the invitation, to sign the Contract.
- 21.8. The Contract is concluded based on the Tenderer's Proposal and in accordance with Annex No 9.
- 21.9. The Procurement Commission has the right to choose the next most economically advantageous Proposal, if the Tenderer in the time stipulated by the Regulation:
- 21.9.1. refuses to conclude a partnership contract in the cases and deadlines defined by the Regulation, or in the cases and deadlines defined by the Regulation does not submit a copy of the partnership contract or does not inform of the founding of a partnership company;
- 21.9.2. refuses to conclude the Contract or does not submit a signed Contract within the deadlines defined in the Regulation.
- 21.10. In such a case the Procurement Commission is entitled to terminate this Open Competition without selecting any Proposal, or to select the Proposal with the next best score. For either of these decisions a written decision must be made.
- 21.11. Prior to making the decision regarding the conclusion of the contract with the next Tenderer, the Procurement Commission assesses whether the next Tenderer is one market participant together with the initially selected Tenderer. If the next selected Tenderer is found to be one market participant together with the initially selected Tenderer, the Procurement Commission decides to terminate the Open Competition without selecting any Proposal. If the next chosen Tenderer also refuses to conclude the contract or does not submit a signed public procurement contract within the deadline set by the Procurement Commission, the Procurement Commission makes the decision to terminate the Open Competition without selecting any Proposal.

22. ANNEXES:

1. Application form on 2 (two) pages;
2. Financial proposal on 2 (two) pages;
3. Table Experience of the Tenderer on 1 (one) page;
4. Table of experience of main contact person on 1 (one) page;
5. Table Entities on whose capabilities the tenderer relies on 1 (one) page;
6. Table of Subcontractors on 1 (one) page;
7. Table confirmation of tenderers financial standing on 1 (one) page;
8. Technical specification on 4 (four) pages;
9. Draft contract on 42 (forty-two) pages;
10. Draft contract on 41 (forty-one) pages.

Procurement commission chairperson

L.Kalniņa

ANNEX NO 1: APPLICATION

[form of the Tenderer's company]

2018.____.

No _____

APPLICATION FOR PARTICIPATION IN THE OPEN COMPETITION

„RECRUITMENT SERVICES“

ID NO RBR 2018/15

Name of the Tenderer or all members of the partnership

Registration number of the Tenderer or all members of the partnership

Name, surname and position of the person, authorized to represent the Tenderer

Name of nominated representative (in case of established partnership)

Name, surname and position of the person authorized to represent the Tenderer

VAT payer registration number

Legal address

Correspondence address

Bank

Bank account (IBAN)

Bank code (SWIFT)

Telephone number of the Tenderer

E-mail of the Tenderer

Contact person (of the Tenderer): name, surname, position

By submitting their Proposal, the Tenderer hereby:

1. Confirms participation in the Open Competition "Recruitment Services" No RBR 2018/15, in a part _____
(please indicated part (Part No 1, Part No 2 or both parts) in which the Tenderer takes participation)).
2. Informs that the following entities and/or persons comply with the following exclusion grounds (if any):

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

3. Confirms that the Regulation is clear and understandable, that it does not have any objections and complaints and that in the case of granting the right to enter into a Contract it shall fulfil all conditions of the Regulation as well as enter into a procurement contract in accordance with the draft Contract enclosed with the Regulation.
4. Confirms that it has in the preparation and submission of its Proposal, fully considered all the clarifications issued by the Contracting Authority.
5. Confirms that its Proposal is not intentionally made with unreasonably low price.
6. Agrees that the Contracting Authority reserves itself the right to reject any or all Proposals and cancel the procurement process before entry into Contract on the grounds specified in the Regulations or the law.
7. Guarantees that all information and documents provided are true.
8. **We meet the criteria of (please mark):**
☐ a small ☐ medium ☐ other

sized enterprise⁷ as defined in the Article 2 of the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprise.⁸

Date: [date of signing]

Name: [name of the representative of the Tenderer]

Position: [position of the representative of the Tenderer]

⁷ The information on the size of the Tenderer is used solely for statistical purposes and is not in any way whatsoever used in the evaluation of the Tenderer or the Proposal.

⁸ Available here - http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2003.124.01.0036.01.ENG&toc=OJ:L:2003:124:TOC

ANNEX NO 2: FINANCIAL PROPOSAL

FINANCIAL OFFER FORM FOR PROCUREMENT PART 1 „RECRUITMENT SERVICES” (LATVIA, LITHUANIA, ESTONIA)

We offer to deliver Services in accordance with the Technical Specification for the following costs⁹:

No.	Services	Quantity	Unit/Hour costs EUR excl.VAT	Total amount EUR excl.VAT
1.	P1	1*		
2.	P2	1*		
3.	P3	1*		
4.	Hourly rate for consultations on employee relations	40*		

FINANCIAL OFFER FORM FOR PROCUREMENT PART 2 „RECRUITMENT SERVICES” (EUROPEAN UNION)

The Tenderer offers to deliver services in accordance with Technical Specification for the following costs¹⁰:

No.	Services	Quantity	Unit costs EUR excl.VAT
1.	P4	1*	
2.	P5	1*	

*Quantity is indicated only for Proposals evaluation.

⁹ When preparing the financial Proposal, the rules of Section 11 of the request for Proposal shall be considered.

¹⁰ When preparing the financial proposal, the rules of Section 11 of the request for Proposal shall be considered.

ANNEX NO 3: EXPERIENCE OF TENDERER

No	Name of the project (or Customer)	Date of completion of the contract	Description of the tasks and approach according to contract, what characterize required experience, stated in Section 8.4.1.	Recruitment area (countries where search of Tenderers has been done)	Contact information for references
1					
2					
n+1					

Date: [date of signing]

Name: [name of the representative of the Tenderer]

Position: [position of the representative of the Tenderer]

ANNEX NO 4: EXPERIENCE OF SPECIALIST (MAIN CONTACT PERSON)¹¹ ¹²

No	_____ (Name, Surname), _____ (phone, e-mail)	_____ (phone, e-mail)	_____ (phone, e-mail)
1.	Education (Educational institution)	Period of studies (month/year – month/year)	Obtained degree (-s)
1.1.			
...			
2.	Professional experience:		
	Employer (name of the company) and position in company	Project (client) to whom services were provided under contract	Description of the responsibilities according to contract, which characterize the experience, mentioned in respective subsections of Section 8.3.6. and Section 8.3.7.
2.1.			
2.2.			
n+1			

English language skills¹³:

Understanding		Speaking	
Listening	Reading	Spoken interaction	Spoken production
Enter level	Enter level	Enter level	Enter level
			Writing
			Enter level

Levels: A1/A2 - Basic user; B1/B2 - Independent user; C1/C2 - Proficient user.

¹¹ Separate Specialist application for every country (Latvia, Lithuania, Estonia) shall be prepared

¹² Specialist application for procurement Part 2

¹³ Language skill level is based on Common European Framework of Reference for Languages (see <http://europass.cedefop.europa.eu/resources/european-language-levels-cefr>)

I confirm that I have consented that my candidature is proposed in the open competition "Recruitment Services", No RBR 2018/15. I confirm that in case the Tenderer [*name of the tenderer or members of the partnership*] will conclude the contract as the result of the open competition I will participate as main contact person in the execution of the contract.

Date: [*date of signing*] Name: [*name of the expert*]

ANNEX NO 5: ENTITIES ON WHOSE CAPABILITIES THE TENDERER RELIES

No	Name	Description of the capabilities
1		
2		
n+1		

Date: [date of signing]

Name: [name of the representative of the Tenderer]

Position: [position of the representative of the Tenderer]

ANNEX NO 6: SUBCONTRACTORS

No	Name of the sub-contractor	Sub-contracted tasks		
		Description of the sub-contracted task	Amount, EUR (without VAT)	% from the proposed price
I	Total amount of the sub-contracted tasks is equal to or exceeds 10% from the proposed contract price			
1				
2				
n+1				
		Total:		
II	Total amount of the sub-contracted tasks is smaller than 10% from the proposed contract price			
1				
2				
n+1				
		Total:		
		Total (I+II)		

Date: [date of signing]

Name: [name of the representative of the Tenderer]

Position: [position of the representative of the Tenderer]

ANNEX NO 7: CONFIRMATION OF TENDERERS' FINANCIAL STANDING¹⁴

1. **(Section 8.3.1 of Regulation)**
"The Tenderer's or all members' of the partnership together (if the Tenderer is a partnership), average annual financial turnover within last 3 (three) years (2015, 2016, 2017) is not less than 158 000,00 EUR (one hundred fifty-eight thousand euros) (relevant for procurement part No 1))".
2. **(Section 8.3.1 of Regulation)**
"The Tenderer's or all members' of the partnership together (if the Tenderer is a partnership), average annual financial turnover within last 3 (three) years (2015, 2016, 2017) is not less than 96 000,00 EUR (ninety-six thousand euros) (relevant for procurement part No 2))".

No	Year	Total Turnover in EUR	Notes
The Tenderer or each member of the partnership (if the Tenderer is a partnership) on whose abilities the Tenderer is relying to certify it's financial and economic performance (Section 8.3 of Regulations) and who will be financially and economically responsible for fulfilment of the contract and entity on whose abilities the Tenderer is relying to certify it's financial and economic performance and who will be financially and economically responsible for fulfilment of the procurement contract:			
Name of the Tenderer/member of a partnership/entity			
1.	2017		
2.	2016		
3.	2015		
Average within last three financial years			

3. **(Section 8.3.2 of Regulation)**
 The Tenderer or each member of the partnership (if the Tenderer is a partnership) on whose abilities the Tenderer is relying to certify it's financial and economic performance and who will be financially and economically responsible for fulfilment of the procurement contract and entity on whose abilities the Tenderer is relying to certify it's financial and economic performance and who will be financially and economically responsible for fulfilment of the procurement contract, shall have stable financial and economic performance, namely, in the last financial year (2017) liquidity ratio (current assets divided by short-term liabilities) shall be equal to or exceed 1 and shall have positive equity.

Name of the Tenderer/member of partnership/entity

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

$$\text{equity} = \text{total assets} - \text{total liabilities} = \underline{\hspace{2cm}}$$

Date: [date of signing]

Name: [name of the representative of the Tenderer/ member of the partnership/ entity]

Position: [position of the representative of the Tenderer/member of the partnership/ entity]

¹⁴ Please provide information regarding each member of partnership (if the Tenderer is a partnership) and entity to which this requirement applies.

ANNEX NO 8: TECHNICAL SPECIFICATION

FOR OPEN COMPETITION

„RECRUITMENT SERVICES“

(IDENTIFICATION NO RBR 2018/15)



Co-financed by the European Union
Connecting Europe Facility

Riga, 2018

1. INTRODUCTION

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.

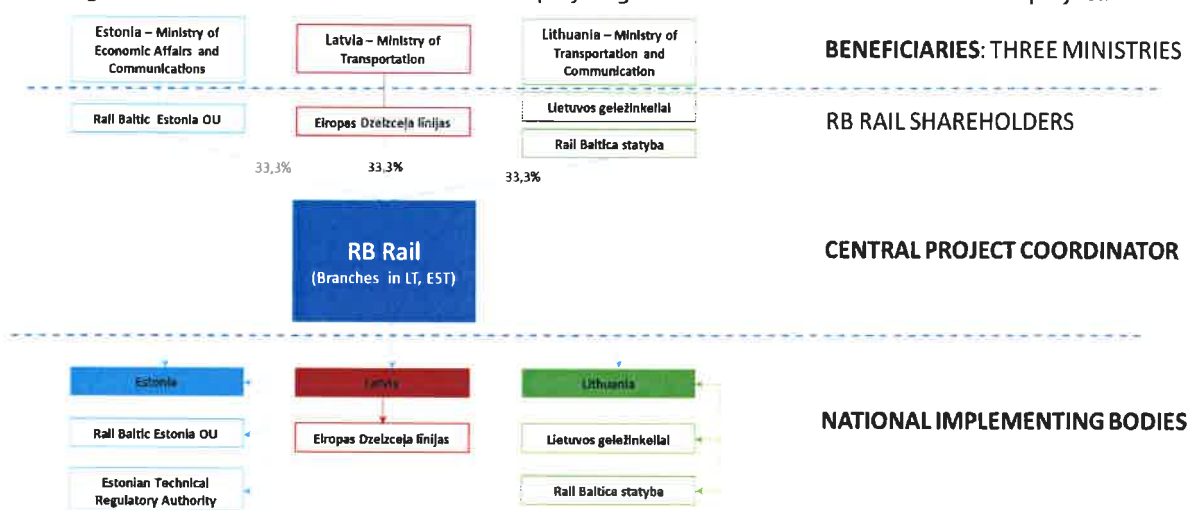
The ambitions of the Rail Baltica Global project (Global Project) are:

- 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 main technical parameters shall correspond to traffic code P2-F1 as per INF TSI (Commission Regulation 1299/2014/EU) and they are detailed in Design Guidelines.

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



RBR together with governments of Estonia, Latvia and Lithuania (represented by the ministries in charge of transport policy) have applied for the CEF co-financing in 2015, 2016 and 2017 (three applications in total). The first three applications have been successful and INEA grants are available for Rail Baltica project implementation with total approved eligible cost of 823 EUR million, with up to 85% of co-financing rate.

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 249km/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/>.

Procurement aim:

To ensure talent available to RB Rail AS in timely manner to deliver its business goal : the design, construction and marketing (including branding) of the Rail Baltica railway.

Technical Specification for procurement part 1 „Recruitment Services” (Baltic states – Estonia, Latvia, Lithuania).

The Company is looking to recruit the following people for the following position levels and search area:

Position level	Description	Search area
P1	Level of experience 2-3 years. Administration/Support/Service, Procurement: Specialist, administrative, analytical, support roles Infrastructure project delivery: Junior engineers, project assistants	Single country within Baltic states (EE, LV LT)
P2	Level of experience 5+ years Infrastructure project delivery: engineers, technical experts, bid and client management	Single country within Baltic states (EE, LV, LT)
P3	Level of experience 5+ years Marketing-Brand management, Intermodal Logistics, Logistics supply chain, Procurement; Infrastructure project delivery: engineers, technical experts, bid and client management Infrastructure project delivery – programme management, high level technical experience	Pan-Baltic search

The Contractor will be required to carry out the following tasks:

- develop position specification and job description (position purpose, essential job functions, requirements, qualifications and competencies) in cooperation with the company and in accordance with the company's organizational structure and business aims;
- develop recruitment plan and execute recruitment, sourcing candidates in Estonia, Lithuania and Latvia, and/or perform Pan-Baltic search in accordance with the position level;
- attract and evaluate candidates, conduct interviews and tests (if necessary), shortlist 3-4 candidates for each position and present them to the RB Rail AS for final interviews with the following written documentation: CV and appraisal of candidate according to positions profile;
- produce recruitment process related documentation in English;
- reference checks for final applicant;
- provide consultations on employee relations.

Technical Specification for procurement part 2 „Recruitment Services” (European Union).

The Company is looking to recruit the following people for the following position levels and search area:

Position level	Description	Search area
P4	Level of experience 5+ years High speed railway experts, senior engineers, Lead project managers	EU search
P5	Level of experience 10+ years High speed railway experts, senior engineers, Project directors	EU search

The Contractor will be required to carry out the following tasks:

- a) develop position specification and job description (position purpose, essential job functions, requirements, qualifications and competencies) in cooperation with the company and in accordance with the Company's organizational structure and business aims;
- b) develop recruitment plan and execute recruitment, sourcing candidates in EU member states in accordance with the position level;
- c) attract and evaluate candidates, conduct interviews and tests (if necessary), shortlist 3-4 candidates for each position and present them to the RB Rail AS for final interviews with the following written documentation: CV and appraisal of candidate according to positions profile;
- d) produce recruitment process related documentation in English;
- e) reference checks for final applicant.

AGREEMENT
for
RECRUITMENT SERVICES
PART No 1 (Baltic states – Latvia, Lithuania, Estonia)

between

RB Rail AS and

[●]

Contract registration number 8/2018-[●]
CEF¹ Contract No INEA/CEF/TRAN/M2015/1129482 [●]
Procurement procedure identification No RBR 2018/15

Dated [●] [●]2018

¹ Grant Agreement under the Connecting Europe Facility

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PROFESSIONAL CONSULTANT AGREEMENT

This PROFESSIONAL CONSULTANT FRAMEWORK AGREEMENT (hereinafter, the "Agreement"), together with all Annexes thereto, is entered into in Riga, on [-] [-] of the year 2018 (hereinafter, the "Effective Date") by and between:

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

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

WHEREAS:

- (A) This Agreement is entered into under the Project which includes all activities undertaken by the respective beneficiaries and implementing bodies of the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania in order to build, render operational and commercialise the Rail Baltica railway – a new fast conventional double track electrified railway line according TSI INF P2-F1 criteria and European standard gauge (1435mm) on the route from Tallinn through Pärnu-Riga-Panevėžys-Kaunas to Lithuanian-Polish border, with the connection of Kaunas – Vilnius, and related railway infrastructure in accordance with the agreed route, technical parameters and time schedule;
- (B) The Principal has organised procurement procedure "Recruitment Services" (identification No 15) (hereinafter, the "Procurement Procedure") whereby the Service Provider's tender proposal (hereinafter, the "Service Provider's Proposal") was selected as the winning bid;
- (C) This Agreement is co-financed from the Connecting Europe Facility (CEF), CEF Contract No INEA/CEF/TRAN/M201[●]/[●], Activity [●], Action No: [●].

Section 1. DEFINITIONS AND INTERPRETATION

1.1 *Definitions.* In this Agreement, unless the context requires otherwise, all defined terms shall have the meanings ascribed to such terms in accordance with *Annex A: DEFINITIONS AND COMMON TERMS*.

1.2 *Interpretation.*

- 1.2(a) The headings contained in this Agreement shall not be used in its interpretation.
- 1.2(b) References to the singular shall include references in the plural and vice versa, words denoting a gender shall include any other gender where the context requires, and words denoting natural Persons shall include any other Persons.
- 1.2(c) References to a treaty, directive, regulation, law or legislative provision shall be construed, at any particular time, as including a reference to any modification, extension or re-enactment of the respective treaty, directive, regulation, law or legislative provision at any time then in force and to all subordinate legislation enacted from time to time.
- 1.2(d) In the event there arises a conflict between provisions of the Agreement, the last provision to have been written chronologically shall take precedence.
- 1.2(e) Any reference in this Agreement to a Person acting under the direction of another Person shall not include any action that is taken in contravention of any Applicable Law or Standards, unless the

relevant Person can demonstrate that an explicit instruction or direction was given to take the relevant action.

1.2(f) Unless expressly stated to the contrary, any reference in this Agreement to the right of consent, approval or agreement shall be construed such that the relevant consent, approval or agreement shall not be unreasonably delayed or withheld. The Parties agree and acknowledge as follows:

1.2(f)(i) neither Party shall be required to seek or apply for any consent, approval or agreement by any Person which would place the respective Party in breach of any Applicable Law, Standards or Good Industry Practice; and

1.2(f)(ii) nothing in this Agreement shall require the Principal to give or procure the giving of any consent or approval which would be contrary to the protection, safety and efficient operation of the Railway and the Project.

1.2(g) A reference to "writing" shall include an e-mail transmission and any means of reproducing words in a tangible and permanently visible form.

1.2(h) The words "include" and "including" are to be construed without limitation.

1.2(i) Unless indicated otherwise, all references to "days" shall mean calendar days.

1.2(j) The words in this Agreement shall bear their natural meaning, except for any Definitions, in accordance with *Annex A: DEFINITIONS AND COMMON TERMS*.

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

1.3(a) this Agreement document;

1.3(b) Explanations (clarifications) of the procurement documentation;

1.3(c) Procurement documents with the annexes;

1.3(d) Clarifications of the Service Provider's Proposal;

1.3(e) Service Provider's Proposal.

Section 2. GENERAL TERMS AND CONDITIONS

2.1 *Engagement.* The Principal hereby engages the Service Provider to provide and perform the Service on demand basis for the purposes of the Project with the objective of ensuring provision and performance of all Works more fully identified in *Annex C: SCOPE OF SERVICE (Technical specification)* attached to this Agreement (hereinafter, the "Scope of Service") subject to the terms of this Agreement, and the Service Provider hereby accepts such engagement. The Service shall result in the performance of all Works identified in *Annex C: SCOPE OF SERVICE (Technical specification)* according to the terms of this Agreement and delivery to the Principal of the Deliverables according to the delivery terms specified in *Annex D: PAYMENTS FOR SERVICES* to this Agreement.

2.2 *Co-Operation of the Parties.* The Parties shall cooperate with one another to fulfil their respective obligations under this Agreement. Both Parties shall endeavour to maintain good working relationships among all key personnel engaged toward provision of the Service.

2.3 *Licensing Requirements.* By signing this Agreement, the declaration is made by the Service Provider that the Service Provider is professionally qualified, registered, and licensed to practice in the Republic of Latvia, Lithuania and Estonia.

- 2.4 *General Obligations of Service Provider.* The Service Provider shall be responsible for the professional quality, technical accuracy, and coordination of all concepts, specifications, and other services furnished under this Agreement. The Service Provider shall have an obligation, without additional compensation of any kind, to correct or revise any errors, Defects, or omissions in concepts, specifications, estimates, and other services rendered hereunder and forming part of the Service.
- 2.5 *Acceptance Not a Waiver.* The review, approval, acceptance, or payment for the Works forming part of the Service shall not be interpreted or construed to operate as a waiver of any right or cause for action arising out of the Service Provider's performance of any Works under this Agreement. The Service Provider shall remain liable as allowed under this Agreement and under Applicable Law for any and all costs and/or Damages caused by the Service Provider's negligent performance of any of the Works furnished under this Agreement.
- 2.6 *Certain Representations and Warranties by Parties.* Each Party represents and warrants to the other Party, as of the Effective Date, as follows:
- 2.6(a) it has entered into this Agreement with the aim of attaining all of the objectives and performing in all material respects all of the obligations and commitments herein set forth;
 - 2.6(b) it has entered into this Agreement without having any intention or goal whatsoever to violate the Applicable Law, its own Statutes, other constitutional documents or agreements of any kind to which it is a party;
 - 2.6(c) it is not bankrupt and is not the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, it is not in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws of the country where it is registered and submits its tax accounts; and
 - 2.6(d) it has entered into this Agreement of its own volition and in good faith.
- 2.7 *Certain Representations and Warranties by Service Provider.* The Service Provider represents and warrants to the Principal, as of the Effective Date, as follows:
- 2.7(a) it has all requisite qualification, skills and competence to provide the Service to the Principal on the terms and conditions of this Agreement which are no less favourable than the terms and conditions of service identified by the Service Provider in any document submitted by the Service Provider to the Principal as part of the Procurement Procedure and on the terms of the Service Provider's Proposal identified in accordance with Service Provider's Proposal;
 - 2.7(b) it holds all requisite licenses, permits, approvals and consents necessary to enable performance of the Service according to the specifications contained in *Annex C: SCOPE OF SERVICE (Technical specification)*;
 - 2.7(c) it has all requisite ability to ensure the highest quality of the Service;
 - 2.7(d) it will assign competent and duly qualified personnel to carry out the Works set out in this Agreement and provide Service according to the highest professional standard and Good Industry Practice;
 - 2.7(e) it is not deemed to be a Person associated with the Principal for the purposes of Applicable Law;
 - 2.7(f) it has not been registered as a VAT payer in the Republic of [COUNTRY]; and
 - 2.7(g) it is compliant with all of the requirements of the Service Provider's Declaration contained in *Annex K: DECLARATION OF SERVICE PROVIDER* and will continue to be compliant with all such requirements during the term of this Agreement;
 - 2.7(h) the income mentioned in this Agreement will not derive through permanent establishment or fixed base maintained by the Service Provider in the Republic of Latvia. The Service Provider agrees to submit to the Principal four (4) copies of *"Residence Certificate-Application for Reduction of or Exemption from Latvian anticipatory taxes withheld at source from payments (management and*

consultancy fees, leasing fees and certain other types of income), paid to residents of the [COUNTRY] (the "Residence Certificate") confirmed by Competent Authority of the [COUNTRY] and the Latvian State Revenue Service. The Residence Certificate shall be submitted to the Principal prior the Principal will due to make a payment of the fee or other payments to the Service Provider. Otherwise the Principal will withhold withholding tax at the rate of 20% from the fee and payments made to the Service Provider. [IF APPLICABLE].

Section 3. OBLIGATIONS OF SERVICE PROVIDER

- 3.1 *General Obligations.* The Service Provider's services shall be performed as expeditiously as is consistent with professional skill and care, orderly progress of the Service, and in accordance with this Agreement. The Service Provider shall, at all times during the term of this Agreement, act in good faith towards the Principal in respect of all matters under the Agreement. The Service Provider undertakes to perform performance of the Service in its entirety. The Service Provider shall develop and supplement the Scope of Service in consultation with the Principal with a view to achieving the objectives of the Project set out in *Annex B: PROJECT OBJECTIVES*, including with respect to identifying the Due Date and other key dates, Deliverables, the underlying assumptions and any Necessary Consents. The Service Provider agrees with the Principal that it shall use all relevant knowledge obtained by the Service Provider in the subject of the Agreement. Specifically, the Service Provider undertakes to perform the Service in accordance with all of the following:
- 3.1(a) requirements of Applicable Law;
 - 3.1(b) Good Industry Practice;
 - 3.1(c) Legal Requirements and Standards as may be applicable from time to time;
 - 3.1(d) Necessary Consents; and
 - 3.1(e) the terms of this Agreement.
- 3.2 *Duty of Care and Exercise of Authority.* The Service Provider shall:
- 3.2(a) in performing its obligations under this Agreement, exercise reasonable professional skill, diligence and care as may be expected of a properly qualified and competent Person carrying out services of a similar size, nature, type and complexity;
 - 3.2(b) ensure that its personnel are properly qualified and competent in accordance with the relevant Standards;
 - 3.2(c) ensure that all plans, specifications, estimates, surveys and other documents required to be prepared or submitted by the Service Provider under this Agreement conform to Good Industry Practice generally acceptable at the time of submission of such plans, specifications, estimates, studies and documents;
 - 3.2(d) at all times during the term of the Service, ascertain and comply with all Applicable Laws and Good Industry Practice of the Republic of Latvia, Republic of Estonia and Republic of Lithuania. In case Good Industry Practice for any particular aspects is not available in Latvia, Lithuania or Estonia, the Service Provider shall apply the Good Industry Practice from elsewhere in the European Union and ensure that it is in compliance with Applicable Laws of the Republic of Latvia, Lithuania and Estonia;
 - 3.2(e) comply, where applicable, with any reasonable requirements of the Principal not otherwise provided for in this Agreement; and
 - 3.2(f) ensure that all the activities performance are documented in accordance with Good Industry Practice, and using standard industry quality control methods;
 - 3.2(g) notify the Principal of any Defects in accordance with Clause 7.4 of this Agreement as soon as such Defects are identified by the Service Provider;

3.2(h) whenever the Service includes the exercise of powers or performance of duties authorized or required pursuant to the terms of any contract entered into between the Principal and any third party, the Service Provider shall:

3.2(h)(i) act in accordance with the terms and conditions of the agreement entered into between the Principal and the relevant third party; provided, however, that the details of such powers and duties, to the extent not described pursuant to *Annex D: PAYMENTS FOR SERVICE* are acceptable to the Service Provider;

3.2(h)(ii) if authorized to certify, decide or exercise discretion, do so fairly between the Principal and third party not as an arbitrator but as an independent professional exercising its best skill and judgment; and

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

3.3 *Maintenance of Records.* During the term of the Service and for period of 10 (ten) years for any reason whatsoever, the Service Provider shall keep and maintain clear, adequate and accurate records and Documentation evidencing, to the reasonable satisfaction of the Principal, that the Service has been and is being carried out in accordance with the Standards. In addition, the Service Provider shall retain copies of the object code of all Service Provider's Software used in performance of the Service and retain copies of all software used in the design and production of the Service Provider's Software.

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

3.5 *Right to Sub-Contract and Staff.* In carrying out the Service, the Service Provider may only rely on the services of those Approved Sub-Contractors and Staff listed in *Annex E: LIST OF APPROVED SUB-CONTRACTORS*, as such list may, from time to time, be modified or supplemented in agreement with the Principal and in accordance with the terms and subject to the criteria contained in the applicable public procurement laws of the Republic of Latvia. Mentioned Annex shall specify the name, contact details and legal representative(s) of each Approved Sub-Contractor and specify the name of each Staff member as of the Effective Date. The Service Provider shall have an obligation to notify the Principal in writing of any changes to Sub-Contractor and/or Staff data specified in the mentioned Annex occurring during the term of this Agreement and of the required information for any new sub-contractors and/or Staff member which it may subsequently engage toward provision of the Service.

Pursuant to the Public Procurement law of Latvia applicable at the date of entry into effect of this Agreement, the Service Provider shall obtain prior written consent of the Principal for the replacement of each Sub-contractor and/or each Staff member and/or key personnel indicated in the Annexes, including in the *Annex E: LIST OF APPROVED SUB-CONTRACTORS AND STAFF* and involvement of additional sub-contractors and/or Staff members.

Review and evaluation of the replacement Sub-contractors and/or Staff shall be carried out, and the consent or refusal to give consent shall be rendered by the Principal in accordance with Article 62 of the Public Procurement Law of the Republic of Latvia.

The Service Provider shall replace the Sub-contractor and/or Staff member which, during the effectiveness of this Agreement, meets any of the compulsory grounds for exclusion of tenderers (or sub-contractors) that were verified during the Procurement Procedure.

3.6 *Responsibility for Performance by Sub-Contractors.* The Service Provider shall retain the complete responsibility for the proper performance of all of its obligations under this Agreement, and any act, failure to act, breach or negligence on the part of any of its Approved Sub-Contractors shall, for the purposes of this Agreement, be deemed to be the act, failure to act, breach or negligence of the Service Provider.

- 3.7 *Property of Principal.* Anything supplied by or paid for by the Principal for the use by the Service Provider toward provision of the Service under this Agreement shall constitute the property of the Principal and, to the extent practicable, shall be marked by the Service Provider as property of the Principal. To the extent the Service is completed or terminated, the Service Provider shall furnish inventories of whatever has not been consumed in the performance of the Service to the Principal and shall deliver such inventories in such manner and to such location(s) as designated by the Principal. For the avoidance of any doubt, such delivery shall not be forming part of the Scope of Service and the terms of the delivery shall be agreed between the Principal and the Service Provider separately.
- 3.8 *Reservation of Certain Approval Rights.* Nothing in this Agreement shall require the Principal to give or procure the giving of any consent or approval which would be contrary to or inconsistent with the interests of protection, safety and efficient operation of the Railway or the Project and the safety of Persons or property.
- 3.9 *Acceptance Not a Waiver.* The Principal's review, approval, acceptance, or payment with respect to any part of the Service provided by the Service Provider shall not be interpreted or construed to operate as a waiver of any rights or cause for action arising out of the Service Provider's performance of the Service under this Agreement. The Service Provider shall remain liable to the Principal as allowed under this Agreement and under Applicable Law for any and all Costs and/or Damages caused by the Service Provider's negligent performance of any part of the Service furnished under this Agreement.
- 3.10 *Obligations of Service Provider on Termination.* In the event of issue or receipt of a notice of termination of the Agreement under Clause 8.1, the Service Provider shall:
- 3.10(a) take immediate steps to bring an end to the performance of the Service in an orderly manner;
 - 3.10(b) make arrangements to minimize the expenditure under this Agreement as rapidly as possible; and
 - 3.10(c) pass to the Principal a complete set of any documents, manuals or other information that the Principal may require in connection with the Project and the Railway and which, at the time of termination, are in the possession or under the control of the Service Provider.
- 3.11 *Attendance of Meetings.* To the extent necessary to ensure smooth and efficient provision of the Service, the Service Provider shall, at the Principal's request, hold and/or attend meetings with any Persons.
- 3.12 *Compliance with Laws.* The Service Provider shall review the Applicable Laws applicable to the Service Provider's services. In carrying out any activities forming part of the Service, the Service Provider shall, at all times, ensure compliance with requirements imposed by supra-national and/or governmental authorities having jurisdiction over the Project.
- 3.13 *Information Furnished by Principal.* The Service Provider shall be entitled to rely on the accuracy and completeness of Service and information furnished by the Principal. The Service Provider shall scrutinise the information provided by the Principal and provide prompt written notice to the Principal if the Service Provider becomes aware of any errors, omissions, or inconsistencies in the provided information, and in the preparation or provision of Service or information.
- 3.14 *No Material Interference.* The Service Provider agrees that non-Principal activities undertaken by the Service Provider will be managed so as not to materially interfere with the Service Provider's obligations to the Principal under this Agreement.
- 3.15 *No Conflicting Activity.* Except with the Principal's knowledge and express written permission, the Service Provider shall not engage in any activity, or accept any employment, other agreement, interest, or contribution that would reasonably appear to compromise the Service Provider's professional judgment and performance with respect to the Service and/or the Project. In performing the Service, the Service Provider shall take all necessary measures to prevent any situation where the impartial and objective implementation of the Service is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest.
- 3.16 *Certain Negative Covenants.* In carrying out the Service, the Service Provider undertakes not to procure goods or services of any kind from any Person meeting any of the following criteria:

- 3.16(a) the Person who is a member of the Management Board or Supervisory Board of an Approved Sub-Contractor or procurator of an Approved Sub-Contractor, or is authorised to represent or act on behalf of an Approved Sub-Contractor with respect to any activity related to any subsidiary company of such Approved Sub-Contractor, and such Person has been accused of commitment of any of the following criminal offences pursuant to an order issued by a public prosecutor or was found to be guilty of commitment of any of the following criminal offences in accordance with a court judgment that has entered into legal force, is non-disputable and non-appealable:
- 3.16(a)(i) accepting a bribe, giving of a bribe, misappropriation of a bribe, intermediation toward giving or taking of a bribe, acceptance of a prohibited benefit or commercial bribing;
 - 3.16(a)(ii) fraud, misappropriation of funds or money laundering;
 - 3.16(a)(iii) tax evasion or evasion of payments equivalent to tax;
 - 3.16(a)(iv) terrorism, financing of terrorism, instigation of acts of terrorism, terrorist threats or recruitment and training of a Person with the aim of committing acts of terrorism;
- 3.16(b) the Person has, by decision of a competent authority or judgment of a court which has entered into legal force and is non-disputable and non-appealable, been found guilty of violation of labour law in any of the following manners:
- 3.16(b)(i) employment of one or more citizens or nationals of countries who are not citizens or nationals of a Member State of the European Union and are residing in the territory of a Member State of the European Union unlawfully;
 - 3.16(b)(ii) employment of one or more Persons without having entered into written employment agreement with such Persons, or without having submitted an employee declaration with respect to such Persons within a period of time stipulated in accordance with applicable laws and regulations applicable to Persons that enter into salaried employment;
- 3.16(c) the Person who, by decision of a competent authority or in accordance with judgment of a competent court which has entered into legal force, is non-disputable and non-appealable, has been held guilty of violation of applicable rules of competition law manifested as a vertical agreement aimed at restricting the ability of one or more purchasers to determine the resale price, or a horizontal cartel agreement, with the exception of instances where the relevant authority, upon having established the fact of violation of applicable rules of competition law, has discharged the candidate or participant in a tender offer from imposition of a fine or has reduced the amount of fine as a part of co-operation leniency programme;
- 3.16(d) the Person who has insolvency proceedings initiated against it (except in the circumstances where a bailout or a similar set of measures are applied within the insolvency proceedings and are aimed at preventing the bankruptcy and restoring the debtor back to solvency, in which case the Service Provider shall evaluate the possibility of participation by such Person in performing the Service), economic activity of the Person has been suspended or discontinued, bankruptcy proceedings have been initiated against the Person or the Person is subject to a liquidation;
- 3.16(e) the Person has unpaid tax indebtedness in the country where the Procurement Procedure is organised or in the country where the Person is registered or permanently residing as a tax payer, including the indebtedness with respect to State social insurance contributions, in the total amount exceeding EUR 150 in each individual country; in such case, the Service Provider can, within its sole discretion, prompt the Approved Sub-Contractor to pay or discharge all outstanding tax indebtedness within 10 (ten) Working Days and, upon such payment or discharge, allow the person to continue performance of the Service; and
- 3.16(f) any of the above-mentioned criteria shall apply to all members of a group of persons if the Person is a group of persons.

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

3.17(a) any report, brochure, document or information related to the Service provided by the Service Provider to the Principal or any other Person, or which the Service Provider makes publicly available shall include each of the following:

3.17(a)(i) a funding statement which indicates that the Service is financed from CEF funds substantially in the following form: "Rail Baltica is co-financed by the European Union's Connecting Europe Facility";

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

3.17(a)(iii) the flag of the Council of Europe and the European Union.

3.17(b) the requirements set forth in Clauses 3.17(a)(i) and 3.17(a)(iii) of this Agreement can be complied with by means of utilizing the following logo:



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

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

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

Section 4. OBLIGATIONS OF PRINCIPAL

4.1 *Acting in Good Faith and Supply of Information.* At all times during the term of this Agreement, the Principal undertakes to act in good faith toward the Service Provider in respect of all matters under this Agreement. The Principal shall, so as not to delay the Service and within a reasonable time, supply to the Service Provider free of cost all information in the power of the Principal to obtain which pertains to the Service, the Project and the Railway. The Principal shall, free of any Costs to the Service Provider, to the extent not explicitly stated otherwise in this Agreement, comply with all of its obligations under this Agreement, including with respect to carrying out any action or providing any information identified and specifically requested by the Service Provider, as reasonably necessary to enable the Service Provider to progress the Service. Information or instructions provided to the Service Provider by or on behalf of the Principal in connection with the Railway or the Project shall be prepared and given in such a diligent and professional manner and with such clarity, in such detail and in a timely manner as is necessary to enable the Service Provider to comply with its obligations under this Agreement.

4.2 *Review of Documentation.* The Principal shall examine Documentation as may be submitted by the Service Provider for review by the Principal toward partial completion of the Service and, upon request of the Service Provider, shall render decisions and opinions pertaining thereto.

- 4.3 *Decisions by Principal.* On all matters properly referred to it by the Service Provider in writing the Principal shall give its decision in writing so as not to delay the Service and within a reasonable time.
- 4.4 *Assistance and Cooperation by Principal.* In each country of the Railway and in respect of the Service Provider, its personnel and dependents, as the case may be, the Principal shall have an obligation to do all in its power to reasonably assist the Service Provider and reasonably cooperate with the Service Provider with respect to each of the following matters:
- 4.4(a) providing unobstructed access wherever access is required for purposes of enabling, establishing or providing the Service; and
- 4.4(b) providing access to other organizations to enable collection of information which is to be obtained by the Service Provider.
- 4.5 *No Material Interference.* The Principal agrees that non-Service Provider activities undertaken by the Principal will be managed so as not to materially interfere with the Principal's obligations to the Service Provider under this Agreement.
- 4.6 *Accounting and Auditing Services.* The Principal shall furnish accounting and *auditing* services as may be necessary for the Service as the Principal may require to ascertain how and/or for what purposes the Service Provider has used the funds paid under the terms of this Agreement.
- 4.7 *Action Upon Becoming Aware of Defects.* In the event the Principal observes or otherwise becomes aware of any error, fault, omission, or defect in the Service or non-conformance of any action forming part of the Service with the Documentation, the Principal shall give prompt notice thereof to the Service Provider. The Service Provider shall have the obligation to correct such error, fault, omission, or defect in the Service or non-conformance of any action forming part of the Service.

Section 5. PERSONNEL AND REPRESENTATIVES

- 5.1 *Supply of Personnel.* The personnel who are designated by the Service Provider shall be fit for their respective assignments, and their qualifications shall be acceptable to the Principal.
- 5.2 *Representatives.* Each Party shall appoint an officer, employee or individual to serve as its representative toward supply or receipt of the Service with full authority to act on its behalf in connection with this Agreement (hereinafter, the "*Representative*"), the initial Representatives having been identified in accordance with *Annex I: REPRESENTATIVES*. Any restriction placed by either Party on its Representative's authority shall be notified to the other Party in writing in order to be effective. The Representatives may delegate their authority by notice in writing specifying the identity of the delegate and specifying the scope of authority so delegated. In addition to the appointment of a Representative in accordance with this Clause 5.2, to the extent required by the Principal, the Service Provider shall designate an individual to liaise with the Representative of the Principal in each country where the Project is implemented.
- 5.3 *Changes in Personnel.* To the extent necessary to replace any Person among personnel or Representative of either Party engaged toward provision or receipt of the Service, the Party responsible for the appointment of such Person shall immediately arrange for replacement of the appointed Person by another Person of comparable competence. The costs of such replacement shall be borne by the Party responsible for the appointment, except that if the replacement is requested by the other Party,
- 5.3(a) such request shall be made in writing and state the reason for the request; and
- 5.3(b) the Party making the request shall bear the costs of replacement, unless misconduct or inability to perform is satisfactorily established as the reason for the replacement.
- 5.4 *Supplemental Personnel.* To the extent necessity arises to supplement the personnel of the Service Provider engaged toward provision of the Service with additional personnel, the Service Provider shall immediately arrange for engagement of such supplemental personnel. The costs of such engagement shall be borne by the Service Provider. For the avoidance of any doubt, the engagement of supplemental personnel under this Clause 5.4 shall not require approval by the Principal, provided that these personnel comply with the law and this Agreement.

Section 6. SERVICE MEETINGS, REPORTING AND RISK REDUCTION

- 6.1 *Service Meetings.* The Service Provider shall arrange project's communication's planning meetings on weekly, monthly and quarterly bases (or more frequently, to the extent mutually agreed by the Parties) if the Principal requests such meetings to be scheduled, at which appropriate personnel of the Service Provider and the Principal and the Representatives of each Party shall be present. Service Provider shall record all meetings (also online meetings) between Parties and prepare meeting reports within 5 Working Days after each meeting at the request of the Principal. All meeting reports shall be harmonized by Principal.
- 6.2 *Reporting.* The Service Provider shall, in a format and at intervals to be agreed with the Principal:
- 6.2(a) provide the Principal with regular reports and status updates on the progress of the Works.
 - 6.2(b) report on any changes to the Scope of Service, payment terms and Estimated Costs, which the Service Provider considers may be needed in order to fulfil the objectives set out in the Scope of Service and payment terms; and
 - 6.2(c) use reasonable endeavours to provide any other information and status updates as may be reasonably requested by the Principal at any time.
- 6.3 *Early Warnings.* Each Party undertakes to give an early warning by notifying the other Party as soon as such Party becomes aware of any matter that is capable of producing any of the following effects:
- 6.3(a) delay any date or date of supply of any Deliverable specified in accordance with *Annex C: SCOPE OF SERVICE (Technical specification)*; or
 - 6.3(b) impair the usefulness of the Service to the Service Provider.
- Notwithstanding the above, the Service Provider may give an early warning by notifying the Principal of any other matter which the Service Provider deems to be necessary.
- 6.4 *Risk Reduction Meetings.* Either Party may instruct the other Party to attend a risk reduction meeting at which appropriate personnel of each Party and, to the extent practicable, the Representatives of each Party, shall be present, in order for those who attend to co-operate with respect to any of following matters:
- 6.4(a) making and considering proposals for how the effect of the risks registered by the Principal;
 - 6.4(b) deciding on the course of action which will be taken and which Party, in accordance with this Agreement, will take the relevant course of action; and
 - 6.4(c) deciding which risks have now been avoided or have passed.
- 6.5 *Obligation to Act Pursuant to Principal's Comments.* In performing the Service, the Service Provider shall have due regard to any comments made by the Principal in connection with any review of the Documentation and shall provide reasons to the Principal where it does not take into account any such comments.
- 6.6 *Ambiguities and Inconsistencies.* Either Party shall notify the other Party as soon as it becomes aware of any ambiguity or inconsistency in or between the documents forming part of this Agreement or inconsistency in such documents and comments made by the Principal about the Service provided by the Service Provider. The Principal shall have the absolute and exclusive discretion in resolving any such ambiguity or inconsistency.

Section 7. COMMENCEMENT OF SERVICE, REMEDY OF DEFECTS AND ACCEPTANCE

- 7.1 *Service Commencement.* For every assignment, a separate assignment order – Assignment Order, shall be issued by the Principal and confirmed by the Service Provider. 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 Principal. The Service Provider shall ensure that the Deliverable are supplied on or before each relevant Due Date stipulated in Assignment Order and based on *Annex D: PAYMENTS FOR SERVICES*. The Service Provider shall render the Service with due diligence having due regard to any applicable key dates for performance of the Service set out in the Assignment Order, the Agreement and the applicable Annexes, as may be amended from time to time with the consent of the Principal or in accordance with this Agreement and applicable law.

7.2 *Appointment of an assignment.* The Principal invites the Service Provider to implement an assignment by sending an Assignment Order by e-mail. After receiving an invitation as soon as possible but not later than within the one (1) Working day the Service Provider shall respond and accept Assignment Order. After the corresponding Assignment Order is accepted by the Service Provider, the conditions set in the Assignment Order become binding upon the Parties.

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

7.3(a) the Service Provider shall inform the Principal of the circumstances and probable effects of such impediment taking into consideration provisions stipulated in *Annex D: PAYMENTS FOR SERVICES*; and

7.3(b) the duration of the Service shall be increased, and any Due Date affected by the impediment or delay shall be extended accordingly.

7.4 *Defects and Defects Date.* Until the Defects Date specified in accordance with *Annex D: PAYMENTS FOR SERVICE* the Principal shall notify the Service Provider of any Defects of any kind as soon as Defects are identified by the Principal and the Service Provider shall have an obligation to notify the Principal of any Defects of any kind as soon as Defects are identified by the Service Provider. Upon discovery of any Defects, or upon receipt by the Service Provider of a notification of Defects from the Principal, the Service Provider shall have seven (7) calendar days to remedy the Defects, irrespective of the nature of such Defects (hereinafter, the "Cure Period"). In the event of inability or failure by the Service Provider to remedy the Defects within the Cure Period, the Principal shall be entitled, in the sole and exclusive discretion of the Principal, to do any of the following:

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

7.4(b) remedy the Defects, irrespective of the extent or nature of the Defects, at own cost of the Principal (including by means of relying on the services of a third Person) and demand reimbursement by the Service Provider of Costs incurred by the Principal as a result of having to pay other Persons toward carrying out any Work or action;

7.4(c) terminate the Agreement according to Section 8; or

7.4(d) remedy the Defects, irrespective of the extent or nature of the Defects, in accordance with Clause 7.4(b) and terminate the Agreement pursuant to Section 8.

For the avoidance of any doubt, the application of the Cure Period under this Clause 7.4. shall be without prejudice to and shall not relieve the Service Provider from the obligation to pay any contractual penalty in accordance with the provisions of Clause 17.2 or to pay Damages in accordance with the provisions Clause 17.3 of this Agreement.

7.5 *Completion of Service and Completion Note.* Supply of a Deliverable occurs whenever the Service Provider has completed all of the Works which the Service Provider has undertaken to perform according to the Assignment Order and Scope of Service and payment terms by the relevant Due Date. On producing a Deliverable (including all Documentation related to the Deliverable) constituting all or an identifiable part of the Service, the Service Provider shall issue to the Principal a Provisional Completion Note substantially in the form of *Annex F: PROVISIONAL COMPLETION NOTE NO [INSERT NUMBER]* (hereinafter, the „Provisional Completion Note“). The Provisional Completion Note shall include the Deliverable and adequate supporting documentation relevant to the Deliverable completed.

7.6 *Objection Notice and Acceptance Note.* In the event the Principal objects to the issuance of a Provisional Completion Note, it shall give notice to the Service Provider setting out in reasonable detail Defects or reasons for the objection (hereinafter, the "Objection Notice") within reasonable time following receipt of the Provisional Completion Note. In the event no reasons for objection to the Provisional Completion Note exist, the Principal shall issue, within reasonable time following receipt of the Provisional Completion Note, a Certificate of Provisional Acceptance in the form of *Annex G: PROVISIONAL ACCEPTANCE NOTE NO [INSERT NUMBER]* (hereinafter, the "Provisional Acceptance Note"). Subject to Clause 3.9 of this Agreement, the date of the Provisional Acceptance Note shall constitute "Completion Date" with respect to the relevant Due Date and/or Deliverable. The Principal shall not unreasonably withhold or delay issuance of a Provisional Acceptance Note. The Provisional Acceptance Note may have annexed to it a list of any outstanding Defects to be corrected by the Service Provider.

7.7 *Completion of Service Following Receipt of Objection Notice.* In the event of receipt by the Service Provider of an Objection Notice in accordance with Clause 7.6, the Service Provider shall:

- 7.7(a) take due account of all Defects, irrespective of their extent or nature, and other matters raised in the Objection Notice;
- 7.7(b) as soon as reasonably practicable but not later as mentioned in the Objection Notice, correct such Defects, irrespective of their extent or nature, and complete the Works indicated in the Objection Notice so as to comply in all material respects with the requirements of this Agreement; and
- 7.7(c) issue to the Principal a second Provisional Completion Note substantially in the form of *Annex F: PROVISIONAL COMPLETION NOTE NO [INSERT NUMBER]*.

The second Provisional Completion Note issued in accordance with Clause 7.7(c) shall include the Deliverable and adequate supporting documentation relevant to the Deliverable completed. In the event no reasons for objection to the second Provisional Completion Note exist, the Principal shall, within reasonable time following receipt of the second Provisional Completion Note, issue a Certificate of Provisional Acceptance in the form of *Annex G: PROVISIONAL ACCEPTANCE NOTE NO [INSERT NUMBER]* and, subject to the provisions of Clauses 3.9 and 8.1(b) of this Agreement, the date of the Provisional Acceptance Note shall constitute "Completion Date" with respect to the relevant Deliverable. For the avoidance of any doubt, the giving by the Principal of any Objection Notice under Clause 7.6. or second Objection Notice under this Clause 7.7. shall be without prejudice to and shall not relieve the Service Provider from the obligation to pay any contractual penalty in accordance with the provisions of Clause 17.2 or to pay Damages in accordance with the provisions Clause 17.3 of this Agreement.

7.8 *Final Acceptance.* Final acceptance of the Service shall occur upon remedying by the Service Provider of all Defects notified by the Principal to the Service Provider in accordance with Clause 7.4, irrespective of the extent or nature of such Defects. Final acceptance shall be evidenced by means of the Principal issuing and both Parties attaching their signatures to the Final Acceptance Note substantially in the form of *Annex H: FINAL ACCEPTANCE NOTE NO.* (hereinafter, the "Final Acceptance Note"). The date of the Final Acceptance Note shall constitute the "Final Acceptance Date" with respect to the Service. The Principal shall not unreasonably withhold or delay issuance of a Final Acceptance Note.

Section 8. TERMINATION; SUSPENSION

8.1 *Termination for Material Breach or Bankruptcy.* Subject to the provisions of Clause 8.2, either Party shall be entitled to terminate this Agreement upon giving a written notice of termination to the other Party in the event of material breach by the other Party of any of its obligations under this Agreement. The written notice of termination shall contain an itemised description of the breach. For the purposes of this Clause 8.1 an event of material breach shall include any of the following:

- 8.1(a) commitment by a Party of any persistent or material breach of this Agreement (which shall include failure to pay an amount of at least EUR 5,000 due to the other Party or perform any part of the Service valued at least EUR 5,000);
- 8.1(b) failure by the Service Provider to duly address any of the matters raised in the second Objection Notice given by the Principal in accordance with Clause 7.6;

- 8.1(c) failure by any Deliverable to conform to any of the material requirements to such Deliverable contained in and/or *Annex D: PAYMENTS FOR SERVICE*, provided that such failure is not capable of being remedied during the Cure Period; or
 - 8.1(d) failure by the Principal to make any payment to the Service Provider in accordance with this Agreement within at least fourteen (14) days from the date of payment falling due;
 - 8.1(e) any of the representations or warranties given by either Party under Clause 2.6 or any of the representations or warranties given by the Service Provider under Clause 2.7 proving to be untrue; or
 - 8.1(f) breach by the Service Provider of the undertaking contained in Clause 9.10.
- 8.2 *Corrective Period.* In the event of breach by either Party of its obligations under this Agreement, the non-breaching Party shall allow the breaching Party fourteen (30) days for corrective action or submission of a corrective action plan (hereinafter, the "Corrective Period"). The Corrective Period shall be counted from the date of receipt by the breaching Party of a written notice of breach. Should no satisfactory corrective action be taken, or acceptable corrective action plan provided by the breaching Party, the non-breaching Party shall have the right to terminate the Agreement. It is acknowledged and agreed by the Parties that the provisions of this Clause 8.2 shall not apply with respect to any of the events enumerated in accordance with Clause 8.6. In addition and for the avoidance of any doubt, the application of the Corrective Period under this Clause 8.2 shall be without prejudice to and shall not relieve either Party from the obligation to pay any contractual penalty in accordance with the provisions of Clause 17.2 or to pay Damages incurred by the other Party in accordance with the provisions of Clause 17.3. of this Agreement.
- 8.3 *Right to Terminate Immediately.* Notwithstanding anything to the contrary contained in this Agreement, a Party may terminate this Agreement immediately upon giving the other Party a written notice of termination explaining, in reasonable detail, the reason for termination upon occurrence of any of the following:
- 8.3(a) breach by the other Party of Clause 15.6;
 - 8.3(b) an event of Force Majeure has been continuing during more than sixty (60) days;
 - 8.3(c) the other Party had passed a resolution for winding-up (other than in order to amalgamate or reconstruct);
 - 8.3(d) breach by the Service Provider any of the confidentiality undertakings contained in Section 10;
 - 8.3(e) the other Party is unable to pay its debts and has presented a petition for voluntary bankruptcy;
 - 8.3(f) the other Party had a bankruptcy order issued against it;
 - 8.3(g) the other Party has a provisional receiver or administrative receiver appointed over the whole or a substantial part of its undertaking or assets;
 - 8.3(h) liquidation, insolvency or legal protection proceedings have been initiated with respect to the other Party or the other Party is declared insolvent;
 - 8.3(i) the making by the other Party of a proposal for a voluntary arrangement with creditors; or
 - 8.3(j) the occurrence of any event analogous to the events enumerated under Clauses 8.3(e) - 8.3(i) under the law of any jurisdiction to which the other Party's assets and undertaking are subject.
- 8.4 *Principal's Right to Terminate Immediately.* The Principal may terminate this Agreement immediately upon giving the other Party a written notice of termination explaining, in reasonable detail, the reason for termination, if
- 8.4(a) CEF Co-financing for further financing of the Service are not available to the Principal;

In such a case, the Principal shall pay the Service Provider the fees in respect of the Service provided under this Agreement up to the date of the notification of the termination of this Agreement and the Principal is not obliged to pay contractual or any other penalty or damages to the Service Provider.

- 8.4(b) it is not possible to execute the Agreement due to the application of international or national sanctions, or European Union or North Atlantic Treaty Organization applied sanctions significantly affecting interests of financial or capital market.
- 8.5 *Termination according to Public Procurement Law.* The Agreement can be immediately terminated upon giving the other Party a written notice of termination explaining, in reasonable detail, the reason for termination upon occurrence of any of the provisions mentioned in the Article 64 of the Public Procurement Law. In such a case, the Principal shall pay the Service Provider the fees in respect of the Works provided under this Agreement up to the date of the notification of the termination of this Agreement and the Principal is not obliged to pay contractual or any other penalty or damages to the Service Provider.
- 8.6 *Right to Advance to Completion.* In the event the Service Provider fails to fulfil any of its obligations, or fails to cure any breach in accordance with Clause 8.2, and the Agreement is terminated by the Principal, the Principal may advance the Service to completion by employing the services of other professional service supplier(s) or by other means available to the Principal. The Service Provider shall be liable to the Principal for any and all additional costs incurred due to failure by the Service Provider to perform. The rights and remedies available to the Principal set forth in accordance with this Clause 8.6 shall be in addition to any and all other rights and remedies available under Applicable Law.
- 8.7 *Consequences of Termination.* Upon expiration or termination of this Agreement, the obligations of the Parties set forth in this Agreement shall cease, except with respect to the following:
- 8.7(a) any obligations arising as a result of any antecedent breach of this Agreement or any accrued rights; and
- 8.7(b) the provisions stipulated in accordance with Clauses 3.3, 7.4,, 8.8, 9.6, 9.7, 9.8, 9.9, 9.11, 9.12, 15.2, 15.6, 15.7, 15.8, 17.1, 17.3, 17.5 and Section 10, Section 12, Section 14 and Section 18 which shall survive the termination or expiry of this Agreement and continue in full force and effect along with any other Clauses of or Annexes hereof which are necessary to give effect to the clauses specifically identified in this Clause 8.7(b).
- 8.8 *Partial Acceptance.* Notwithstanding anything in this Agreement to the contrary including, without limitation, the provisions of Clauses 7.5, 7.6, 7.7 and 7.8 and in the event of termination of this Agreement, the Principal shall have the right, in the sole discretion of the Principal, to partially accept any Works, part of Works or part of the Service delivered to the Principal under this Agreement (hereinafter, the "Right of Partial Acceptance"). The Principal shall notify the Service Provider of its intention to exercise the Right of Partial Acceptance in the termination notice given in accordance with Clause 8.1 or Clause 8.3 of this Agreement, specifying, in reasonable detail, the Works, part of Works or part of the Service which the Principal would like to partially accept. In the event of receipt of such notice, the Service Provider shall reasonably cooperate with the Principal in order to ascertain transfer to the Principal of ownership in the result(s) of such Works, part of Works or part of the Service and determination of the amount of consideration payable by the Principal.
- 8.9 *Principal's Obligation to Pay.* Subject to the provisions of Clause 8.8 and except in the event of termination by the Principal occurring as a result of violation by the Service Provider of Clause 15.6, and in the event of termination by the Principal according to Clause 8.4(a) in the event this Agreement is terminated for any reason prior to completion of the Service, the Principal shall have an obligation to pay the Service Provider the following:
- 8.9(a) the Costs incurred by the Service Provider up to the date of termination; and
- 8.9(b) except where termination is due to negligence of the Service Provider, breach by the Service Provider, insolvency of the Service Provider or a Force Majeure Event under Section 11:
- 8.9(b)(i) an amount equal to the costs reasonably and properly incurred by the Service Provider as a result of or in connection with such termination; and

8.9(b)(ii) such additional amount as is required to put the Service Provider in the same after tax position (taking into account the amount of any relief, allowance, deduction, set-off or credit relating to tax available to the Service Provider in respect of the payment received) as it would have been in if the payment had not been a taxable receipt in the hands of the Service Provider.

8.10 *No Obligation to Pay Costs Incurred Prior to Acceptance.* Notwithstanding anything set forth in this Agreement to the contrary including, without limitation, under Clause 8.8, the Principal shall have no obligation to pay any of the Costs incurred by the Service Provider with respect to any Works or the Service (or part of any Works or the Service) not deemed as having been accepted by the Principal in accordance with Clauses 7.6, 7.7 or 7.8 of this Agreement.

8.11 *No Prejudice to Other Rights.* The right to terminate this Agreement shall be without prejudice to any other right of either Party which has accrued prior to or as a result of such termination or to any remedy available to either Party under the terms of this Agreement or in accordance with Applicable Law.

8.12 Agreement period. The Agreement period is 18 months starting from the Effective Date. 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 Principal.

Section 9. INTELLECTUAL PROPERTY RIGHTS

9.1 *Proprietary Rights.* All Documentation forming part of the Deliverables developed under this Agreement is and shall become the property of the Principal regardless of whether the Service or Deliverable is produced or finally accepted. It is acknowledged and agreed by the Parties that the Principal shall be permitted to reproduce the drawings, schemes and distribute the prints in connection with the use or disposition of the Documentation without any approval of the Service Provider and without incurring obligation to pay any royalties or additional compensation whatsoever to the Service Provider.

9.2 *Intellectual Property in Documentation.* The Service represents and warrants that it owns all Intellectual Property required for the purposes of completing its obligations under this Agreement and in all Documentation deliverable by or on behalf of the Service Provider under this Agreement and that, to the extent any Intellectual Property in any Documentation is not owned by the Service Provider, it has obtained all requisite consents from owner(s) of all Intellectual Property in the Documentation to fulfil all of the obligations undertaken by the Service Provider under this Agreement and has fully discharged all obligations with respect to payment of any royalties or fees.

9.3 *Transfer of Ownership to Principal.* The Principal shall acquire legal title to and ownership in the Intellectual Property in all Documentation deliverable to the Principal under this Agreement as of the moment of delivery by the Service Provider to the Principal of the Provisional Completion Note, together with the Deliverable and Documentation forming part of the Deliverable, in accordance with Clause 7.5 of this Agreement; provided, however, that the Principal has paid the Fee or other consideration payable under the terms of this Agreement with respect to the relevant part of the Service or Deliverable. For the avoidance of any doubt, such title and ownership shall confer upon the Principal, without limitation, each of the following:

9.3(a) the right to reproduce the Documentation, or any part thereof, and distribute copies of the Documentation or any part thereof;

9.3(b) the right to modify, amend and supplement the Documentation, or any part thereof;

9.3(c) the right to licence the Documentation, or any part thereof, for use by others; and

9.3(d) the right to transfer ownership in the Documentation, or any part thereof, to others.

9.4 *Grant of Limited License to Service Provider.* Upon acceptance by the Principal of any Deliverable and Documentation forming part of any Deliverable in accordance with Clause 7.6, the Principal shall be deemed to have granted the Service Provider an irrevocable and exclusive licence to reproduce, modify and distribute copies of any Documentation forming part of any Deliverable for the purposes of the Service and the Project, subject to the following restrictions:

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

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

- 9.5 *No Additional Royalty.* It is acknowledged and agreed by the Parties that consideration for the transfer of ownership in the Intellectual Property shall be forming part of the Fee and no additional royalty, fee or other consideration of any kind shall be payable by the Principal to the Service Provider or to any third party in consideration of the transfer of ownership in the Intellectual Property in any Documentation.
- 9.6 *No Infringement.* The Service Provider represents and warrants to the Principal that no Documentation deliverable to the Principal under the terms of this Agreement will infringe any existing Intellectual Property of any third party. In the event any of the representations or warranties contained in this Clause prove to be untrue or inaccurate, the Service Provider undertakes, at its own cost and expense, to defend and settle any claim raised by any third party alleging infringement of Intellectual Property in the Documentation. The foregoing undertaking by the Service Provider shall apply subject to the following conditions:
 - 9.6(a) the Principal shall notify the Service Provider, without undue delay, of any third-party claim alleging infringement of any Intellectual Property in any Documentation;
 - 9.6(b) the Principal refrains from admitting liability under any third-party claim or acting on the account of such claim without prior approval by the Service Provider; and
 - 9.6(c) the exclusive control over any legal proceeding or settlement related any third-party claim shall be exercised by the Service Provider; provided, however, that the Principal shall render the Service Provider all reasonable assistance toward such proceeding or settlement, at the cost and expense of the Service Provider.
- 9.7 *Infringement Proceedings.* In the event the Principal is a party to legal proceedings involving allegations of infringement of any Intellectual Property in the Documentation of any third party, the Service Provider shall keep the Principal fully informed of all aspects relevant to the legal proceedings and the Principal shall have the right, at its own cost, to be represented in the legal proceedings by separate counsel. In the event the Service Provider fails to act against claims alleging infringement of any Intellectual Property in the Documentation of any third party within reasonable time but, in any event, within twenty (20) days of having been notified of such claims, the Principal shall have the right to assume legal defence against claims alleging infringement of Intellectual Property and shall be entitled to reimbursement by the Service Provider of reasonable costs and expenses incurred toward such defence.
- 9.8 *Continued Use.* In the event a court of competent jurisdiction resolves in a binding judgment that the Documentation, or any part thereof, infringe Intellectual Property of any third party, the Service Provider shall, at its own cost and expense, procure for the Principal the right of continued use of the Documentation, or part thereof infringing Intellectual Property of a third party.
- 9.9 *License in Intellectual Property of Service Provider.* The Service Provider hereby grants the Principal an irrevocable and non-exclusive license to use, reproduce, modify and/or enhance any Intellectual Property of the Service Provider, provided and to the extent Intellectual Property of the Service Provider is used by the Principal for the purposes of the Railway and/or the Project. It is agreed and acknowledged by the Parties that the license fee for the grant of license in accordance with this Clause 9.9 forms part of the Fee and such license shall continue to be valid irrespective of expiration of this Agreement following completion of the Service or termination of this Agreement for any reason.
- 9.10 *Obligation to Procure Intellectual Property Rights.* Where the Service Provider is not the legal owner of any relevant Intellectual Property of the Service Provider, the Service Provider shall use reasonable endeavours to procure for the Principal the rights specified in accordance with Clause 9.9.

- 9.11 *Obligation to Indemnify with Respect to Uses Other Than for the Purpose.* The Principal shall defend and indemnify the Service Provider from and against any and all Damages arising from the use by the Principal of any Intellectual Property of the Service Provider other than for the purposes of the Railway and/or the Project.
- 9.12 *Indemnification by the Service Provider.* The Service Provider shall defend and indemnify the Principal from and against any and all Damages arising from the use by the Principal of any Intellectual Property of the Service Provider, to the extent use by the Principal is within the scope of the license granted to the Principal in accordance with Clause 9.9.
- 9.13 *Certain Rights of Service Provider.* The Service Provider after obtaining prior written approval from the Principal shall have the right to include photographic or artistic representations of the design of the Project among the Service Provider's promotional and professional materials. The Service Provider shall be given reasonable access to the completed Project to make such representations. However, the Service Provider's materials shall not include the Principal's confidential or proprietary information regardless of whether or not the Principal has previously advised the Service Provider in writing of the specific information considered by the Principal to be confidential or proprietary.

Section 10. CONFIDENTIALITY

- 10.1 *Confidential Information.* "Confidential Information" means in relation to the Principal all information of a confidential nature relating to the Principal and its Affiliates which is supplied by the Principal (whether before or after the date of this Agreement) to the Service Provider, either in writing, orally or in any other form and includes all analyses, compilations, notes, studies, memoranda and other documents which contain or otherwise reflect or are derived from such information, but excludes information which:
- 10.1(a) the Principal confirms in writing is not required to be treated as confidential; or
 - 10.1(b) the Service Provider can show that the Confidential Information was in its possession or known to it (by being in its use or being recorded in its files or computers or other recording media) prior to receipt from the Principal and was not previously acquired by the Service Provider from the Principal under an obligation of confidence; or
 - 10.1(c) was developed by or for the Service Provider at any time independently of this Agreement, without application of the information provided to the Service Provider under this Agreement.
- 10.2 *Undertakings with Respect to Confidential Information.* Subject to Clauses 10.1 and 10.3, the Service Provider shall:
- 10.2(a) at all times keep confidential all Confidential Information received by it and shall not disclose such Confidential Information to any other Person; and
 - 10.2(b) procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any Person any Confidential Information, except with the prior written consent of the Party to which such Confidential Information relates.
- 10.3 *Permitted Disclosure.* Notwithstanding anything to the contrary set forth in accordance with Clauses 10.1 and 10.2, the Service Provider shall, without the prior written consent of the Principal, be entitled to disclose Confidential Information:
- 10.3(a) that is reasonably required by the Service Provider in the performance of its obligations pursuant to this Agreement, including the disclosure of any Confidential Information to any employee, contractor, agent, officer, Sub-Contractor (of any tier) or adviser to the extent necessary to enable the Service Provider to perform its obligations under this Agreement;
 - 10.3(b) to enable a determination to be made pursuant to Section 18;
 - 10.3(c) to its lenders or their professional advisers, any rating agencies, or its insurance advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;

- 10.3(d) to the extent required by Applicable Law or pursuant to an order of any court of competent jurisdiction, any parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law; or
- 10.3(e) to the extent Confidential Information has become available to the public other than as a result of any breach of an obligation of confidence; provided that any such disclosure is made in good faith.
- 10.4 *Obligation of Confidentiality Pertinent to Recipients of Confidential Information.* Whenever disclosure is permitted to be made pursuant to Clause 10.3, the Service Provider shall require that the recipient of Confidential Information be subject to the same obligation of confidentiality as that contained in this Agreement.
- 10.5 *Certain Obligations on Termination of Agreement.* If this Agreement is terminated for whatsoever reason, the Service Provider shall:
 - 10.5(a) return to the Principal all of the Confidential Information then within the possession or control of the Service Provider; or
 - 10.5(b) destroy such Confidential Information using a secure and confidential method of destruction.
- 10.6 *No Press Release by Service Provider.* Save as required by Applicable Law, the Service Provider shall not issue any press release in relation to the matters contemplated under this Agreement without the prior written consent of the Principal (such consent not to be unreasonably withheld or delayed) as to both the content and the timing of the issue of the press release.
- 10.7 *Right to Publish.* For the avoidance of any doubt, the Principal shall have the right to publish any of the documents, information or data provided by the Service Provider to the Principal during provision of the Service.
- 10.8 *Remedies.* The Parties acknowledge and agree that a breach of the provisions of this Section 10 may cause the owner of Confidential Information to suffer irreparable Damage that could not be adequately remedied by an action at law. Accordingly, the Service Provider agrees that the owner of Confidential Information that is disclosed in breach of Clauses 10.2, 10.4 or 10.6 may be entitled to specific performance of those provisions to enjoin a breach or attempted breach thereof and to any other remedy, including, inter alia, damages and injunctive relief, awarded by a court of competent jurisdiction.

Section 11. FORCE MAJEURE

- 11.1 *Effects of Force Majeure.* Subject to the requirements set forth in accordance with Clauses 11.2 and 11.3, 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.
- 11.2 *Action Upon Becoming Aware of Force Majeure.* Each Party shall at all times, following the occurrence of a Force Majeure Event:
 - 11.2(a) take reasonable steps to prevent and mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the Force Majeure Event as soon as practicable and use reasonable endeavours in accordance with Good Industry Practice to remedy its failure to perform; and
 - 11.2(b) not be relieved from liability under this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to any failure to comply with its obligations under Clause 11.1.
- 11.3 *Notification Requirements.* Upon the occurrence of a Force Majeure Event, the affected Party shall notify the other Party as soon as reasonably practicable and in any event within ten (10) 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 11.2 and an estimate of the period of time required to overcome the Force Majeure Event. The affected Party shall provide the other Party with any further information it receives or becomes aware of which relates to the Force Majeure Event and provide an update on the estimate of the period of time required to overcome its effects.

- 11.4 *Notification of Resumed Performance.* The affected Party shall notify the other Party as soon as practicable once the performance of its affected obligations can be resumed (performance to continue on the terms existing immediately prior to the occurrence of the Force Majeure Event).
- 11.5 *Mitigation of Effects of Force Majeure.* As soon as practicable after the notification specified pursuant to Clause 11.3, the Parties shall use reasonable endeavours to agree appropriate terms or modifications to the Scope of Service and payment terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.

Section 12. RIGHT TO AUDIT

- 12.1 *Right to Audit.* Notwithstanding anything to the contrary set forth in this Agreement the Principal itself, a reputable outside independent body or expert engaged and authorised by the Principal shall be entitled to inspect and/or audit the Service Provider to ensure compliance with the terms of this Agreement, including inspecting and/or auditing:
- 12.1(a) the performance of any aspect of the Service; and/or
- 12.1(b) any documentation, including all payrolls, accounts of the Service Provider and/or other records used in or related to the performance of the Services.
- 12.2 *Obligation to Assist.* The Service Provider shall provide all reasonable assistance to the Principal or the independent body authorized by the Principal in carrying out any inspection or audit pursuant to this Section 12. The Principal shall be responsible for its own costs, or the costs incurred by the outside independent body designated by the Principal, incurred toward carrying out such inspection or audit, unless, in the case of any such audit, that audit reveals that the Service Provider is not compliant with the terms of this Agreement, in which case the Service Provider shall reimburse the Principal for all of its additional reasonable costs incurred, provided such non-compliance is material.
- 12.3 *Survival of Termination.* The rights and obligations of the Parties set forth in accordance with this Section 12 shall survive expiration or termination of this Agreement for any reason and shall continue to apply during ten (10) years following expiration or termination of this Agreement for any reason whatsoever.

Section 13. ON-THE-SPOT VISITS

- 13.1 *Right to perform On-the-Spot visits.* By submitting a written notice five (5) Working Days in advance, but at the same time reserving the right of an unannounced on-the-spot visit without an advance notice, the Principal may carry out on-the-spot visits to the sites and premises where the activities implemented within the Agreement are or were carried out.
- 13.2 *Personnel involved.* On-the-spot visits may be carried out either directly by authorised staff or representatives of the Principal or by any other outside body or third party authorised to do so on behalf of the Principal. Information provided and collected in the framework of on-the-spot visits shall be treated on confidential basis. The Principal shall ensure that any authorised outside body or third party shall be bound by the same confidentiality obligations.
- 13.3 *Access to the information.* Service Provider shall provide to the performer of the on-the-spot visit or any other authorised outside body or third party access to all the information and documents, including information and documents in electronic format, which is requested by the authorised staff of the performer of the on-the-spot visit or any other authorised outside body or third party for the performance of an on-the-spot visit

and which relates to the implementation of the Agreement, as well as shall allow the authorised staff of the performer of the on-the-spot visit or any other authorised outside body or third party the copying of the information and documents, with due respect to the confidentiality obligation.

- 13.4 *OLAF checks and inspections.* By virtue of Council Regulation (Euratom, EC) No 2185/961 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EU) No 883/20132 of the European Parliament and the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF), OLAF may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by European Union law for the protection of the financial interests of the European Union against fraud and other irregularities. Where appropriate, OLAF findings may lead to criminal prosecution under national law.

Section 14. NOTICES AND COMMUNICATION

- 14.1 *Notices.* All notices and other communications made or required to be given pursuant to this Agreement shall be in writing and shall be deemed given if delivered personally or by facsimile transmission (if receipt is confirmed by the facsimile operator of the recipient), or delivered by overnight courier service, or mailed by registered or certified mail (return receipt requested), postage prepaid, to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice):

- 14.1(a) to the Principal:
.....
.....
14.1(b) to the Service Provider:
.....
.....

- 14.2 *Changes in Address.* Either Party shall be entitled to change its address for purposes of this Section 14 by notice to the other Party. A notice of a change of address shall be effective only upon receipt thereof.

Section 15. MISCELLANEOUS PROVISIONS

- 15.1 *Capacity.* Each Party warrants to the other Party that it has full power to enter into and perform this Agreement, and the Person signing this Agreement on its behalf has been duly authorized and empowered to enter into such agreement. Each Party further acknowledges that it has read this Agreement, understands it and agrees to be bound by it.
- 15.2 *Severability.* If any provision of this Agreement shall be held to be illegal, invalid, void or unenforceable under Applicable Laws, the legality, validity and enforceability of the remainder of this Agreement shall not be affected, and the legality, validity and enforceability of the whole of this Agreement shall not be affected.
- 15.3 *Relationship of the Parties.* The relationship between the Service Provider to the Principal under this Agreement is that of independent contractors. The Service Provider (or the Service Provider's sub-contractors) is not an employee of the Principal, is not carrying out the regular business of the Principal and is not subject to the same employment regulations as are applicable to employees of the Principal. Each of the Parties shall be solely and entirely responsible for their own acts and the acts of their employees. No benefits, special considerations, or employer/employee-type provisions are provided by the Principal to the Service Provider, the Service Provider's employees, or the Service Provider's consultants, or the employees of such consultants.
- 15.4 *Damages Covered by Insurance.* To the extent Damages are covered by insurance, the Principal and the Service Provider waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance current as of the date of this Agreement.

- 15.5 *Successors and Assigns.* The Principal and the Service Provider each bind themselves, their successors, legal representatives, and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect to all covenants of this Agreement. Neither Party shall assign or transfer its respective interest in the Agreement without written consent of the other Party.
- 15.6 *Conflict of Interest, Corruption and Fraud.* Notwithstanding any penalties that may be enforced against the Service Provider under Applicable Law of the country of the project, or of other jurisdictions, the Principal will be entitled to terminate the Agreement in accordance with Clause 8.3 and the Service Provider shall be deemed to have breached Clause 3.16 of the Agreement, if it is shown that the Service Provider is guilty of:
- 15.6(a) offering, giving, receiving or soliciting anything of value with a view to influencing the behaviour or action of anyone, whether a public official or otherwise, directly or indirectly in the selection process or in the conduct of the Agreement; or
- 15.6(b) misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Principal, including the use of collusive practices intended to stifle or reduce the benefits of free and open competition.
- 15.7 *Entire Agreement.* This Agreement, and the Annexes hereto, constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes and extinguishes all and any prior drafts, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.
- 15.8 *Amendments and Variations.* No amendment to or variation of this Agreement shall be effective unless made in writing and signed by duly authorized representatives of both Parties. The Agreement can be amended in compliance with the provisions of Article 61 of the Public Procurement Law including but not limited to the provisions of point 5 of Section 2 of Article 61.
- 15.9 *Execution.* This Agreement may be executed in two counterparts to be held by each Party which counterparts, taken together, shall constitute one and the same instrument.

Section 16. PAYMENT

- 16.1 *Service Fee.* The Agreement with Service Provider is on-demand based with no fixed work-load and/or fixed overall value. The total allocated amount for the Procurement of Recruitment Services Part [·] for the Agreement concluded as a result of the Procurement is: [·] EUR [·] (euros), excl.VAT (Service Fee). However, this does not bind the Principal to purchase Services through the Agreement for the estimated amount.
- 16.2 *Payment for Services.* Attached to this Agreement as Annex D 9(PAYMENTS FOR SERVICE) and incorporated into this Agreement, is a list of the Service Providers service charges, including hourly charges and/or per service charges, as applicable. In consideration of the provision of Services, the Principal undertakes to pay the Service Provider a remuneration which shall be calculated and paid in proportion to the Works actually performed according to Annex D (PAYMENTS FOR SERVICE). It is acknowledged and agreed by the Parties that Service Fee shall include all Costs and expenses incurred by the Service Provider and Approved Sub-Contractors toward carrying out the Service. For the avoidance of any doubt, Service Fee specified in accordance with Clause 16 shall exclude value added tax that will be charged at the rate applicable in accordance with Applicable Law at the time of invoicing.
- 16.3 *Invoicing.* Following each Completion Date and the Final Acceptance Date, the Service Provider shall deliver to the Principal an invoice (subject to request by the Principal, containing a reasonably detailed breakdown and any supporting information) in respect of Services assigned by Assignment Order. In the event the Principal objects to payment of any amount claimed by the Service Provider in the invoice, notice to this effect shall be given by the Principal to the Service Provider not later than five (5) Working Days before the due date for payment under this Clause. The Objection Notice shall state the amount to be withheld, the grounds for withholding the payment and the basis on which that amount is calculated. Unless such Objection Notice is made by the Principal, the amount to be paid is that stated in the invoice which shall become due and payable in accordance with this Clause. For the avoidance of any doubt, the Principal shall not be required to pay any amount under this Agreement with respect to any part of the Service that has not been accepted by the Principal in accordance with Clauses 7.5, 7.6 or 7.7 of this Agreement.

- 16.4 **Payment.** Subject to the provisions of Clause 16.1 and 16.2 the Principal reserves the right to make the payments to the Service Provider with set-off, retention, counterclaim, abatement or other deduction of any kind if the nature of such set-off, retention, counterclaim, abatement or other deduction arises from this Agreement and the obligations of the Service Provider provided herein (i.e. in cases of accrued contractual penalty amounts etc.). If the Principal uses the right to make the payments to the Service Provider with set-off, retention, counterclaim, abatement or other deduction of any kind, then the Principal so notifies to the Service Provider no later than on the date of the respective payment stating the amount, the grounds and the basis on the Principal uses its right to set-off, retention, counterclaim, abatement or other deduction. Invoices shall be paid within 30 (thirty) days after the date of issue of the invoice. For the avoidance of any doubt, the Principal shall not be required to pay any amount with respect to any invoice in the absence of a Provisional Completion Note duly signed by the Principal or, with respect to the final payment of the Fee to be effected under this Agreement, the Final Acceptance Note duly signed by both Parties.
- 16.5 **Costs and Commissions.** Each Party shall bear its own costs, fees, commissions and expenses incurred in connection with the transfer of any funds under this Agreement to the other Party.
- 16.6 **Compliance with Tax Obligations in [COUNTRY].** It is acknowledged and agreed by the Parties that the Fee shall include all taxes and duties payable by the Service Provider in the consequence of provision of the Service, except value added tax (VAT). The Service Provider shall, at the sole cost and expense of the Service Provider, comply with the obligation to pay all taxes and duties relevant to the provision of the Service in [COUNTRY] and in accordance with Applicable Law of [COUNTRY]. In addition, the Service Provider shall assume all risks associated with the payment or obligation to pay such taxes and duties, if any. The Service Provider assumes all risks associated with the possible increase in the amount of the Fee arising as a result of the obligation of having to pay any such taxes or duties, except as a result of a change in law.
- 16.7 **Invoice.** The Service Provider's invoices shall contain the following Service Provider's details and details about the Agreement:

Service Provider	[●]
Registration No	[●]
VAT payer's No or (and) indication that The Service provider is not a VAT payer	[●]
Legal address, city, Zip code, country	[●]
Legal name of Bank	[●]
Bank SWIFT Code	[●]
Bank IBAN Account No	[●]
Subject:	For provided services according to the Framework Agreement for Rail Baltica Railway No [●] (CEF Contract No INEA/CEF/TRAN/M2015/1129482 Activity No [●]), Contract manager: [●]

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

Section 17. LIABILITY

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

- 17.2 *Contractual Penalty.* In the event of failure by the Service Provider to respond within the required time period to the Principal, to supply any Deliverable, the Service Provider shall be liable to pay to the Principal a penalty of zero point five percent (0.5%) of the amount of Fee payable under this Agreement with respect to the relevant Service period for each day of delay with supplying any of the Deliverables set forth in accordance with Annex D: *PAYMENTS FOR SERVICE*; provided, however, that the total amount of penalty payable by the Service Provider under this Clause 17.2 for the relevant Works/Services, as specified according to Annex D: *PAYMENTS FOR SERVICES* shall not exceed ten percent (10%) of the total amount of Fee payable in consideration of such Works/Services. In the event of failure by the Principal to pay any amount in accordance with Clause 16.4, the Principal shall be liable to pay to the Service Provider a penalty of zero point five percent (0.5%) of the amount of the amount invoiced for each day of delay with meeting the payment obligation; provided, however, that the total amount of penalty payable by the Principal under this Clause 17.2 shall not exceed ten percent (10%) of the total amount remaining unpaid under the relevant invoice.
- 17.3 *Compensation for Damages.* Notwithstanding of and without prejudice to any contractual penalty payable in accordance with Clause 17.2 and subject to the provisions of Clause 17.5, in the event it is established that either Party is liable to the other Party with respect to any breach of its respective obligations under this Agreement, the liable Party shall compensate the other Party for any Damages incurred as a result of such breach, subject to the following terms:
- 17.3(a) the amount of compensation shall be limited to the amount of reasonably foreseeable Damages suffered as a result of the breach(es), but not otherwise;
- 17.3(b) if either Party is considered to be liable jointly with third parties to the other, the proportion of compensation payable by the liable Party shall be limited to that proportion of liability which is attributable to the breach by the liable Party.
- 17.4 *Attribution of Damages.* Any Damages suffered by either Party shall, for the purposes of Clause 17.3, be reduced to the extent that the Damages are caused by or contributed to by the other Party's own negligence or breach of its obligations under this Agreement.
- 17.5 *Limitation of Liability.* Notwithstanding anything to the contrary set forth in this Agreement, in no circumstances shall the Service Provider or Principal be liable to one another for any loss of production, loss of profit, loss of revenue, loss of contract, liability incurred under other agreements (with the exception of costs paid by the Principal to contractors appointed by the Principal in relation to the Service or the Project) or any indirect or consequential loss arising out of or in connection with this Agreement. The Service Provider's total liability for the Works/Services carried out under this Agreement shall in no circumstances exceed EUR 500 000,00 (five hundred thousand euros).

Section 18. GOVERNING LAW AND RESOLUTION OF DISPUTES

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

Signed by:

For and on behalf of the Principal:

Signature:

Name, title:

Bank account details of the Principal:

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For and on behalf of the Service Provider:

Signature:

Name, title:

Bank account details of the Service Provider:

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.....

Annex A: DEFINITIONS AND COMMON TERMS

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

- (a) "Agreement", this Agreement together with all Annexes thereto.
- (b) "Applicable Law" or "Law", any legislative act, regulation, decree, order, ordinance, statute, treaty, directive, judgment, or other legislative measure. For the avoidance of any doubt, the term "Applicable Law" shall include any legislative act or directive relevant to public procurement.
- (c) "Approved Staff", any Person listed pursuant to *Annex E: LIST OF APPROVED SUB-CONTRACTORS*, which is in a contractual relationship with the Service Provider to provide a part of the Service.
- (d) "Approved Sub-Contractor", any Person or organisation listed pursuant to *Annex E: LIST OF APPROVED SUB-CONTRACTORS*, which is in a contractual relationship with the Service Provider to provide a part of the Service.
- (e) "Assignment Order" – as defined in accordance with Clause 7.1.
- (f) "Candidate", a natural person subject to the requirements stipulated in *Annex C: SCOPE OF SERVICE (Technical specification)* and *Annex D: PAYMENTS FOR SERVICES*, as appropriate.
- (g) "Completion Acceptance Note", as defined in accordance with Clause 7.5, as appropriate.
- (h) "Completion Date", as defined in accordance with Clause 7.6 and 7.7, as appropriate.
- (i) "Confidential Information", as defined in accordance with Clause 10.1 of the Agreement.
- (j) "Costs", direct costs reasonably incurred in relation to the Project. Specifically, Cost shall include any of the following:
 - (i) costs of all materials and supplies forming part of the Service, including transportation and storage expenses (discounts for cash or prompt payments will not reduce these costs);
 - (ii) salaries for personnel in the direct employ of the Service Provider in the performance of the Service or relating to the Service;
 - (iii) salaries of the Service Provider's employees for the time that they spend in connection with the Service;
 - (iv) payments to Sub-Contractors for Work relating to the Service;
 - (v) costs of all employee benefits and taxes for items such as social security and other benefits for the labour and employees;
 - (vi) costs, including transportation and maintenance, of equipment and hand tools not owned by workmen employed by the Service Provider which are employed or consumed toward the Service;
 - (vii) payments for rental charges for machinery, equipment, facilities and tools used in connection with the Service, and payments for installations, repairs, replacements, dismantling, removal, lubrication, transportation and delivery of those rental items;
 - (viii) other transportation costs incurred in connection with the Service;
 - (ix) that portion attributable to this Agreement of premiums for insurance that is required by this Agreement or by law to be obtained or maintained by the Service Provider;
 - (x) sales, use, gross receipts or other taxes related to the Service, imposed by any governmental authority, to the extent that the Service Provider is responsible for such taxes;
 - (xi) costs of long-distance telephone calls, telephone service at the site and postage relating to the Service;
 - (xii) costs associated with any Alteration as to which the Service Provider is entitled to payment hereunder;

- (xiii) losses and expenses, not compensated by insurance, sustained by the Service Provider in connection with the Works under this Agreement, provided they resulted from causes other than the fault or neglect of the Service Provider.
- (k) "Corrective Period", as defined in accordance with Clause 8.2.
- (l) "Cure Period", as defined in accordance with Clause 7.4.
- (m) "Damages", any cost, claim, damage, demand, loss, expense or liability incurred by the relevant Party or Person.
- (n) "Defect" is a part of the Service or Work which is not in accordance with *Annex C: SCOPE OF SERVICE (Technical specification)*, Applicable Law or Good Industry Practice.
- (o) "Defects Date", a date specified in accordance with *Annex D: PAYMENTS FOR SERVICE* by which the Principal is obliged to notify about Defect in the Service.
- (p) "Deliverables", any kind of resources, information, notes, material, computer files, documents and/or other items which the Service Provider is required to deliver to the Principal as part of the Service, as further specified pursuant to *Annex D: PAYMENTS FOR SERVICE*.
- (q) "Documentation", all records, correspondence, and computer files of the Service Provider, its employees, engineers, and consultants pertaining to the Project.
- (r) "Due Date", a date specified in accordance with *Annex D: PAYMENTS FOR SERVICES* by which the Service Provider is obliged to provide the Deliverables.
- (s) "Effective Date", as first above specified in the Preamble to this Agreement.
- (t) "EUR" and "euro", the official currency of the eurozone, officially known as the euro area.
- (u) "Fee", as specified in accordance with *Annex D: PAYMENTS FOR SERVICE*.
- (v) "Final Acceptance Date", as defined in accordance with Clause 7.8.
- (w) "Final Acceptance Note", as described in accordance with Clause 7.8.
- (x) "Force Majeure Event", any of the following events:
 - (i) an act of the public enemy or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;
 - (ii) an act of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;
 - (iii) a natural disaster or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);
 - (iv) nuclear, chemical or biological contamination;
 - (v) pressure waves caused by devices travelling at supersonic speeds;
 - (vi) discovery of fossils, antiquities or unexploded bombs; and/or
 - (vii) strike, lockout or other industrial action other than involving the Service Provider or the Principal.
- (cc) "Good Industry Practice", in relation to the performance of any activity to which this standard is applied, the exercise of that degree of skill, diligence, prudence and foresight as would reasonably be expected to be exercised by a properly qualified and competent Person engaged in carrying out Works or services of a similar size, nature, scope, type and complexity, complying with Applicable Law, applicable Standards and published codes of practice.
- (ee) "Intellectual Property", all intellectual property rights in any part of the world in respect of any documentation, or information provided by the Service Provider to the Principal, including any patent, patent application, trade mark, trade mark application, utility model, trade name discovery, invention, process, formula, specification, copyright (including all neighbouring rights, rights in computer software and database and topography rights), know-how or unregistered design right.
- (ff) "Intellectual Property of Service Provider", all Intellectual Property owned or licensed to the Service Provider with a right to sub-license.

- (gg) "Necessary Consents", all approvals, permissions, consents, licenses, certificates, registrations and authorizations (whether statutory or otherwise), which may be required from time to time for the purposes of carrying out the Project.
- (hh) "Objection Notice", as defined in accordance with Clause 7.6.
- (ii) "Party" and "Parties", the Principal and the Service Provider and include the respective successors in title, permitted assigns and permitted transferees.
- (jj) "Person" shall include any natural person, company, body corporate, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the foregoing.
- (kk) "Principal", the company RB Rail AS, as further specified in the Preamble of this Agreement, which employs the services of the Service Provider, and legal successors to the Service Provider and permitted assignees of the Service Provider.
- (ll) "Project", development of a 1435 mm standard gauge railway line in the Rail Baltica (RB) corridor through Estonia, Latvia and Lithuania aimed at eliminating the technical bottleneck due to the gauge differences (1,520 mm vs. the EU standard of 1,435 mm).
- (mm) "Provisional Completion Note", as defined in accordance with Clause 7.5.
- (nn) "Railway", new fast conventional double track electrified railway line with the maximum design speed of 240 km/h and European standard gauge (1435 mm) on the Route.
- (oo) "Residence Certificate", a certificate mentioned in Clause 2.7(h).
- (pp) "Right of Partial Acceptance", as defined in accordance with Clause 8.8.
- (qq) "Service Provider", the company [·], as further specified in the Preamble of this Agreement, which is employed by the Principal as an independent professional contractor to perform the Service, and legal successors to the Principal and permitted assignees of the Principal.
- (rr) "Service Provider's Software", the object code versions of any downloadable software owned by or duly licensed to the Service Provider solely for the purpose of accessing the Service, including but not limited to an agent, together with the updates, new releases or versions, modifications or enhancements, owned or licensed to and provided by the Service Provider to the Principal pursuant to this Agreement, together with all pertinent documentation and other instructions related to such software.
- (ss) "Standards", CEF Standards and Grant Agreement Standards.
- (tt) "Service", recruitment services mentioned in the *Annex C: SCOPE OF SERVICE (Technical specification)* and this Agreement.
- (uu) "Service Provider's Proposal", as specified in accordance with the preamble of this Agreement.
- (vv) "Service Start Date", as specified in accordance with *Annex D: PAYMENTS FOR SERVICE*.
- (ww) "Works", all incidental works, steps and actions, performed by the Service Provider under this Agreement for the attainment of the objectives of the Service and/or the Project in accordance with *Annex C: SCOPE OF SERVICE (Technical specification)* and *Annex D: PAYMENTS FOR SERVICES*.
- (xx) "Working Day", any day (other than Saturday or Sunday) on which banks in the Republic of Latvia are open for conduct of business.

Annex B: PROJECT OBJECTIVES

The Project is a part of the pre-identified, cross-border "Rail Baltica" project connecting the three Baltic States with Central Europe along the North Sea - Baltic Corridor. The aim of the Project is to develop a new, EU gauge double-track electrified railway line to eliminate the technical bottleneck due to the gauge differences (1520 mm vs. EU 1435 mm) matching the requirements of the TSI INF traffic codes P2/F1, as of 2015.

The Project includes technical designs, assessments and studies, land acquisition, project implementation support measures, preliminary construction works, supervision, communication and PR tasks.

The aim of the Project is to implement all the necessary preparatory activities including, without limitations, technical designs, building permits, land acquisition, to commence construction works of the Railway and to prepare for the main construction phases of the Railway line. The activities of the Project are envisaged to be performed on multiple sites in Estonia, Latvia and Lithuania.

The main objectives of the phase of the Project contemplated under the Agreement are the following:

- preparation of the technical design of the track and railway related structures in full compliance with agreed TSI INF traffic codes P2/F1 (design speed of up to 240 km/h for passenger traffic and up to 120 km/h for freight traffic, axle load 22,5 t and length of freight train from 740 m to 1050 m) and the relevant EU and domestic legislations;
- technical consultancy for designs vis-à-vis the technical requirements;
- completion of the Railway route related studies to ensure a successful implementation of the project;
- planning of the land acquisition activities alongside the planned Railway route and land acquisition;
- construction of a new Railway line on Tallinn - EE/LV border, Phase I - embankment and grade-level crossings, to complete the preliminary works for the Railway superstructure;
- construction of Ülemiste and Pärnu passenger terminals, Riga Central Railway junction and related civil structures and Riga International Airport RB passenger station civil structures and junction to complete the preliminary works for the Railway superstructure;
- construction of a Railway connection between Riga Central Station and Riga International Airport;
- construction of a section of the new railway line Kaunas (RRT)- Panevėžys - Lithuania/Latvia state border (Phase I, approximately 3 km single track);
- implementation of a communication plan in order to keep stakeholders and the public informed of the progress of the project;
- supervision of works to ensure that the construction is in compliance with technical design; and
- contribution to the implementation of the North Sea-Baltic Core Network Corridor and the development of the EU internal market.

In addition, it is a prerequisite that all compulsory assessments be duly completed and approved by the competent authorities according to Applicable Law and in line with requirements of relevant EU legislation prior to commencement of the physical intervention.

FOR OPEN COMPETITION

„RECRUITMENT SERVICES“

PART NO 1

(Baltic States – Estonia, Latvia, Lithuania):

(IDENTIFICATION NO RBR 2018/15)



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

Riga, 2018

Procurement aim:

To ensure talent available to RB Rail AS in timely manner to deliver its business goal: the design, construction and marketing (including branding) of the Rail Baltica railway.

Technical Specification for procurement part 1 „Recruitment Services” (Baltic states – Estonia, Latvia, Lithuania):

Position level	Description	Search area
P1	Level of experience 2-3 years. Administration/Support/Service, Procurement: Specialist, administrative, analytical, support roles Infrastructure project delivery: Junior engineers, project assistants	Single country within Baltic states (EE, LV LT)
P2	Level of experience 5+ years Infrastructure project delivery: engineers, technical experts, bid and client management	Single country within Baltic states (EE, LV, LT)
P3	Level of experience 5+ years Marketing-Brand management, Intermodal Logistics, Logistics supply chain, Procurement; Infrastructure project delivery: engineers, technical experts, bid and client management Infrastructure project delivery – programme management, high level technical experience	Pan-Baltic search

The Contractor will be required to carry out the following tasks:

- a) develop position specification and job description (position purpose, essential job functions, requirements, qualifications and competencies) in cooperation with the company and in accordance with the company's organizational structure and business aims;
- b) develop recruitment plan and execute recruitment, sourcing Candidates in Estonia, Lithuania and Latvia, and/or perform Pan-Baltic search in accordance with the position level;
- c) attract and evaluate Candidates, conduct interviews and tests (if necessary), shortlist 3-4 Candidates for each position and present them to the RB Rail AS for final interviews with the following written documentation: CV and appraisal of Candidate according to positions profile;
- d) produce recruitment process related documentation in English;
- e) reference checks for final applicant;
- f) provide consultations on employee relations.

Annex D: PAYMENTS FOR SERVICES

1. **"Service Fee"** a total service fee in the amount of 79 000,00 EUR (seventy-nine thousand euros) and

Value added tax (hereinafter – VAT), which on the date of conclusion of this Agreement is 21%, namely, 16 590,00 EUR (sixty thousand five hundred ninety euro).

2. Service Start Date: Date when the Principal sends the Assignment Order (in the form chosen by the Principal) to the Service Providers email indicated in the Agreement. The Assignment Order shall contain at least the information about the specific position (Candidates as per table below) required and Due Date:
3. Deliverables:

No	After delivery and acceptance of:	Fee	Deadline Date
4.1	P1 (Annex C: SCOPE OF SERVICE (Technical specification)) Candidates: Level of experience 2-3 years. Administration/Support/Service, Procurement: Specialist, administrative, analytical, support roles Infrastructure project delivery: Junior engineers, project assistants	EUR [●] for one recruited Candidate, excluding VAT	SSD* + three (3) months
4.2	P2 (Annex C: SCOPE OF SERVICE (Technical specification)) Candidates: Level of experience 5+ years Infrastructure project delivery: engineers, technical experts, bid and client management	EUR [●] for one recruited Candidate, excluding VAT	SSD* + three (3) months
4.3	P3 (Annex C: SCOPE OF SERVICE (Technical specification)) Candidates: Level of experience 5+ years Marketing-Brand management, Intermodal Logistics, Logistics supply chain, Procurement; Infrastructure project delivery: engineers, technical experts, bid and client management Infrastructure project delivery – programme management, high level technical experience	EUR [●] for one recruited Candidate, excluding VAT	SSD* + four (4) months

*SSD – Service Start Date.

5. The Principal pays to the Service Provider for the Service regarding the recruited Candidate in accordance with the afore mentioned table as follows:
 - 5.1 70% of the amount stipulated in the corresponding row of the afore mentioned table shall be paid within 30 days after the Principal enters into employment agreement with the Candidate for the particular position (P1, P2 or P3);
 - 5.2 30% of the amount stipulated in the corresponding row of the afore mentioned table shall be paid as a success fee – within 30 days after the Principal employs the Candidate suggested by the Service Provider, and it withstands the probation period defined by the Principal in the agreement, for instance, employment agreement or service agreement.
6. In case if the Principal enters into the employment agreement with two (2) selected Candidates suggested by the Service Provider within one (1) search Service (regarding one (1) vacancy), the Principal shall pay to the Service provider 100% of the amount stipulated in the corresponding row of the afore mentioned table for the first recruited Candidate and 50% of the amount stipulated in the corresponding row of the afore mentioned table for the second recruited Candidate.
7. In case if the Principal during the execution of the particular Assignment Order, enters into the employment agreement with the Candidate found and proposed by the Principal, not Service Provider, the Service Provider is entitled to receive 50% of the amount stipulated in the corresponding row of the afore mentioned table.

8. Defects Date: thirty (30) calendar days.

Annex E: LIST OF APPROVED SUB-CONTRACTORS AND STAFF

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

Annex F: PROVISIONAL COMPLETION NOTE NO [INSERT NUMBER]

Date: [INSERT DATE IN THE FORM OF 1 JANUARY 2018]

Location: [INSERT LOCATION]

For:

RB Rail AS

Registration number 40103845025, legal address: Krišjāņa Valdemāra iela 8-7, Rīga, LV-1010, Latvia
(hereinafter, the "Principal")

This provisional completion note (hereinafter, "Provisional Completion Note") is issued to the Principal by [.] [INSERT NAME, REGISTRATION NUMBER INSERT REGISTRATION NUMBER, LEGAL ADDRESS] (hereinafter, the "Service Provider"), represented by [INSERT NAME OF REPRESENTATIVE ON THE BASIS OF INSERT BASIS OF REPRESENTATION].

In this Provisional Completion Note, unless the context requires otherwise, all defined terms shall have the meaning ascribed to such terms in accordance with the [INSERT AGREEMENT DATE IN THE FORM OF FRAMEWORK AGREEMENT NO. INSERT AGREEMENT NUMBER] (hereinafter, the "Agreement") and *Annex A: DEFINITIONS AND COMMON TERMS* of the Agreement.

Whereas:

- (A) the Principal and the Service Provider have entered into the Agreement;
- (B) Clause 7.5 of the Agreement stipulates that upon producing a Deliverable constituting all or an identifiable part of the Technical Specification, the Service Provider shall issue to the Principal a Provisional Completion Note substantially in the form of *Annex F: PROVISIONAL COMPLETION NOTE NO [INSERT NUMBER]* of the Agreement;
- (C) a Deliverable has been supplied.

The following Deliverable has/have been supplied on [INSERT DATE IN THE FORM OF 1 January 2018], as specified in accordance with *Annex D: PAYMENTS FOR SERVICE* of the Agreement:
[DESCRIBE IN REASONABLE DETAIL THE DELIVERABLE SUPPLIED. INSERT N/A, IF NO DELIVERABLE HAS BEEN SUPPLIED]

As stipulated in Clause 7.6 of the Agreement, in the event the Principal objects to the issue of the Provisional Completion Note, the Principal shall give a written notice to the Service Provider setting out in reasonable detail Defects or reasons for the objection (hereinafter, the "Objection Notice") (15) Working Days, following receipt of the Provisional Completion Note.

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

Signature:

[insert name, surname
insert position
insert company name]

Annex G: PROVISIONAL ACCEPTANCE NOTE NO [INSERT NUMBER]

Date: [INSERT DATE IN THE FORM OF 1 JANUARY 2018]

Location: [INSERT LOCATION]

This provisional acceptance Note (hereinafter Provisional Acceptance Note) is issued to the Service Provider by RB Rail AS, registration number 40103845025, legal address K. Valdemāra iela 8-7, Riga, LV-1010 (hereinafter, the "Principal"), represented by [INSERT NAME OF REPRESENTATIVE ON THE BASIS OF INSERT BASIS OF REPRESENTATION].

In this Provisional Acceptance Note, unless the context requires otherwise, all defined terms shall have the meaning ascribed to such terms in accordance with the [INSERT AGREEMENT DATE] Agreement on [INSERT NAME] No [INSERT AGREEMENT NUMBER] (hereinafter, the "Agreement") and *Annex A: DEFINITIONS AND COMMON TERMS* of the Agreement.

Whereas:

- (A) the Principal and the Service Provider have entered into the Agreement;
- (B) the following Deliverable(s) have been supplied to the Principal:
 - (ii) [PLEASE IDENTIFY DELIVERABLE]
- (C) any and all Defects have been averted or no Objection Notices have been issued;
- (D) as stipulated by Clause 7.6 of the Agreement, final acceptance shall be evidenced by means of the

Principal issuing and both Parties attaching their signature to the Final Acceptance Note substantially in the form of *Annex H: FINAL ACCEPTANCE NOTE NO.* (hereinafter, the "Final Acceptance Note");

The Principal is satisfied with the result of any and all Deliverables supplied and, in accordance with Clause 7.5 of the Agreement, the Principal accepts the part of the Service performed as of the date of this Provisional Acceptance Note.

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

Signatures:

[insert name, surname
insert position]

Annex H: FINAL ACCEPTANCE NOTE NO.

Date: [INSERT DATE IN THE FORM OF 1 January 2018]

Location: [INSERT LOCATION]

For: [•] (hereinafter, the "Service Provider")

This final acceptance Note (hereinafter, "Final Acceptance Note") is issued to the Service Provider by RB Rail AS, registration number 40103845025, legal address K. Valdemāra iela 8-7, Riga, LV-1010 (hereinafter, the "Principal"), represented by [INSERT NAME OF REPRESENTATIVE ON THE BASIS OF INSERT BASIS OF REPRESENTATION].

In this Final Acceptance Note, unless the context requires otherwise, all defined terms shall have the meaning ascribed to such terms in accordance with the Agreement on [INSERT NAME] No [INSERT AGREEMENT NUMBER] dated [INSERT DATE] (hereinafter, the "Agreement") and *Annex A: DEFINITIONS AND COMMON TERMS* of the Agreement.

Whereas:

- (A) the Principal and the Service Provider have entered into the Agreement;
- (B) one or more Deliverables have been supplied;
- (C) any and all Defects have been averted or no Objection Notices have been issued;
- (D) as stipulated in accordance with Clause 7.8 of the Agreement, final acceptance shall be evidenced by means of the Principal issuing and both Parties attaching their signature to the Final Acceptance Note substantially in the form of *Annex H: FINAL ACCEPTANCE NOTE NO.* (hereinafter, "**Final Acceptance Note**");

The Principal is satisfied with the result of the Service and/or Deliverables completed and submitted and the Principal accepts the Service in its entirety.

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

[insert name, surname
insert position]
RB Rail AS
Principal

[insert position]
[insert company name]
Service Provider

Annex I: REPRESENTATIVES

Annex J: SERVICE PROVIDER'S PROPOSAL

Annex K: DECLARATION OF SERVICE PROVIDER

I, the undersigned duly authorised representative, on behalf of [*name of the Service Provider*] undertake:

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

Beneficiaries' or Implementing Bodies' official, professional under contract with Beneficiary or Implementing Body or sub-contractor may have a direct or indirect interest of any kind in the Service Provider's business or any kind of economic ties with the Service Provider;

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

[signature] [name, last name] [position] [date]

**AGREEMENT
for
RECRUITMENT SERVICES
PART No 2 (European Union)
between**

**RB Rail AS and
[•]**

**Contract registration number 8/2018-[•]
CEF¹ Contract No INEA/CEF/TRAN/M2015/1129482 [•]
Procurement procedure identification No RBR 2018/15**

Dated [•] [•]2018

¹ Grant Agreement under the Connecting Europe Facility

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PROFESSIONAL CONSULTANT AGREEMENT

This PROFESSIONAL CONSULTANT FRAMEWORK AGREEMENT (hereinafter, the "Agreement"), together with all Annexes thereto, is entered into in Riga, on [-] [-] of the year 2018 (hereinafter, the "Effective Date") by and between:

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

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

WHEREAS:

- (A) This Agreement is entered into under the Project which includes all activities undertaken by the respective beneficiaries and implementing bodies of the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania in order to build, render operational and commercialise the Rail Baltica railway – a new fast conventional double track electrified railway line according TSI INF P2-F1 criteria and European standard gauge (1435mm) on the route from Tallinn through Pärnu-Riga-Panevėžys-Kaunas to Lithuanian-Polish border, with the connection of Kaunas – Vilnius, and related railway infrastructure in accordance with the agreed route, technical parameters and time schedule;
- (B) The Principal has organised procurement procedure "Recruitment Services" (identification No 15) (hereinafter, the "Procurement Procedure") whereby the Service Provider's tender proposal (hereinafter, the "Service Provider's Proposal") was selected as the winning bid;
- (C) This Agreement is co-financed from the Connecting Europe Facility (CEF), CEF Contract No INEA/CEF/TRAN/M201[●]/[●], Activity [●], Action No: [●].

Section 1. DEFINITIONS AND INTERPRETATION

- 1.1 *Definitions.* In this Agreement, unless the context requires otherwise, all defined terms shall have the meanings ascribed to such terms in accordance with *Annex A: DEFINITIONS AND COMMON TERMS*.
- 1.2 *Interpretation.*
 - 1.2(a) The headings contained in this Agreement shall not be used in its interpretation.
 - 1.2(b) References to the singular shall include references in the plural and vice versa, words denoting a gender shall include any other gender where the context requires, and words denoting natural Persons shall include any other Persons.
 - 1.2(c) References to a treaty, directive, regulation, law or legislative provision shall be construed, at any particular time, as including a reference to any modification, extension or re-enactment of the respective treaty, directive, regulation, law or legislative provision at any time then in force and to all subordinate legislation enacted from time to time.
 - 1.2(d) In the event there arises a conflict between provisions of the Agreement, the last provision to have been written chronologically shall take precedence.
 - 1.2(e) Any reference in this Agreement to a Person acting under the direction of another Person shall not include any action that is taken in contravention of any Applicable Law or Standards, unless the

relevant Person can demonstrate that an explicit instruction or direction was given to take the relevant action.

1.2(f) Unless expressly stated to the contrary, any reference in this Agreement to the right of consent, approval or agreement shall be construed such that the relevant consent, approval or agreement shall not be unreasonably delayed or withheld. The Parties agree and acknowledge as follows:

1.2(f)(i) neither Party shall be required to seek or apply for any consent, approval or agreement by any Person which would place the respective Party in breach of any Applicable Law, Standards or Good Industry Practice; and

1.2(f)(ii) nothing in this Agreement shall require the Principal to give or procure the giving of any consent or approval which would be contrary to the protection, safety and efficient operation of the Railway and the Project.

1.2(g) A reference to "writing" shall include an e-mail transmission and any means of reproducing words in a tangible and permanently visible form.

1.2(h) The words "include" and "including" are to be construed without limitation.

1.2(i) Unless indicated otherwise, all references to "days" shall mean calendar days.

1.2(j) The words in this Agreement shall bear their natural meaning, except for any Definitions, in accordance with *Annex A: DEFINITIONS AND COMMON TERMS*.

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

1.3(a) this Agreement document;

1.3(b) Explanations (clarifications) of the procurement documentation;

1.3(c) Procurement documents with the annexes;

1.3(d) Clarifications of the Service Provider's Proposal;

1.3(e) Service Provider's Proposal.

Section 2. GENERAL TERMS AND CONDITIONS

2.1 *Engagement.* The Principal hereby engages the Service Provider to provide and perform the Service **on-demand** basis for the purposes of the Project with the objective of ensuring provision and performance of all Works more fully identified in *Annex C: SCOPE OF SERVICE (Technical specification)* attached to this Agreement (hereinafter, the "Scope of Service") subject to the terms of this Agreement, and the Service Provider hereby accepts such engagement. The Service shall result in the performance of all Works identified in *Annex C: SCOPE OF SERVICE (Technical specification)* according to the terms of this Agreement and delivery to the Principal of the Deliverables according to the delivery terms specified in *Annex D: PAYMENTS FOR SERVICE* to this Agreement.

2.2 *Co-Operation of the Parties.* The Parties shall cooperate with one another to fulfil their respective obligations under this Agreement. Both Parties shall endeavour to maintain good working relationships among all key personnel engaged toward provision of the Service.

2.3 *Licensing Requirements.* By signing this Agreement, the declaration is made by the Service Provider that the Service Provider is professionally qualified, registered, and licensed to practice in the Republic of Latvia, Estonia and Lithuania.

- 2.4 *General Obligations of Service Provider.* The Service Provider shall be responsible for the professional quality, technical accuracy, and coordination of all concepts, specifications, and other services furnished under this Agreement. The Service Provider shall have an obligation, without additional compensation of any kind, to correct or revise any errors, Defects, or omissions in concepts, specifications, estimates, and other services rendered hereunder and forming part of the Service.
- 2.5 *Acceptance Not a Waiver.* The review, approval, acceptance, or payment for the Works forming part of the Service shall not be interpreted or construed to operate as a waiver of any right or cause for action arising out of the Service Provider's performance of any Works under this Agreement. The Service Provider shall remain liable as allowed under this Agreement and under Applicable Law for any and all costs and/or Damages caused by the Service Provider's negligent performance of any of the Works furnished under this Agreement.
- 2.6 *Certain Representations and Warranties by Parties.* Each Party represents and warrants to the other Party, as of the Effective Date, as follows:
- 2.6(a) it has entered into this Agreement with the aim of attaining all of the objectives and performing in all material respects all of the obligations and commitments herein set forth;
 - 2.6(b) it has entered into this Agreement without having any intention or goal whatsoever to violate the Applicable Law, its own Statutes, other constitutional documents or agreements of any kind to which it is a party;
 - 2.6(c) it is not bankrupt and is not the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, it is not in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws of the country where it is registered and submits its tax accounts; and
 - 2.6(d) it has entered into this Agreement of its own volition and in good faith.
- 2.7 *Certain Representations and Warranties by Service Provider.* The Service Provider represents and warrants to the Principal, as of the Effective Date, as follows:
- 2.7(a) it has all requisite qualification, skills and competence to provide the Service to the Principal on the terms and conditions of this Agreement which are no less favourable than the terms and conditions of service identified by the Service Provider in any document submitted by the Service Provider to the Principal as part of the Procurement Procedure and on the terms of the Service Provider's Proposal identified in accordance with Service Provider's Proposal;
 - 2.7(b) it holds all requisite licenses, permits, approvals and consents necessary to enable performance of the Service according to the specifications contained in *Annex C: SCOPE OF SERVICE (Technical specification)*;
 - 2.7(c) it has all requisite ability to ensure the highest quality of the Service;
 - 2.7(d) it will assign competent and duly qualified personnel to carry out the Works set out in this Agreement and provide Service according to the highest professional standard and Good Industry Practice;
 - 2.7(e) it is not deemed to be a Person associated with the Principal for the purposes of Applicable Law;
 - 2.7(f) it has not been registered as a VAT payer in the Republic of [COUNTRY]; and
 - 2.7(g) it is compliant with all of the requirements of the Service Provider's Declaration contained in *Annex K: DECLARATION OF SERVICE PROVIDER* and will continue to be compliant with all such requirements during the term of this Agreement;
 - 2.7(h) the income mentioned in this Agreement will not derive through permanent establishment or fixed base maintained by the Service Provider in the Republic of Latvia. The Service Provider agrees to submit to the Principal four (4) copies of *"Residence Certificate–Application for Reduction of or Exemption from Latvian anticipatory taxes withheld at source from payments (management and*

consultancy fees, leasing fees and certain other types of income), paid to residents of the [COUNTRY]"(the "Residence Certificate") confirmed by Competent Authority of the [COUNTRY] and the Latvian State Revenue Service. The Residence Certificate shall be submitted to the Principal prior the Principal will due to make a payment of the fee or other payments to the Service Provider. Otherwise the Principal will withhold withholding tax at the rate of 20% from the fee and payments made to the Service Provider. [IF APPLICABLE].

Section 3. OBLIGATIONS OF SERVICE PROVIDER

- 3.1 *General Obligations.* The Service Provider's services shall be performed as expeditiously as is consistent with professional skill and care, orderly progress of the Service, and in accordance with this Agreement. The Service Provider shall, at all times during the term of this Agreement, act in good faith towards the Principal in respect of all matters under the Agreement. The Service Provider undertakes to perform the performance of the Service in its entirety. The Service Provider shall develop and supplement the Scope of Service in consultation with the Principal with a view to achieving the objectives of the Project set out in *Annex B: PROJECT OBJECTIVES*, including with respect to identifying the Due Date and other key dates, Deliverables, the underlying assumptions and any Necessary Consents. The Service Provider agrees with the Principal that it shall use all relevant knowledge obtained by the Service Provider in the subject of the Agreement. Specifically, the Service Provider undertakes to perform the Service in accordance with all of the following:
- 3.1(a) requirements of Applicable Law;
 - 3.1(b) Good Industry Practice;
 - 3.1(c) Legal Requirements and Standards as may be applicable from time to time;
 - 3.1(d) Necessary Consents; and
 - 3.1(e) the terms of this Agreement.
- 3.2 *Duty of Care and Exercise of Authority.* The Service Provider shall:
- 3.2(a) in performing its obligations under this Agreement, exercise reasonable professional skill, diligence and care as may be expected of a properly qualified and competent Person carrying out services of a similar size, nature, type and complexity;
 - 3.2(b) ensure that its personnel are properly qualified and competent in accordance with the relevant Standards;
 - 3.2(c) ensure that all plans, specifications, estimates, surveys and other documents required to be prepared or submitted by the Service Provider under this Agreement conform to Good Industry Practice generally acceptable at the time of submission of such plans, specifications, estimates, studies and documents;
 - 3.2(d) at all times during the term of the Service, ascertain and comply with all Applicable Laws and Good Industry Practice of the Republic of Latvia, Republic of Estonia and Republic of Lithuania. In case Good Industry Practice for any particular aspects is not available in Latvia, Lithuania or Estonia, the Service Provider shall apply the Good Industry Practice from elsewhere in the European Union and ensure that it is in compliance with Applicable Laws of the Republic of Latvia, Lithuania and Estonia;
 - 3.2(e) comply, where applicable, with any reasonable requirements of the Principal not otherwise provided for in this Agreement; and
 - 3.2(f) ensure that all the activities performance are documented in accordance with Good Industry Practice, and using standard industry quality control methods;
 - 3.2(g) notify the Principal of any Defects in accordance with Clause 7.4 of this Agreement as soon as such Defects are identified by the Service Provider;

3.2(h) whenever the Service includes the exercise of powers or performance of duties authorized or required pursuant to the terms of any contract entered into between the Principal and any third party, the Service Provider shall:

3.2(h)(i) act in accordance with the terms and conditions of the agreement entered into between the Principal and the relevant third party; provided, however, that the details of such powers and duties, to the extent not described pursuant to *Annex D: PAYMENTS FOR SERVICE* are acceptable to the Service Provider;

3.2(h)(ii) if authorized to certify, decide or exercise discretion, do so fairly between the Principal and third party not as an arbitrator but as an independent professional exercising its best skill and judgment; and

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

3.3 *Maintenance of Records.* During the term of the Service and for period of ten (10) years for any reason whatsoever, the Service Provider shall keep and maintain clear, adequate and accurate records and Documentation evidencing, to the reasonable satisfaction of the Principal, that the Service has been and is being carried out in accordance with the Standards. In addition, the Service Provider shall retain copies of the object code of all Service Provider's Software used in performance of the Service and retain copies of all software used in the design and production of the Service Provider's Software.

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

3.5 *Right to Sub-Contract and Staff.* In carrying out the Service, the Service Provider may only rely on the services of those Approved Sub-Contractors and Staff listed in *Annex E: LIST OF APPROVED SUB-CONTRACTORS*, as such list may, from time to time, be modified or supplemented in agreement with the Principal and in accordance with the terms and subject to the criteria contained in the applicable public procurement laws of the Republic of Latvia. Mentioned Annex shall specify the name, contact details and legal representative(s) of each Approved Sub-Contractor and specify the name of each Staff member as of the Effective Date. The Service Provider shall have an obligation to notify the Principal in writing of any changes to Sub-Contractor and/or Staff data specified in the mentioned Annex occurring during the term of this Agreement and of the required information for any new sub-contractors and/or Staff member which it may subsequently engage toward provision of the Service.

Pursuant to the Public Procurement law of Latvia applicable at the date of entry into effect of this Agreement, the Service Provider shall obtain prior written consent of the Principal for the replacement of each Sub-contractor and/or each Staff member and/or key personnel indicated in the Annexes, including in the *Annex E: LIST OF APPROVED SUB-CONTRACTORS AND STAFF* and involvement of additional sub-contractors and/or Staff members.

Review and evaluation of the replacement Sub-contractors and/or Staff shall be carried out, and the consent or refusal to give consent shall be rendered by the Principal in accordance with Article 62 of the Public Procurement Law of the Republic of Latvia.

The Service Provider shall replace the Sub-contractor and/or Staff member which, during the effectiveness of this Agreement, meets any of the compulsory grounds for exclusion of tenderers (or sub-contractors) that were verified during the Procurement Procedure.

3.6 *Responsibility for Performance by Sub-Contractors.* The Service Provider shall retain the complete responsibility for the proper performance of all of its obligations under this Agreement, and any act, failure to act, breach or negligence on the part of any of its Approved Sub-Contractors shall, for the purposes of this Agreement, be deemed to be the act, failure to act, breach or negligence of the Service Provider.

- 3.7 *Property of Principal.* Anything supplied by or paid for by the Principal for the use by the Service Provider toward provision of the Service under this Agreement shall constitute the property of the Principal and, to the extent practicable, shall be marked by the Service Provider as property of the Principal. To the extent the Service is completed or terminated, the Service Provider shall furnish inventories of whatever has not been consumed in the performance of the Service to the Principal and shall deliver such inventories in such manner and to such location(s) as designated by the Principal. For the avoidance of any doubt, such delivery shall not be forming part of the Scope of Service and the terms of the delivery shall be agreed between the Principal and the Service Provider separately.
- 3.8 *Reservation of Certain Approval Rights.* Nothing in this Agreement shall require the Principal to give or procure the giving of any consent or approval which would be contrary to or inconsistent with the interests of protection, safety and efficient operation of the Railway or the Project and the safety of Persons or property.
- 3.9 *Acceptance Not a Waiver.* The Principal's review, approval, acceptance, or payment with respect to any part of the Service provided by the Service Provider shall not be interpreted or construed to operate as a waiver of any rights or cause for action arising out of the Service Provider's performance of the Service under this Agreement. The Service Provider shall remain liable to the Principal as allowed under this Agreement and under Applicable Law for any and all Costs and/or Damages caused by the Service Provider's negligent performance of any part of the Service furnished under this Agreement.
- 3.10 *Obligations of Service Provider on Termination.* In the event of issue or receipt of a notice of termination of the Agreement under Clause 8.1, the Service Provider shall:
- 3.10(a) take immediate steps to bring an end to the performance of the Service in an orderly manner;
 - 3.10(b) make arrangements to minimize the expenditure under this Agreement as rapidly as possible; and
 - 3.10(c) pass to the Principal a complete set of any documents, manuals or other information that the Principal may require in connection with the Project and the Railway and which, at the time of termination, are in the possession or under the control of the Service Provider.
- 3.11 *Attendance of Meetings.* To the extent necessary to ensure smooth and efficient provision of the Service, the Service Provider shall, at the Principal's request, hold and/or attend meetings with any Persons.
- 3.12 *Compliance with Laws.* The Service Provider shall review the Applicable Laws applicable to the Service Provider's services. In carrying out any activities forming part of the Service, the Service Provider shall, at all times, ensure compliance with requirements imposed by supra-national and/or governmental authorities having jurisdiction over the Project.
- 3.13 *Information Furnished by Principal.* The Service Provider shall be entitled to rely on the accuracy and completeness of Service and information furnished by the Principal. The Service Provider shall scrutinise the information provided by the Principal and provide prompt written notice to the Principal if the Service Provider becomes aware of any errors, omissions, or inconsistencies in the provided information, and in the preparation or provision of Service or information.
- 3.14 *No Material Interference.* The Service Provider agrees that non-Principal activities undertaken by the Service Provider will be managed so as not to materially interfere with the Service Provider's obligations to the Principal under this Agreement.
- 3.15 *No Conflicting Activity.* Except with the Principal's knowledge and express written permission, the Service Provider shall not engage in any activity, or accept any employment, other agreement, interest, or contribution that would reasonably appear to compromise the Service Provider's professional judgment and performance with respect to the Service and/or the Project. In performing the Service, the Service Provider shall take all necessary measures to prevent any situation where the impartial and objective implementation of the Service is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest.
- 3.16 *Certain Negative Covenants.* In carrying out the Service, the Service Provider undertakes not to procure goods or services of any kind from any Person meeting any of the following criteria:

- 3.16(a) the Person who is a member of the Management Board or Supervisory Board of an Approved Sub-Contractor or procurator of an Approved Sub-Contractor, or is authorised to represent or act on behalf of an Approved Sub-Contractor with respect to any activity related to any subsidiary company of such Approved Sub-Contractor, and such Person has been accused of commitment of any of the following criminal offences pursuant to an order issued by a public prosecutor or was found to be guilty of commitment of any of the following criminal offences in accordance with a court judgment that has entered into legal force, is non-disputable and non-appealable:
- 3.16(a)(i) accepting a bribe, giving of a bribe, misappropriation of a bribe, intermediation toward giving or taking of a bribe, acceptance of a prohibited benefit or commercial bribing;
 - 3.16(a)(ii) fraud, misappropriation of funds or money laundering;
 - 3.16(a)(iii) tax evasion or evasion of payments equivalent to tax;
 - 3.16(a)(iv) terrorism, financing of terrorism, instigation of acts of terrorism, terrorist threats or recruitment and training of a Person with the aim of committing acts of terrorism;
- 3.16(b) the Person has, by decision of a competent authority or judgment of a court which has entered into legal force and is non-disputable and non-appealable, been found guilty of violation of labour law in any of the following manners:
- 3.16(b)(i) employment of one or more citizens or nationals of countries who are not citizens or nationals of a Member State of the European Union and are residing in the territory of a Member State of the European Union unlawfully;
 - 3.16(b)(ii) employment of one or more Persons without having entered into written employment agreement with such Persons, or without having submitted an employee declaration with respect to such Persons within a period of time stipulated in accordance with applicable laws and regulations applicable to Persons that enter into salaried employment;
- 3.16(c) the Person who, by decision of a competent authority or in accordance with judgment of a competent court which has entered into legal force, is non-disputable and non-appealable, has been held guilty of violation of applicable rules of competition law manifested as a vertical agreement aimed at restricting the ability of one or more purchasers to determine the resale price, or a horizontal cartel agreement, with the exception of instances where the relevant authority, upon having established the fact of violation of applicable rules of competition law, has discharged the candidate or participant in a tender offer from imposition of a fine or has reduced the amount of fine as a part of co-operation leniency programme;
- 3.16(d) the Person who has insolvency proceedings initiated against it (except in the circumstances where a bailout or a similar set of measures are applied within the insolvency proceedings and are aimed at preventing the bankruptcy and restoring the debtor back to solvency, in which case the Service Provider shall evaluate the possibility of participation by such Person in performing the Service), economic activity of the Person has been suspended or discontinued, bankruptcy proceedings have been initiated against the Person or the Person is subject to a liquidation;
- 3.16(e) the Person has unpaid tax indebtedness in the country where the Procurement Procedure is organised or in the country where the Person is registered or permanently residing as a tax payer, including the indebtedness with respect to State social insurance contributions, in the total amount exceeding EUR 150 in each individual country; in such case, the Service Provider can, within its sole discretion, prompt the Approved Sub-Contractor to pay or discharge all outstanding tax indebtedness within 10 (ten) Working Days and, upon such payment or discharge, allow the person to continue performance of the Service; and
- 3.16(f) any of the above-mentioned criteria shall apply to all members of a group of persons if the Person is a group of persons.

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

3.17(a) any report, brochure, document or information related to the Service provided by the Service Provider to the Principal or any other Person, or which the Service Provider makes publicly available shall include each of the following:

3.17(a)(i) a funding statement which indicates that the Service is financed from CEF funds substantially in the following form: "Rail Baltica is co-financed by the European Union's Connecting Europe Facility";

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

3.17(a)(iii) the flag of the Council of Europe and the European Union.

3.17(b) the requirements set forth in Clauses 3.17(a)(i) and 3.17(a)(iii) of this Agreement can be complied with by means of utilizing the following logo:



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

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

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

Section 4. OBLIGATIONS OF PRINCIPAL

4.1 **Acting in Good Faith and Supply of Information.** At all times during the term of this Agreement, the Principal undertakes to act in good faith toward the Service Provider in respect of all matters under this Agreement. The Principal shall, so as not to delay the Service and within a reasonable time, supply to the Service Provider free of cost all information in the power of the Principal to obtain which pertains to the Service, the Project and the Railway. The Principal shall, free of any Costs to the Service Provider, to the extent not explicitly stated otherwise in this Agreement, comply with all of its obligations under this Agreement, including with respect to carrying out any action or providing any information identified and specifically requested by the Service Provider, as reasonably necessary to enable the Service Provider to progress the Service. Information or instructions provided to the Service Provider by or on behalf of the Principal in connection with the Railway or the Project shall be prepared and given in such a diligent and professional manner and with such clarity, in such detail and in a timely manner as is necessary to enable the Service Provider to comply with its obligations under this Agreement.

4.2 **Review of Documentation.** The Principal shall examine Documentation as may be submitted by the Service Provider for review by the Principal toward partial completion of the Service and, upon request of the Service Provider, shall render decisions and opinions pertaining thereto.

- 4.3 *Decisions by Principal.* On all matters properly referred to it by the Service Provider in writing the Principal shall give its decision in writing so as not to delay the Service and within a reasonable time.
- 4.4 *Assistance and Cooperation by Principal.* In each country of the Railway and in respect of the Service Provider, its personnel and dependents, as the case may be, the Principal shall have an obligation to do all in its power to reasonably assist the Service Provider and reasonably cooperate with the Service Provider with respect to each of the following matters:
- 4.4(a) providing unobstructed access wherever access is required for purposes of enabling, establishing or providing the Service; and
- 4.4(b) providing access to other organizations to enable collection of information which is to be obtained by the Service Provider.
- 4.5 *No Material Interference.* The Principal agrees that non-Service Provider activities undertaken by the Principal will be managed so as not to materially interfere with the Principal's obligations to the Service Provider under this Agreement.
- 4.6 *Accounting and Auditing Services.* The Principal shall furnish accounting and *auditing* services as may be necessary for the Service as the Principal may require to ascertain how and/or for what purposes the Service Provider has used the funds paid under the terms of this Agreement.
- 4.7 *Action Upon Becoming Aware of Defects.* In the event the Principal observes or otherwise becomes aware of any error, fault, omission, or defect in the Service or non-conformance of any action forming part of the Service with the Documentation, the Principal shall give prompt notice thereof to the Service Provider. The Service Provider shall have the obligation to correct such error, fault, omission, or defect in the Service or non-conformance of any action forming part of the Service.

Section 5. PERSONNEL AND REPRESENTATIVES

- 5.1 *Supply of Personnel.* The personnel who are designated by the Service Provider shall be fit for their respective assignments, and their qualifications shall be acceptable to the Principal.
- 5.2 *Representatives.* Each Party shall appoint an officer, employee or individual to serve as its representative toward supply or receipt of the Service with full authority to act on its behalf in connection with this Agreement (hereinafter, the "*Representative*"), the initial Representatives having been identified in accordance with *Annex I: REPRESENTATIVES*. Any restriction placed by either Party on its Representative's authority shall be notified to the other Party in writing in order to be effective. The Representatives may delegate their authority by notice in writing specifying the identity of the delegate and specifying the scope of authority so delegated. In addition to the appointment of a Representative in accordance with this Clause 5.2, to the extent required by the Principal, the Service Provider shall designate an individual to liaise with the Representative of the Principal in each country where the Project is implemented.
- 5.3 *Changes in Personnel.* To the extent necessary to replace any Person among personnel or Representative of either Party engaged toward provision or receipt of the Service, the Party responsible for the appointment of such Person shall immediately arrange for replacement of the appointed Person by another Person of comparable competence. The costs of such replacement shall be borne by the Party responsible for the appointment, except that if the replacement is requested by the other Party,
- 5.3(a) such request shall be made in writing and state the reason for the request; and
- 5.3(b) the Party making the request shall bear the costs of replacement, unless misconduct or inability to perform is satisfactorily established as the reason for the replacement.
- 5.4 *Supplemental Personnel.* To the extent necessity arises to supplement the personnel of the Service Provider engaged toward provision of the Service with additional personnel, the Service Provider shall immediately arrange for engagement of such supplemental personnel. The costs of such engagement shall be borne by the Service Provider. For the avoidance of any doubt, the engagement of supplemental personnel under this Clause 5.4 shall not require approval by the Principal, provided that these personnel complies with the law and this Agreement.

Section 6. SERVICE MEETINGS, REPORTING AND RISK REDUCTION

- 6.1 *Service Meetings.* The Service Provider shall arrange project's communication's planning meetings on weekly, monthly and quarterly bases (or more frequently, to the extent mutually agreed by the Parties) if the Principal requests such meetings to be scheduled, at which appropriate personnel of the Service Provider and the Principal and the Representatives of each Party shall be present. Service Provider shall record all meetings (also online meetings) between Parties and prepare meeting reports within 5 Working Days after each meeting at the request of the Principal. All meeting reports shall be harmonized by Principal.
- 6.2 *Reporting.* The Service Provider shall, in a format and at intervals to be agreed with the Principal:
- 6.2(a) provide the Principal with regular reports and status updates on the progress of the Works.
 - 6.2(b) report on any changes to the Scope of Service, payment terms and Estimated Costs, which the Service Provider considers may be needed in order to fulfil the objectives set out in the Scope of Service and payment terms; and
 - 6.2(c) use reasonable endeavours to provide any other information and status updates as may be reasonably requested by the Principal at any time.
- 6.3 *Early Warnings.* Each Party undertakes to give an early warning by notifying the other Party as soon as such Party becomes aware of any matter that is capable of producing any of the following effects:
- 6.3(a) delay any date of supply of any Deliverable specified in accordance with *Annex C: SCOPE OF SERVICE (Technical specification)*; or
 - 6.3(b) impair the usefulness of the Service to the Service Provider.
- Notwithstanding the above, the Service Provider may give an early warning by notifying the Principal of any other matter which the Service Provider deems to be necessary.
- 6.4 *Risk Reduction Meetings.* Either Party may instruct the other Party to attend a risk reduction meeting at which appropriate personnel of each Party and, to the extent practicable, the Representatives of each Party, shall be present, in order for those who attend to co-operate with respect to any of following matters:
- 6.4(a) making and considering proposals for how the effect of the risks registered by the Principal;
 - 6.4(b) deciding on the course of action which will be taken and which Party, in accordance with this Agreement, will take the relevant course of action; and
 - 6.4(c) deciding which risks have now been avoided or have passed.
- 6.5 *Obligation to Act Pursuant to Principal's Comments.* In performing the Service, the Service Provider shall have due regard to any comments made by the Principal in connection with any review of the Documentation, and shall provide reasons to the Principal where it does not take into account any such comments.
- 6.6 *Ambiguities and Inconsistencies.* Either Party shall notify the other Party as soon as it becomes aware of any ambiguity or inconsistency in or between the documents forming part of this Agreement or inconsistency in such documents and comments made by the Principal about the Service provided by the Service Provider. The Principal shall have the absolute and exclusive discretion in resolving any such ambiguity or inconsistency.

Section 7. COMMENCEMENT OF SERVICE, REMEDY OF DEFECTS AND ACCEPTANCE

- 7.1 *Service Commencement.* For every assignment, a separate assignment order - Assignment Order, shall be issued by the Principal and confirmed by the Service Provider. 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 Principal. The Service Provider shall ensure that the Deliverable are supplied on or before each relevant Due Date stipulated in Assignment Order and based on *Annex D: PAYMENTS FOR*

SERVICES. The Service Provider shall render the Service with due diligence having due regard to any applicable any key dates for performance of the Service set out in the Assignment Order, the Agreement and the applicable Annexes, as may be amended from time to time with the consent of the Principal or in accordance with this Agreement and applicable law.

7.2 *Appointment of an assignment.* The Principal invites the Service Provider to implement an assignment by sending an Assignment Order by e-mail. After receiving an invitation, as soon as possible but not later than within the one (1) Working Day the Service Provider shall respond and accept Assignment Order. After the corresponding Assignment Order is accepted by the Service Provider, the conditions set in the Assignment Order become binding upon the Parties.

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

7.3(a) the Service Provider shall inform the Principal of the circumstances and probable effects of such impediment taking into consideration provisions stipulated in *Annex D: PAYMENTS FOR SERVICE*; and

7.3(b) the duration of the Service shall be increased, and any Due Date affected by the impediment or delay shall be extended accordingly.

7.4 *Defects and Defects Date.* Until the Defects Date specified in accordance with *Annex D: PAYMENTS FOR SERVICE* the Principal shall notify the Service Provider of any Defects of any kind as soon as Defects are identified by the Principal and the Service Provider shall have an obligation to notify the Principal of any Defects of any kind as soon as Defects are identified by the Service Provider. Upon discovery of any Defects, or upon receipt by the Service Provider of a notification of Defects from the Principal, the Service Provider shall have seven (7) calendar days to remedy the Defects, irrespective of the nature of such Defects (hereinafter, the "Cure Period"). In the event of inability or failure by the Service Provider to remedy the Defects within the Cure Period, the Principal shall be entitled, in the sole and exclusive discretion of the Principal, to do any of the following:

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

7.4(b) remedy the Defects, irrespective of the extent or nature of the Defects, at own cost of the Principal (including by means of relying on the services of a third Person) and demand reimbursement by the Service Provider of Costs incurred by the Principal as a result of having to pay other Persons toward carrying out any Work or action;

7.4(c) terminate the Agreement according to Section 8; or

7.4(d) remedy the Defects, irrespective of the extent or nature of the Defects, in accordance with Clause 7.4(b) and terminate the Agreement pursuant to Section 8.

For the avoidance of any doubt, the application of the Cure Period under this Clause 7.4 shall be without prejudice to and shall not relieve the Service Provider from the obligation to pay any contractual penalty in accordance with the provisions of Clause 17.2 or to pay Damages in accordance with the provisions Clause 17.3 of this Agreement.

7.5 *Completion of Service and Completion Note.* Supply of a Deliverable occurs whenever the Service Provider has completed all of the Works which the Service Provider has undertaken to perform according to the Assignment Order and Scope of Service and payment terms by the relevant Due Date. On producing a Deliverable (including all Documentation related to the Deliverable) constituting all or an identifiable part of the Service, the Service Provider shall issue to the Principal a Provisional Completion Note substantially in the form of *Annex F: PROVISIONAL COMPLETION NOTE NO [INSERT NUMBER]* (hereinafter, the "Provisional Completion Note"). The Provisional Completion Note shall include the Deliverable and adequate supporting documentation relevant to the Deliverable completed.

7.6 *Objection Notice and Acceptance Note.* In the event the Principal objects to the issuance of a Provisional Completion Note, it shall give notice to the Service Provider setting out in reasonable detail Defects or reasons for the objection (hereinafter, the "Objection Notice") within reasonable time following receipt of the

Provisional Completion Note. In the event no reasons for objection to the Provisional Completion Note exist, the Principal shall issue, within reasonable time following receipt of the Provisional Completion Note, a Certificate of Provisional Acceptance in the form of *Annex G: PROVISIONAL ACCEPTANCE NOTE NO [INSERT NUMBER]* (hereinafter, the "Provisional Acceptance Note"). Subject to Clause 3.9 of this Agreement, the date of the Provisional Acceptance Note shall constitute "Completion Date" with respect to the relevant Due Date and/or Deliverable. The Principal shall not unreasonably withhold or delay issuance of a Provisional Acceptance Note. The Provisional Acceptance Note may have annexed to it a list of any outstanding Defects to be corrected by the Service Provider.

7.7 *Completion of Service Following Receipt of Objection Notice.* In the event of receipt by the Service Provider of an Objection Notice in accordance with Clause 7.6, the Service Provider shall:

- 7.7(a) take due account of all Defects, irrespective of their extent or nature, and other matters raised in the Objection Notice;
- 7.7(b) as soon as reasonably practicable but not later as mentioned in the Objection Notice, correct such Defects, irrespective of their extent or nature, and complete the Works indicated in the Objection Notice so as to comply in all material respects with the requirements of this Agreement; and
- 7.7(c) issue to the Principal a second Provisional Completion Note substantially in the form of *Annex F: PROVISIONAL COMPLETION NOTE NO [INSERT NUMBER]*.

The second Provisional Completion Note issued in accordance with Clause 7.7(c) shall include the Deliverable and adequate supporting documentation relevant to the Deliverable completed. In the event no reasons for objection to the second Provisional Completion Note exist, the Principal shall, within reasonable time following receipt of the second Provisional Completion Note, issue a Certificate of Provisional Acceptance in the form of *Annex G: PROVISIONAL ACCEPTANCE NOTE NO [INSERT NUMBER]* and, subject to the provisions of Clauses 3.9 and 8.1(b) of this Agreement, the date of the Provisional Acceptance Note shall constitute "Completion Date" with respect to the relevant Deliverable. For the avoidance of any doubt, the giving by the Principal of any Objection Notice under Clause 7.6 or second Objection Notice under this Clause 7.7 shall be without prejudice to and shall not relieve the Service Provider from the obligation to pay any contractual penalty in accordance with the provisions of Clause 17.2 or to pay Damages in accordance with the provisions Clause 17.3 of this Agreement.

7.8 *Final Acceptance.* Final acceptance of the Service shall occur upon remedying by the Service Provider of all Defects notified by the Principal to the Service Provider in accordance with Clause 7.4, irrespective of the extent or nature of such Defects. Final acceptance shall be evidenced by means of the Principal issuing and both Parties attaching their signatures to the Final Acceptance Note substantially in the form of *Annex H: FINAL ACCEPTANCE NOTE NO.* (hereinafter, the "Final Acceptance Note"). The date of the Final Acceptance Note shall constitute the "Final Acceptance Date" with respect to the Service. The Principal shall not unreasonably withhold or delay issuance of a Final Acceptance Note.

Section 8. TERMINATION; SUSPENSION

8.1 *Termination for Material Breach or Bankruptcy.* Subject to the provisions of Clause 8.2, either Party shall be entitled to terminate this Agreement upon giving a written notice of termination to the other Party in the event of material breach by the other Party of any of its obligations under this Agreement. The written notice of termination shall contain an itemised description of the breach. For the purposes of this Clause 8.1 an event of material breach shall include any of the following:

- 8.1(a) commitment by a Party of any persistent or material breach of this Agreement (which shall include failure to pay an amount of at least EUR 5,000 due to the other Party or perform any part of the Service valued at least EUR 5,000);
- 8.1(b) failure by the Service Provider to duly address any of the matters raised in the second Objection Notice given by the Principal in accordance with Clause 7.6;
- 8.1(c) failure by any Deliverable to conform to any of the material requirements to such Deliverable contained in and/or *Annex D: PAYMENTS FOR SERVICE*, provided that such failure is not capable of being remedied during the Cure Period; or

- 8.1(d) failure by the Principal to make any payment to the Service Provider in accordance with this Agreement within at least fourteen (14) days from the date of payment falling due;
 - 8.1(e) any of the representations or warranties given by either Party under Clause 2.6 or any of the representations or warranties given by the Service Provider under Clause 2.7 proving to be untrue; or
 - 8.1(f) breach by the Service Provider of the undertaking contained in Clause 9.10.
- 8.2 *Corrective Period.* In the event of breach by either Party of its obligations under this Agreement, the non-breaching Party shall allow the breaching Party fourteen (14) days for corrective action or submission of a corrective action plan (hereinafter, the "Corrective Period"). The Corrective Period shall be counted from the date of receipt by the breaching Party of a written notice of breach. Should no satisfactory corrective action be taken or acceptable corrective action plan provided by the breaching Party, the non-breaching Party shall have the right to terminate the Agreement. It is acknowledged and agreed by the Parties that the provisions of this Clause 8.2 shall not apply with respect to any of the events enumerated in accordance with Clause 8.6. In addition and for the avoidance of any doubt, the application of the Corrective Period under this Clause 8.2 shall be without prejudice to and shall not relieve either Party from the obligation to pay any contractual penalty in accordance with the provisions of Clause 17.2 or to pay Damages incurred by the other Party in accordance with the provisions of Clause 17.3. of this Agreement.
- 8.3 *Right to Terminate Immediately.* Notwithstanding anything to the contrary contained in this Agreement, a Party may terminate this Agreement immediately upon giving the other Party a written notice of termination explaining, in reasonable detail, the reason for termination upon occurrence of any of the following:
- 8.3(a) breach by the other Party of Clause 15.6;
 - 8.3(b) an event of Force Majeure has been continuing during more than sixty (60) days;
 - 8.3(c) the other Party had passed a resolution for winding-up (other than in order to amalgamate or reconstruct);
 - 8.3(d) breach by the Service Provider any of the confidentiality undertakings contained in Section 10;
 - 8.3(e) the other Party is unable to pay its debts and has presented a petition for voluntary bankruptcy;
 - 8.3(f) the other Party had a bankruptcy order issued against it;
 - 8.3(g) the other Party has a provisional receiver or administrative receiver appointed over the whole or a substantial part of its undertaking or assets;
 - 8.3(h) liquidation, insolvency or legal protection proceedings have been initiated with respect to the other Party or the other Party is declared insolvent;
 - 8.3(i) the making by the other Party of a proposal for a voluntary arrangement with creditors; or
 - 8.3(j) the occurrence of any event analogous to the events enumerated under Clauses 8.3(e) - 8.3(i) under the law of any jurisdiction to which the other Party's assets and undertaking are subject.
- 8.4 *Principal's Right to Terminate Immediately.* The Principal may terminate this Agreement immediately upon giving the other Party a written notice of termination explaining, in reasonable detail, the reason for termination, if
- 8.4(a) CEF Co-financing for further financing of the Service are not available to the Principal;
- In such a case, the Principal shall pay the Service Provider the fees in respect of the Service provided under this Agreement up to the date of the notification of the termination of this Agreement and the Principal is not obliged to pay contractual or any other penalty or damages to the Service Provider.

8.4(b) it is not possible to execute the Agreement due to the application of international or national sanctions, or European Union or North Atlantic Treaty Organization applied sanctions significantly affecting interests of financial or capital market.

8.5 *Termination according to Public Procurement Law.* The Agreement can be immediately terminated upon giving the other Party a written notice of termination explaining, in reasonable detail, the reason for termination upon occurrence of any of the provisions mentioned in the Article 64 of the Public Procurement Law. In such a case, the Principal shall pay the Service Provider the fees in respect of the Works provided under this Agreement up to the date of the notification of the termination of this Agreement and the Principal is not obliged to pay contractual or any other penalty or damages to the Service Provider.

8.6 *Right to Advance to Completion.* In the event the Service Provider fails to fulfil any of its obligations, or fails to cure any breach in accordance with Clause 8.2, and the Agreement is terminated by the Principal, the Principal may advance the Service to completion by employing the services of other professional service supplier(s) or by other means available to the Principal. The Service Provider shall be liable to the Principal for any and all additional costs incurred due to failure by the Service Provider to perform. The rights and remedies available to the Principal set forth in accordance with this Clause 8.6 shall be in addition to any and all other rights and remedies available under Applicable Law.

8.7 *Consequences of Termination.* Upon expiration or termination of this Agreement, the obligations of the Parties set forth in this Agreement shall cease, except with respect to the following:

8.7(a) any obligations arising as a result of any antecedent breach of this Agreement or any accrued rights; and

8.7(b) the provisions stipulated in accordance with Clauses 3.3, 7.4, 8.8, 9.6, 9.7, 9.8, 9.9, 9.11, 9.12, 15.2, 15.6, 15.7, 15.8, 17.1, 17.3, 17.5 and Section 10, Section 12, Section 14 and Section 18 which shall survive the termination or expiry of this Agreement and continue in full force and effect along with any other Clauses of or Annexes hereof which are necessary to give effect to the clauses specifically identified in this Clause 8.7(b).

8.8 *Partial Acceptance.* Notwithstanding anything in this Agreement to the contrary including, without limitation, the provisions of Clauses 7.5, 7.6, 7.7 and 7.8 and in the event of termination of this Agreement, the Principal shall have the right, in the sole discretion of the Principal, to partially accept any Works, part of Works or part of the Service delivered to the Principal under this Agreement (hereinafter, the "Right of Partial Acceptance"). The Principal shall notify the Service Provider of its intention to exercise the Right of Partial Acceptance in the termination notice given in accordance with Clause 8.1 or Clause 8.3 of this Agreement, specifying, in reasonable detail, the Works, part of Works or part of the Service which the Principal would like to partially accept. In the event of receipt of such notice, the Service Provider shall reasonably cooperate with the Principal in order to ascertain transfer to the Principal of ownership in the result(s) of such Works, part of Works or part of the Service and determination of the amount of consideration payable by the Principal.

8.9 *Principal's Obligation to Pay.* Subject to the provisions of Clause 8.8 and except in the event of termination by the Principal occurring as a result of violation by the Service Provider of Clause 15.6 and in the event of termination by the Principal according to Clause 8.4(a), in the event this Agreement is terminated for any reason prior to completion of the Service, the Principal shall have an obligation to pay the Service Provider the following:

8.9(a) the Costs incurred by the Service Provider up to the date of termination; and

8.9(b) except where termination is due to negligence of the Service Provider, breach by the Service Provider, insolvency of the Service Provider or a Force Majeure Event under Section 11:

8.9(b)(i) an amount equal to the costs reasonably and properly incurred by the Service Provider as a result of or in connection with such termination; and

8.9(b)(ii) such additional amount as is required to put the Service Provider in the same after tax position (taking into account the amount of any relief, allowance, deduction, set-off or credit relating to tax available to the Service Provider in respect of the payment received) as it would have been in if the payment had not been a taxable receipt in the hands of the Service Provider.

- 8.10 *No Obligation to Pay Costs Incurred Prior to Acceptance.* Notwithstanding anything set forth in this Agreement to the contrary including, without limitation, under Clause 8.8, the Principal shall have no obligation to pay any of the Costs incurred by the Service Provider with respect to any Works or the Service (or part of any Works or the Service) not deemed as having been accepted by the Principal in accordance with Clauses 7.6, 7.7 or 7.8 of this Agreement.
- 8.11 *No Prejudice to Other Rights.* The right to terminate this Agreement shall be without prejudice to any other right of *either* Party which has accrued prior to or as a result of such termination or to any remedy available to either Party under the terms of this Agreement or in accordance with Applicable Law.
- 8.12 *Agreement period.* The Agreement period is 18 months starting from the Effective Date. 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 Principal.

Section 9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 *Proprietary Rights.* All Documentation forming part of the Deliverables developed under this Agreement is and shall become the property of the Principal regardless of whether the Service or Deliverable is produced or finally accepted. It is acknowledged and agreed by the Parties that the Principal shall be permitted to reproduce the drawings, schemes and distribute the prints in connection with the use or disposition of the Documentation without any approval of the Service Provider and without incurring obligation to pay any royalties or additional compensation whatsoever to the Service Provider.
- 9.2 *Intellectual Property in Documentation.* The Service represents and warrants that it owns all Intellectual Property required for the purposes of completing its obligations under this Agreement and in all Documentation deliverable by or on behalf of the Service Provider under this Agreement and that, to the extent any Intellectual Property in any Documentation is not owned by the Service Provider, it has obtained all requisite consents from owner(s) of all Intellectual Property in the Documentation to fulfil all of the obligations undertaken by the Service Provider under this Agreement and has fully discharged all obligations with respect to payment of any royalties or fees.
- 9.3 *Transfer of Ownership to Principal.* The Principal shall acquire legal title to and ownership in the Intellectual Property in all Documentation deliverable to the Principal under this Agreement as of the moment of delivery by the Service Provider to the Principal of the Provisional Completion Note, together with the Deliverable and Documentation forming part of the Deliverable, in accordance with Clause 7.5 of this Agreement; provided, however, that the Principal has paid the Fee or other consideration payable under the terms of this Agreement with respect to the relevant part of the Service or Deliverable. For the avoidance of any doubt, such title and ownership shall confer upon the Principal, without limitation, each of the following:
- 9.3(a) the right to reproduce the Documentation, or any part thereof, and distribute copies of the Documentation or any part thereof;
 - 9.3(b) the right to modify, amend and supplement the Documentation, or any part thereof;
 - 9.3(c) the right to licence the Documentation, or any part thereof, for use by others; and
 - 9.3(d) the right to transfer ownership in the Documentation, or any part thereof, to others.
- 9.4 *Grant of Limited License to Service Provider.* Upon acceptance by the Principal of any Deliverable and Documentation forming part of any Deliverable in accordance with Clause 7.6, the Principal shall be deemed to have granted the Service Provider an irrevocable and exclusive licence to reproduce, modify and distribute copies of any Documentation forming part of any Deliverable for the purposes of the Service and the Project, subject to the following restrictions:
- 9.4(a) the license shall apply during the term of this Agreement only;
 - 9.4(b) the permitted use shall only cover the right to reproduce, modify and distribute the Documentation, or any part thereof, for the purposes of performing, implementing or modifying the Service; and

- 9.4(c) the Documentation, or any part thereof, shall not, without the prior consent by the Principal, be distributed or communicated to any third party for purposes other than those permitted in accordance with this Clause 9.4.

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

- 9.5 *No Additional Royalty.* It is acknowledged and agreed by the Parties that consideration for the transfer of ownership in the Intellectual Property shall be forming part of the Fee and no additional royalty, fee or other consideration of any kind shall be payable by the Principal to the Service Provider or to any third party in consideration of the transfer of ownership in the Intellectual Property in any Documentation.
- 9.6 *No Infringement.* The Service Provider represents and warrants to the Principal that no Documentation deliverable to the Principal under the terms of this Agreement will infringe any existing Intellectual Property of any third party. In the event any of the representations or warranties contained in this Clause prove to be untrue or inaccurate, the Service Provider undertakes, at its own cost and expense, to defend and settle any claim raised by any third party alleging infringement of Intellectual Property in the Documentation. The foregoing undertaking by the Service Provider shall apply subject to the following conditions:
- 9.6(a) the Principal shall notify the Service Provider, without undue delay, of any third-party claim alleging infringement of any Intellectual Property in any Documentation;
- 9.6(b) the Principal refrains from admitting liability under any third-party claim or acting on the account of such claim without prior approval by the Service Provider; and
- 9.6(c) the exclusive control over any legal proceeding or settlement related any third-party claim shall be exercised by the Service Provider; provided, however, that the Principal shall render the Service Provider all reasonable assistance toward such proceeding or settlement, at the cost and expense of the Service Provider.
- 9.7 *Infringement Proceedings.* In the event the Principal is a party to legal proceedings involving allegations of infringement of any Intellectual Property in the Documentation of any third party, the Service Provider shall keep the Principal fully informed of all aspects relevant to the legal proceedings and the Principal shall have the right, at its own cost, to be represented in the legal proceedings by separate counsel. In the event the Service Provider fails to act against claims alleging infringement of any Intellectual Property in the Documentation of any third party within reasonable time but, in any event, within twenty (20) days of having been notified of such claims, the Principal shall have the right to assume legal defence against claims alleging infringement of Intellectual Property and shall be entitled to reimbursement by the Service Provider of reasonable costs and expenses incurred toward such defence.
- 9.8 *Continued Use.* In the event a court of competent jurisdiction resolves in a binding judgment that the Documentation, or any part thereof, infringe Intellectual Property of any third party, the Service Provider shall, at its own cost and expense, procure for the Principal the right of continued use of the Documentation, or part thereof infringing Intellectual Property of a third party.
- 9.9 *License in Intellectual Property of Service Provider.* The Service Provider hereby grants the Principal an irrevocable and non-exclusive license to use, reproduce, modify and/or enhance any Intellectual Property of the Service Provider, provided and to the extent Intellectual Property of the Service Provider is used by the Principal for the purposes of the Railway and/or the Project. It is agreed and acknowledged by the Parties that the license fee for the grant of license in accordance with this Clause 9.9 forms part of the Fee and such license shall continue to be valid irrespective of expiration of this Agreement following completion of the Service or termination of this Agreement for any reason.
- 9.10 *Obligation to Procure Intellectual Property Rights.* Where the Service Provider is not the legal owner of any relevant Intellectual Property of the Service Provider, the Service Provider shall use reasonable endeavours to procure for the Principal the rights specified in accordance with Clause 9.9.
- 9.11 *Obligation to Indemnify with Respect to Uses Other Than for the Purpose.* The Principal shall defend and indemnify the Service Provider from and against any and all Damages arising from the use by the Principal of any Intellectual Property of the Service Provider other than for the purposes of the Railway and/or the Project.

- 9.12 *Indemnification by the Service Provider.* The Service Provider shall defend and indemnify the Principal from and against any and all Damages arising from the use by the Principal of any Intellectual Property of the Service Provider, to the extent use by the Principal is within the scope of the license granted to the Principal in accordance with Clause 9.9.
- 9.13 *Certain Rights of Service Provider.* The Service Provider after obtaining prior written approval from the Principal shall have the right to include photographic or artistic representations of the design of the Project among the Service Provider's promotional and professional materials. The Service Provider shall be given reasonable access to the completed Project to make such representations. However, the Service Provider's materials shall not include the Principal's confidential or proprietary information regardless of whether or not the Principal has previously advised the Service Provider in writing of the specific information considered by the Principal to be confidential or proprietary.

Section 10. CONFIDENTIALITY

- 10.1 *Confidential Information.* "Confidential Information" means in relation to the Principal all information of a confidential nature relating to the Principal and its Affiliates which is supplied by the Principal (whether before or after the date of this Agreement) to the Service Provider, either in writing, orally or in any other form and includes all analyses, compilations, notes, studies, memoranda and other documents which contain or otherwise reflect or are derived from such information, but excludes information which:
- 10.1(a) the Principal confirms in writing is not required to be treated as confidential; or
 - 10.1(b) the Service Provider can show that the Confidential Information was in its possession or known to it (by being in its use or being recorded in its files or computers or other recording media) prior to receipt from the Principal and was not previously acquired by the Service Provider from the Principal under an obligation of confidence; or
 - 10.1(c) was developed by or for the Service Provider at any time independently of this Agreement, without application of the information provided to the Service Provider under this Agreement.
- 10.2 *Undertakings with Respect to Confidential Information.* Subject to Clauses 10.1 and 10.3, the Service Provider shall:
- 10.2(a) at all times keep confidential all Confidential Information received by it and shall not disclose such Confidential Information to any other Person; and
 - 10.2(b) procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any Person any Confidential Information, except with the prior written consent of the Party to which such Confidential Information relates.
- 10.3 *Permitted Disclosure.* Notwithstanding anything to the contrary set forth in accordance with Clauses 10.1 and 10.2, the Service Provider shall, without the prior written consent of the Principal, be entitled to disclose Confidential Information:
- 10.3(a) that is reasonably required by the Service Provider in the performance of its obligations pursuant to this Agreement, including the disclosure of any Confidential Information to any employee, contractor, agent, officer, Sub-Contractor (of any tier) or adviser to the extent necessary to enable the Service Provider to perform its obligations under this Agreement;
 - 10.3(b) to enable a determination to be made pursuant to Section 18;
 - 10.3(c) to its lenders or their professional advisers, any rating agencies, or its insurance advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
 - 10.3(d) to the extent required by Applicable Law or pursuant to an order of any court of competent jurisdiction, any parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law; or

- 10.3(e) to the extent Confidential Information has become available to the public other than as a result of any breach of an obligation of confidence; provided that any such disclosure is made in good faith.
- 10.4 *Obligation of Confidentiality Pertinent to Recipients of Confidential Information.* Whenever disclosure is permitted to be made pursuant to Clause 10.3, the Service Provider shall require that the recipient of Confidential Information be subject to the same obligation of confidentiality as that contained in this Agreement.
- 10.5 *Certain Obligations on Termination of Agreement.* If this Agreement is terminated for whatsoever reason, the Service Provider shall:
- 10.5(a) return to the Principal all of the Confidential Information then within the possession or control of the Service Provider; or
- 10.5(b) destroy such Confidential Information using a secure and confidential method of destruction.
- 10.6 *No Press Release by Service Provider.* Save as required by Applicable Law, the Service Provider shall not issue any press release in relation to the matters contemplated under this Agreement without the prior written consent of the Principal (such consent not to be unreasonably withheld or delayed) as to both the content and the timing of the issue of the press release.
- 10.7 *Right to Publish.* For the avoidance of any doubt, the Principal shall have the right to publish any of the documents, information or data provided by the Service Provider to the Principal during provision of the Service.
- 10.8 *Remedies.* The Parties acknowledge and agree that a breach of the provisions of this Section 10 may cause the owner of Confidential Information to suffer irreparable Damage that could not be adequately remedied by an action at law. Accordingly, the Service Provider agrees that the owner of Confidential Information that is disclosed in breach of Clauses 10.2, 10.4 or 10.6 may be entitled to specific performance of those provisions to enjoin a breach or attempted breach thereof and to any other remedy, including, inter alia, damages and injunctive relief, awarded by a court of competent jurisdiction.

Section 11. FORCE MAJEURE

- 11.1 *Effects of Force Majeure.* Subject to the requirements set forth in accordance with Clauses 11.2 and 11.3, 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.
- 11.2 *Action Upon Becoming Aware of Force Majeure.* Each Party shall at all times, following the occurrence of a Force Majeure Event:
- 11.2(a) take reasonable steps to prevent and mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the Force Majeure Event as soon as practicable and use reasonable endeavours in accordance with Good Industry Practice to remedy its failure to perform; and
- 11.2(b) not be relieved from liability under this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to any failure to comply with its obligations under Clause 11.1.
- 11.3 *Notification Requirements.* Upon the occurrence of a Force Majeure Event, the affected Party shall notify the other Party as soon as reasonably practicable and in any event within ten (10) 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 11.2 and an estimate of the period of time required to overcome the Force Majeure Event. The affected Party shall provide the other Party with any further information it receives or becomes aware of which relates to the Force Majeure Event and provide an update on the estimate of the period of time required to overcome its effects.

- 11.4 *Notification of Resumed Performance.* The affected Party shall notify the other Party as soon as practicable once the performance of its affected obligations can be resumed (performance to continue on the terms existing immediately prior to the occurrence of the Force Majeure Event).
- 11.5 *Mitigation of Effects of Force Majeure.* As soon as practicable after the notification specified pursuant to Clause 11.3, the Parties shall use reasonable endeavours to agree appropriate terms or modifications to the Scope of Service and payment terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.

Section 12. RIGHT TO AUDIT

- 12.1 *Right to Audit.* Notwithstanding anything to the contrary set forth in this Agreement the Principal itself, a reputable outside independent body or expert engaged and authorised by the Principal shall be entitled to inspect and/or audit the Service Provider to ensure compliance with the terms of this Agreement, including inspecting and/or auditing:
- 12.1(a) the performance of any aspect of the Service; and/or
- 12.1(b) any documentation, including all payrolls, accounts of the Service Provider and/or other records used in or related to the performance of the Services.
- 12.2 *Obligation to Assist.* The Service Provider shall provide all reasonable assistance to the Principal or the independent body authorized by the Principal in carrying out any inspection or audit pursuant to this Section 12. The Principal shall be responsible for its own costs, or the costs incurred by the outside independent body designated by the Principal, incurred toward carrying out such inspection or audit, unless, in the case of any such audit, that audit reveals that the Service Provider is not compliant with the terms of this Agreement, in which case the Service Provider shall reimburse the Principal for all of its additional reasonable costs incurred, provided such non-compliance is material.
- 12.3 *Survival of Termination.* The rights and obligations of the Parties set forth in accordance with this Section 12 shall survive expiration or termination of this Agreement for any reason and shall continue to apply during ten (10) years following expiration or termination of this Agreement for any reason whatsoever.

Section 13. ON-THE-SPOT VISITS

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

inspections in accordance with the procedures laid down by European Union law for the protection of the financial interests of the European Union against fraud and other irregularities. Where appropriate, OLAF findings may lead to criminal prosecution under national law.

Section 14. NOTICES AND COMMUNICATION

- 14.1 *Notices.* All notices and other communications made or required to be given pursuant to this Agreement shall be in writing and shall be deemed given if delivered personally or by facsimile transmission (if receipt is confirmed by the facsimile operator of the recipient), or delivered by overnight courier service, or mailed by registered or certified mail (return receipt requested), postage prepaid, to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice):

14.1(a) to the Principal:

.....
.....

14.1(b) to the Service Provider:

.....
.....

- 14.2 *Changes in Address.* Either Party shall be entitled to change its address for purposes of this Section 14 by notice to the other Party. A notice of a change of address shall be effective only upon receipt thereof.

Section 15. MISCELLANEOUS PROVISIONS

- 15.1 *Capacity.* Each Party warrants to the other Party that it has full power to enter into and perform this Agreement, and the Person signing this Agreement on its behalf has been duly authorized and empowered to enter into such agreement. Each Party further acknowledges that it has read this Agreement, understands it and agrees to be bound by it.
- 15.2 *Severability.* If any provision of this Agreement shall be held to be illegal, invalid, void or unenforceable under Applicable Laws, the legality, validity and enforceability of the remainder of this Agreement shall not be affected, and the legality, validity and enforceability of the whole of this Agreement shall not be affected.
- 15.3 *Relationship of the Parties.* The relationship between the Service Provider to the Principal under this Agreement is that of independent contractors. The Service Provider (or the Service Provider's sub-contractors) is not an employee of the Principal, is not carrying out the regular business of the Principal and is not subject to the same employment regulations as are applicable to employees of the Principal. Each of the Parties shall be solely and entirely responsible for their own acts and the acts of their employees. No benefits, special considerations, or employer/employee-type provisions are provided by the Principal to the Service Provider, the Service Provider's employees, or the Service Provider's consultants, or the employees of such consultants.
- 15.4 *Damages Covered by Insurance.* To the extent Damages are covered by insurance, the Principal and the Service Provider waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance current as of the date of this Agreement.
- 15.5 *Successors and Assigns.* The Principal and the Service Provider each bind themselves, their successors, legal representatives, and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect to all covenants of this Agreement. Neither Party shall assign or transfer its respective interest in the Agreement without written consent of the other Party.
- 15.6 *Conflict of Interest, Corruption and Fraud.* Notwithstanding any penalties that may be enforced against the Service Provider under Applicable Law of the country of the project, or of other jurisdictions, the Principal will be entitled to terminate the Agreement in accordance with Clause 8.3 and the Service Provider shall be deemed to have breached Clause 3.16 of the Agreement, if it is shown that the Service Provider is guilty of:

- 15.6(a) offering, giving, receiving or soliciting anything of value with a view to influencing the behaviour or action of anyone, whether a public official or otherwise, directly or indirectly in the selection process or in the conduct of the Agreement; or
- 15.6(b) misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Principal, including the use of collusive practices intended to stifle or reduce the benefits of free and open competition.
- 15.7 *Entire Agreement.* This Agreement, and the Annexes hereto, constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes and extinguishes all and any prior drafts, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.
- 15.8 *Amendments and Variations.* No amendment to or variation of this Agreement shall be effective unless made in writing and signed by duly authorized representatives of both Parties. The Agreement can be amended in compliance with the provisions of Article 61 of the Public Procurement Law including but not limited to the provisions of point 5 of Section 2 of Article 61.
- 15.9 *Execution.* This Agreement may be executed in two counterparts to be held by each Party which counterparts, taken together, shall constitute one and the same instrument.

Section 16. PAYMENT

- 16.1 *Service Fee.* The Agreement with Service Provider is on-demand based with no fixed work-load and/or fixed overall value. The total allocated amount for the Procurement of Recruitment Services Part [●] for the Agreement concluded as a result of the Procurement is: [●] EUR [●] euros), excl. VAT (*Service Fee*). However, this does not bind the Principal to purchase Services through the Agreement for the estimated amount.
- 16.2 *Payment for Services.* Attached to this Agreement as Annex D (*PAYMENTS FOR SERVICE*), and incorporated into this Agreement, is a list of the Service Providers service charges and/or per service charges, as applicable. In consideration of the provision of Services, the Principal undertakes to pay the Service Provider a remuneration which shall be calculated and paid in proportion to the Works actually performed according to Annex D (*PAYMENT FOR SERVICE*). It is acknowledged and agreed by the Parties that Service Fee shall include all Costs and expenses incurred by the Service Provider and Approved Sub-Contractors toward carrying out the Service. For the avoidance of any doubt, Service Fee specified in accordance with Clause 16.1 shall exclude value added tax that will be charged at the rate applicable in accordance with Applicable Law at the time of invoicing.
- 16.3 *Invoicing.* Following each Completion Date and the Final Acceptance Date, the Service Provider shall deliver to the Principal an invoice (subject to request by the Principal, containing a reasonably detailed breakdown and any supporting information) in respect of Services assigned by Assignment Order. In the event the Principal objects to payment of any amount claimed by the Service Provider in the invoice, notice to this effect shall be given by the Principal to the Service Provider not later than five (5) Working Days before the due date for payment under this Clause. The Objection Notice shall state the amount to be withheld, the grounds for withholding the payment and the basis on which that amount is calculated. Unless such Objection Notice is made by the Principal, the amount to be paid is that stated in the invoice which shall become due and payable in accordance with this Clause. For the avoidance of any doubt, the Principal shall not be required to pay any amount under this Agreement with respect to any part of the Service that has not been accepted by the Principal in accordance with Clauses 7.5, 7.6 or 7.7 of this Agreement.
- 16.4 *Payment.* Subject to the provisions of Clause 16.1 and 16.2, the Principal reserves the right to make the payments to the Service Provider with set-off, retention, counterclaim, abatement or other deduction of any kind if the nature of such set-off, retention, counterclaim, abatement or other deduction arises from this Agreement and the obligations of the Service Provider provided herein (i.e. in cases of accrued contractual penalty amounts etc.). If the Principal uses the right to make the payments to the Service Provider with set-off, retention, counterclaim, abatement or other deduction of any kind, then the Principal so notifies to the Service Provider no later than on the date of the respective payment stating the amount, the grounds and the basis on the Principal uses its right to set-off, retention, counterclaim, abatement or other deduction. Invoices shall be paid within 30 (thirty) days after the date of issue of the invoice. For the avoidance of any doubt, the Principal shall not be required to pay any amount with respect to any invoice in the absence of a Provisional

Completion Note duly signed by the Principal or, with respect to the final payment of the Fee to be effected under this Agreement, the Final Acceptance Note duly signed by both Parties.

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

Service Provider	[●]
Registration No	[●]
VAT payer's No or (and) indication that The Service provider is not a VAT payer	[●]
Legal address, city, Zip code, country	[●]
Legal name of Bank	[●]
Bank SWIFT Code	[●]
Bank IBAN Account No	[●]
Subject:	For provided services according to the Framework Agreement for Rail Baltica Railway No [●] (CEF Contract No INEA/CEF/TRAN/M201[●]/[●] Activity No [●]), Contract manager: [●]

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

Section 17. LIABILITY

- 17.1 *Liability of the Parties.* The Service Provider shall be liable to compensate Damages incurred by the Principal arising out of or in connection with this Agreement and pay contractual penalty set forth in accordance with Clause 17.2 if a breach of any of the obligations of the Service Provider under this Agreement is established against the Service Provider. The Principal shall be liable to pay the contractual penalty set forth in accordance with Clause 17.2 if a breach of payment obligations of the Principal under this Agreement is established against the Principal.
- 17.2 *Contractual Penalty.* In the event of failure by the Service Provider to respond within the required time period to the Principal, to supply any Deliverable, the Service Provider shall be liable to pay to the Principal a penalty of zero point zero five percent (0.5%) of the amount of Fee payable under this Agreement with respect to the relevant Service period for each day of delay with supplying any of the Deliverables set forth in accordance with *Annex D: PAYMENTS FOR SERVICE*; provided, however, that the total amount of penalty payable by the Service Provider under this Clause 17.2 for the relevant Works/Services, as specified according to *Annex D: PAYMENTS FOR SERVICE* shall not exceed ten percent (10%) of the total amount of Fee payable in consideration of such Works/Services. In the event of failure by the Principal to pay any amount in accordance with Clause 16.4, the Principal shall be liable to pay to the Service Provider a penalty of zero point zero five

percent (0.5%) of the amount of the amount invoiced for each day of delay with meeting the payment obligation; provided, however, that the total amount of penalty payable by the Principal under this Clause 17.2 shall not exceed ten percent (10%) of the total amount remaining unpaid under the relevant invoice.

- 17.3 *Compensation for Damages.* Notwithstanding of and without prejudice to any contractual penalty payable in accordance with Clause 17.2 and subject to the provisions of Clause 17.5, in the event it is established that either Party is liable to the other Party with respect to any breach of its respective obligations under this Agreement, the liable Party shall compensate the other Party for any Damages incurred as a result of such breach, subject to the following terms:
- 17.3(a) the amount of compensation shall be limited to the amount of reasonably foreseeable Damages suffered as a result of the breach(es), but not otherwise;
- 17.3(b) if either Party is considered to be liable jointly with third parties to the other, the proportion of compensation payable by the liable Party shall be limited to that proportion of liability which is attributable to the breach by the liable Party.
- 17.4 *Attribution of Damages.* Any Damages suffered by either Party shall, for the purposes of Clause 17.3, be reduced to the extent that the Damages are caused by or contributed to by the other Party's own negligence or breach of its obligations under this Agreement.
- 17.5 *Limitation of Liability.* Notwithstanding anything to the contrary set forth in this Agreement, in no circumstances shall the Service Provider or Principal be liable to one another for any loss of production, loss of profit, loss of revenue, loss of contract, liability incurred under other agreements (with the exception of costs paid by the Principal to contractors appointed by the Principal in relation to the Service or the Project) or any indirect or consequential loss arising out of or in connection with this Agreement. The Service Provider's total liability for the Works/Services carried out under this Agreement shall in no circumstances exceed EUR 500 000,00 (five hundred thousand euros).

Section 18. GOVERNING LAW AND RESOLUTION OF DISPUTES

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

Signed by:

For and on behalf of the Principal:

Signature:

Name, title:

Bank account details of the Principal:

.....
.....
.....

For and on behalf of the Service Provider:

Signature:
Name, title:

Bank account details of the Service Provider:

.....
.....
.....

Annex A: DEFINITIONS AND COMMON TERMS

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

- (a) "Agreement", this Agreement together with all Annexes thereto.
- (b) "Applicable Law" or "Law", any legislative act, regulation, decree, order, ordinance, statute, treaty, directive, judgment, or other legislative measure. For the avoidance of any doubt, the term "Applicable Law" shall include any legislative act or directive relevant to public procurement.
- (c) "Approved Staff", any Person listed pursuant to *Annex E: LIST OF APPROVED SUB-CONTRACTORS*, which is in a contractual relationship with the Service Provider to provide a part of the Service.
- (d) "Approved Sub-Contractor", any Person or organisation listed pursuant to *Annex E: LIST OF APPROVED SUB-CONTRACTORS*, which is in a contractual relationship with the Service Provider to provide a part of the Service.
- (e) "Assignment Order: - as defined in accordance with Clause 7.1
- (f) "Candidate", a natural person subject to the requirements stipulated in Annex C: SCOPE OF SERVICE (Technical specification) and Annex D: PAYMENTS FOR SERVICES, as appropriate.
- (g) "Completion Acceptance Note", as defined in accordance with Clause 7.5, as appropriate.
- (h) "Completion Date", as defined in accordance with Clause 7.6 and 7.7 , as appropriate
- (i) "Confidential Information", as defined in accordance with Clause 10.1 of the Agreement.
- (j) "Costs", direct costs reasonably incurred in relation to the Project. Specifically, Cost shall include any of the following:
 - (i) costs of all materials and supplies forming part of the Service, including transportation and storage expenses (discounts for cash or prompt payments will not reduce these costs);
 - (ii) salaries for personnel in the direct employ of the Service Provider in the performance of the Service or relating to the Service;
 - (iii) salaries of the Service Provider's employees for the time that they spend in connection with the Service;
 - (iv) payments to Sub-Contractors for Work relating to the Service;
 - (v) costs of all employee benefits and taxes for items such as social security and other benefits for the labour and employees;
 - (vi) costs, including transportation and maintenance, of equipment and hand tools not owned by workmen employed by the Service Provider which are employed or consumed toward the Service;
 - (vii) payments for rental charges for machinery, equipment, facilities and tools used in connection with the Service, and payments for installations, repairs, replacements, dismantling, removal, lubrication, transportation and delivery of those rental items;
 - (viii) other transportation costs incurred in connection with the Service;
 - (ix) that portion attributable to this Agreement of premiums for insurance that is required by this Agreement or by law to be obtained or maintained by the Service Provider;
 - (x) sales, use, gross receipts or other taxes related to the Service, imposed by any governmental authority, to the extent that the Service Provider is responsible for such taxes;
 - (xi) costs of long-distance telephone calls, telephone service at the site and postage relating to the Service;
 - (xii) costs associated with any Alteration as to which the Service Provider is entitled to payment hereunder;

- (xiii) losses and expenses, not compensated by insurance, sustained by the Service Provider in connection with the Works under this Agreement, provided they resulted from causes other than the fault or neglect of the Service Provider.
- (k) "Corrective Period", as defined in accordance with Clause 8.2.
- (l) "Cure Period", as defined in accordance with Clause 7.4.
- (m) "Damages", any cost, claim, damage, demand, loss, expense or liability incurred by the relevant Party or Person.
- (n) "Defect" is a part of the Service or Work which is not in accordance with *Annex C: SCOPE OF SERVICE (Technical specification)*, Applicable Law or Good Industry Practice.
- (o) "Defects Date", a date specified in accordance with *Annex D: PAYMENTS FOR SERVICE* by which the Principal is obliged to notify about Defect in the Service.
- (p) "Deliverables", any kind of resources, information, notes, computer files, documents and/or other items which the Service Provider is required to deliver to the Principal as part of the Service, as further specified pursuant to *Annex D: PAYMENTS FOR SERVICE*.
- (q) "Documentation", all records, correspondence, and computer files of the Service Provider, its employees, engineers, and consultants pertaining to the Project.
- (r) "Due Date", a date specified in accordance with *Annex D: PAYMENTS FOR SERVICES* by which the Service Provider is obliged to provide the Deliverables. "Effective Date", as first above specified in the Preamble to this Agreement.
- (s) "EUR" and "euro", the official currency of the eurozone, officially known as the euro area.
- (t) "Fee", as specified in accordance with *Annex D: PAYMENTS FOR SERVICE*.
- (u) "Final Acceptance Date", as defined in accordance with Clause 7.8.
- (v) "Final Acceptance Note", as described in accordance with Clause 7.8.
- (w) "Force Majeure Event", any of the following events:
 - (i) an act of the public enemy or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;
 - (ii) an act of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;
 - (iii) a natural disaster or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);
 - (iv) nuclear, chemical or biological contamination;
 - (v) pressure waves caused by devices travelling at supersonic speeds;
 - (vi) discovery of fossils, antiquities or unexploded bombs; and/or
 - (vii) strike, lockout or other industrial action other than involving the Service Provider or the Principal.
- (cc) "Good Industry Practice", in relation to the performance of any activity to which this standard is applied, the exercise of that degree of skill, diligence, prudence and foresight as would reasonably be expected to be exercised by a properly qualified and competent Person engaged in carrying out Works or services of a similar size, nature, scope, type and complexity, complying with Applicable Law, applicable Standards and published codes of practice.
- (ee) "Intellectual Property", all intellectual property rights in any part of the world in respect of any documentation, or information provided by the Service Provider to the Principal, including any patent, patent application, trade mark, trade mark application, utility model, trade name discovery, invention, process, formula, specification, copyright (including all neighbouring rights, rights in computer software and database and topography rights), know-how or unregistered design right.
- (ff) "Intellectual Property of Service Provider", all Intellectual Property owned or licensed to the Service Provider with a right to sub-license.

- (gg) "Necessary Consents", all approvals, permissions, consents, licenses, certificates, registrations and authorizations (whether statutory or otherwise), which may be required from time to time for the purposes of carrying out the Project.
- (hh) "Objection Notice", as defined in accordance with Clause 7.6.
- (ii) "Party" and "Parties", the Principal and the Service Provider and include the respective successors in title, permitted assigns and permitted transferees.
- (jj) "Person" shall include any natural person, company, body corporate, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the foregoing.
- (kk) "Principal", the company RB Rail AS, as further specified in the Preamble of this Agreement, which employs the services of the Service Provider, and legal successors to the Service Provider and permitted assignees of the Service Provider.
- (ll) "Project", development of a 1435 mm standard gauge railway line in the Rail Baltica (RB) corridor through Estonia, Latvia and Lithuania aimed at eliminating the technical bottleneck due to the gauge differences (1,520 mm vs. the EU standard of 1,435 mm).
- (mm) "Provisional Completion Note", as defined in accordance with Clause 7.5.
- (nn) "Railway", new fast conventional double track electrified railway line with the maximum design speed of 240 km/h and European standard gauge (1435 mm) on the Route.
- (oo) "Residence Certificate", a certificate mentioned in Clause 2.7(h).
- (pp) "Right of Partial Acceptance", as defined in accordance with Clause 8.8.
- (qq) "Service Provider", the company [·], as further specified in the Preamble of this Agreement, which is employed by the Principal as an independent professional contractor to perform the Service, and legal successors to the Principal and permitted assignees of the Principal.
- (rr) "Service Provider's Software", the object code versions of any downloadable software owned by or duly licensed to the Service Provider solely for the purpose of accessing the Service, including but not limited to an agent, together with the updates, new releases or versions, modifications or enhancements, owned or licensed to and provided by the Service Provider to the Principal pursuant to this Agreement, together with all pertinent documentation and other instructions related to such software.
- (ss) "Standards", CEF Standards and Grant Agreement Standards.
- (tt) "Service", recruitment services mentioned in the *Annex C: SCOPE OF SERVICE (Technical specification)* and this Agreement.
- (uu) "Service Provider's Proposal", as specified in accordance with the preamble of this Agreement.
- (vv) "Service Start Date", as specified in accordance with *Annex D: PAYMENTS FOR SERVICE*.
- (ww) "Works", all incidental works, steps and actions, performed by the Service Provider under this Agreement for the attainment of the objectives of the Service and/or the Project in accordance with *Annex C: SCOPE OF SERVICE (Technical specification)* and *Annex D: PAYMENTS FOR SERVICES*.
- (xx) "Working Day", any day (other than Saturday or Sunday) on which banks in the Republic of Latvia are open for conduct of business.

Annex B: PROJECT OBJECTIVES

The Project is a part of the pre-identified, cross-border "Rail Baltica" project connecting the three Baltic States with Central Europe along the North Sea - Baltic Corridor. The aim of the Project is to develop a new, EU gauge double-track electrified railway line to eliminate the technical bottleneck due to the gauge differences (1520 mm vs. EU 1435 mm) matching the requirements of the TSI INF traffic codes P2/F1, as of 2015.

The Project includes technical designs, assessments and studies, land acquisition, project implementation support measures, preliminary construction works, supervision, communication and PR tasks.

The aim of the Project is to implement all the necessary preparatory activities including, without limitations, technical designs, building permits, land acquisition, to commence construction works of the Railway and to prepare for the main construction phases of the Railway line. The activities of the Project are envisaged to be performed on multiple sites in Estonia, Latvia and Lithuania.

The main objectives of the phase of the Project contemplated under the Agreement are the following:

- preparation of the technical design of the track and railway related structures in full compliance with agreed TSI INF traffic codes P2/F1 (design speed of up to 240 km/h for passenger traffic and up to 120 km/h for freight traffic, axle load 22,5 t and length of freight train from 740 m to 1050 m) and the relevant EU and domestic legislations;
- technical consultancy for designs vis-à-vis the technical requirements;
- completion of the Railway route related studies to ensure a successful implementation of the project;
- planning of the land acquisition activities alongside the planned Railway route and land acquisition;
- construction of a new Railway line on Tallinn - EE/LV border, Phase I - embankment and grade-level crossings, to complete the preliminary works for the Railway superstructure;
- construction of Ülemiste and Pärnu passenger terminals, Riga Central Railway junction and related civil structures and Riga International Airport RB passenger station civil structures and junction to complete the preliminary works for the Railway superstructure;
- construction of a Railway connection between Riga Central Station and Riga International Airport;
- construction of a section of the new railway line Kaunas (RRT)- Panevėžys - Lithuania/Latvia state border (Phase I, approximately 3 km single track);
- implementation of a communication plan in order to keep stakeholders and the public informed of the progress of the project;
- supervision of works to ensure that the construction is in compliance with technical design; and
- contribution to the implementation of the North Sea-Baltic Core Network Corridor and the development of the EU internal market.

In addition, it is a prerequisite that all compulsory assessments be duly completed and approved by the competent authorities according to Applicable Law and in line with requirements of relevant EU legislation prior to commencement of the physical intervention.

FOR OPEN COMPETITION

„RECRUITMENT SERVICES“

PART NO 2

(European Union):

(IDENTIFICATION NO RBR 2018/15)



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

Riga, 2018

Procurement aim:

To ensure talent available to RB Rail AS in timely manner to deliver its business goal: the design, construction and marketing (including branding) of the Rail Baltica railway.

Technical Specification for procurement part 1 „Recruitment Services” (European Union):

Position level	Description	Search area
P4	Level of experience 5+ years High speed railway experts, senior engineers, Lead project managers	EU search
P5	Level of experience 10+ years High speed railway experts, senior engineers, Project directors	EU search

The Contractor will be required to carry out the following tasks:

- a) develop position specification and job description (position purpose, essential job functions, requirements, qualifications and competencies) in cooperation with the company and in accordance with the Company's organizational structure and business aims;
- b) develop recruitment plan and execute recruitment, sourcing Candidates in EU member states in accordance with the position level;
- c) attract and evaluate Candidates, conduct interviews and tests (if necessary), shortlist 3-4 Candidates for each position and present them to the RB Rail AS for final interviews with the following written documentation: CV and appraisal of Candidate according to positions profile;
- d) produce recruitment process related documentation in English;
- e) reference checks for final applicant.

Annex D: PAYMENTS FOR SERVICES

1. **"Service Fee"** a total service fee in the amount of 48 000,00 EUR (forty-eight thousand euro) and

Value added tax (hereinafter – VAT), which on the date of conclusion of this Agreement is 21%, namely, 10 080,00 EUR (ten thousand eighty euro).

2. Service Start Date : Date when the Principal sends the Assignment Order (in the form chosen by the Principal) to the Service Providers' email indicated in the Agreement. The Assignment Order shall contain at least the information about the specific position (Candidate or Candidates as per table below) required and Due Date.

3. Deliverables:

No	After delivery and acceptance of:	Fee	Due Date
4.1	P4 (Annex C: SCOPE OF SERVICE (Technical specification)) Candidates: Level of experience 5+ years High speed railway experts, senior engineers, Lead project managers	EUR [●] for one recruited Candidate, excluding VAT	SSD* + four (4) months
4.2	P5 (Annex C: SCOPE OF SERVICE (Technical specification)) Candidates: Level of experience 10+ years High speed railway experts, senior engineers, Project directors	EUR [●] for one recruited Candidate, excluding VAT	SSD + four (4) months

* Service Start Date

5. The Principal pays to the Service Provider for the Services regarding the recruited Candidate in accordance with the afore mentioned table as follows:
 - 5.1 70% of the amount stipulated in the corresponding row of the afore mentioned table shall be paid within 30 days after the Principal enters into employment agreement with the Candidate for the particular position (P4 or P5);
 - 5.2 30% of the amount stipulated in the corresponding row of the afore mentioned table shall be paid as a success fee – within 30 days after the Principal employs the Candidate suggested by the Service Provider, and it withstands the probation period defined by the Principal in the agreement, for instance, employment agreement or service agreement.
6. In case if the Principal enters into the employment agreement with two (2) selected Candidates suggested by the Service Provided within one (1) search Service (regarding one (1) vacancy), the Principal shall pay to the Service Provider 100% of the amount stipulated in the corresponding row of the afore mentioned table for the first recruited Candidate and 50% of the amount stipulated in the corresponding row of the afore mentioned table for the second recruited Candidate.
7. In case if the Principal, during the execution of the particular Assignment Order, enters into the employment agreement with the Candidate found and proposed by the Principal not Service Provider, the Service Provider is entitled to receive 50% of the amount stipulated in the corresponding row of the afore mentioned table.
8. Defects Date: thirty (30) calendar days.

Annex E: LIST OF APPROVED SUB-CONTRACTORS AND STAFF

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

Annex F: PROVISIONAL COMPLETION NOTE NO [INSERT NUMBER]

Date: [INSERT DATE IN THE FORM OF 1 JANUARY 2018]

Location: [INSERT LOCATION]

For:

RB Rail AS

Registration number 40103845025, legal address: Krišjāņa Valdemāra iela 8-7, Rīga, LV-1010, Latvia (hereinafter, the "Principal")

This provisional completion note (hereinafter, "Provisional Completion Note") is issued to the Principal by [-] [INSERT NAME, REGISTRATION NUMBER INSERT REGISTRATION NUMBER, LEGAL ADDRESS] (hereinafter, the "Service Provider"), represented by [INSERT NAME OF REPRESENTATIVE ON THE BASIS OF INSERT BASIS OF REPRESENTATION].

In this Provisional Completion Note, unless the context requires otherwise, all defined terms shall have the meaning ascribed to such terms in accordance with the [INSERT AGREEMENT DATE IN THE FORM OF FRAMEWORK AGREEMENT NO. INSERT AGREEMENT NUMBER] (hereinafter, the "Agreement") and *Annex A: DEFINITIONS AND COMMON TERMS* of the Agreement.

Whereas:

- (A) the Principal and the Service Provider have entered into the Agreement;
- (B) Clause 7.5 of the Agreement stipulates that upon producing a Deliverable constituting all or an identifiable part of the Technical Specification, the Service Provider shall issue to the Principal a Provisional Completion Note substantially in the form of *Annex F: PROVISIONAL COMPLETION NOTE NO [INSERT NUMBER]* of the Agreement;
- (C) a Deliverable has been supplied.

The Deliverable has/have been supplied on [INSERT DATE IN THE FORM OF 1 January 2018], as specified in accordance with *Annex D: PAYMENTS FOR SERVICE* of the Agreement:
[DESCRIBE IN REASONABLE DETAIL THE DELIVERABLE SUPPLIED. INSERT N/A, IF NO DELIVERABLE HAS BEEN SUPPLIED]

As stipulated in Clause 7.6 of the Agreement, in the event the Principal objects to the issue of the Provisional Completion Note, the Principal shall give a written notice to the Service Provider setting out in reasonable detail Defects or reasons for the objection (hereinafter, the "Objection Notice") (15) Working Days, following receipt of the Provisional Completion Note.

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

Signature:

[insert name, surname
insert position
insert company name]

Annex G: PROVISIONAL ACCEPTANCE NOTE NO [INSERT NUMBER]

Date: [INSERT DATE IN THE FORM OF 1 JANUARY 2018]

Location: [INSERT LOCATION]

This provisional acceptance Note (hereinafter Provisional Acceptance Note) is issued to the Service Provider by RB Rail AS, registration number 40103845025, legal address K. Valdemāra iela 8-7, Riga, LV-1010 (hereinafter, the "Principal"), represented by [INSERT NAME OF REPRESENTATIVE ON THE BASIS OF INSERT BASIS OF REPRESENTATION].

In this Provisional Acceptance Note, unless the context requires otherwise, all defined terms shall have the meaning ascribed to such terms in accordance with the [INSERT AGREEMENT DATE] Agreement on [INSERT NAME] No [INSERT AGREEMENT NUMBER] (hereinafter, the "Agreement") and *Annex A: DEFINITIONS AND COMMON TERMS* of the Agreement.

Whereas:

- (A) the Principal and the Service Provider have entered into the Agreement;
- (B) the following Deliverable(s) have been supplied to the Principal:
 - (ii) [PLEASE IDENTIFY DELIVERABLE]
- (C) any and all Defects have been averted or no Objection Notices have been issued;
- (D) as stipulated by Clause 7.6 of the Agreement, final acceptance shall be evidenced by means of the

Principal issuing and both Parties attaching their signature to the Final Acceptance Note substantially in the form of *Annex H: FINAL ACCEPTANCE NOTE NO.* (hereinafter, the "Final Acceptance Note");

The Principal is satisfied with the result of any and all Deliverables supplied and, in accordance with Clause 7.5 of the Agreement, the Principal accepts the part of the Service performed as of the date of this Provisional Acceptance Note.

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

Signatures:

[insert name, surname
insert position]

Annex H: FINAL ACCEPTANCE NOTE NO.

Date: [INSERT DATE IN THE FORM OF 1 January 2018]

Location: [INSERT LOCATION]

For: [•] (hereinafter, the "Service Provider")

This final acceptance Note (hereinafter, "Final Acceptance Note") is issued to the Service Provider by RB Rail AS, registration number 40103845025, legal address K. Valdemāra iela 8-7, Riga, LV-1010 (hereinafter, the "Principal"), represented by [INSERT NAME OF REPRESENTATIVE ON THE BASIS OF INSERT BASIS OF REPRESENTATION].

In this Final Acceptance Note, unless the context requires otherwise, all defined terms shall have the meaning ascribed to such terms in accordance with the Agreement on [INSERT NAME] No [INSERT AGREEMENT NUMBER] dated [INSERT DATE] (hereinafter, the "Agreement") and *Annex A: DEFINITIONS AND COMMON TERMS* of the Agreement.

Whereas:

- (A) the Principal and the Service Provider have entered into the Agreement;
- (B) one or more Deliverables have been supplied;
- (C) any and all Defects have been averted or no Objection Notices have been issued;
- (D) as stipulated in accordance with Clause 7.8 of the Agreement, final acceptance shall be evidenced by means of the Principal issuing and both Parties attaching their signature to the Final Acceptance Note substantially in the form of *Annex H: FINAL ACCEPTANCE NOTE NO.* (hereinafter, "**Final Acceptance Note**");

The Principal is satisfied with the result of the Service and/or Deliverables completed and submitted and the Principal accepts the Service in its entirety.

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

[insert name, surname
insert position]
RB Rail AS
Principal

[insert position]
[insert company name]
Service Provider

Annex I: REPRESENTATIVES

Annex J: SERVICE PROVIDER'S PROPOSAL

Annex K: DECLARATION OF SERVICE PROVIDER

I, the undersigned duly authorised representative, on behalf of [*name of the Service Provider*] undertake:

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

Beneficiaries' or Implementing Bodies' official, professional under contract with Beneficiary or Implementing Body or sub-contractor may have a direct or indirect interest of any kind in the Service Provider's business or any kind of economic ties with the Service Provider;

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

[signature] [name, last name] [position] [date]