

## AGREEMENT

ON

## SOFTWARE DELIVERY FOR TRAIN TRAFFIC MODELLING

between

RB Rail AS

and

Rail Management Consultants GmbH

Agreement registration number

8/2017-94

CEF Contract No INEA/CEF/TRAN/M2014/1045990<sup>1</sup>

A34

Dated 09.08.2017

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

## AGREEMENT

This Agreement ("**Agreement**") is entered into in Riga, on 9 August 2017 ("**Effective Date**") by and between:

**RB Rail AS**, registration number: 40103845025, having its registered address at K. Valdemāra iela 8-7, Riga, LV-1010, Latvia ("**Contracting authority**"), represented by Chairperson of the Management Board Baiba Anda Rubesa and Management Board Member Kaspars Rokens acting on the basis of the Power of Attorney No 9/2017-7 dated July 14, 2017 and

**Rail Management Consultants GmbH**, registration number 57737, having its registered address at Lützerodestraße 10, 30161 Hannover, Deutschland ("**Contractor**"), represented by Managing Director PD Dr.-Ing. Alfons Radtke, acting on the basis of the Articles of Association,

each individually referred to as the "Party" and collectively referred to as the "Parties".

### WHEREAS:

- (A) the Contracting authority is implementing the European standard track width project Rail Baltica, within the scope of which the Contracting authority needs Software Delivery for Train Traffic Modelling;
- (B) The Contracting authority has organised the open competition "Software Delivery for Train Traffic Modelling" (identification No RBR 2017/13) ("**Procurement**") in which the Contractor's procurement proposal ("**Proposal**") was selected as the winning bid;
- (C) This Agreement is co-financed from the Connecting Europe Facility (CEF), CEF Contract No INEA/CEF/TRAN/M2014/1045990, Action No A34.

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

### 1. SUBJECT OF THE AGREEMENT

- 1.1. The Contractor undertakes to deliver and install for the Contracting authority the software for train traffic modelling 1 (one) license ("**Software**"), provide the technical support for 2 (two) years ("**Technical Support**") and provide the employee training services, in accordance with Proposal for the Procurement and Agreement ("**Training**", but Software, Technical Support and Training jointly referred to as "**Services**"), whereas the Contracting authority undertakes to pay for the Services provided by the Contractor in accordance with the Agreement.
- 1.2. The Procurement Regulation and Contractor's Proposal shall form integral part of the Agreement.
- 1.3. The Contractor represents and warrants that the Software performs the following tasks (among others):
  - 1.3.1. railway line and station capacity calculation;
  - 1.3.2. train traffic modelling;
  - 1.3.3. calculation of train running times;
  - 1.3.4. analysis of the efficiency of the planned and/or existing infrastructure;

- 1.3.5. train traffic / infrastructure capacity analysis by simulating different railway infrastructure technical solutions (such as track alignment, signalling system, electrification system, power capacity etc.) and railway operation scenarios;
- 1.3.6. power consumption calculations.
- 1.4. The Contractor represents and warrants that the Software has the following key characteristics:
  - 1.4.1. be able to fully operate on Windows 10 (or higher version) platform;
  - 1.4.2. determine the capacity of a planned or existing railway line and stations, including localization of bottlenecks (UIC 405 and EU TSI compliant);
  - 1.4.3. possibility to import and export data (including infrastructure) in RailML format among others;
  - 1.4.4. include information most commonly used signalling systems in the European Union, specifically, it must include the ERTMS Level 2 (baseline 2.3.0d and higher versions);
  - 1.4.5. include all electrification systems used in Europe, mainly DC, AC (1x25 kV, 2x25kV);
  - 1.4.6. Infrastructure model must take into account all geometric parameters of the railway (slope gradient, cant, curvature radius among others);
  - 1.4.7. be able to test and evaluate the component, system and rolling stock reliability effect on the operation of the railway line (sensitivity of the timetable);
  - 1.4.8. provide railway line operation diagrams, including maintenance, (train graphs – speed/time, tractive effort, electric energy consumption, acceleration behaviour) as well as showing real time operation of the railway;
  - 1.4.9. include information on most commonly used rolling stock in Europe on 1435mm gauge (including acceleration behaviour, tractive effort etc.) so that no additional information collection is required from the Contracting authority for the simulations;
  - 1.4.10. has the possibility to analyse and represent various train infrastructure and train operation scenarios;
  - 1.4.11. software interface must be in English and a full manual and instructions in an electronic format and a physical copy must be provided.
- 1.5. The Contractor will provide the Technical support for 2 (two) years from the moment of delivery of the Software (Section 3.4) as follows:
  - 1.5.1. provide support with any issues arising from the use of his software (both technical errors and other issues);
  - 1.5.2. provide support in English and answer all requests by e-mail or by phone from the Contracting authority related to the Technical support within (2) two working days;
  - 1.5.3. to update the Software to the most recent version when it is available. This includes fixing any technical issues arising from the Software which may or may not be experienced by the Contracting authority.
- 1.6. The Contractor shall deliver the Training, which shall include the following:
  - 1.6.1. the Training shall be done at the premises of the Contracting authority, thus travel and accommodation costs for the Contractor's employee(s) will be covered by the Contractor;
  - 1.6.2. the Training shall be done in a group setting - maximum (3) three employees for maximum (3) three days (8) eight hours per day;
  - 1.6.3. during the Training, the Contractor should explain and demonstrate the full functionality of the Software on a demo project or client's data. This includes a theoretical background (description on how the Software works) and practical examples;

- 1.6.4. any required equipment, presentation materials for the training shall be prepared and costs thereof shall be covered by the Contractor.
- 1.7. The Contractor shall deliver the Software and provide the Training within 30 days from the date of the Agreement and agree on the exact delivery and training date with the Contracting authority.
- 1.8. The Services shall be provided in the English language.
- 1.9. The Agreement contains the following Annexes:
- 1.9.1. Annex 1, Technical Specification of the Procurement Regulation;
- 1.9.2. Annex 2, Financial proposal;
- 1.9.3. Annex 3, Technical proposal;
- 1.9.4. Annex 4, Contractor's Declaration.
- 1.10. The Annexes listed in Section 1.9 of this Agreement shall form an integral part of the Agreement and are incorporated herein by reference as if set out at length in the Agreement.
- 1.11. In the event of any inconsistency between the terms of this Agreement and any of the Annexes, the text of this Agreement shall take precedence over any term set forth in any of the Annexes. In the event of any inconsistency between the terms of any of the Annexes, the terms of the Proposal shall prevail.
- 2. PROVISION OF SERVICES**
- 2.1. The Contractor shall deliver the Services of the Contracting authority within the dates approved by the Parties and following the deadlines set in the Agreement.
- 2.2. The Contractor provides the Services in accordance with its best knowledge and experience and perform all necessary actions in order to provide the Services.
- 2.3. Contracting authority's liaison person that is authorized in the name of the Contracting authority to approve the delivery of the Services fully or partially and communicate between the Parties is Project Assistant Kristaps Rudzis, phone +371 28 150 101, e-mail: [Kristaps.Rudzis@railbaltica.org](mailto:Kristaps.Rudzis@railbaltica.org).
- 2.4. Contractor's liaison person that is authorized to approve the delivery of the Services fully or partially and communicate between the Parties is Key Account Manager Gabriele Löber, phone +49 511 262926 26, e-mail: [Gabriele.Loerber@rmcon.de](mailto:Gabriele.Loerber@rmcon.de).
- 2.5. During the absence of the Parties' liaison persons their duties shall be carried out by other respectively qualified employees of the Parties.
- 2.6. After the successful delivery and installation of the Software on a computer on the premises of the Contracting authority and delivery of the Training, the Contractor shall prepare and submit to the Contracting authority the delivery and acceptance act signed on its part in respect of the Services provided.
- 2.7. The Contracting authority shall review the delivery and acceptance act not later than within 5 (five) business days as of the receipt thereof and sign the delivery and acceptance act thereby confirming the compliance of the Services rendered with the Agreement and requirements of the Contracting authority, or raise reasonable objections in respect to the Services rendered. The objections thereto must be expressed in a written form and communicated by electronic mail to the Contractor's liaison person.
- 2.8. The delivery and acceptance act signed on the part of the Contracting authority shall serve as a basis for issuing invoice by the Contractor for the delivery and installation of the Software, the delivery of the Training and the annual subscription cost for the Software for the first year. For the annual subscription cost for the Software for the second year the invoice shall be issued not earlier than 12 months after the date of the delivery and acceptance act.
- 3. FEE AND PAYMENT**
- 3.1. For the Services, the Contracting authority shall pay to the Contractor the following fees:

- 3.1.1. for the delivery and installation of the Software - 15 000,00 EUR (fifteen thousand *euro* and 00 cents), excluding value added tax ("VAT");
- 3.1.2. for yearly subscription of the Software (for 2 years) – 8 500,00 EUR (eight thousand five hundred *euro* and 00 cents), excluding VAT;
- 3.1.3. for the delivery of the Training – 5 650,00 EUR (five thousand six hundred fifty *euro* and 00 cents), excluding VAT.
- 3.2. Total amount of the Agreement excluding VAT is **29 150,00 EUR (twenty nine thousand one hundred fifty *euro* and 00 cents).**
- 3.3. The Contractor confirms that the fee mentioned in Section 3.1 cover all and any costs of the Contractor for the delivery of the Services at the premises of the Contracting authority, including, but not limited to travel and accommodation costs for the Contractor's employee(s).
- 3.4. The Contracting authority shall make the payment set in Section 3.1 of the Agreement within 30 (thirty) days after receipt of the signed delivery and acceptance act, the signed Contractor's declaration and receipt of the invoice from the Contractor by transfer of the payment to the bank account. For the annual subscription cost for the Software for the second year the invoice shall be issued not earlier than 12 months after the date of the delivery and acceptance act.
- 3.5. The Contractor's invoices shall contain the following Contractor's details and details about the Agreement:

Contractor	[●]
Registration No	[●]
VAT payer's No	[●]
Address	[●]
Name of Bank	[●]
Bank Code	[●]
Bank Account No	[●]
Subject:	For provided services according to Software Delivery for Train Traffic Modelling Agreement No 8/2017-94 (CEF Contract No INEA/CEF/TRAN/M2014/1045990 <sup>2</sup> Activity No A34), Kristaps Rudzis, Identification number RBR 2017/13

- 3.6. Invoices should be sent to the e-mail [invoices@railbaltica.org](mailto:invoices@railbaltica.org) and should include details mentioned in Section 3.5.

#### 4. INTELLECTUAL PROPERTY RIGHTS

- 4.1. Unless agreed otherwise in writing between the Parties, all copyright and other intellectual property rights (except personal copyrights of an author) to all materials created by using the Software shall be exclusively owned by the Contracting authority. The material author's property rights include, but are not limited to, the rights to communicate the materials mentioned above to the public, publish, distribute, reproduce, translate or modify them. The Contracting authority is entitled to use the materials created by using the Software in any manner and an unlimited number of times in Latvia, Lithuania, Estonia and other countries. The Contractor may not assign, transfer, sell, license, sublicense or grant any right in or to the all materials created by using the Software by the Contracting authority and any related documentation to any other person or entity. For the avoidance of any doubt, the Contractor shall be deemed to have granted the Contracting authority the right to use any materials deliverable to the Contracting authority under this

<sup>2</sup> Grant Agreement under the Connecting Europe Facility (CEF) -Transport Sector Agreement No INEA/CEF/TRAN/M2014/1045990

Contracting authority the right to use any materials deliverable to the Contracting authority under this Agreement (including all data contained in such materials) for whatever purpose. The Contractor confirms the Contracting authority is the owner of the data it has entered and defined in the software (infrastructure, timetable, rolling stock, perturbations etc.) and all related results of the the Contracting authority investigations.

- 4.2. The Contractor confirms that in the course of provision of the Services, the Contractor will ensure that the rights of the copyright holders are respected and there will be no infringements of any copyrights. If necessary, the Contractor shall obtain all the necessary permits, consents and licences for the use of the work protected by the intellectual property rights.
- 4.3. The Contractor agrees that the costs of all the necessary permits, consents, licences etc., if any such will be incurred in relation to provision of the Services and due performance of the Agreement, are included in the fee set in Section 3.1.
- 4.4. This Agreement does not transfer or convey to the Contractor or any third party any right, title or interest in or to any of the Contracting authority's property.

## **5. RIGHTS AND OBLIGATIONS OF THE PARTIES**

### **5.1. Rights and Obligations of the Contracting authority:**

- 5.1.1. to adhere to the provisions of the Agreement;
- 5.1.2. to a reasonable extent supply the Contractor with information, as well as provide answers to the Contractor's questions required for provision of the Services;
- 5.1.3. to accept the Services duly provided by the Contractor pursuant to the Agreement and pay for them;
- 5.1.4. refuse to accept the Services if the Contracting authority discovers that the Services or part of the Services are provided in a bad quality, incompletely or not in accordance with the terms of the Agreement;
- 5.1.5. request the Contractor to remove free of charge and within the term defined by the Contracting authority the defects and incompliances that are discovered in the provided Services;
- 5.1.6. to control at his own expense the performance of the Agreement, engaging professionals and experts, if necessary.

### **5.2. Rights and obligations of the Contractor:**

- 5.2.1. to adhere to the provisions of the Agreement and the Contractor's declaration;
  - 5.2.2. to provide Services using its professional skills, timely and autonomously, in a good quality and with such accuracy that one can expect from a decent and proper Contractor;
  - 5.2.3. to cooperate with the Contracting authority;
  - 5.2.4. to independently request, receive and assess information required for provision of the Services.
- 5.3. Parties shall immediately notify the other Party in writing on any circumstances occurring irrespective of their action and hindering provision of the Services according to deadlines and procedure set in the Agreement.

## **6. LIABILITY**

- 6.1. If the Contractor fails to deliver the Services by the Parties' approved deadlines as provided for in the Agreement, and the Contractor's delay has not occurred due to the Contracting authority's fault, the Contractor shall pay the Contracting authority a contractual penalty in the amount of 150 EUR for each day of delay, but not exceeding in total 10% of the fee for the Services rendered in the relevant month. The same penalty shall apply to the Contractor, if it fails to perform other obligations under the Agreement (for example, fails to sign and deliver the Contractor's declaration) and does not eliminate the breach within

five (5) days from receipt of respective written notice from the Contracting authority. The Contracting authority is entitled to withhold from the payment the contractual penalties accrued.

- 6.2. For failure to make payments when due under the Agreement, the Contracting authority shall pay to the Contractor a contractual penalty amounting to 0.05 % (zero point zero five per cent) of the outstanding amount for each day delayed, but not exceeding 10% of the sum of the delayed payment.
- 6.3. Payment of the contractual penalty shall not release the Parties from performance of obligations.
- 6.4. The Parties are reciprocally liable for the breaches of obligations and damages caused to the other Party. The Party that is liable for the breach of the contractual obligations shall pay damages to the other Party.

## **7. FORCE MAJEURE**

- 7.1. None of the Parties will be considered in breach of the Agreement to the extent that any fulfilment of obligations under the Agreement is prevented or becomes impossible due to the event of force majeure, which neither of the Parties was able to prevent by any reasonable measure available to it. Force majeure is natural disasters, war and any type of war operations, siege, epidemic and other circumstances of extraordinary character beyond the reasonable control by the Parties that the Parties could not foresee during fulfilment of the Contract.
- 7.2. The force majeure clause shall apply also to the changes in legislative regulations and existing rules that may delay or make the provision of the Services impossible.
- 7.3. The Party that refers to the force majeure shall without delay and within the shortest possible time notify to the other Party in writing the force majeure circumstances. The other party has the right to request the certified statement of the competent authority that proves and characterizes the notified force majeure circumstances.
- 7.4. In case the fulfilment of the obligations of the Agreement becomes impossible due to the force majeure circumstances for more than 30 (thirty) days, the Parties has the right to withdraw from the Agreement. In this case the Contractor shall transfer to the Contracting authority the completed Services and the Contracting authority shall pay for them.

## **8. CONFIDENTIALITY**

- 8.1. The Parties agree that any information ("Information") obtained in the course of fulfilment of the Agreement, incl. but not limited to information obtained by one Party on the other Party, ideas, methods and work techniques of Parties, as well as information obtained by the Contractor in the course of performance of work will be considered as confidential.
- 8.2. The Parties undertake not to disclose without a prior written consent of the other Party any Information obtained in the course of fulfilment of the Agreement, save for the cases referred to in Section 8.4 of the Agreement. This provision shall be applicable during the validity of the Agreement, and shall remain effective also after the expiration or termination of the Agreement.
- 8.3. The Parties undertake to provide Information to their employees only to the extent required for provision of the Services and due performance of the Agreement. The Contractor ensures that its employees or other persons involved in the provision of the Services respect the provisions of confidentiality defined in the Agreement. The Contractor shall be fully responsible for the damages caused to the Contracting authority due to the reveal of the Information to the third persons, disregarding whether the Information was revealed by the Contractor itself, its employees or by other persons involved in the provision of the Services.
- 8.4. The disclosure of the Information will not be considered a breach of the Agreement if it is revealed due to the legislative requirements and in accordance with the provisions of the normative enactments or EU legislation, including the obligation of the Contracting authority to disclose the Agreement terms to any authorities controlling spending of public funds.

- 8.5. The Party which itself or through its engaged persons is in breach of the confidentiality obligation, shall compensate direct losses incurred by the other Party.

## **9. VALIDITY OF THE AGREEMENT AND TERMINATION**

- 9.1. The Agreement shall enter into force upon its signing by the both Parties and shall remain in force for two years from the date of date of the delivery and signing acceptance act.
- 9.2. The Contracting authority is entitled to unilaterally terminate the Agreement having notified the Contractor in writing ten (10) days in advance in one of the following cases:
- 9.2.1. the Contractor misses deadlines set by the Parties for provision of the Services under the Agreement by more than five (5) days;
- 9.2.2. the Contractor is in breach of other contractual obligations or liabilities, and the Contractor has not eliminated the breach within five (5) days from receipt of respective written notice from the Contracting authority;
- 9.2.3. the Contractor has been declared insolvent, legal protection process or liquidation of the Contractor has been initiated.
- 9.3. In case of early termination of the Agreement the Parties shall draft and sign a special deed on actually provided volume and value of Services. The Contracting authority shall approve the Services to the extent completed and compliant with the Agreement. The Contracting authority shall pay to the Contractor for the Services provided on the basis of duly drafted and mutually signed deed. The Contracting authority is entitled to withhold from the payment the contractual penalties accrued. In the case referred to in this clause above the Parties shall settle mutual payments within 10 (ten) days from signing of the deed.

## **10. DISPUTE RESOLUTION**

- 10.1. Any disagreements arising between the Parties concerning performance of the liabilities as per the Agreement shall be resolved by way of mutual negotiations. The agreement reached shall be documented in writing.
- 10.2. If no agreement is reached during thirty (30) days period, the dispute shall be settled in the court of the Republic of Latvia according to the procedure set by the normative enactments of the Republic of Latvia.

## **11. FINAL PROVISIONS**

- 11.1. Communication between the Parties (e.g. information, requests, submissions, formal notifications, etc.) during the Agreement must be carried out in English language.
- 11.2. If the final day of a time period referred to in this Agreement is Saturday, Sunday or a holiday prescribed by law, the following working day shall be considered the final day of the time period.
- 11.3. The Agreement can be amended in compliance with the provisions of Article 61 of the Public Procurement Law. Amendments and supplements to the Agreement shall be valid only when they have been prepared in writing and signed by the Parties; they shall be enclosed to this Agreement and become an integral part of it. If any of the provisions of the Agreement become void, it shall not affect other provisions of the Agreement.
- 11.4. The Parties shall timely notify the changes of billing details, legal addresses or representatives.
- 11.5. Rights and obligations not covered by this Agreement are regulated according laws of the Republic of Latvia.
- 11.6. The Agreement has been signed in 2 (two) identical copies, 1 (one) copy for the Contracting authority and the other for the Contractor.



## 12. DETAILS OF THE PARTIES

Contracting authority:

RB Rail AS

Contractor:

Rail Management Consultants GmbH