

Amendment 1\_amendment\_Agreement on delivery JHMD\_EBE\_091213\_131209

**AMENDMENT NO. 1 OF  
AGREEMENT ON  
THE DELIVERY AND INSTALLATION OF  
RAILROAD CROSSING SAFETY DEVICE AND ACCESSORIES**

**Jindřichohradecké místní dráhy, a.s.,**

Nádražní 203/II,  
377 01 Jindřichův Hradec,  
IČO: 62509870  
DIČ: CZ62509870

a company registered with the Regional Court in České Budějovice, Section B, Entry 684,  
banking details: ČSOB, a.s., Jindřichův Hradec branch  
account number:  
represented by Ing. Boris Cajánek, chairman of the Board of Directors  
(hereafter referred to as **JHMD**)

and

**EBE Solutions G.m.b.H.,**  
Breitenfurter Straße 274/2,  
A-1230 Wien

Companies register number: 304203H  
UID number: ATU 638 975 45  
banking details: Bank Austria,  
bank code: 12000.  
account number:  
IBAN:  
BIC:  
represented by: Ing. Alfred Paukerl, MAS, MSc  
(hereafter referred to as **EBE**)

have entered on the day, month and year mentioned below into the following Amendment agreement of Article 10 as follows:

New point enter into the force:

- 9) The Contractors agree with control of State Fund for Transport Infrastructure and provide necessary documents (for example technical specification, users manual, maintenance plan, invoicing between the contractors ) for its inspection, which relates to the subject of contract work.

EBE Solutions G.m.b.H.

Jindřichohradecké místní dráhy a.s.

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banking details: Bank Austria,

bank code: 120000

account number:

IBAN:

represented by: Ing. Alfred Paukerl, MAS, MSc  
(hereafter referred to as **EBE**)

have entered on the day, month and year mentioned below into the following agreement pursuant to Section 269 (2) of the Commercial Code (hereafter referred to as the **Agreement**):

**Article 1  
Introductory Provisions**

- 1) EBE is an Austrian developer, producer and supplier of railroad crossing safety devices. In this field, it acts as an integrator and supplier of whole units or its components. It has available to it the necessary know how to insure the functionality of railroad crossing safety devices.
- 2) JHMD operates railroads and provides rail transportation pursuant to Railroad Act No. 266/94 Coll. of the regional rail transit Jindřichův Hradec - Nová Bystřice and Jindřichův Hradec - Obrataň. In addition, JHMD does business in the field of production, installation and repairs of electrical machines and devices, electronic and telecommunication equipment and structures, their modifications and dismantling. JHMD wishes to utilize EBE's experience as the integrator in order to install on its railroad tracks a railroad crossing safety device using the components produced by EBE and in cooperation with EBE.

## **Article 2 Obligations of JHMD**

- 1) JHMD shall configure and specify technical requirements on the components of a railroad crossing safety device without barriers (Safety Integrity Level 2) (hereinafter referred as "the Device(s)") which EBE shall supply based on this agreement. Any specifications and/or designs, drawings and illustrations relating to the supplied components provided by either of the parties and agreed by the other one are an integral part of this agreement.
- 2) JHMD shall at its own expense secure and obtain all certificates, approvals and permissions needed for the Device to be installed on JHMD railroad infrastructure in the Czech Republic.
- 3) To the end mentioned above, JHMD shall in particular:
  - a) obtain permissions to place the new system on the JHMD railroads in conformity with requirements approved by the Czech Rail Authority,
  - b) carry out all preparations and construction work needed for the installation of the Device on JHMD's railroad infrastructure according to the specification provided by EBE;
  - c) notify to EBE the completion of all preparation and construction work and readiness of the infrastructure for the final check and approval of EBE needed prior to the installation of the device;
  - d) install the new system on the railroad in cooperation and under instructions of EBE,
  - e) operate and maintain the system once installed.

## **Article 3 Obligations of EBE**

- 1) EBE shall supply to JHMD all necessary components and software for the Device based on the specification set by JHMD. The list of the said components is attached as Annex 1 hereto.
- 2) EBE shall specify the requirements on technical and construction preparation of the JHMD infrastructure for the installation and inspect and approve the preparation and construction work prior to initiation of the installation process.
- 3) EBE shall provide technical and organizational assistance during the whole installation process and launching the system into operation as well as subsequently inspect and validate the installation on site.
- 4) Additionally, EBE shall provide to JHMD technical and organizational support in operating the Devices to include namely training of JHMD employees to assemble, put into operation, and operate the Devices, and to conduct regular maintenance and servicing of the devices, in the scope of 3 training days for 10 employees. Training will consist of personal presence of and assistance by the EBE trainer during assembly of the devices at railroads owned and operated by JHMD, and if needed, of follow-up training in the scope of another 3 training days for these employees, practical demonstrations and of training materials describing assembly and maintenance of safety devices so that JHMD will be able - through its employees - to operate the service centre for the Devices and to independently and in necessary extent carry out the assembly of EBE components, and the maintenance and service of both hardware and software.

Therefore EBE will set up an training plan with all performed training actions which is attached as Annex 2 hereto.

#### **Article 4 Schedule of Performance**

- 1) A detailed schedule of preparation and construction work and delivery of the compact parts of the system is attached as Annex 3 hereto.
- 2) Should EBE fail to comply to the agreed schedule JHMD shall be entitled to a contractual penalty amounting to 0.1 % of the respective partial delivery for each week of the delay. This shall apply for those milestones only for which a penalty is stipulated in Annex 1 whereby a grace period of 30 days is agreed upon. The penalty does not apply in case services or supplies from third parties are concerned. The penalties are limited with EUR 4,500 in the aggregate.

#### **Article 5 Rights of use and Confidentiality**

- 1) JHMD hereby acquires the non-exclusive transferable right restricted to the territory of the Czech Republic to use the delivered and installed EBE components processed into the device. The right of use granted shall further apply to the documentation thereto provided under this agreement. All existing intellectual property rights (including without limitation, copyrights, patents, small patents etc.) to delivered and installed standard components shall exclusively, perpetually and without any restrictions remain with EBE.
- 2) Parties hereto shall treat as confidential any and all information of business, legal, financial, production and technical nature pertaining to parties, devices and equipment as well as performance under this Agreement of which they acquire knowledge during the course of cooperation hereunder or which was made available to them as part of this cooperation, including information pertaining to past, present and future research, development or business activities, know-how, services and technical findings of the other party which is not publicly available and which is duly protected from disclosure by the party which has such information and the disclosure of which to a third party, being the competitor of the first party, by the other party could cause material harm to the first party (hereafter referred to as **confidential information**). No party hereto shall disclose any confidential information to any third party without having a written consent to do so by the other party or use any confidential information in conflict with rightful interests of the other party or to the benefit of a third party, including after the term of the present Agreement.
- 3) Parties hereto shall create suitable conditions for effective protection of confidential information and otherwise facilitate its protection.
- 4) The confidentiality and non-disclosure of information does not pertain to:
  - a) information which is or becomes publicly available through no violation by either party of the non-disclosure obligation above,
  - b) information disclosed in keeping with statutory obligations, with a final court judgment or administrative ruling,
  - c) information provably obtained independently from this Agreement or the other party.
- 5) Upon termination of this Agreement each party shall immediately undertake to return any written or otherwise recorded documentation received from the other party, including any copies made, to the other party. The party requesting that all written documentation be

returned must be issued with confirmation that all such documentation has been returned. The parties acknowledge, however, that confidential documentation provided in electronic format (e.g. e-mail) may be copied by the receiving party as part of its back-up procedures and if such copies cannot be returned to the disclosing party each party agrees that it shall not access or utilize such copies following receipt of a request to return confidential documentation received from the disclosing party.

#### **Article 6 Consideration**

- 1) For the performance hereunder provided by EBE JHMD shall pay to EBE EUR 59.000. JHMD shall pay to EBE the total price in form of three installments. EBE is entitled to invoice the first installment amounting to EUR 19.500 after delivery of components 1-6, 8-22 (Annex 1). EBE is entitled to invoice the second installment amounting to EUR 19.500 after delivery of components 23-27 (Annex 1) at JHMDs premises (to be defined by JHMD). EBE is entitled to invoice the third installment amounting to EUR 20.000 after delivery components 7, 28, 29 (Annex 1) and successful trial installation with successful trial operation (to be defined by JHMD).
- 2) All invoices should be due within 30 days from its issuance to the bank account of EBE mentioned above.

#### **Article 7 Liability for Defect, Warranty**

- 1) The parties hereto agree that liability for product defects, product functionality and proper installation on the JHMD railroad tracks vis a vis JHMD is borne by EBE. This liability clause only refers to components provided and installed in cooperation with EBE. In case of amendments, adaptations or advancements to the products, its functionality and in the event of maintenance by employees of JHMD that do not comply with specifications, guidelines or instructions provided by EBE documents or training, liability of EBE is excluded. EBE is not liable for product defects, product functionality and proper installation caused by components or performance of other suppliers or companies involved in the contractual cooperation process. Further EBE is not liable for any defects caused by defective administrative orders, requirements or specifications required by the certification agency or the Czech Rail Authority.
- 2) Prior to the installation of the equipment, representatives of both parties shall jointly test the equipment and its components for proper functionality of the whole unit. EBE shall be liable for any hidden defects of its components during the entire life of the equipment. This concerns also such defects which have not been recognized during the certification and validation process.
- 3) EBE shall offer to JHMD a warranty in connection with the functionality of the system for the period of 3 years. The life cycle of the device is 25 years at least. Any defects of the components, down-time of the system and substandard functionality within this warranty period, for whose removal JHMD employees have not been trained by EBE, will be notified by JHMD to EBE without delay. In such a case, EBE shall without further delay specify how the defect should be removed and/or send own service technicians to remove such a defect. Upon request from JHMD, EBE shall provide consultancy regarding repair and maintenance. If a defect appears to be irreparable during the warranty period, EBE shall replace the defective component by a new one.

### **Article 8 Termination of Agreement**

- 1) This Agreement is entered into for an indefinite period of time and terminates by its completion or by withdrawal. Termination by notice is not permitted.
- 2) JHMD may withdraw from this Agreement in the event EBE fails to provide its performance pursuant to Article 3 above even after a written request from JHMD to EBE giving extended and reasonable time limit;
- 3) EBE may withdraw from this Agreement in the event JHMD fails to pay for the supplied components and software even after a written request from JHMD to EBE giving extended and reasonable time limit;
- 4) Withdrawal from this Agreement becomes effective upon serving a written withdrawal notice to the other party. By withdrawal, this Agreement is deemed terminated, parties are obliged to return what was delivered or in case that it shall be not possible to return the components or software provided to compensate for such performance.

### **Article 9 Final Provisions**

- 1) This Agreement is made out in two original copies in the English language, each party receiving one.
- 2) All Annexes to this agreement are an integral part of this contract.
- 3) Any amendments hereto must be done in writing, bear a sequential number and be signed by both parties. For the purpose of communication between parties and for the purpose of written notices hereunder, a written form is deemed to include communication by fax, electronic mail and by other remote means which are capable of capturing the legal act and the person executing such act.
- 4) In the event any provision of this Agreement is deemed or rendered invalid, ineffective or unenforceable under the relevant legislation, the validity, effect and enforceability of other provisions will remain intact and such provisions are deemed perfected. The invalid, ineffective or unenforceable provision will be without undue delay, while reflecting its nature and respecting the original business intention, replaced, amended or otherwise modified by interpretation or by a written amendment executed by the parties. The same applies to any contractual gaps that need to be provided for.
- 5) This Agreements and underlying legal relations are governed by the laws of the Czech Republic, namely by Act No. 513/1991 Coll., the Commercial Code, as amended, and by other applicable legal regulations as amended.
- 6) Any disputes between parties will be preferably resolved by conciliation and mediation. If no conciliatory solution or solution via mediation is found, disputes hereunder will be referred for a decision to a general court of JHMD in the Czech Republic.
- 7) This Agreement comes into force and effect upon its execution by both parties.
- 8) Both parties hereto declare that this Agreement is an expression of their true and free will and in witness thereof, they attach their signatures.

In on

In on

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EBE Solutions G.m.b.H.

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Jindřichohradecké místní dráhy a.s.

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name, position

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name, position

## Annex 1

No.	Item	Number
1	LC cabinet	1
2	Communicator based on GSM	1
3	GSM Antenna	1
4	Diagnostic module	1
5	Touch screen of diagnostic module	1
6	Programmable logic computer	1
7	LC controlling SW	1
8	Axel counter	1
9	Counter points	4
10	Case of local control	1
11	Desk switchgear (fuses, circuit breakers)	1
12	Overvoltage protection blocks for all inputs/outputs	/
13	Material to fit LC cabinet to concrete block	/
14	Connection material for LC logic components	/
15	Connection material for LC switchboard	/
16	emergency batteries of LC	1
17	LC battery charger	1
18	Interface for petrol generator	1
19	Heater for LC cabinet	1
20	Material to fit for 4 counter points	/
21	Connection material from counter points to switchgears of counter points	/
22	Counter point switchgears	4
23	Road warning device included bells	2
24	Road warning device pole	2
25	Connection material from Road warning device to a terminal inside its pole	/
26	Material to fit Road warning device to its pole	/
27	Material to fit Road warning device pole to a concrete block	/
28	PC SW for LC diagnostic in Czech	1
29	SW for LC diagnostic module in Czech	1



Annex 2		
Action		
1	System description	
2	Safety Precautions and Safty related Application conditions	
3	Operation	
4	Repair, Diagnostics, Fault removal, Inspection and start up	
5	Preventive Maintenance	
6	Training on the system, tutorials	

Annex 3		Deadline
Action		
1	Signing of contract	12.11.2013
2	Check of building preparation for LC installation	12.12.2013
3	Delivery of components 1-6, 8-22. (Annex 1)	30.01.2014
4	Installation of LC cabinet, counterpoints	30.10.2014
5	Debug and Run the train detection system	30.01.2014
6	Run diagnostic modul to send failure/emergency sms	30.01.2014
7	Delivery time of RWD (component 23-27) (Annex 1)	24.03.2014
8	Final revision of LC control SW ,diagnostic module SW and PC diagnostic (component 7,28,29) (Annex 1)	29.03.2014
9	Debug and run of LC in safe way compliant with Czech standards (without paper work/certification etc.) - in field verification of function, hazardous cases, gsm messages etc.	30.04.2014
	penalty not accepted	
	penalty accepted	

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EBE Solutions G.m.b.H.

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Jindřichohradecké místní dráhy a.s.

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name, position

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**Article 1  
Introductory Provisions**

- 1) EBE is an Austrian developer, producer and supplier of railroad crossing safety devices. In this field, it acts as an integrator and supplier of whole units or its components. It has available to it the necessary know how to insure the functionality of railroad crossing safety devices.
- 2) JHMD operates railroads and provides rail transportation pursuant to Railroad Act No. 266/94 Coll. of the regional rail transit Jindřichův Hradec - Nová Bystřice and Jindřichův Hradec - Obrataň. In addition, JHMD does business in the field of production, installation and repairs of electrical machines and devices, electronic and telecommunication equipment and structures, their modifications and dismantling. JHMD wishes to utilize EBE's experience as the integrator in order to install on its railroad tracks railroad crossing safety device newly designed and built in cooperation with EBE. Such a new device shall be integrated using the EBE components modified for purposes of the Czech rail infrastructure, a newly developed type of a railroad warning device (RWD) as well as specific standard components from other producers.

- 3) The parties hereto have entered into this Agreement to (i) cooperate in developing and integrating of a new type of a railroad crossing safety device without barriers (Safety Integrity Level 2) (hereinafter referred as "**Device(s)**") from specified components including modification and customization of EBE components and development of a new type of a railroad warning device (ii) such a device shall be then certified and approved for the use on the JHMD's railroad tracks in the Czech Republic (iii) and put into operation as a pilot device on the JHMD's railroad tracks. This Agreement regulates the cooperation of parties hereto on the development and customization process of the Device and its certification process consisting of necessary approvals for use on the JHMD railroad tracks in the Czech Republic. The delivery and installation of a pilot device is covered by a separate contract signed jointly with this Agreement.

## **Article 2 Obligations of JHMD**

- 1) JHMD shall configure and specify all necessary technical requirements for the Device for the purpose of customisation of the respective components by EBE.
- 2) Upon request and without undue delay, JHMD shall extend to EBE all cooperation (in cases of influence by JHMD) necessary for the performance hereunder on the part of EBE, namely in order to obtain necessary permissions and approvals for the installation and operating of a new device on the JHMD's infrastructure. This cooperation obligation particularly involves the communication with the Czech Railway Authority, additional translation of communication documents and the delivery of specifications.
- 3) JHMD shall at its own expense secure and obtain all certificates, approvals and permissions needed for the Device to be installed – at later stages – on JHMD's railroad infrastructure in the Czech Republic.
- 4) To the end mentioned above, JHMD shall in particular:
  - a) define specifications on functionality of individual components of **Device**,
  - b) examine the system and its components via the Czech Rail Authority,
  - c) cooperate with EBE in adjusting EBE's device and components to the requirements of the Czech Rail Authority,
  - d) obtain permissions to place the new system on the railroads of JHMD in conformity with requirements approved by the Czech Rail Authority.

## **Article 3 Obligations of EBE**

- 1) EBE shall according to the requirements of the Czech legislation and appropriate authorities in cooperation with JHMD adapt (i.e. change certain characteristics, functionalities or partial solutions) the necessary components of railroad crossing safety devices as well as the respective software, which it produces and supplies, and develop the Device so that it can be integrated and installed on the railroads of JHMD in the Czech Republic.
- 2) Upon request and without undue delay, EBE shall extend to JHMD all cooperation (in cases of influence by EBE) necessary for the performance hereunder on the part of JHMD, namely in order to obtain necessary permissions and approvals for the installation and operating of a new device on the JHMD's infrastructure. This cooperation obligation particularly involves the communication with Arsenal Railway Certification GmbH. Further EBE shall allow access to, create or help creating the following documents, as well as further documents provided they are in the sphere of influence of

EBE, which are needed for the certification process to be launched and completed for the system to be placed on the railroads of JHMD in the Czech Republic, namely:

- a) expert opinion of the Arsenal Railway Certification GmbH or another such expert centre for railroad equipment ("safety assessment report"),
  - b) technical specifications,
  - c) design guidelines,
  - d) maintenance instructions,
  - e) assembly instructions,
  - f) operation instructions,
  - g) type testing and routine testing,
  - h) documents underlying the Declaration of Conformity under 22/1997 Coll.,
  - i) protocol of the type-scale testing,
  - j) protocol of the type testing,
  - k) instructions to test and assess operability prior to operation,
  - l) instructions to assess operability at inspection and testing.
- 3) In connection with the obligation above the parties hereto undertake to cooperate and to make every effort to pass the certification process and to satisfy the respective authorities and empowered bodies with information and data necessary for the certification process and approvals needed for installation and operating of the new device.

#### **Article 4 Exclusivity**

- 1) The parties hereto undertake not to enter into an agreement or cooperation with a third entity having the same or similar goal as the parties hereto or being competitive to the cooperation contemplated hereunder or the Agreement on the delivery and installation of the railroad crossing safety device and accessories concluded between the parties hereto concurrently with this Agreement (hereinafter referred as "**the Agreement on delivery**") limited to the development or distribution of railroad crossings without barriers in the Czech Republic. Such mutual obligation of exclusivity shall be valid until the latter of (i) complete fulfilment of this Agreement and the Agreement on delivery and/or (ii) formal termination of negotiations between the representatives of parties hereto relating to the establishment of their future business cooperation in the Czech Republic. In case of non-compliance with this commitment, the breaching party shall be obliged to pay a contractual fine of 200,000 EUR, payable within 30 days after a written demand from the injured party.
- 2) As a complete fulfilment of this Agreement and the Agreement on delivery shall be deemed the successful development, integration and certification of the newly developed device and its installation on JHMD's railroad infrastructure and a successful testing operation of the Device over 6 months leading to the final approval of the proper operation of the device. As a complete fulfilment of this Agreement and the Agreement on delivery shall also be deemed the termination of this Agreement and/or the Agreement on delivery according to the termination provisions (Articles 8 and 9).
- 3) Parties hereto intend to deepen their further cooperation based on a certification of the Device for purposes of the state rail infrastructure in the Czech Republic which shall

enable to distribute the device in the Czech market. The specific form of further cooperation shall be subject to follow-up negotiations.

- 4) This Agreement as well as the exclusivity shall specifically end on 30.06.2016 provided JHMD has not ordered at least one Device – not including the Pilot Device – up to this date. Meanwhile JHMD shall set up a business plan for the period 2016 to 2018 until 31.12.2015, in order to identify the revenue for the contractual Devices. Provided that no significant increase in revenue can be recognised according to this business plan, this Agreement as well as the exclusivity shall end by no later than 31.12.2016.

#### **Article 5 Schedule of Performance**

- 1) A detailed schedule of cooperation on development process, preparation and construction work and delivery of a device or compact parts of the system is set in the Annex 1 hereto.
- 2) Should EBE fail to comply with the agreed schedule, JHMD shall be entitled to a contractual penalty amounting to 150 EUR for each day of the delay. This shall apply for those milestones only for which a penalty is stipulated in Annex 1 whereby a grace period of 30 days is agreed upon. The penalty does not apply in case services or supplies from third parties are concerned. The penalties are limited with EUR 4,500 in the aggregate.

#### **Article 6 Rights of use of the certificate and Confidentiality**

- 1) The parties agree that the Device jointly designed in keeping with specific requirements and specific conditions of the Czech railroad infrastructure, shall receive the certificate of the relevant authorities in the Czech Republic and JHMD shall be the sole owner of this certificate.
- 2) The customization and development of necessary new software modules for the new road warning device and train warning device hereunder shall be considered as commissioned work pursuant to the Czech Act No. 121/2000 Coll., Copyright Act. JHMD hereby acquires the exclusive right, restricted to the territory of the Czech Republic and restricted to the purposes of this cooperation, to exercise the author's right to the customized and newly developed EBE software modules, processed into the new devices and documentation thereto provided under this agreement, which are subject to EBE's copyright. EBE hereby undertakes to provide for the consent of its respective employee(s) considered as an author to such a transfer of rights. Based on this undertaking EBE is not entitled to grant license or transfer any rights to the customized or newly developed software modules to a third party.
- 3) Apart from the above paragraph JHMD acquires the non-exclusive transferable right restricted to the territory of the Czech Republic to use the delivered and installed EBE standard components processed into the new device only in the context and for purposes of this agreement. The right of use granted shall further apply to the documentation thereto provided under this agreement to the extent they are required for the fulfillment of the contractually due performances.
- 4) All existing intellectual property rights (including without limitation, copyrights, patents, small patents etc.) to such delivered and installed standard components shall exclusively, perpetually and without any restrictions remain with EBE.

- 5) Potential further development of components and cooperating software modules for the Czech market will be exclusively developed jointly. The specific form of further development and cooperation shall be subject to follow-up negotiations.
- 6) The Parties hereto shall treat as confidential any and all information of business, legal, financial, production and technical nature pertaining to parties, devices and equipment as well as performance under this Agreement of which they acquire knowledge during the course of cooperation hereunder or which was made available to them as part of this cooperation, including information pertaining to past, present and future research, development or business activities, know-how, services and technical findings of the other party which is not publicly available and which is duly protected from disclosure by the party which has such information and the disclosure of which to a third party, being the competitor of the first party, by the other party could cause material harm to the first party (hereafter referred to as **confidential information**). No party hereto shall disclose any confidential information to any third party without having a written consent to do so by the other party or use any confidential information in conflict with rightful interests of the other party or to the benefit of a third party, including after the term of the present Agreement.
- 7) Parties hereto shall create suitable conditions for effective protection of confidential information and otherwise facilitate its protection.
- 8) The confidentiality and non-disclosure of information does not pertain to:
  - a) information which is or becomes publicly available through no violation by either party of the non-disclosure obligation above,
  - b) information disclosed in keeping with statutory obligations, with a final court judgment or administrative ruling,
  - c) information provably obtained independently from this Agreement or the other party.
- 9) Upon termination of this Agreement each party shall immediately undertake to return any written or otherwise recorded documentation received from the other party, including any copies made, to the other party. The party requesting that all written documentation be returned must be issued with confirmation that all such documentation has been returned. The parties acknowledge, however, that confidential documentation provided in electronic format (e.g. e-mail) may be copied by the receiving party as part of its back-up procedures and if such copies cannot be returned to the disclosing party each party agrees that it shall not access or utilize such copies following receipt of a request to return confidential documentation received from the disclosing party.

#### **Article 7 Consideration**

- 1) For the performance hereunder provided by EBE JHMD shall pay to EBE EUR 60.000 EUR. JHMD shall pay to EBE the total price in form of three installments. EBE is entitled to invoice the first installment amounting to EUR 10.000 after signing of this Agreement. EBE is entitled to invoice the second installment amounting to EUR 25.000 with "starting productions of prototypes", nr. 8 (Annex 1). EBE is entitled to invoice the third installment amounting to EUR 25.000 with "Certification of the complete LC..." nr. 16 (annex 1).
- 2) All invoices should be due within 30 days from its issuance to the bank account of EBE mentioned above.
- 3)



**Article 8**  
**Liability for Defect, Warranty**

- 1) The parties hereto agree that liability for product defects, product functionality and qualities vis a vis JHMD is borne by EBE. This liability clause only refers to components provided modified or developed in cooperation with EBE. In case of amendments, adaptations or advancements to the products, its functionality and in the event of maintenance by employees of JHMD that do not comply with specifications, guidelines or instructions provided by EBE documents or training, liability of EBE is excluded. EBE is not liable for product defects, product functionality and proper installation caused by components or performance of other suppliers or companies involved in the contractual cooperation process. Further EBE is not liable for any defects caused by defective administrative orders, requirements or specifications required by the certification authority or the Czech Rail Authority.
- 2) Prior to the installation of the equipment, representatives of both parties shall jointly test the equipment and its components for proper functionality of the whole unit. EBE shall be liable for any hidden defects of its components.

**Article 9**  
**Termination of Agreement**

- 1) This Agreement is entered into for an indefinite period of time and terminates by its completion or by written agreement of both parties as set in Article 4 above. Termination by notice is not permitted. Withdrawal from the Agreement is permitted only for reasons mentioned below.
- 2) JHMD may withdraw from this Agreement in the event EBE fails to provide adequate performance and cooperation pursuant to Article 3 above even after a written request from JHMD to EBE giving extended and reasonable time limit;
- 3) EBE may withdraw from this Agreement in the event JHMD fails to obtain necessary certificates, approvals and permissions pursuant to Article 2 herein within 12 months from the receipt of all necessary documents and sufficient cooperation by EBE execution and fails to show that in spite of diligent care and effort it was impossible to meet the above deadline for reasons outside JHMD's control, in particular for reasons on the part of the certification agency etc. (in such an event, the time limit will be reasonably extended). EBE may withdraw from this Agreement in the events of Article 4 paragraph 4). EBE may also withdraw from this contract in the event of a breach of obligations according to Article 7 to pay its financial obligations hereunder even after a written request from EBE to JHMD giving an extended and reasonable time limit of at least 30 days.
- 4) Both parties may withdraw from this Agreement:
  - a) in the event of insolvency proceedings have been instituted on the assets of one party or that an application for the initiation of insolvency proceedings is rejected for lack of cost-covering assets.
  - b) if the other party violates its obligation regarding exclusivity taken on pursuant to Article 4 herein.
- 5) Parties hereto agree that a termination hereof by a withdrawal shall also establish a reason for a withdrawal from the Agreement on delivery.
- 6) Withdrawal from this Agreement becomes effective upon serving a written withdrawal notice to the other party. By withdrawal, this Agreement is deemed terminated; parties are obliged to return what was delivered or compensate for such performance.

Regardless to a withdrawal Article 7 hereof and the rights and obligations ensuing from its provisions shall survive the termination hereof.

**Article 10  
Final Provisions**

- 1) This Agreement is made out in two original copies in the English language, each party receiving one.
- 2) All Annexes to this agreement are an integral part of this contract.
- 3) Any amendments hereto must be done in writing, bear a sequential number and be signed by both parties. For the purpose of communication between parties and for the purpose of written notices hereunder, a written form is deemed to include communication by fax, electronic mail and by other remote means which are capable of capturing the legal act and the person executing such act.
- 4) In the event any provision of this Agreement is deemed or rendered invalid, ineffective or unenforceable under the relevant legislation, the validity, effect and enforceability of other provisions will remain intact and such provisions are deemed perfected. The invalid, ineffective or unenforceable provision will be without undue delay, while reflecting its nature and respecting the original business intention, replaced, amended or otherwise modified by interpretation or by a written amendment executed by the parties. The same applies to any contractual gaps that need to be provided for.
- 5) This Agreements and underlying legal relations are governed by the laws of the Czech Republic, namely by Act No. 513/1991 Coll., the Commercial Code, as amended, and by other applicable legal regulations as amended.
- 6) Any disputes between parties will be preferably resolved by conciliation and mediation. If no conciliatory solution or solution via mediation is found, disputes hereunder will be will be referred for a decision to a general court of JHMD in the Czech Republic.
- 7) This Agreement comes into force and effect upon its execution by both parties.
- 8) Both parties hereto declare that this Agreement is an expression of their true and free will and in witness thereof, they attach their signatures.

In \_\_\_\_\_ on

In \_\_\_\_\_ on

EBE Solutions G.m.b.H.

Jindřichohradské místní dráhy a.s.

\_\_\_\_\_  
name, position

\_\_\_\_\_  
name, position

Annex 1		
	Action	Deadline
1	Signing of contract	19.11.2013
2	Requirements of LC - accepted by both sides	02.12.2013
3	Development of power supply switchgear, automatic switch between power supplies (electrical distribution, emergency battery, petrol generator )	06.12.2013
4	Development of battery and battery charger	06.12.2013
5	Development of LC control SW - to run axle counter and counter points (train detection feature).	31.01.2014
6	Development of LC diagnostic SW to send failure/emergency sms	31.01.2014
7	Design of road warning device (mechanical, electrical)	28.02.2014
8	Start Production of prototypes	28.02.2014
9	Translation of PC diagnostic SW to Czech	28.02.2014
10	Debug and release of the final revision of LC control SW (control of driver indication signal, road warning device, check function of all peripherals of LC )	15.04.2014
11	Debug and release of the final revision of SW for diagnostic SW (all emergency states recording, sms sending etc.)	15.04.2014
12	Debug and release of the final revision of PC SW for diagnostic (in Czech)	15.04.2014
13	Finishing Test and measurement of optical, electrical parameters of road warning device	30.04.2014
14	Documents according to Article 3, point 2, letters from b to l of EBE and JHMD development agreement.	30.04.2014
15	Delivery of materials for the certification to a certification authority (Arsenal Railway Certification)	31.05.2014
16	Certification of the complete LC (all necessary EN501xx) - according to Article 3, point 2, a letter of a of EBE and JHMD development agreement.	30.07.2014
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