

P19 CONFIDENTIALITY AGREEMENT

Confidentiality Agreement (with a Selected Contractor)

concluded on the day, month and year marked below and according to Sec. 1746 (2) of Act No. 89/2012 Coll., Civil Code, as amended (hereinafter referred to as the "Civil Code") and Act No. 134/2016 Coll., on Public Procurement, as amended (hereinafter referred to as the "Public Procurement Act") between the following parties:

Správa železnic, státní organizace
having its registered office at Praha 1, Nové Město, Dláždění 1003/7, Postcode 110 00
ID No.: 70994234, VAT No.: CZ70994234

(hereinafter referred to as the "**Disclosing Party**");

and

[REDACTED]
having its registered office at [REDACTED]
ID No.: [REDACTED]

(hereinafter referred to as the "**Receiving Party**");

WHEREAS:

- a) The Disclosing Party, pursuant to Act No. 266/1994 Coll., on Rail Systems, as amended, and Act No. 77/2002 Coll., on the Czech Railways and Správa železnic, as amended, provides the operation of the nationwide and regional railways owned by the Czech Republic, their operability, modernization and development to the extent necessary to ensure the transport needs of the Czech Republic and its regions, thus meeting needs in the general interest, not having an industrial or commercial character.
- b) The Disclosing Party prepared, with the support of the SNCF holding (represented by SNCF International, a limited liability company, registration number 415 238 179 RCS, with its registered office at 2 place aux Etoiles, 93 200 Saint Denis, France) (hereinafter referred to as "SNCF") the Design Manual for Planning Permit Procedure Documentation of High Speed Lines in the Czech Republic (hereinafter referred to as the "**Manual**"), while the Manual contains the intellectual property of both the Disclosing Party and SNCF.
- c) The Disclosing Party intends to develop high speed lines in the Czech Republic and in connection therewith it has initiated a design competition in accordance with Section 143 et seq. of the Public Procurement Act (hereinafter referred to as the "**Design Competition**") for a design for a new terminal building in the district of Prague-East, real estate registration area of Nehvizdy, entitled "*Prague East Terminal*" (hereinafter referred to as the "**Design**"), while the Design will particularly include the building of the Prague East Terminal including roofing and platform access, a parking house, a parking space, bus and taxi bays, bike parking and all relating roads and pavements, hardened and soft surfaces, a road bridge over the HSR corridor and a road to Horoušany (within the motorway bridge section in the area delimited by the corridor and the terminal up to the connection to a distributing road to D11), a public area and parks and landscaping in the vicinity of these structures and their integration in the landscape and the relating technical infrastructure (hereinafter referred to as the "**Construction**").
- d) In the course of the Design Competition, the Disclosing Party evaluated the competition entry of the Receiving Party as the most advantageous.

- e) In accordance with Section 65(1) of the Public Procurement Act, the Disclosing Party has initiated a public procurement procedure following up to the Design Competition for the purpose of submitting a tender from the Receiving Party for the preparation of the Design, finalisation of the competition entry, preparation of project documentation for issuing the decision on the placement of a construction regarding the Construction and for the provision of consultation services and cooperation from the Receiving Party in selecting a contractor of the Construction (hereinafter referred to as the **"Tender Process"**)
- f) During the course of the Tender Process, the Disclosing Party evaluated the bid of the Receiving Party as the most suitable and decided to award the contract in the Tender Process to the Receiving Party.
- g) In connection with this the Disclosing Party may disclose information of a confidential and proprietary nature included in the Manual to the Receiving Party for the purpose of the Design and to allow the Receiving Party to prepare and submit the work that is the subject-matter of the Tender Process (hereinafter referred to as the **"Work"**);
- h) The disclosure of such information to the Receiving Party shall be subject to the terms set out in this Agreement.

1. PURPOSE OF AGREEMENT

The Receiving Party acknowledges that for the purpose of the Work, the Receiving Party will have access to certain Confidential Information (as defined hereinafter) and then agrees that any disclosure or use of Confidential Information hereunder shall be subject to the terms and conditions of this Agreement.

The signing of this Agreement by the Receiving Party shall imply acceptance of the commitments in this Agreement.

2. DEFINITIONS

- 2.1 In this Agreement **"Confidential Information"** means information in any form (whether oral, documentary, magnetic, electronic, graphic or digitized) containing or consisting of information or material of a technical, financial, operational, commercial, administrative or planning nature or of the nature of intellectual property of any kind and relating (wholly or in part) to the Manual, designated or not as "confidential", "proprietary" or the like, in whatever language.
- 2.2 **"Affiliate"** means any legal entity owned directly or indirectly at more than 50% by the Receiving Party, and also any subcontractor, financier or legal entity or person having access to the Confidential Information through the Receiving Party for the purpose of the Work.

3. OWNERSHIP

- 3.1 Any Confidential Information communicated hereunder shall be disclosed only to the Receiving Party or its designated Affiliates in accordance with this Agreement and solely for the purpose of the Work.
- 3.2 Any Confidential Information, including copies and derivatives, disclosed to the Receiving Party hereunder remains the property of the Disclosing Party (or partially SNCF). Nothing in this Agreement and in any disclosure made hereunder shall be construed as granting to the Receiving Party or its designated Affiliates any patent, trademark, copyright, design license, or rights of use other than for the purpose of the Work.

4. RIGHTS OF USE AND NON-DISCLOSURE

- 4.1 The Receiving Party undertakes and agrees that the Confidential Information disclosed to it hereunder will be held in strict confidence and will only be used for the Work by the Receiving Party.
- 4.2 In particular, the Receiving Party shall only use any Confidential Information disclosed to it for any other purpose than stated in Art. 4.1 subject to prior written approval of the Disclosing Party. The Receiving Party shall ensure that any third party to whom it may disclose any of such Confidential Information for the purpose of the Work is bound by a similar confidentiality undertaking as the Receiving Party.
- 4.3 The Receiving Party undertakes and agrees not to make copies of and not to disclose to any third party any part of the Confidential Information communicated to it hereunder, except as follows:
- i. the Receiving Party shall not be prevented from disclosing any or all of the Confidential Information to such of its officers and employees as are required by their duties to have knowledge thereof for the Work, provided that such officers and employees shall be similarly bound by undertakings of confidence, restricted use and non-disclosure and non-compete in respect of the Confidential Information (regarding the Disclosing Party or SNCF).
 - ii. the Receiving Party may disclose for the Work such Confidential Information as provided to any of its professional advisers, consultants, insurers and subcontractors who shall be similarly bound by undertakings of confidentiality (and of non-competition if necessary), restricted use and non-disclosure and non-compete in respect of such Confidential Information (regarding the Disclosing Party and SNCF). The Receiving Party is obliged to inform on such disclosure in writing and in advance of 14 days the Disclosing Party, while the Disclosing Party can forbid such disclosure until the Receiving Party declares the objective necessity of such disclosure and also proves the existence and extent of confidentiality undertaking of its professional advisers, consultants, insurers and subcontractors and the method of protection of the Confidential Information according to the first sentence of this section.
- 4.4 The Receiving Party shall use all reasonable endeavours that can be expected from it and that are appropriate to the nature of the Confidential Information, or use such endeavours at a same degree of care when used to protect its own Confidential Information, to ensure the due observance of the undertakings of confidentiality, restricted use and non-disclosure by all persons (including its consultants, subcontractors or financiers) to whom it discloses extracts of the Confidential Information. The Receiving Party confirms that it understands the exceptional significance of the Confidential Information for the Disclosing Party and SNCF, its security aspect and business sensitivity.
- 4.5 The Receiving Party nor the persons mentioned in Article 2.2 and Article 4.3 section i) and ii) shall not extract any part of the Confidential Information for reverse engineering or for any activity leading to compete the Disclosing Party or SNCF. The Receiving Party undertakes to make all rational steps and measures to prevent such reverse engineering and activity leading to compete the Disclosing Party or SNCF and to inform such Parties on such steps and measures upon their request.

5. RETURN OF CONFIDENTIAL INFORMATION

At the request the Disclosing Party after the termination of the contract for the Work or the breach of the contract by the Receiving Party, the Receiving Party shall promptly return any Confidential Information communicated to it in physical form by the Disclosing Party, or remove all illegal copies, extracts and derivatives made on the basis of the Confidential Information in a manner not allowing recycling and confirm in writing to the Disclosing Party the destruction of any and all Confidential Information of the Disclosing Party.

6. SCOPE AND APPLICATION

- 6.1. This Agreement shall also apply to the Confidential Information which may also have been communicated by the Disclosing Party or SNCF to the Receiving Party prior to the effective date of this Agreement provided that it was communicated for the preparation of a bid to the Tender Process or the Work and have been designated as confidential.
- 6.2. This Agreement shall not apply in respect of any part of the Confidential Information communicated which:
- (a) was in the lawful possession of the Receiving Party prior to its first receipt thereof (before, on or after the effective date of this Agreement) from the Disclosing Party or SNCF; or
 - (b) is after its receipt from the Disclosing Party or SNCF independently received by the Receiving Party in good faith from a third party having the right to disclose the same who did not receive it directly or indirectly from the Disclosing Party or SNCF with restriction on its use; or
 - (c) is or becomes (through no act or default of the Receiving party) public knowledge as evidenced by printed publication or otherwise; or
 - (d) is required or requested by order of any Government or governmental agency, or by any regulatory body, or by any court, judicial or administrative body, or by law, provided that it will prior to such disclosure (where permitted by applicable law) promptly notify the Disclosing Party so that an appropriate protective order can be sought and, in relation to any Confidential Information disclosed, shall use reasonable endeavors to obtain assurances that confidential treatment will be afforded to the same. The disclosure of the Confidential Information shall be limited to only that portion of the Confidential Information which is legally required to be disclosed by the Receiving Party.
- 6.3. The Disclosing Party declares that the Receiving Party as a professional in the field of preparation of documentation for Planning Permit of railway lines is obliged to duly examine the Confidential Information and to notice the Disclosing Party on any of its part, which may cause any delay, additional costs or damage to the Design or the Work.
- 6.4. This Agreement shall not be construed as a partnership, joint venture or other such arrangement. This Agreement is only for the purpose of protecting the disclosure of any Confidential Information.

7. DURATION

This Agreement shall remain in force for ten (10) years from its date of signing by the last Party. The obligations of the Receiving Party under Clause 4 above shall continue thereafter for a period of fifteen (15) years from its termination date.

8. REMEDY

- 8.1 The Receiving Party accepts and agrees that the Confidential Information disclosed or to be disclosed to it pursuant to this Agreement is valuable proprietary information, any unauthorized disclosure of which is likely to cause the Disclosing Party and/or SNCF considerable damage and loss for which monetary compensation may be claimed, however, with regard to the nature of the Confidential Information, this shall be without prejudice to other rights and remedies of the Disclosing Party or SNCF.
- 8.2 The Receiving Party confirms that it is aware of the fact that the significance and scope of damage according to Art. 8.1 may exceed the price of the Work and that the Disclosing Party and SNCF may demand remedy from the Receiving Party jointly or separately in accordance with general laws.

- 8.3 The Disclosing Party is entitled to relief before court, including interim injunction and other special procedural means of defence.
- 8.4 The Receiving Party shall notify the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of the Confidential Information by any means, and will cooperate to help the Disclosing Party to cure any misuse of the Confidential Information and to prevent any further unauthorized use of the Confidential Information.
- 8.5 The Receiving Party will be obliged to pay the Disclosing Party in case of any breach of its obligations on confidentiality under this Agreement, a contractual penalty of CZK 11,914,999 exclusive of VAT, and confirms that due to the character of the know-how incorporated into the Manual considers this contractual penalty as adequate. Paying the contractual penalty shall not affect the right for remedy in full extent under Art. 8.1.

9. MISCELLANEOUS

9.1 NO LICENCE

Neither this Agreement nor disclosure of the Confidential Information under this Agreement shall be construed as granting nor conferring to the Receiving Party any right or licence including, but without limitation, licences to trademarks, inventions, copyrights or patents.

9.2 NO WAIVER

Failure or delay of the Disclosing Party to exercise any right or remedy under this Agreement or to require strict performance by the other party of any provision of this Agreement shall not be construed to be a waiver of any such right or remedy or any other right or remedy hereunder. All of the rights of either party under this Agreement shall be cumulative and may be exercised separately or concurrently.

9.3 AMENDMENTS

This Agreement can only be modified by a written amendment signed by the Receiving Party and the Disclosing Party.

9.4 APPLICABLE LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of the Czech Republic.

Any dispute not settled amicably in a period of thirty (30) days from the date of the notice of the dispute, shall be finally submitted to relevant courts according to the registered seat of the Disclosing Party.

9.5 VALIDITY AND ENFORCEABILITY

The Parties agree that this Agreement shall become valid on the date of signing by the last of the Parties and shall enter into effect (Effective Date) on the day of its publication in the register of contracts according to Czech Act No. 340/2015 Coll., on the condition of effect of selected contracts, publication of such contracts and on the register of contracts, as amended. Such publication will be ensured by the Disclosing Party.

Signed for and on behalf of the Receiving Party

Signed for and behalf of the Disclosing Party

Signature:

Signature:

Name:

Name:

Position:

Position: