



Simple Communication Tool for Timetabling (TTcom)

Framework Agreement for Implementation, Maintenance and Development

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1 Introduction

For the purpose of this framework agreement, the provisions cover services the Contractor renders for RNE based on service contracts (call-offs) under this framework agreement.

2 Framework Agreement (FA)

2.1 Subject of the FA

The Parties are concluding a FA without fixed and binding volumes regarding the services listed in the contractual items (referred to as “Subject of Services” for short) at the conditions set forth in this FA.

Under this FA, it is explicitly not agreed to obliged RNE in any way whatsoever to purchase a minimum amount. RNE is free at any time to award parallel contracts on the Subject of Services under this FA and to refrain from undertaking call-offs under this FA. The Contractor is not entitled to any right whatsoever to the conclusion of even a single service contract (call-off) under this FA or to claims arising from such a contract for any legal reason whatsoever, e.g. such as damage claims or claims for compensation of expenses.

This FA is not a service contract. However, RNE has the unilateral right to conclude individual contracts on the Subject of Services contained in this FA at the conditions indicated in this FA. These individual contracts are service contracts on the services and volumes indicated in RNE’s call-off.

The call-offs for services are rendered in writing via email.

It is noted for clarification’s sake that an actual contract volume that is significantly in excess of the originally estimated volume announced in the tendering documents will not lead to the termination of the FA.

RNE conducted a tender procedure, which led to the conclusion of this FA with the Contractor. In this procedure, that party received all information and documents, in particular for the calculation of tender prices, and was therefore able to draw up its tender based on the tender’s documentation. The Contractor shall therefore at no time plead that it was unaware of documents, information or other circumstances, such as inaccurate expectations about the volumes or specifications involved in call-offs from RNE, for the sake of asserting any claims whatsoever.

2.2 Integral Parts of the FA

The reciprocal rights and obligations of the Parties to this FA arise solely from the following documents, which apply in the order below:

- (1) This FA;
- (2) The specifications according to the documents 'Technical specifications - Development', 'Technical specifications - Software maintenance and service operation' from the tendering documents of the preceding tender procedure for concluding this FA;
- (3) The other tendering documents from the preceding tender procedure for concluding this FA;
- (4) The last and final tender completed with annexes from the Contractor as a Tenderer in the preceding tender procedure for concluding this FA.

All indicated documents are integral parts of this FA. In the event of contradictions among the documents, the provision in the higher ranked document(s) applies.

General terms and conditions of business of the Contractor apply neither to this FA nor to call-offs concluded on the basis of this FA. This provision also applies to any contractual changes of this FA.

The Contractor confirms that he knows about all integral parts of the FA and accepts them without any reservation.

2.3 Term of the FA

This FA comes into force upon the signature of both Parties.

The term of this FA is 3 (three) years from its entering into force and ends on this date automatically, with no separate notice of termination required by either party.

RNE has the unilateral right (optional right) to extend this FA beyond this term once for two years (term option) as it sees fit. It does so by issuing a unilateral declaration to this effect to the Contractor. The exercise of this term option extends the term of validity of the contract by two years. RNE can exercise the term option up to one month prior to the expiration of the given term by issuing a unilateral declaration.

2.4 Termination of the FA

RNE can immediately terminate this FA with the Contractor at any time if there is an important reason for doing so that falls within the sphere of the Contractor. An important reason for termination is deemed to exist

- If the Contractor refuses to submit a tender or to perform the service in connection with awarding of a contract under this FA in breach thereof; or
- If RNE justifiably cancels a call-off with the Contractor or withdraws therefrom for important reasons falling within the Contractor's sphere of influence, doing so either immediately or after setting a reasonable period of grace that does, however, not exceed 14 days.

An important reason falling within the Contractor's sphere exists in particular

- (1) If an insolvency petition against the Contractor's assets was dismissed due to insufficient assets or if adjudication of insolvency proceedings was annulled for this same reason;
- (2) If the Contractor or the partner/shareholder authorized to represent it or bodies under the articles of incorporation or members thereof have – for other reasons – lost the ability to dispose of its/their assets themselves or lost the license to conduct business or were finally convicted by a criminal court for serious actions or omissions in connection with its/their professional activity;
- (3) If the Contractor fails to perform the FA altogether or properly, in particular if he renders services not corresponding to the specifications from the preceding tender procedure or if circumstances involving the Contractor make a continuation of the agreement unacceptable for RNE;
- (4) If the Contractor violates his obligation to take action against corruption and restrictions on competition and/or its duty to maintain secrecy;
- (5) If the Contractor passes the order on to third parties without RNE's consent;
- (6) If the Contractor misleads RNE or third parties with respect to the awarding of the FA or the handling of the FA;
- (7) If the Contractor, having his seat of registration in Austria, fails to abide by the provisions of the Austrian Federal Act Governing the Employment of Foreign Nationals;

- (8) If the Contractor grossly violates worker protection provisions or persistently fails to pay public taxes or social security contributions;
- (9) If the Contractor fails to make available to RNE the documents necessary for determining remuneration despite being asked to do so;
- (10) If the Contractor repeatedly violates negligible provisions or violates significant provisions once (in particular causes delays for which he is responsible, poor performance, incorrect billing of services, etc.);
- (11) If the Contractor acts contrary to recognized rules of the art or to government regulations and, despite RNE threatening to withdraw from the FA, fails to restore a contractually conforming situation within a reasonable period set to do so;
- (12) If the contractual performance of the FA becomes obviously impossible, e.g. due to legal or governmental action, etc.;
- (13) If the Contractor defaults in part or as a whole or if he fails to deliver the performance owed under the FA/call-off contract at the agreed time or at the agreed place or in the agreed manner (i.e. if he renders it defectively).

The Contractor is not entitled to any claims – under any legal title whatsoever – in connection with the termination of the FA. However, the termination of the FA with the Contractor does not affect the validity of any validly existing call-off contracts with said party unless otherwise expressly stipulated by RNE.

If the Contractor is responsible for the reason for termination or withdrawal, it must compensate RNE for any damages caused thereby; if third parties assert claims against RNE for this same reason, the Contractor must indemnify RNE and save it harmless as regards those claims.

The Contractor is not entitled to terminate the FA with due notice during its term.

2.5 Call-offs under the FA

2.5.1 Direct Awarding of Contract

RNE is entitled to issue a call-off order at the conditions stated in the FA documents with the Contractor.

In the call-off order letter, RNE will complete all further order conditions (volume, delivery dates, etc.) not yet specified in the FA documents but necessary for performing the contract.

Fixed prices are deemed agreed for all call-offs under this FA.

The call-off is issued by means of a call-off order letter e-mailed to the contact email address of the Contractor. The call-off contractual relationship comes into being with the arrival of the order letter at the Contractor's inbox.

In case of a call-off, the Contractor agrees to render the services described in the FA documents and specified and ordered in the order letter at the conditions indicated there and in accordance with the conditions of this FA.

If the Contractor refuses to render the performance for an order under this FA, RNE is entitled to sue for damages or insist upon performance as it sees fit.

2.6 Material Regulation of the FA

2.6.1 Personnel and Language

The Contractor must ensure that the assigned personnel possesses the skills and experience required to render the actual performance at a high level of quality and in keeping with standards that are in conformity with the market.

The project language is English; therefore, project employees are required to have extensive command of written and spoken English.

2.7 Applicable Law and Jurisdiction

This FA shall be governed by and interpreted in accordance with the laws of the Republic of Austria. Applicability of Austrian law of conflicts/international private law is excluded. However, mandatory national law of the Party concerned shall apply with regard to confidentiality.

In the event of a dispute ensuing from the interpretation or the performance of this FA, the Parties shall first undertake to resolve the dispute amiably. If these efforts fail, the court having jurisdiction over commercial matters in the first district of Vienna shall have exclusive jurisdiction over all disputes arising from this FA, including those connected with its conclusion and termination.

3 Regulations for Call-Off Contracts Under the FA

This clause governs the material contents of the call-off contracts, which are concluded under the FA in the event of an order issued by RNE. According to Clause 2.5, RNE will include all further order conditions (volume, delivery dates, etc.) not yet specified in the FA documents but necessary for performing the contract.

3.1 Integral Parts of the Call-Off Contract

The integral parts of the call-off contract are in the order indicated below, whereby the provision in the respective higher-ranking part applies in the event of contradictions among the integral parts:

- (1) The call-off contract;
- (2) The Specifications documents from the tendering documents of the preceding tender procedure for concluding this FA;
- (3) The other FA documents as per Clause 2.2 in the order indicated there (the statutory regulations).

3.2 Commencement of Performance

RNE shall unilaterally set the exact beginning of the performance (being mindful as much as possible of the Contractor's interests) in the call-off letter. The Contractor is obliged to begin rendering the performance at the latest ten (10) working days after the service contract comes into being.

3.3 Place of Performance, Supply Conditions and Pricing

The place of performance is made known in each case in the call-off. English is the project language for carrying out all deliveries and services.

Prices are fixed prices for the first three years and net prices as defined in Article 11 of the Austrian Federal Value Added Tax Act 1994. Costs for overtime or work on Sundays and holidays and the like to abide by the agreed completion periods or meet the agreed deadlines are not separately remunerated. The agreed prices cover any and all of the Contractor’s expenses, services and auxiliary services (including all costs relating to travel and accommodation). Remunerations not explicitly set forth contractually are excluded.

The prices will be adjusted according to the Austrian Consumer Price Index ("CPI" - Verbraucherpreisindex) in case of extension of this FA with two years in line with Art. 2.3. The new price is calculated as follows:

$$\text{New price} = \frac{\text{The agreed price} \times \text{Latest index}}{\text{Last index}}$$

where the “Last index” corresponds to the index at the date of the 1st day of the month the agreement was signed.

3.4 Payment Terms and Conditions and Invoicing

Service item	Price	Payment arrangements
Implementation	Fixed price for implementation	30% advanced payment 50% after successful user acceptance test 20% after go-live
Software maintenance and service operation	Fixed price for each half year over the term of the FA	50% of the annual price biannually in advance
Software development (on demand)	Fixed hourly rate for defined roles	Monthly according to mandatory timesheets

Each timesheet for software development shall contain the following information for each activity: name and role of the person, number of the consumed hours, description of the activity and date, place and signature of the employee and the legal representative of the Contractor.

The invoice shall be sent by the Contractor to an email address of RNE set forth in the call-off letter.

Payment shall be made by RNE within 30 days starting from the date of receipt of the invoice.

3.5 Documentation and Work Progress

Performance documentation is an ancillary contractual service. It must be submitted at the formal acceptance of the performance and is a mandatory requirement for payment by RNE.

The Contractor is obliged to document its work progress and outcomes on an ongoing basis in such a way that an outsider can easily trace work progress and outcomes and pick up where the Contractor leaves off if the outsider continues the project. The details of the performance documentation are determined by RNE together with the Contractor when the latter is contracted.

Regardless of that, the Contractor must always be available to inform RNE about his progress with the performance both in writing and orally. The Contractor is obliged to provide RNE with the necessary information at any time and to allow it to examine all project documents. RNE is entitled

to check and monitor the Contractor's performance progress in all stages and processes of the performance. The Contractor's responsibility and liability thereby remain intact in their entirety.

RNE reserves the right to install an authorized party to monitor the handling of the order. This authorized party is empowered by RNE to check progress in the project based on documentation and other information and to evaluate it for RNE accordingly. This monitoring authorized party is a third party (person/company) that is independent of RNE.

3.6 Responsibility of the Contractor, Quality of the Performance

The Contractor is liable to RNE as to whether the performance is practicable. If the Contractor recognizes that the specifications or a demand made by RNE is flawed, incomplete, unclear or not doable or recognizes that the goal of the performance could be endangered, he must inform RNE immediately in writing thereof and of the recognizable consequences for implementation. If he fails to meet this duty to inform, he is liable for the practicability of RNE's specifications.

In addition, the Contractor must render his services sparingly and conscientiously according to the generally recognized rules of the art with the care expected of him as an expert (§ 1299 Austrian General Civil Code (ABGB)), in harmony with Austrian law and regulations and other general legal norms and in accordance with the pertinent standards and with conditions imposed by government authorities.

3.7 Withdrawal / Termination of a Call-Off Contract

RNE is entitled to terminate a call-off or to withdraw therefrom for important reasons falling within the sphere of influence of the Contractor. It can do so either immediately or after setting a reasonable period of grace that does, however, not exceed 14 days.

It is exclusively RNE that is entitled to the rights under this clause. The Contractor is thus not entitled to terminate a call-off contract with due notice.

If RNE withdraws from the contract entirely or in part for important reasons falling within the Contractor's sphere (see Clause 2.4), the Contractor is entitled to a compensation claim only to the extent that usable partial performances exist for RNE. If the Contractor is responsible for the reason for withdrawal occurring, he must compensate RNE for the additional costs resulting from giving the contract to a third party to the extent that these costs are not yet covered by a lump-sum amount for damages.

RNE fully retains all intellectual property rights of any kind (in particular copyrights and ancillary copyrights) arising up to the withdrawal or cancellation for important reasons falling into the Contractor's sphere and is exclusively entitled to same.

3.8 Delay

RNE can respond to a failure to comply with a set timetable (milestone plan) either

- By insisting on the contract being performed after dunning and setting a reasonable period of grace, or
- By withdrawing from this FA or regarding individual, still outstanding performances based on call-offs under the FA already issued upon setting a period of grace.

As soon as the Contractor fails to meet the set timetable and cannot prove it is not responsible for this failure, a contractual penalty falls due regardless of whether there is evidence of damage. No

penalty applies if the Contractor proves he did not cause the delay. RNE can assert any further demands – particularly regarding damages and including costs of substitute performance – up to the amount set forth in the contract (up to the liability limit in the case of ordinary negligence). If the Contractor's failure necessitates an adjustment of the periods set in the timetable, the penalization of the original deadlines is upheld.

If the deadlines set in the timetable shift for reasons for which the Contractor is not responsible, the deadline-linked penalization shifts accordingly. The Contractor must furnish proof regarding the above shifts.

The contractual penalty is deducted from the Contractor's remuneration.

3.9 Contractual Penalties

3.9.1 Contractual Penalties in General

The contractual penalties are limited to a total of 50% of the net order amount of the respective call-off that is actually issued and are due regardless of culpability.

More detailed provisions are described below for the contractual penalties for late delivery. If the Contractor is in breach of other contractual obligations, RNE is entitled to demand a contractual penalty of 0.5% of the net order amount per breach and per calendar day begun.

The agreement or enforcement of the contractual penalty for late delivery or for being in breach of other contractual obligations will not prevent RNE from claiming damages above and beyond the penalty.

3.9.2 Contractual Penalty for Late Delivery

If a performance or a part thereof that is to be formally accepted separately is delayed for reasons for which RNE is not responsible or if the Contractor defaults for reasons for which he is responsible in that he fails altogether to render the performance owed, or a part thereof that is to be formally accepted separately, or does not render same at the proper place, in the agreed manner or on the set performance date, RNE is entitled to do its choice of the following:

- Insist on performance and demand a contractual penalty for each calendar day in default, and/or
- Withdraw from the individual order without prejudice to its right to assert a contractual penalty upon setting a reasonable period of grace. RNE is entitled to this right of withdrawal even if it previously insisted on performance of the contract in the above sense.

If the Contractor is in default with his performance, a contractual penalty of 1% of the net order amount falls due for each calendar day begun but this penalty is not allowed to exceed a total of 25% of the net order amount.

3.10 Warranty

The Contractor fully warrants that his performances have the characteristics required in the contract and otherwise commonly assumed and that they are in line with the generally accepted rules of the art; he also warrants compliance with all general and specific norms applicable in Austria or the equivalent thereof pertinent to the rendering of the performance.

The Contractor's warranty is also not restricted by RNE reserving the right to monitor execution or by it providing or releasing any documents on performance of the contract.

The warranty period is one year and begins on the day after signing the document on the take-over of the contractual performance. If the Contractor offers a longer warranty period, it applies.

3.11 Liability

RNE has an undiminished right to claims for damages and recourse, including all claims under Austrian product liability law unless otherwise stipulated below; payments are not deemed to constitute a waiving of such claims and rights.

If performance is defective, RNE will initially demand improvement or the replacement of the item/element/module in the IT tool. If RNE demands improvement, the Contractor must remedy the defects immediately at his own risk and expense. If RNE demands replacement of the item/element/module in the IT tool, the Contractor must replace the defective items immediately with items that are free of defects, doing so at his own risk and expense. The Contractor is responsible for the culpability of his people and suppliers as well as for his own culpability.

If defects persist in the performance after a reasonable period of grace is set, RNE will demand monetary compensation.

For each type of damages, the Contractor bears the burden of proof that he is not culpable for the entire duration under the statute of limitations. The Parties have not agreed to other restrictions and exclusions of liability for the Contractor of any kind or to the obligation to impose liability exclusions on customers.

3.12 Confidentiality

Each party undertakes to keep strictly confidential any and all information disclosed under or in connection with this FA. This obligation shall remain in effect for three years after the termination of this FA.

In addition, both Parties to this agreement regard any information either in the form of electronic data or data in written form on paper or other materials (e.g. printouts of excel files, diagrams, tables, slides) exchanged under this FA to be confidential. The Parties to this FA also consider any and all data contained in the IT tool that falls under the scope of the GDPR and is not publicly available information to be confidential. The form in which such information is communicated or kept is irrelevant (binary data, excel files, diagrams, tables, slides, printouts, etc.). It can include, but is not limited to, information relating to services, customers, fees, suppliers, financial information or internal structure and management. It does not include information generally available to the public.

The Parties undertake to keep all confidential information entirely secret and confidential and to use confidential information only for the purpose for which the NS & CID IT tool has been created and limited to their own business operations and when providing services to their customers. The Parties undertake to ensure that their respective directors, officers, employees, advisers and agents keep all confidential information entirely secret and confidential.

The Parties shall ensure that any confidential information that is exchanged remains confidential and is not disclosed or transmitted to any unauthorized person or used for any purposes other than those intended by the Parties. They undertake to implement and maintain security procedures and measures in order to safeguard the protection, integrity and authenticity of exchanged data against the risks of unauthorized access, alteration, delay, destruction or loss.

The Parties are not allowed to disclose the information referred to above by any means or for any reason whatsoever, including orally, directly or indirectly, to third parties,

- unless the party whose data is involved expressly agrees in writing to the disclosure,
- unless the party disclosing the information is forced to do so by national law or legal obligation, in which case, none of the confidentiality obligations of this clause apply.

Any authorized, further transmission of such confidential information shall be subject to the same degree of confidentiality as provided for by this clause unless agreed otherwise.

Each party may disclose confidential information to the extent it is requested to do so by judicial authorities, regulatory bodies or in response to any requirement of mandatory law. Each party may disclose confidential information to the extent necessary to allow a party to comply with any legal requirement to furnish information to any public authority, court, regulatory body, etc., provided, however, that this party first consult with the other party – the situation permitting – before complying with such obligation or inform the other party promptly thereafter.

3.13 Intellectual Property Rights of the Software, the Database, and the Documentation

The software (i.e. the computer program), the database and all relevant documentation subject to this FA are the exclusive intellectual property of RNE. The Contractor must refrain from taking any action which could enable him or third parties to copy or reproduce the Simple Communication Tool for Timetabling as an international system. This obligation remains in force even after termination of this FA with RNE.

The intellectual property rights in any software developed for RNE by the Contractor under this FA shall be owned by RNE and, at RNE's request, the Contractor shall take all reasonable steps to make sure that those intellectual property rights are vested in RNE.

3.14 Adjustment of the FA

Any amendments to or modification of this FA must be rendered in writing to attain legal validity. Oral promises shall be ineffective until confirmed in writing. If the above formal requirement of written form is amended or changed, this amendment or change must also be rendered in writing to attain legal validity.

3.15 Other Provisions

Unless otherwise specified, the Contractor agrees to cover all costs, charges, fees, taxes from or in connection with the conclusion or carrying out of contracts based on call-offs under this FA between RNE and the Contractor. Each party covers the costs of advice and representation itself.

English is the contract and order language. English is to be used for communications with RNE and for contract performance. This provision applies in particular also for all information or documents that are to be handed over to RNE or to be made accessible to same.

The validity of any general terms and conditions of business (performance conditions) of the Contractor is and always remains excluded.

If a clause in this a FA becomes invalid, unenforceable and/or is found to be incomplete, it shall be automatically replaced by a legally valid and enforceable clause with similar commercial content. The invalidity or incompleteness of a clause does not influence the validity of other clauses or this FA.