

E-SCU-I proposal after CIT-RNE meeting of 30 September 2020; RNE JO/CIT GS/ Trasse CH meeting of 13 October and CIT-CUI Committee on 15 October 2020, LM WG meeting 21 October 2020

1.1 Objective and scope of the contract

§ 1 This contract governs the relationship between [the RU] and [the IM] for the use of the railway infrastructure operated by [the IM] within the scope of [national law] in order to operate [freight or passenger] transport services.

The parties may choose between the two following options for § 2:

Option A¹ :

§ 2 The **services**² agreed upon by the Parties are described in the following appendices:

- **all** services are described in appendix [1];
- a plan of the train paths allocated for the upcoming annual timetable is shown in appendix [2];

Option B³:

§ 2 This contract shall cover all the paths and services⁴ described in the network Statement that are to be agreed upon by the Parties during the process of requesting and allocating paths.

1.2 Service covered and not covered

Other services such as⁵ [...] within the scope of [national law] shall be arranged by the parties separately. Other terms and conditions shall be applicable to these services.

~~1.3 Existence of one or several contracts between the IM and the RU~~

~~*Option for IMs that offer framework agreements:*~~

~~This **contract complements the arrangements/aims at realizing the objectives set by the parties in their multi-annual framework agreement.**~~

¹ Option A is meant to be applied when the contract of use of the infrastructure is concluded after the allocation of the train paths.

² Services are meant to refer (only) to services encompassed by the minimum access package (as defined in point 1 of Annex II to Directive 2012/34/EU), i.e. [handling of requests for railway infrastructure capacity; the right to utilise capacity which is granted; use of the railway infrastructure, including track points and junctions; train control including signalling, regulation, dispatching and the communication and provision of information on train movement; use of electrical supply equipment for traction current, where available; all other information required to implement or operate the service for which capacity has been granted.](#)

³ Option B is meant to be applied when the contract is concluded before the allocation of train paths

⁴ See FN 2.

⁵ These could be services that are not yet known when the contract is concluded, or services not covered by the minimum access package.

2.1 Constituent parts of the contract

The parties may choose between two options that are actually related to the objective and scope of the contract in point 1.1.2:

Option A:

The following documents form part of the present contract:

(1) the present contract

(2) appendices [1 to XX] to the present contract

Items not explicitly ruled by this contract shall be governed by the [IM] network statement and its appendices, including the [IM] terms and conditions for the use of the railway infrastructure [and the E-GTC-I⁶].

Option B:

By signing this contract, the parties agree that the following documents form part of the contract:

- The present contract and its Annexes
- The terms and conditions for the use of the railway infrastructure as stipulated in [the NS/this contract/document xxx]⁷
- [Chapters xxx of]⁸ the network statement

Optional:

- xxx (= other relevant documents to be specified by the IM)

2.2 ... and hierarchy between them

§ 1 In case of conflict or discrepancy between different parts of the contract, the hierarchy between all documents shall be determined as follows:

(1) the contract takes precedence over the appendices,

(2) the contract and appendices take precedence over the general terms and

conditions [the E-GTC-I]⁹, unless such are defined in the main body of the contract,

(3) [...e.g. network statement, hierarchy btw. Annexes, etc.]

3. Modifications to the contract

RNE Proposal after 13 October:

In principle, this contract may be modified only by agreement between the Parties. This is without prejudice to the right of the infrastructure manager to unilaterally modify the NS and to terminate the contract if modifications to the GTC proposed by the IM are rejected; any unilateral modifications have to be in line with the rules and procedures defined in [national law?/GTCs/other].

⁶ Reference to the E-GTC-I would be optional and only relevant for IMs that have chosen to apply the E-GTC-I.

⁷ In case an IM applies the E-GTC-I, it is recommended to refer to the E-GTC-I here.

⁸ In countries where the NS is not legally binding the Chapters that should become legally binding by reference in the contract of use should be indicated here.

⁹ See FN 6.

Any amendment shall be done in writing.

CIT Counterproposal of 20 October:

§ 1 In principle, this contract may be modified only by agreement between the Parties. A request to change of this contract can be made by either the IM or the RU. In any case the change proposed has to be non-discriminatory and – more generally - in accordance with applicable national, European, and international law. Any amendment shall be done in writing and cannot be implemented without the acceptance of the other party.

§ 2 This is without prejudice to the right of the IM to make modification(s) to the NS or (E-)GTC(-I) when necessary to comply with laws, regulations or decisions adopted by the RB (to define) or rulings adopted by a court of law or arbitration board which entered into force after the Contract signature date, but are related to the object of this contract or its conditions of performance.

In that case the IM shall timeously draft, and notify to the RU, the new versions of the provisions concerned and, where necessary, provide for an addendum amending/supplementing this contract, which the RU shall accept without delay, provided/subject to the condition that the proposed changes/additions strictly comply with the aforementioned laws, regulations, decisions or rulings.

4. Exchange of information and confidentiality

Option 1 (with references to E-GTC-I):

Before concluding the contract, the parties shall exchange all relevant information related to point [5] and declare any changes in these items during the performance of the contract in accordance with Chapter 5 of the E-GTC-I.

As regards confidential information, the parties shall conform to Chapter 8 of the E-GTC-I. The exchange of information between the parties during operations is subject to point 2.6.3 of the E-GTC-I.

Option 2 (without references to E-GTC-I):

Before concluding the contract, the parties shall exchange all relevant information related to point [5] and declare any changes in these items during the performance of the contract. [The railway undertaking shall provide the infrastructure manager with a copy of the original documents related to point 5.1 (licence, safety certificate), and shall inform the infrastructure manager immediately about any change in the aforementioned documents and other documents required by the provisions of the network statement and within the terms prescribed by the network statement.]

As regards confidential information, the parties shall conform to the following procedure:

1. In order to maintain confidentiality, each of the parties to this contract shall undertake to safeguard the confidential nature of all facts, information, especially commercial information, studies and decisions relating to the activity of the other party of which it becomes aware during drafting and implementation of the contract.

2. A party entrusted with confidential information by the other party during negotiations or implementation of this contract shall be bound not to use such information for any purpose other than that for which it was provided. This obligation shall endure beyond expiry of the contract and irrespective of the reasons for expiry.

3. The parties may use this confidential information and documentation for operating and insurance purposes.

4. Notwithstanding their duty of confidentiality, each party may divulge information without the approval of the other when required to do so to fulfil its legal obligations.

5. The parties shall set up appropriate information systems to guarantee data security.

6. As an exception to the above provisions, the infrastructure manager is entitled to inform any interested party of the infrastructure capacity which has been granted to the railway undertaking, without mentioning the name of the railway undertaking.

7. If a party is found to be in breach of its duty of confidentiality, it shall be liable for the damage sustained by the other party, unless the former party proves that it is not at fault. (OPTIONAL: The parties mutually agree on the limit of xx Euro to the damage to be compensated. This limit shall not apply if it is proved that the damage results from an act or omission committed by one of the parties, either with intent or gross negligence).]

[During operations the railway undertaking and infrastructure manager ensure that their staff are effectively available to receive information from the other party and take operational decisions on behalf of their company. At least one railway undertaking staff member on board of each train must be contactable by the infrastructure manager].

5.1. Authorisations, approvals

[The RU] hereby declares that it holds the relevant licence and safety certificate in order to use the infrastructure subject to this contract in accordance with [national law], as referred to in point [XX] of the network statement.

The suspension of the relevant licence or safety certificate will lead to a suspension of the right to use the infrastructure for transport services in accordance with [national law] and may, under the conditions set out in point [9] below, lead to termination of the contract.

5.2. Insurance

[The RU] hereby declares that it holds the relevant statutory insurance in order to use the infrastructure subject to this contract in accordance with [national law], [as referred to in point [XX] of the network statement]¹⁰. [The RU] shall produce a

¹⁰ Reference to NS would be optional.

certified copy of the insurance coverage at least [XX] days before the start of the timetable period.

[The RU] shall inform the infrastructure manager of any changes to its insurance coverage that could affect the validity of its license.

5.3. Financial guarantees (OPTIONAL¹¹)

Without prejudice to the Commissions Implementing Regulations (EU) 2015/10 and 2015/171 (where applicable) and if financial guarantees are applied, the parties may choose between the two following options:

Option A:

[The RU] shall provide a financial guarantee¹² for the sum of [.....]¹³ € at least [XX]¹⁴ days before the first of the month in which [the RU] starts the train operations. If the capacity is allocated after this point in time, [the IM] may request the financial guarantee at short notice.

Option B:

[The RU] is exempted from providing the financial guarantee referred to in point [XX] of the network statement, unless it falls into a situation where the credit rating of it suggests that it might have difficulties in effecting regular payments for infrastructure charges as referred to in point [XX] of the [network statement]. A financial guarantee must then be provided within [XX] days after receiving such a request from [the IM] but not more than 10 days before the first of the month in which [the RU] starts the train operations. If the capacity is allocated after this point in time, [the IM] may request the financial guarantee at short notice.

6.1 Prices and other price related schemes

The price of the services agreed shall be determined in accordance with the [IM] list of charges published in the NS and invoiced in accordance with point 6.2 of this contract.

Performance regimes and other quality incentives related to the price of the services agreed, described in the network statement [and the IM list of charges], shall be invoiced following the [same rules / rules set in the network statement].

¹¹ To be included in SCU-I only be IMs that apply financial guarantees.

¹² According to implementing Regulation (EU) 2015/10, applicants can choose whether to meet a request for financial guarantee by means of either advance payment or contractual arrangement by which a financial institution such as a bank commits to ensure that payments for infrastructure charges are effected once they are due.

¹³ According to implementing Regulation (EU) 2015/10 the level of financial guarantees regarding one applicant shall not exceed the estimated amount of charges incurred during two months of train operations requested.

¹⁴ According to Implementing Regulation (EU) 2015/10 an IM shall not require that a financial guarantee takes effect or is paid more than 10 days before the first of the month in which the railway undertaking starts the train operations in relation to the infrastructure charges which this financial guarantee is to cover. An exception to this is when the capacity is allocated after this point in time.

6.2. Payment and accountancy

Option 1 (with references to E-GTC-I):

[The RU] shall pay within [XX] days / month[s] the charges invoiced by [the IM] for the services covered by this contract, in accordance with Chapter 3 of the E-GTC-I and point [XX] of the network statement.

Services which have not been provided are settled according to point 2.9 of the E-GTC-I and point [XX] of the network statement.

Services which have not been ordered but which have been provided as essential services¹⁵ to the operations shall be invoiced separately.

Mistakes or overcharges are settled according to [national law].

The invoicing address is indicated in Appendix [5].

Late payment shall give rise to a [XX] % interest rate, in accordance with point 3.3 of the E-GTC-I.

Option 2 (without references to E-GTC-I)

§1 The [RU] shall pay within [XX] days / month[s] the charges invoiced by [the IM] for the services covered by this contract. The [RU] is obliged to pay the charges according to the pricing system of [the IM] described in the network statement. In the event of payment by transfer, the RU's obligation is discharged when the transfer to the IM's account becomes effective.

§2

Option 1: In case of cancellations, alterations or modifications of train paths by either the infrastructure manager or the railway undertaking, the rules, procedures, charging rules and penalties as described in points [XX] and [XX] of the network statement shall apply.

This is without prejudice regarding the parties' mutual right of recourse for pecuniary losses resulting from damages payable by the railway undertaking or infrastructure manager to its contractual partners within the limits and conditions provided by agreement or obligatory national law, applicable European law or international law. [Optional: In case RUs and IMs agree to reimburse each other for financial losses resulting from damages payable by the railway undertaking or infrastructure manager to its contractual partners within the limits and conditions provided by obligatory national law, applicable European law or international law in the event of delay or disruptions the text of Chapter 4 E-GTC-I would be included here.¹⁶]

Option 2:

[Without prejudice to mandatory Union law/national law,] in case of cancellations of allocated train paths by the infrastructure manager due to disruptions or public authority requirements, where the infrastructure manager is able to offer a

¹⁵ Such services could encompass e.g. "special shuntings" at border stations (e.g. CH-IT border station of Chiasso) with a change in electricity systems, which have to be provided even when they are not ordered, or services in case of emergencies /for security reasons offered and accounted by the IM.



Optional inclusion
of chapter 4 E-GTC-I

¹⁶ The adapted text of chapter 4 E-GTC-I is available under:

reasonable alternative to the allocated train path cancelled, the charges for the alternative train path shall not exceed those of the original train path.

The infrastructure manager will charge the full price of the alternative train path if the cancellation is

- a. due to a damage caused by the fault of the railway undertaking or by an order given by the railway undertaking which is not attributable to the infrastructure manager, or*
- b. due to circumstances such as force majeure or the behaviour of a third party which the infrastructure manager, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which it was unable to prevent.*

If the infrastructure manager is not able to offer a reasonable alternative, based on the needs of the railway undertaking, the charges for the train path which was cancelled shall not be payable.

If there are restrictions on the characteristics of the allocated train path (e.g. gradients, axle load, speed, train length, diesel traction instead of electric traction), the infrastructure manager shall calculate the charges for the train path according to the characteristics of the train path actually used.

All other cases of cancellation, alteration or modification of a train path by either the infrastructure manager or the railway undertaking shall be subject to the procedures, charging rules and penalties as described in points [XX] and [XX] of the network statement.

This is without prejudice regarding the parties' mutual right of recourse for pecuniary losses resulting from damages payable by the railway undertaking or infrastructure manager to its contractual partners within the limits and conditions provided by agreement or obligatory national law, applicable European law or international law. [Optional: In case RUs and IMs agree to reimburse each other for financial losses resulting from damages payable by the railway undertaking or infrastructure manager to its contractual partners within the limits and conditions provided by obligatory national law, applicable European law or international law in the event of delay or disruptions the text of Chapter 4 E-GTC-I would be included here.¹⁷]

§ 3 Services which have not been ordered but which have been provided as essential services to the operations shall be invoiced separately.

§ 4 Mistakes or overcharges are settled according to [national law].

§ 5 The invoicing address is indicated in Appendix [5]. Payments shall be made in [currency of the country of IM's headquarters], at the railway undertaking's expense to the following account: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx



Optional inclusion
of chapter 4 E-GTC-I

¹⁷The adapted text of chapter 4 E-GTC-I is available under:

§ 6 Late payments, i.e. payments not received within the payment term defined above, are subject to the provisions of Chapter [xx] of the network statement and shall give rise to a [XX] % interest rate. This interest shall become payable

Option A:

from the day following the date or the end of the period laid down in the contract.

Option B (if so provided for by applicable law):

following notification.

In the event of late payment by the railway undertaking for successive payments periods or for two payment periods within one year, the infrastructure manager is entitled to suspend the services provided by the contract until the payment is made.

This is without prejudice to the right of the infrastructure manager to rescind the contract according to point 9(1)b of this contract.

7 Language(s)

The parties may choose between the two following options:

Option A :

§ 1 If the contract or its appendices are drawn up in several languages, the texts in the various languages are equally authoritative.

§ 2 If a comparison of the texts discloses a difference of meaning which cannot be resolved using general rules for interpretation, the meaning which best reconciles the texts, having regard to the object and purpose of the cooperation contract, is to be adopted.

Option B :

If the contract or its appendices are drawn up in several languages, the [language] version is authoritative. Translations may only be used internally by the parties.

8 Duration

The parties may choose between the two following options that are actually related to the objective and scope of the contract in point 1.1.2:

Option A (one timetable period):

This contract shall take effect upon being signed/on [date] and end on [XX] December [20XX]. This contract can / cannot¹⁸ be renewed by tacit agreement.

Option B (indefinite –at least

for IM situated outside the EU):

This contract shall take effect upon being signed.

9 Termination

Option 1 (with references to E-GTC-I):

This contract may be terminated in accordance with Chapter 7 E-GTC-I and point [XX] of the network statement.

¹⁸ This should be specified in the contract. In some countries, contracts are concluded for 1 TT period but there is a possibility for a tacit renewal by ordering paths for the next TT period.

Option 2 (without references to E-GTC-I):

This contract may be terminated in accordance with [optional: point [XX] of the network statement¹⁹/national law as well as] the following rules:

§ 1 The infrastructure manager is entitled to rescind the contract of use of the railway infrastructure with immediate effect, should one of the following occur:

- a. If the railway undertaking is no longer authorised to exercise the activity of transports by rail (in particular, if its license or safety certificate is withdrawn);*
- b. If the railway undertaking is in arrears with payment, that is to say:
 - for two successive payment periods and for an amount in excess of the equivalent of one month's use or
 - for a period covering more than two payment periods and for an amount equivalent to two months' use;*
- c. If the railway undertaking is declared bankrupt, when national law allows termination.*

§ 2 The railway undertaking is entitled to rescind the contract of use of the railway infrastructure with immediate effect, should the infrastructure manager lose its right to manage the railway infrastructure.

§3 Both railway undertaking and the infrastructure manager are entitled to rescind the contract of use of the railway infrastructure:

- a. in the event of any imposed change in the relevant legislation, rules or regulations, affecting the obligations of the parties, the consequences of which could not be foreseen and which prevent the parties from executing their obligations, in which case a notice period of two months will apply if possible;*
- b. with immediate effect if one party is in clear breach of an essential contractual obligation, when that obligation concerns the safety of persons or goods;*
- c. with two months' notice if one party is in willful default or gross negligence of other essential contractual obligations.*
- d. with two months' notice before the change of the working timetable.*²⁰

§4 The party to the contract which is the cause of its rescission shall be liable to the other party for the loss or damage resulting from it, unless it proves that the loss or damage were not caused by its fault.]

10 Disputes and competent courts

Option 1 (with reference to E-GTC-I)

The parties shall solve all disputes arising from this contract in accordance with point 9.1 E-GTC-I, with [city²¹] courts having exclusive competence. Time limits are governed by point 9.3 E-GTC-I.

The parties may also refer their issue to the [relevant regulatory authority] in accordance with [national law].

¹⁹ Reference to NS to be included in case NS contains relevant stipulations.

²⁰ This provision should allow for termination of contracts concluded for an indefinite period of time without the need to provide any reasons. – correlates with option B in point 8 (duration)

²¹ According to 9.1.3 E-GTC-I these courts would be the courts where the IMs have their registered seat.

Option 2 (without reference to E-GTC-I)

Without prejudice to the right of the parties to take a dispute to the competent courts²² or to refer their issue to the [relevant regulatory authority] in accordance with [national law],

Option A

the parties should attempt to solve all disputes arising from this contract in the first place by a conciliation procedure, which should be administered by a committee composed of an equal number of Members appointed by each party.

Option B:

the parties should attempt to solve all disputes arising from this contract in the first place amicably.

If [the conciliation procedure fails²³] [the dispute has not been amicably solved²⁴], the parties will decide whether their dispute is to be settled through an arbitration procedure.

If the parties do not agree upon this arbitration procedure,

Option A: *the [city] courts²⁵ shall have exclusive competence.*

Option B: *the Courts referred to in Article 24 of the CUI shall have exclusive competence²⁶.*

Time limits are governed by Article 25 CUI Uniform Rules. This is without prejudice to prevailing mandatory national or international law].

11 Law applicable

This contract is subject to [IM's country] law.

12 Saving clauses

The parties agree to faithful cooperation.

If an individual provision in this contract proves to be wholly or partly invalid or inoperable, the other provisions of this contract and the validity of this contract are not affected, unless inseparable from the invalidated provision. In place of the provision which is invalid or inoperable, a valid and operable provision is to be agreed, in writing, which is as close as possible to the meaning and objective of the invalid provision.

If this contract proves to have loopholes, provisions are to be agreed, in writing, which correspond to the meaning and objectives of the contract and which would have been agreed had the loopholes been detected.

²² According to 9.1.3 E-GTC-I these courts would be the courts where the IMs have their registered seat.

²³ If Option A of Option 2 was chosen.

²⁴ If Option B of Option 2 was chosen.

²⁵ According to 9.1.3 E-GTC-I these courts would be the courts where the IMs have their registered seat.

²⁶ According to Article 24 CUI, unless the parties to the contract otherwise agreed, the courts where the IMs have their registered seat are competent.

13 Contact details

The parties shall appoint representatives for contractual issues (performance of this contract, sales, invoicing) and contact points for operational matters and emergency situations. Their contact details are listed in Appendix [5], which sets the procedure to be applied in order to ensure compliance with the EU Regulation 2016/679 (GDPR).

14 Copies of the contract

Each party receives a signed copy of this contract which is issued in [2] originals. Copies and/or original may [not] be transferred and all confidential information contained therein is subject to point [4] above.
