

AGREEMENT

ON

MARKETING SERVICES FOR RAIL BALTICA PROJECT

between

RB Rail AS

and

Sabiedrība ar ierobežotu atbildību "DDB WORLDWIDE LATVIA"

Agreement registration number	8/2017-102
CEF Contract No INEA/CEF/TRAN/M2014/1045990 ¹	A39

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

AGREEMENT

This Marketing Services Agreement ("**Agreement**") is entered into in Riga, on 16 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 ("**Company**"), 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

Sabiedrība ar ierobežotu atbildību "DDB WORLDWIDE LATVIA", registration number 50003265411, having its registered address at Brīvības iela 40 - 33, Rīga, Latvia, LV-1050 ("**Contractor**"), represented by Members of the Board Andris Rubins and Kristiāns Vjakske acting on the basis of Articles of Association,

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

WHEREAS:

- (A) the Company is implementing the European standard track width project Rail Baltica, within the scope of which the Company needs marketing services;
- (B) the Company has organised the open competition "Marketing Services for Rail Baltica project" (identification No RBR 2017/12) ("**Procurement**") in which the Contractor's procurement proposal ("**Proposal**") was selected as the winning bid;
- (C) Procurement is co-financed by the Company and Connecting Europe Facility (CEF).

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

1. SUBJECT OF THE AGREEMENT

- 1.1. The Company assigns and the Contractor undertakes to provide the marketing services, in accordance with Proposal for the Procurement and Agreement ("**Services**"), whereas the Company undertakes to pay for the Services provided by the Contractor in accordance with the Agreement.
- 1.2. The Services include but are not limited to:
 - 1.2.1. works of design and technical layout design for information and communications materials, banners, infographics, animated infographics, exhibition stand, branded templates for social media, corporate presentations etc.;
 - 1.2.2. creative works;
 - 1.2.3. development of the official documentation templates according to the Rail Baltica corporate guidelines;
 - 1.2.4. web applications for social media needs and other web digital products;
 - 1.2.5. hosting service for the WordPress based web site. Uptime should be at least 99.95% measured monthly;
 - 1.2.6. maintenance of the web site – monitoring of new update availability and installation of the updates for operation system, web server, database including updates for WordPress platform;
 - 1.2.7. web site visual and functionality development according to the Company's needs.
- 1.3. The Contractor provides Services in accordance with the requests of the Company in the amount necessary for the Company. The Company is not obliged within the duration of the Agreement to order all the Services stipulated in Section 1.2 of the Agreement.
- 1.4. The Services shall be provided in the Latvian and English language.
- 1.5. The Agreement contains the following Annexes:
 - 1.5.1. Annex 1, Technical Specification;
 - 1.5.2. Annex 2, Financial proposal;

Annex 3, Contractor's Declaration.

- 1.6. The Annexes listed in Section 1.5 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.
- 1.7. 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 provide the Services on the basis of separate work tasks communicated by the Company to the electronic mail address of the Contractors liaison person.
- 2.2. The Contractor shall perform the work tasks of the Company within the deadlines and in the volumes approved by the Parties.
- 2.3. The persons involved in the performance of the Agreement on the Contractor's part whose qualification has been evaluated and accepted by the Company within the Procurement may be replaced with other persons only with prior consent of the Company. The Company is entitled to object to such replacement if the qualification of such person is not equal or better to the qualification of the replaceable person (*change of personnel and Sub-Contractors involved in Agreement implementation in compliance with the provisions of Article 62 of Public Procurement Law*).
- 2.4. Company's liaison person that is authorized in the name of the Company to submit the requests for the Services, as well as approve of the work tasks to be given within the scope of the Services and communicate between the Parties is Communications and Government Affairs Manager Ilze Rassa phone +371 27 337 767, e-mail: ilze.rassa@railbaltica.org.
- 2.5. Contractor's liaison person that is authorized to confirm the receipt of the request for the Services, agree to the terms and conditions for the provision of the Services and transfer the provided Services to the Customer is Project Director Nora Kirta, phone 29269696, e-mail: nora.kirta@lv.ddb.com.
- 2.6. During the absence of the Parties' liaison persons their duties shall be carried out by other respectively qualified employees of the Parties.
- 2.7. The Contractor shall prepare by the 5th date of the current month and submit to the Company the delivery and acceptance act signed on its part in respect of the Services provided in the previous month.
- 2.8. The Company 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 Company, 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.
- 2.9. In the event the provided Services is rejected, the Contractor shall have an obligation to submit to the Company a revised Services no later than within 5 (five) working days from the date of receipt of recommendations or objections from the Company, or, unless, if objectively justified, a different time for supply of the revised Services is agreed between the Parties.
- 2.10. The delivery and acceptance act signed on the part of the Company shall serve as a basis for issuing invoice by the Contractor for the Services rendered in the previous month.

3. TECHNICAL SERVICES

- 3.1. The Technical Services include, but are not limited to services of photographer, translation, production of advertising materials and other services necessary to provide the Services and to duly perform the Agreement.
- 3.2. In case if the Contractor is organising the provision of the Technical Services, costs related to the Technical Services shall be agreed between the Parties' liaison persons in a written form by electronic mail and approved by the Company prior to the provision of these services ("**Costs of Technical Services**"). The Company is entitled to engage and remunerate the providers of the Technical Services itself while coordinating such engagement with the Contractor.

FEE AND PAYMENT

- 4.1. For the hosting and maintenance of the web site www.railbaltica.org, the Company shall pay to the Contractor ("**Web Fee**") depending on the intensity and complexity of the works for www.raibaltica.org and in accordance with Financial Proposal, but Web Fee will not exceed **500,00 EUR (five hundred euro)**, excluding value added tax ("**VAT**") per month.
- 4.2. For the Services (except Services referred to in Section 4.1.) rendered and accepted in the manner and within the terms provided for in the Agreement, the Company shall pay to the Contractor according to the hourly rate as described in Proposal (hereinafter, "**Fee**"), i.e.:
 - 4.2.1. Account manager: **65,00 EUR (sixty five euro)** per hour, excluding VAT;
 - 4.2.2. Art Director: **85,00 EUR (eighty five euro)** per hour, excluding VAT;
 - 4.2.3. Copywriter (English): **85,00 EUR (eighty five euro)** per hour, excluding VAT;
 - 4.2.4. Artist / Designer: **70,00 EUR (seventy euro)** per hour, excluding VAT;
 - 4.2.5. Web site visual and functionality development fee: **145,00 EUR (one hundred forty five euro)** per hour, excluding VAT.
- 4.3. The Fee shall be calculated in accordance with the actual time which the employees of the Contractor work on Services. The minimum time unit for the purposes of calculating the Fee is 0,1h (6 minutes). The Fee includes payment for any and all expenses incurred by the Contractor in the course of provision of the Services and due performance of the Agreement, except for the Costs of Technical Services referred to in Section 3.2.
- 4.4. Total amount of the Agreement excluding VAT is **64 200 EUR (sixty-four thousand two hundred euro 00 cents)**.
- 4.5. In addition to the Fee and Web Fee, the Company shall compensate the Contractor the Costs of Technical Services in their actual amount.
- 4.6. The Contractor shall substantiate the amount of the Costs of Technical Services by submitting to the Company the copies of the source documents submitted by the providers of the Technical Services (invoices, delivery notes and other documents).
- 4.7. The Company shall make the payment set in Section 4.1 and 4.2 of the Agreement once a calendar month for the Services provided in the previous calendar months within 30 (thirty) days after signed delivery and acceptance act and receipt of the invoice from the Contractor by transfer of the payment to the bank account.
- 4.8. The Contractor's invoices shall contain the following Contractor's details and details about the Agreement:

Contractor	Sabiedrība ar ierobežotu atbildību "DDB WORLDWIDE LATVIA"
Registration No	50003265411
VAT payer's No	LV50003265411
Address	Brīvības iela 40 - 33, Rīga, Latvija, LV-1050
Name of Bank	Nordea Bank AB Latvijas filiāle
Bank Code	NDEALV2X
Bank Account No	LV25NDEA0000083520691
Subject:	For provided services according to the Marketing services Agreement No 8/2017-102 (CEF Contract No INEA/CEF/TRAN/M2014/1045990 ² Activity No A39), Ilze Rassa, Identification number RBR 2017/12

- 4.9. Invoices should be sent to the e-mail invoices@railbaltica.org and should include details mentioned in Section 4.8.

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

THE TERMS OF PROVISION OF SERVICES

The Contractor provides the Services to the Company in accordance with each particular request of the Company.

- 5.2. The Company orders Services by making a request to the Contractor, indicating necessary Services and providing information, which is necessary for the provision of the Services.
- 5.3. The Contractor provides Services in accordance with its knowledge and experience and perform all necessary actions in order to provide the requested Services.
- 5.4. The Company orders Services by sending a request to the Contractor to the electronic mail address of the Contractor stated in Section 2.5 of the Agreement and defining the scope of the necessary Services. After the receipt of the request, the Company and the Contractor agree on terms and conditions of provision of the requested Services and the Contractor sends to the Company its proposal for requested Services.
- 5.5. The Contractor shall confirm the receipt of the request by sending a reply to the electronic address of the Company stated in Section 2.4 of the Agreement.
- 5.6. The Contractor may start to perform requested Services only upon reception of the Company's final approval of the Contractor's proposal.
- 5.7. Hosting service and maintenance of the web site www.railbaltica.org (including but not limited to monitoring of new update availability and installation of the updates for operation system, web server, database including updates for WordPress platform, backup of the web site) shall be done based on day-to-day bases without any additional request or order from the Company.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1. 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 within the scope of the Services including all improvements and derivatives thereof and modifications thereto are transferred to the Company within the terms and for the amount that the Contractor owns or is entitled to use the respective intellectual property items. 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 Company is entitled to use the materials created within the scope of the Services 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 within the scope of the Services 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 Company the right to use any materials deliverable to the Company under this Agreement (including all data contained in such materials) for whatever purpose within the terms and for the amount that the Contractor owns or is entitled to use the respective intellectual property items.
- 6.2. 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.
- 6.3. 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 and/or Web Fee.
- 6.4. 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 Company's property.

7. RIGHTS AND OBLIGATIONS OF THE PARTIES

- 7.1. Rights and obligations of the Company:
 - 7.1.1. to adhere to the provisions of the Agreement;
 - 7.1.2. 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;
 - 7.1.3. to accept the Services duly provided by the Contractor pursuant to the Agreement and pay for them;

- to refuse to accept the Services if the Company 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;
- 7.1.5. to request the Contractor to remove free of charge and within the term defined by the Company the defects and incompliances that are discovered in the provided Services;
- 7.1.6. to control at his own expense the performance of the Agreement, engaging professionals and experts, if necessary.
- 7.2. Rights and obligations of the Contractor:
- 7.2.1. to adhere to the provisions of the Agreement;
- 7.2.2. 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;
- 7.2.3. to comply with Rail Baltica Visual Guidelines (Annex C to the Agreement) and EU Visibility Requirements;
- 7.2.4. to cooperate with the Company, its shareholders and third parties;
- 7.2.5. to independently request, receive and assess information required for provision of the Services.
- 7.3. 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.

8. LIABILITY

- 8.1. If the Contractor due to the Contractor's fault 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 Company's fault, the Contractor shall pay the Company a contractual penalty in the amount of EUR 150 for each day of delay, but not exceeding in total 10% of the Fee for the Services rendered in the relevant month. The Company is entitled to withhold from the payment the contractual penalties accrued.
- 8.2. For failure to make payments when due under the Agreement, the Company 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.
- 8.3. Payment of the contractual penalty shall not release the Parties from performance of obligations.
- 8.4. 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.

9. FORCE MAJEURE

- 9.1. 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 Agreement.
- 9.2. 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.
- 9.3. 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.
- 9.4. 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 Company the completed Services and the Company shall pay for them.

10. CONFIDENTIALITY

- 10.1. 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 service from the third parties will be considered as confidential.

- 10.2. 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 10.4 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.
- 10.3. 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 Company 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.
- 10.4. 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.
- 10.5. 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.

11. VISIBILITY REQUIREMENTS

- 11.1. The Contractor is obliged to comply with the following visibility requirements:
 - 11.1.1. Any reports, brochures, other documents or information connected with Services which the Contractor produces and submits to the Company, any other third person or makes publicly available must include the following:
 - 11.1.1.1. a funding statement stating that Project has received funding from the European Union: "Rail Baltica is co-financed by the European Union's Connecting Europe Facility";
 - 11.1.1.2. (for printed materials) a disclaimer releasing the European Union from any liability in terms of the content of the dissemination materials: "The sole responsibility of this publication lies with the author. The European Union is not responsible for any use that may be made of the information contained therein." This disclaimer in all European Union official languages can be seen at the website: <https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos>;
 - 11.1.1.3. the European Union flag.
 - 11.1.1.4. Requirements set in Sections 11.1.1.1 and 11.1.1.3 can be fulfilled by using the following logo:



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

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

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

12. VALIDITY OF THE AGREEMENT AND TERMINATION

- 12.1. The Agreement shall enter into force upon its signing by the both Parties and shall remain in force for one year until 15 August 2018 or until the Parties fully complete their contractual obligations, whichever occurs earlier.
- 12.2. Each of the Parties has the right to terminate the Agreement giving a written notice to the other Party one months in advance. The Contractor in that case shall complete all the Services already requested by the Company.

The Company is entitled to unilaterally terminate the Agreement having notified the Contractor in writing 10 (ten) days in advance in one of the following cases:

- 12.3.1. the Contractor misses deadlines set by the Parties for provision of the Services under the Agreement by more than 5 (five) days;
- 12.3.2. the Contractor is in breach of other contractual obligations or liabilities, and the Contractor has not eliminated the breach within 5 (five) days from receipt of respective written notice from the Company;
- 12.3.3. the Contractor has been declared insolvent, legal protection process or liquidation of the Contractor has been initiated.
- 12.4. In case of early termination of the Agreement the Parties shall draft and mutually sign a special deed on actually provided volume and value of Services. The Company shall approve the Services to the extent completed and compliant with the Agreement. The Company shall pay to the Contractor for the Services provided on the basis of duly drafted and mutually signed deed. The Company 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.

13. DISPUTE RESOLUTION

- 13.1. 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.
- 13.2. If no agreement is reached during 30 (thirty) 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.

14. FINAL PROVISIONS

- 14.1. 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.
- 14.2. 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.
- 14.3. The Parties shall timely notify the changes of billing details, legal addresses or representatives.
- 14.4. Rights and obligations not covered by this Agreement are regulated according laws of the Republic of Latvia.
- 14.5. The Agreement has been signed in 2 (two) identical copies, 1 (one) copy for the Company and the other for the Contractor, all having the same legal effect.

15. DETAILS OF THE PARTIES

Company:

RB Rail AS

Contractor:

Sabiedrība ar ierobežotu atbildību "DDB
WORLDWIDE LATVIA"