

European Standard Contract of Use of Rail Infrastructure (E-SCU-I)
Draft proposed by the CIT CUI Committee on the basis of existing contracts of use
Comments and counterproposals elaborated during the RNE / CIT meeting of 2020-February 5th and September 8th/ 30th

Nota bene:

- Highlighted in **yellow**: topics already discussed with RNE
- Highlighted in **green**: topics still under discussion with RNE
- Different discussion points in the same clause of the contract are structured in blue numbers (1, 2 etc.)
- Abbreviations used: "NetwStat" = Network Statement, GTC = General Terms and Conditions, SF = Service Facilities

	Items of the contract	CIT-Proposals for standard clause in 2018	Comment RNE on CIT-Proposal	Discussions and decisions during joint CIT/RNE meeting on 8 th and 30 th September 2020	(Preliminary) text proposal after meetings with RNE in September 2020
1.1	Objective and scope of the contract –	<p>§ 1 This contract governs the relationship between [the RU] and [the IM] for the use of the railway infrastructure and service facilities (1) operated by [the IM] within the scope of [national law] in order to operate [freight or passenger] transport services.</p> <p><i>The parties may choose between the two following options for § 2:</i></p> <p><i>Option A :</i></p> <p>§ 2 The services agreed upon by the Parties are described in the following appendices:</p> <ul style="list-style-type: none"> – all services are described in appendix [1]; – a plan of the train paths allocated for the upcoming annual timetable is shown in appendix [2]; – other movements (2) such as [...] are described in appendix [3]. <p><i>Option B :</i></p> <p>§ 2 This contract shall cover all the paths and services described in the network statement that are to be agreed upon by the Parties during the process of requesting, allocating & validating paths (3)</p>	<p>(1) RNE suggested in a first step to only refer to the minimum access package, not to other rail related services.</p> <p>(2) What includes "other movements"?</p> <p>(3) Question regarding the term "validating paths".</p>	<p>(1) The mandate of RNEs GA only includes the work on minimum access package for the time being, the organisations CIT and RNE agreed to focus on minimum access package in a first step and discuss the inclusion of service facilities in a next step.</p> <p>(2) The expression "Other movements such as..." is not needed anymore in the contract of use. RFI and Trenitalia gave the feedback that in the contract of use signed between RFI and Trenitalia now includes an attachment with all train paths (both commercial and technical - i.e. the train movements between stations and maintenance depots); thus, the general reference to "path" in the contract is enough and there is no need for the inclusion of "other movements".</p> <p>(3) The term "validating paths" can be deleted. This is covered by the wording of "allocating"</p>	<p>1.1 Objective and scope of the contract</p> <p>§ 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.</p> <p><i>The parties may choose between the two following options for § 2:</i></p> <p><i>Option A:</i></p> <p>§ 2 The services agreed upon by the Parties are described in the following appendices:</p> <ul style="list-style-type: none"> – all services are described in appendix [1]; – a plan of the train paths allocated for the upcoming annual timetable is shown in appendix [2]; <p><i>Option B:</i></p> <p>§ 2 This contract shall cover all the paths and services described in the network statement that are to be agreed upon by the Parties during the process of requesting and allocating paths.</p>
1.2	...– services covered and not covered	<p>Other services such as [...] (1) within the scope of [national law] shall be arranged by the parties separately. Other terms and conditions shall be applicable to these services.</p> <p>Services such as [...] shall be arranged separately with the operators of service facilities referred to in point [XX] of the network statement or in the Common European Rail Facility Portal [www.XXX] (2).</p>	<p>(1) RNE asked what the first paragraph refers to</p> <p>(2) The second paragraph could be deleted if only the minimum access package would be included and no other rail related services.</p> <p>In addition, RNE does not see the need for referring to contracts with third parties.</p>	<p>(1) On the one hand, these could be services that are not yet known when the contract is concluded. On the other hand, it could be services outside the scope of Article 13 of Directive 2012/34/EU.</p> <p>(2) As the contract will be limited only to the minimum access package, it can be deleted in a first step.</p>	<p>1.2 ... services covered and not covered</p> <p>Other services such as [...] within the scope of [national law] shall be arranged by the parties separately. Other terms and conditions shall be applicable to these services.</p>
1.3	Existence of one or several contracts	<p><i>Option for IMs that offer framework agreements:</i></p> <p>This contract aims at realising [in part] the objectives set by the parties in their multi-annual framework agreement signed on</p>	<p>RNE does not see the need for this regulation. The proposed text for framework agreements</p>	<p>RNE and CIT agreed that there is no need that Framework Agreements are concluded prior to the E-SCU-I.</p> <p>The wording "aims at realizing" would be currently preferred</p>	<p>1.3 Existence of one or several contracts between the IM</p> <p><i>Option for IMs that offer framework agreements:</i></p> <p>This contract complements the arrangements or aims at realizing the</p>

	between the IM and the RU	[DD MM YYYY] for the period 20[XX]-20[XX].	<p>only works, if the framework agreement has been signed prior to the conclusion of the SCU-I, which is not always the case.</p> <p>RNE proposed amendments (in red):</p> <p><i>Option for IMs that offer have also concluded framework agreements prior to the conclusion of the SCU-I:</i></p> <p>This contract complements the arrangements [aims at realising in part] the objectives set by the parties in their multi-annual framework agreement signed on [DD MM YYYY] for the period 20[XX]-20[XX].</p>	<p>instead of “complements the arrangements”.</p> <p>RNE will contact the representator of Trasse CH in order to see if he has arguments against the wording “aims at...”.</p>	objectives set by the parties in their multi-annual framework agreement.
2.1	Constituent parts of the contract	<p>The parties may choose between two options (1) that are actually related to the objective and scope of the contract in point 1.1.2:</p> <p><i>Option A (for those parties which chose option A in 1.1.2) (2) :</i> The following documents form part of the present contract:</p> <p>(1) the present contract (2) appendices [1 to XX] to the present contract</p> <p>Items not explicitly ruled by this contract shall be governed by the [IM] network statement and its appendices (3), including the [IM] terms and conditions for the use of the railway infrastructure and the E-GTC-I (4).</p> <p><i>Option B (for those parties which chose option B in 1.1.2) (2):</i> The following documents form part of the present contract:</p> <p>(1) the present contract (2) [the IM] terms and conditions for the use of the railway infrastructure (3) the E-GTC-I (4) [the IM] network statement (5) [the IM] list of charges [...] (4)</p>	<p>(1) RNE asked back why the CIT chose two different options in point 1.1 and 2.1.</p> <p>(2) The allocation between Option A and B to points 1.1.2 is not clear.</p> <p>(3) Why are the NetwStat and the GTC not included in the constituent parts of the contract?</p> <p>(4) Regarding the E-GTC-I they would favour an optional reference to the national GTC as the E-GTC-I are not used by all IMs</p> <p>(4) RNE proposal of 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 (E-)GTCs as stipulated in the NetwStat/ this contract/document xxx Optional in addition: -The NetwStat -xxx (= other relevant documents to be specified by the IM).</p> <p>Background of this proposal: Practices regarding NetwStat differ in each country. In some countries they are only informative, and the legally binding part is part of the legislation. The reference to the NetwStat should not be made to its whole but only to the certain points otherwise the NetwStat in its whole would become legally binding for all. The Norwegian</p>	<p>(1) CIT explanation: There are mainly two different timelines existing when the contract is concluded between the IM and RU and therefore the content of contracts differs. According to option A (later stage of signing the contract, after paths are allocated): the contract covers only the services agreed upon and paths allocated. Option B: the contract covers the whole contractual relationship between an IM and a RU whatever path may be allocated after the signature.</p> <p>(2) The allocation between option A or B of point 2.1 and option A or B in point 1.1.2 should be deleted. IMs would wish to combine this more flexible.</p> <p>(3) CIT explanation: E.g. RFI is not including the NetwStat in the list of documents that are parts of the contract and just clarifying that the items not ruled by the contract are set forth in the NetwStat and its Annexes. The idea below the RFI's choice seems to exclude – as general principle – any contradictions between the texts. This option seems to be possible for those IMs that consider the NS as not binding.</p> <p>(4) The reference to E-GTC-I should be kept as an option.</p> <p>(5) Option B of point 2.1 was amended according to the RNE proposal. Some IMs consider not all points of the NetwStat as legally binding and therefore the possibility to make a reference in the E-SCU-I which makes some chapters of the NetwStat contractually binding is needed.</p>	<p>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:</p> <p><i>Option A:</i> 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-I].</p> <p><i>Option B</i> By signing this contract, the parties agree that the following documents form part of the contract:</p> <ul style="list-style-type: none"> - 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] - [Chapters xxx of] The network statement <p>Optional:</p> <ul style="list-style-type: none"> - xxx (= other relevant documents to be specified by the IM)

			IM suggested to add the word "optional" in connection to the NetwStat so IMs are able to choose.		
2.2	and hierarchy between them	<p>§ 1 In case of conflict or discrepancy between different parts of the contract, the hierarchy between all documents shall be determined as follows:</p> <p>(1) the contract takes precedence over the appendices,</p> <p>(2) the contract and appendices take precedence over the terms and conditions [of the E-GTC-I]</p> <p>(3) [...] (1)</p> <p>§ 2 Provisions of this contract are deemed to be fully in line with mandatory national law (2).</p>	<p>(1) The principle of hierarchy is ok for RNE, but the wording was finetuned to take account of countries where GTC are part of the contract. Additional Amendments (in red): ...</p> <p>(2) the contract and appendices take precedence over the general terms and conditions unless such are defined in the main body of the contract [of the E-GTC-I]</p> <p>(3) [e.g. network statement, hierarchy btw. Annexes, etc]</p> <p>(2) Delete §2</p>	<p>(1) RNE's fine-tuned wording was excepted</p> <p>(2) § 2 can be deleted. It is only repeating what is clear.</p>	<p>2.2 ...and hierarchy between them</p> <p>In case of conflict or discrepancy between different parts of the contract, the hierarchy between all documents shall be determined as follows:</p> <p>(1) the contract takes precedence over the appendices,</p> <p>(2) the contract and appendices take precedence over the general terms and conditions [the E-GTC-I], unless such are defined in the main body of the contract,</p> <p>(3) [...e.g. network statement, hierarchy btw. Annexes, etc.]</p>
3	Modifications to the contract	In principle, this contract may be modified only by agreement between the Parties. Exceptions are provided for in point [XX] of the [IM's GTC or network statement]. Any amendment shall be done in writing.	<p>RNE addition (in red):</p> <p>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. Exceptions are provided for in point [XX] of the [IM's GTC or network statement]. Any amendment shall be done in writing.</p>	<p>CIT could not agree to RNE counterproposal also if it is clear, that some amendments have to be done by the IM (e.g. charges, court decisions...) but RUs should somehow have the possibility to raise objections and need a timeframe to react.</p> <p>Open questions. Which kind of amendments are done during the period of the agreement? Is this in practice problematic?</p> <p>RNE will check if the CIT counterproposal resulting from the CUI Committee (15 May 2020) would be feasible:</p> <p>(...) This is without prejudice to the exceptions as provided for in the [Infrastructure Managers network statements or (E-) GTC (-I)].</p> <p>Proposal will be discussed again between RNE JO and Trasse Schweiz and CIT GS and afterwards with the members.</p>	<p>3. Modifications to the contract</p> <p>In principle, this contract may be modified only by agreement between the Parties. RNE proposal: 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. Exceptions are provided for in point [XX] of the [IM's GTC or network statement]. CIT counterproposal: This is without prejudice to the exceptions as provided for in the [Infrastructure Managers network statements or (E-) GTC (-I)].</p> <p>Any amendment shall be done in writing.</p>
4	Exchange of information and confidentiality	<p>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 (1).</p> <p>As regards confidential information, the parties shall conform to Chapter 8 of the E-GTC-I (2). The exchange of information between the parties during operations is subject to point 2.6 of the E-GTC-I (3).</p>	<p>(1) As not all IMs apply the E-GTC-I, RNE would recommend to include the text of Chapter 5 of the E-GTC-I in the contract (for those IMs who do not apply E-GTC-I or have no national GTC).</p> <p>(2) Some IMs have concerns/reservations regarding points 5 and 7 of Chapter 8 of the E-GTC-I. Due to the length of Chapter 8, inclusion of the remaining provisions of Chapter 8 directly in the contract (as suggested for Chapter 5) would overload the contract; an alternative could be to agree to include the relevant provisions in national GTCs/align national GTCs to the relevant extracts from the EGTC.</p> <p>(3) RNE suggested to include only point 2.6.3. of point 2.6.</p>	<p>(1) Text proposal instead of including chapter 5 of E-GTC-I as a reference was discussed and agreed during the meeting (see option 2 in the right-hand column). The text proposal is taken from the E-GTC-I and the wording is adapted if necessary.</p> <p>(2) Text proposal instead of including chapter 8 of E-GTC-I as a reference was discussed and agreed during the meeting (see option 2 in the right-hand column). The text proposal is taken from the E-GTC-I and the wording is adapted if necessary</p> <p>(3) Reference was limited to point 2.6.3.</p>	<p>4. Exchange of information and confidentiality</p> <p><i>Option 1 (with references to E-GTC-I):</i></p> <p>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.</p> <p>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.</p> <p><i>Option 2 (without references to E-GTC-I):</i></p> <p>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.</p> <p>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.</p> <p>As regards confidential information, the parties shall conform to the following procedure:</p> <p>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.</p>

					<p>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.</p> <p>3. The parties may use this confidential information and documentation for operating and insurance purposes.</p> <p>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.</p> <p>5. The parties shall set up appropriate information systems to guarantee data security.</p> <p>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.</p> <p>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).</p> <p>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.</p>
5.1	Authorisations, approvals	<p>[The RU] shall hold (1) 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.</p> <p>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. (2).</p>	<p>(1) RNE proposal with amendments in red: [The RU] shall—hereby declares that it holds the relevant...</p> <p>(2) RNE explained that such information is usually included in the NetwStat, so they propose to delete it in order to avoid duplication in the contract.</p>	<p>(1) RNE proposal was accepted</p> <p>(2) It was agreed that if sentence 2 (the suspension of...) is already stipulated in the Network Statement it could be deleted in the E-SCU-I.</p>	<p>5.1 Authorisations, approvals</p> <p>[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.</p> <p>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.</p>
5.2	Insurance	<p>[The RU] shall hold the relevant (1) 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 (2). [The RU] shall produce a certified copy of the insurance coverage at least [XX] days before the start of the timetable period.</p> <p>The suspension of the relevant insurance 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 (3).</p>	<p>(1) RNE proposal with amendments in red: [The RU] shall—hereby declares that it holds the relevant statutory insurance...</p> <p>(2) Comment RNE: Some IMs do not consider the NetwStat as binding so a reference could be problematic. We should further work on this wording.</p> <p>(3) RNE explained that such information is usually stated in law and NetwStat, so it seems redundant to repeat it in the</p>	<p>(1) RNE proposal was accepted</p> <p>(2) CIT explanation: This part was included as also Art. 7 RNE Standard contract of use stipulates the obligation for the RU to hold a valid insurance as well as the obligation to provide a certified copy to the IM at least 15 days before starting operations. For those IMs who do not consider the NetwStat as legally binding, the part “as referred to in point [XX] of the network statement” could be optional.</p> <p>(3) The sentence “the suspension of the relevant insurance will lead to a suspension of the right to use...” was deleted and RNE counterproposal (The RU shall inform...) was accepted as this principle is reflected in art. 6 § 2 CUI.</p>	<p>5.2 Insurance</p> <p>[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]. [The RU] shall produce a certified copy of the insurance coverage at least [XX] days before the start of the timetable period.</p> <p>[The RU] shall inform the infrastructure manager of any changes to its insurance coverage that could affect the validity of its license.</p>

			contract. They would rather propose to have an obligation to inform the IM about any changes in insurance coverage (any other licensing requirements) that could affect their ability/right to operate train services/ the validity of the licence: RNE proposal of this paragraph in red: The railway undertaking shall inform the infrastructure manager of any changes to its insurance coverage that could affect the validity of its license.		
5.3	Financial guarantees	<p><i>The parties may choose between the two following options (1):</i></p> <p><i>Option A:</i> [The RU] shall provide the financial guarantee referred to in point [XX] of the network statement (2) for the sum of [.....] € at least [XX] days before the start of the timetable period.</p> <p><i>Option B:</i> [The RU] is exempted from providing the financial guarantee referred to in point [XX] of the network statement, unless it falls into a situation referred to in point [XX] of the [IM's terms and conditions or network statement] for lack of payment. A financial guarantee must then be provided within [XX] days after receiving such a request from [the IM].</p>	<p>(1) RNE commented that not all IMs apply financial guarantees, so this Article should be optional.</p> <p>(2) The NS may provide different options and the proposed drafting might not work well in all cases. The need for/drafting of such reference should thus be discussed.</p>	<p>(1) the text will be an optional point of the E-SCU-I as not all IMs ask the RU for guarantees.</p> <p>CIT suggested to start the point 5.3 with the clarification: Without prejudice to the Commissions Implementing Regulation (EU) 2015/171 (Article 5) and if financial guarantees are applied, the parties may choose...</p> <p>The wording was accepted.</p> <p>(2) The deletion of this reference to the NetwStat was agreed.</p> <p>During the meeting the additional question came up, that IR 2015/10 on financial guarantees according to Article 41 §2 of Directive has to be taken into account and the text would have to be adapted. Therefore The RNE JO and CIT GS have to check if the current stipulations of point 5.3 are in line with IR 2015/10 (see new proposal in the right-hand column new text proposal in red).</p>	<p>5.3. Financial guarantees (OPTIONAL) Without prejudice to the Commissions Implementing Regulations (EU) 2015/10 and 2015/171 and if financial guarantees are applied, the parties may choose between the two following options:</p> <p><i>Option A:</i> [The RU] shall provide a financial guarantee for the sum of [...] € at least [XX] days before the first of the month in which the railway undertaking starts the train operations. If the capacity is allocated after this point in time, the infrastructure manager may request the financial guarantee at short notice.</p> <p><i>Option B:</i> [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 railway undertaking starts the train operations. If the capacity is allocated after this point in time, the infrastructure manager may request the financial guarantee at short notice.</p>
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 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].	RNE proposal with amendments in red: The price of the services agreed shall be determined in accordance with the [IM] list of charges published in the NetwStat and invoiced in accordance with point 6.2 of this contract.	RNE proposal was agreed. According to Article 27 Annex IV point 2 of the Directive 2012/34/EU, prices are a content of the NetwStat.	<p>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].</p>
6.2	Payment and accountancy	<p>[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 (1).</p> <p>Services which have not been provided are settled according to point 2.9 of the E-GTC-I (2) and point [XX] of the network statement.</p> <p>Services which have not been ordered but which have been provided as essential services (3) to the operations shall be invoiced separately. Mistakes or overcharges are settled according to [national law].</p> <p>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 (4).</p>	<p>(1) The RNE NetwStat Common Structure suggests that terms and conditions, billing arrangements, etc. should be specified in NetwStat. The contract (and the reference to E-GTC-I) should not lead to duplication.</p> <p>(2) Some of the provisions of Chapter 2.9. will need to be double-checked and possibly amended to ensure compatibility with EU law (in particular direct cost implementing act 9090/2015)</p>	<p>(1) We would have to agree within the sector where this topic should finally be regulated to avoid duplications. Until that this clause should stay in the E-SCU-I</p> <p>(2) During the meetings it was explained that IR 909/2015 (direct cost implementing act) has a different scope than point 2.9 E-GTC-I. The E-GTC-I refer to charges during the timetable period whereas IR 909/2015 refers to charges (unit costs) that have to be developed by the IM already well in advance of the next timetable change. Therefore, point 2.9 E-GTC-I should not contradict or overlap with IR 909/2015. As option for those IMs/RUs not using the E-GTC-I/having no national GTC, a text proposal instead of including point 2.9 of the E-GTC-I as a reference will have to be developed further. Open question is, if the principles of 2.9 E-GTC-I (especially 2.9.1 and 2.9.2 E-GTC-I) can be found in European law and if not, then the</p>	<p>6.2. Payment and accountancy <i>Option 1 (with references to E-GTC-I):</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 EGTC-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 services 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.</p> <p><i>Option 2 (without references to E-GTC-I)</i> §1 The [RU] shall pay within [XX] days / month[s] the charges invoiced by</p>

			<p>(3) RNE asked on the background of this regulation and what these “essential” services cover.</p> <p>(4) RNE suggested to avoid too many references to other documents, such as E-GTC-I, but to include the key information directly in the contract. In addition, it has to be discussed to what extent national specificities would allow for such an approach.</p>	<p>text of the E-GTC-I has to be taken over in the concrete E-SCU-I-text. RNE/ and CIT agreed that the principles of especially 2.9.1 E-GTC-I and 2.9.2 E-GTC-I are a common sense in the sector.</p> <p>(3) Comment CIT: One practical example of this category could be the service of “special shuntings” in Chiasso due to the different CH and I electricity systems depending on the traction unit used. If these services are not ordered, they must still be provided by IM (see also decision of the Swiss Railways Arbitration Commission https://www.ske.admin.ch/de/themen/klageverfahren/entscheide/). In addition, if intervention services in case of emergencies /for security reasons, are offered and accounted by the IM, this clause might be useful.</p> <p>(4) The concrete text proposal instead of referring to point 3.3 of the E-GTC-I was presented and there were no further remarks.</p>	<p>[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.</p> <p>§2</p> <p>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.</p> <p>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.</p> <p>[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].</p> <p>Option 2:</p> <p>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 reasonable alternative to the allocated train path cancelled, the charges for the alternative train path shall not exceed those of the original train path.</p> <p>The infrastructure manager will charge the full price of the alternative train path if the cancellation is</p> <p>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</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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</p>
--	--	--	--	--	---

					<p>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].</p> <p>§ 3 Services which have not been ordered but which have been provided as essential services to the operations shall be invoiced separately.</p> <p>§ 4 Mistakes or overcharges are settled according to [national law].</p> <p>§ 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: xxxxxxxxxxxxxxxxxxxxxxxxxxxx</p> <p>§ 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</p> <p>Option A: from the day following the date or the end of the period laid down in the contract.</p> <p>Option B (if so provided for by applicable law): following notification.</p> <p>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.</p> <p>This is without prejudice to the right of the infrastructure manager to rescind the contract according to point 9(1)b of this contract.</p>
7	Language(s)	<p><i>The parties may choose between the two following options:</i></p> <p>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.</p> <p>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.</p>	<p>RNE asked if we need this clause. Most IMs do only offer the contracts in their national languages. Therefore, they would rather suggest a provision simply stating that the (authentic) language of the contract is the official language of the country where the IM has its seat.</p>	<p>Comment CIT during meeting: In general, English version of contracts would be very beneficial for RUs operating trains in an international context. In practice, there are existing contracts from DB Netz, RFI, SBB, SNCF Réseau, Trafiverket in English but none of them regulate the question of which language prevails. Therefore, besides providing English versions of contracts a regulation in case languages differ, could be beneficial.</p> <p>The clause was accepted between RNE/CIT during the meeting.</p>	<p>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.</p>
8	Duration	<p><i>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:</i></p> <p>Option A (one timetable period – (3) for those parties who chose option A in 1.1.2): This contract shall take effect upon being signed (1) and end on [XX] December [20XX]. This contract cannot (2) be renewed by tacit agreement.</p> <p>Option B (indefinite – (3) for those parties who chose option B in 1.1.2 and at least for IM situated outside the EU): This contract shall take effect upon being signed.</p>	<p>(1) RNE pointed out that it happens that the contract takes effect at another moment than the moment of the signature of the contract and therefore suggests the following amendment (in red) This contract shall take effect upon being signed /on [date] and...</p> <p>(2) In some countries, contracts are concluded for 1 Timetable period but there is a possibility</p>	<p>(1) No objections to this RNE suggestion.</p> <p>(2) Comment CIT during meeting: during our process of drafting the E-SCU-I we also discussed whether the contract could be renewed without infringing the principle of discrimination (Article 38 (2) Directive 2012/34/EU). It seems that the renewal through ordering train paths is possible.</p> <p>(3) During the meetings it was expressed that the link between option A of point 1.1.2 of the contract and option A of point 8 as well as the link between option B of point 1.1.2 of the contract and option B of point 8 should be deleted. IMs would need more flexibility to combine the different options.</p>	<p>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 / cannot be renewed by tacit agreement.</p> <p>Option B (indefinite –at least for IM situated outside the EU): This contract shall take effect upon being signed.</p>

			for a tacit renewal by ordering paths for the next Timetable period. Therefore, RNE suggests adding (in red): This contract can/ cannot be renewed...		
9	Termination	This contract may be terminated in accordance with Chapter 7 E-GTC-I and point [XX] of the network statement.	RNE referred to the general remark that the E-GTC-I are not used by all IMs.	Optional, besides a reference to the E-GTC-I / the national GTC, a concrete text proposal instead of including chapter 7 of E-GTC-I as a reference was discussed. The text proposal is aligned with chapter 7 E-GTC-I and the wording was adapted if necessary. During the meeting it was agreed to this concrete text proposal.	<p>9 Termination</p> <p><i>Option 1 (with references to E-GTC-I):</i> This contract may be terminated in accordance with Chapter 7 E-GTC-I and point [XX] of the network statement.</p> <p><i>Option 2 (without references to E-GTC-I):</i> This contract may be terminated in accordance with [optional: point [XX] of the network statement as well as] the following rules:</p> <p>§ 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:</p> <ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> - 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. <p>§ 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.</p> <p>§3 Both railway undertaking and the infrastructure manager are entitled to rescind the contract of use of the railway infrastructure:</p> <ul style="list-style-type: none"> 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. <p>§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.</p>
10	Disputes and competent courts	The parties shall solve all disputes arising from this contract in accordance with point 9.1 E-GTC-I (1), with [city] courts having exclusive competence. Time limits are governed by point 9.3 E-GTC-I (2). The parties may also refer their issue to the [relevant regulatory authority] in accordance with [national law].	<p>(1) Most IMs do not apply a conciliation procedure, so the reference to Chapter 9.1. of the EGTC-I would be problematic.</p> <p>(2) The reference to subparas 1 and 2 of Chapter 9.3 could be problematic, as some IMs believe it could violate national law.</p>	<p>(1) Besides a reference to the E-GTC-I / the national GTC, a concrete text proposal instead of including a reference to point 9.1 of E-GTC-I was discussed. During the meeting it was expressed by both, RUs and IMs, that conciliation procedures according to 9.1 E-GTC-I only raise problems and that usually a conciliation procedure cannot exclude the parties right to call the court or to suspend a regulatory body's decision. → CIT GS and RNE JO will draft a different concrete text proposal adapting the one discussed during the meeting of 30 September. This new text will then be discussed with the members of the organisations.</p> <p>(2) The concrete text proposal instead of a reference to point 9.3 of the E-GTC-I was discussed and agreed during the meeting.</p>	<p>10 Disputes and competent courts</p> <p><i>Option 1 (with reference to E-GTC-I)</i> The parties shall solve all disputes arising from this contract in accordance with point 9.1 E-GTC-I, with [city] 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].</p> <p><i>Option 2 (without reference to E-GTC-I)</i> [Without prejudice to the powers and competence of national rail regulatory bodies] The parties shall attempt to solve all disputes arising from this contract in the first place by a consultation procedure [as referred to in Chapter [xx] of the network statement – tbd.], which should</p>

				Remark: In case there is a conflict of Article 24 CUI with national law, mandatory national law prevails (see point 9.3.6 E-GTC-I)	<p>be administered by a committee composed of an equal number of Members appointed by each party.</p> <p>If the conciliation procedure fails, the parties will decide whether their dispute is to be settled through an arbitration procedure.</p> <p>If the parties do not agree upon this arbitration procedure,</p> <p>Option A: the [city] courts shall have exclusive competence.</p> <p>Option B: the Courts referred to in Article 24 of the CUI shall have exclusive competence.</p> <p>Time limits are governed by Article 25 CUI Uniform Rules. This is without prejudice to prevailing mandatory national or international law].</p> <p>The parties may also refer their issue to the [relevant regulatory authority] in accordance with [national law].</p>
11	Law applicable	This contract is subject to [IM's country] law.	--	Clause was discussed and agreed.	<p>11 Law applicable</p> <p>This contract is subject to [IM's country] law.</p>
12	Saving clauses	<p>The parties agree to faithful cooperation.</p> <p>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.</p> <p>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.</p>	--	Clause was discussed and agreed.	<p>12 Saving clauses</p> <p>The parties agree to faithful cooperation.</p> <p>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.</p> <p>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.</p>
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).	--	Clause was discussed and agreed.	<p>13 Contact details</p> <p>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).</p>
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.	--	Clause was discussed and agreed.	<p>14 Copies of the contract</p> <p>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.</p>

Sources of CIT proposal:

- [CUI Uniform Rules](#) (2015)
- [Directive 2012/34/EU](#) (consolidated version 2017)
- [E-GTC-I](#) (2014)
- [RNE Standard contract of use](#) (2004)
- [RNE Network Statement Common Structure](#) (2017)
- "Analysis of the contracts of use of infrastructure – Current contracts from DB Netz, SBB Infra, RFI and Trafikverket", 2017-05-01