



International Rail Transport Committee
Comité international des transports ferroviaires
Internationales Eisenbahntransportkomitee



European Standard Contract of use of railway infrastructure “E-SCU-I”

Version 1.0
10 June 2021

<p>CIT Weltpoststrasse 20 CH-3015 Bern Phone: +41 (0)31 350 01 90 info@cit-rail.org www.cit-rail.org</p>	<p>RailNetEurope Oelzeltgasse 3/9 AT-1030 Vienna Phone: +43 1 907 62 72 00 mailbox@rne.eu www.rne.eu</p>
--	--

Infrastructure Manager (NAME...)
- hereinafter referred to as "IM" –

And

the Railway Undertaking (NAME...)
- hereinafter referred to as "RU" –

IM and RU together to be referred to as "Parties" and separately as "a Party"

hereby enter into the following contract of use of infrastructure ("Contract"):

0. Definitions

For the purpose of this Contract:

1. "**E-GTC-I**" means the European General Terms and Conditions of use of railway infrastructure, negotiated between RNE and the CIT and published on 1 September 2014.
2. "**E-SCU-I**" means the European Standard Contract of use of railway infrastructure, negotiated between RNE and the CIT and published on 10-06-21.
3. "**Infrastructure manager (IM)**" means any body or firm responsible for the operation, maintenance and renewal of railway infrastructure on a network, as well as responsible for participating in its development as determined by the Member State within the framework of its general policy on development and financing of infrastructure.
4. "**Network Statement**" means the applicable statement published by the infrastructure manager or allocation body which sets out in detail the general rules, deadlines, procedures and criteria for charging and capacity-allocation schemes, including such other information as is required to enable applications for infrastructure capacity.
5. "**Railway infrastructure**" means the items listed in Annex I to Directive 2012/34/EU.
6. "**Railway undertaking (RU)**" means any public or private undertaking, licensed according to applicable legislation, whose principal business is to provide services for the transport of goods and/or passengers by rail with a requirement that the undertaking must ensure traction. This also includes undertakings which provide traction only.
7. "**Services**" in accordance with this Contract are – depending on the scope of the contract – meant to refer EITHER 1. (only) to services encompassed by the minimum access package (as defined in point 1 of Annex II to Directive 2012/34/EU) OR 2. to the minimum access package AND rail-related services provided by the infrastructure manager in service facilities.
[OPTIONAL in case the scope of the contract covers rail-related services provided by the infrastructure manager in service facilities.
8. "**Service facility**" means the installation, including ground area, building and equipment, which has been specially arranged, as a whole or in part, to allow the supply of one or more services referred to in points 2 to 4 of Annex II Directive 2012/34/EU.]
9. "**Train path**" means the infrastructure capacity needed to run a train between two places over a given time-period.

1.1 Purpose and scope

§ 1 This Contract governs the relationship between [the RU] and [the IM] for the use of the Railway infrastructure [OPTIONAL: and Service facilities / rail-related services] operated/provided by [the IM] within the scope of [national law] in order to operate [freight and/or passenger] transport services.

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

Option A:

§ 2 The services 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 [if applicable] is shown in Appendix [2];

Option B:

§ 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.

1.2 Services covered and not covered

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

2.1 Constituent parts of the Contract

The parties may choose between two options that are actually related to the purpose 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 governed 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].

Option B:

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

- The present Contract and its Appendices
- 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

[Optional:

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

2.2 Hierarchy between the different documents

§ 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], unless such are defined in the main body of the Contract,
- (3) [...e.g. network statement, hierarchy btw. Appendices, etc.]

3. Modifications to the contract

The parties may choose between the three following options:

Option A:

In principle, this Contract may be modified only by written agreement between the Parties.

This is without prejudice to the right of the Infrastructure manager to unilaterally modify the Network Statement during the timetable year if this is required to comply with

- laws that enter into force after the signing of the Contract and relate to the subject matter of the Contract;
- a court ruling;
- a decision taken by a regulatory body or other competent authority;
- [Optional: the regulatory requirement of keeping the network statement up to date, in particular with information on the characteristics of the infrastructure].

Option B:

In principle, this contract may be modified only by written agreement between the Parties.

This is without prejudice to the right of the Infrastructure manager to unilaterally modify the Network Statement if this is required to comply with

- laws that enter into force after the signing of the Contract and relate to the subject matter of the Contract;
- a court ruling;
- a decision taken by a regulatory body or other competent authority;
- [Optional: the regulatory requirement of keeping the Network Statement up to date, in particular with information on the characteristics of the infrastructure];
- the regulatory requirement to publish the Network Statement every year, at least four months in advance of the deadline for requests for infrastructure capacity following a consultation procedure.

Option C:

This Contract may be modified only by written agreement between the Parties.

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 comply with 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 comply with 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 shall 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 each train must be contactable by the Infrastructure manager.

5.1. Authorisations and approvals

[The RU] hereby declares that it holds the relevant licence, safety certificate and other relevant documents in accordance with national law in order to use the Railway 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, safety certificate or other relevant documents in accordance with national law will lead to a suspension of the right to use the Railway 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 Railway 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

Option A (applicable if the Contract is valid for one timetable period):

-at least [XX] days before the start of the timetable period.

Option B (applicable if the Contract is valid for an indefinite period):

-at least [XX] days before the first day of use of the Railway infrastructure. Subsequently, the RU shall duly prove the insurance coverage every year.

[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 (OPTIONAL)

Without prejudice to Commission 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 guarantee for the sum of [...] € at least [XX] 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 its credit rating 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 Network Statement 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 out in the Network Statement].

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 shall be settled in accordance with 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 shall be settled in accordance with [national law].

The invoicing address is indicated in Appendix [xx].

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 in accordance with the pricing system of [the IM] as 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.

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

Option A:

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 to 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 by mandatory 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 mandatory 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.]*

Option B:

[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 which has been 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 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 in accordance with 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 to 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 by mandatory 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 mandatory national law, applicable European law or international law in the event of delay or disruptions, the text of Chapter 4.1 E-GTC-I would be included here]*

§ 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 shall be settled in accordance with [national law].

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

Option A: to the following account: xxxxxxxxxxxxxxxxxxxxxxxxxxxx /

Option B: to the account indicated in an invoice.

§ 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

* The adapted text of chapter 4 E-GTC-I is available under: https://www.cit-rail.org/secure-media/files/documentation_en/infrastructure/egtc/e-gtc-i_rne-cit_en-fr-de_2014-09-01.pdf?cid=221233

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 payment 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 terminate the Contract in accordance with 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 shall be 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 Contract, is to be adopted.

Option B:

If the Contract or its Appendices are drawn up in several languages, the [language] version shall be 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 purpose 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 [may] / [may not] be renewed by tacit agreement.

Option B (indefinite –at least for IM situated outside the EU):

This Contract shall take effect upon being signed and shall be effective for an indefinite period.

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.

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

This Contract may be terminated in accordance with [optional: point [XX] of the Network Statement/national law as well as] the following rules:

§ 1 The Infrastructure manager is entitled to terminate the Contract with immediate effect, should one of the following occur:

- a. If the Railway undertaking is no longer authorised to exercise the activity of transport 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;

except in the case the debt is secured by the guarantee referred to in point 5.3 of this contract. In order to determine the abovementioned amount, payments still outstanding at their natural due date shall be taken into account, in relation to the Contract in force. Upon exhaustion of the guarantee, the IM shall be entitled to reinitiate the procedure for requesting a financial guarantee in accordance with point 5.3 of this contract.

AND/OR

In the event of § 1b. the IM shall send the RU concerned a formal notice for payment of the amounts due in the event of arrears, containing the following: 1. an injunction to comply with its payment obligations within xx days; 2. the reservation of the right to terminate the Contract, under the termination clause expressed under § 1b, if the RU fails to comply within the deadline of xx days.

- c. If the Railway undertaking is declared bankrupt, when national law allows termination.

§ 2 The Railway undertaking is entitled to terminate the Contract 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 terminate the Contract:

- 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 minimum two months' notice if one party is in wilful default or gross negligence of other essential contractual obligations.
- d. with minimum two months' notice before the change of the working timetable.

§4 The party to the contract which is the cause of its termination 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 [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].

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

Without prejudice to the right of the Parties to take a dispute to the competent courts 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 by a conciliation procedure in the first instance, 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 amicably in the first instance.

If [the conciliation procedure fails] [the dispute has not been amicably solved], 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] courts shall have exclusive competence.

Option B:

- the Courts referred to in Article 24 of the CUI shall have exclusive competence.

Time limits are governed by Article 25 CUI Uniform Rules. This is without prejudice to the 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 cooperate in good faith.

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 shall not be 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 purpose of the invalid provision.

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

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 EU Regulation 2016/679 (GDPR).

14 Copies of the contract

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

15 Miscellaneous provisions

[This point can, in accordance with the interested parties, be developed further as required and placed where appropriate according to the content].

AS AGREED AND SIGNED IN [PLACE] ON [DATE]

On behalf of [Infrastructure manager]

[XXX]

[Name and capacity of the authorised representative of the IM]

On behalf of [Railway undertaking]

[XXX]

[Name and capacity of the authorised representative of the RU]



Appendices

[List of all the Appendices]
