

RailNetEurope Standard framework agreement

Between the infrastructure managers [or] the allocation body

1.

.....
.....

represented by

2.

.....
.....

represented by

[if more IMs – 3.....]

hereafter referred to as “the IMs”/”ABs”

and

the railway undertaking

represented by.....

[or]

the international grouping (Directive 91/440/EC of 29 July 1991, article 3) of the following RUs

.....
.....
.....

represented by

hereafter referred to as “the RU”

[or]

XXX, acting as an applicant (other than a railway undertaking or an international grouping, Directive 2001/14/EC of 26 February 2001, article 16.1) (*when allowed by national laws in application for all the signing IMs*)

.....
represented by

.....

hereafter referred to as the “applicant”

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Whereas :

- a) A railway undertaking (RU) or an applicant can conclude a framework agreement with more than one infrastructure manager in order to ensure infrastructure capacities over a period of time exceeding one working timetable period as specified in article 17 from the EC directive 2001/14 of 26 February 2001 and by the provisions of national laws. This framework agreement does not specify any train paths in detail.
- b) The infrastructure managers (IMs)/allocation bodies (ABs) are co-operating within the RailNetEurope (RNE) association, whose main objective is to foster the development and competitiveness of international rail traffic by promoting co-operation amongst its members to enable the efficient marketing, allocation and sales of cross-border infrastructure capacity and of other infrastructure services, and by setting up appropriate procedures and operational structures (e.g. the One Stop Shop (OSS) network).
- c) In accordance with the mentioned provisions, the RU/applicant has introduced a request for a framework agreement to the signing IMs/ABs.
- d) In support of its request, the RU/applicant has communicated to the IMs/ABs the following indications, information, documents, contracts or commercial agreements :
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 -
 -
- e) After an assessment of that request by the concerned IMs/ABs, and the approval of the IMs/ABs.

The following is agreed :

Article 1 – Purpose

- 1) The present framework agreement sets out the mutual rights and obligations of the RU/applicant and the IMs/ABs concerning the infrastructure capacity to be offered on the RNE network for the transport service(s) [**describe here** the type of services : freight/passengers/high speed trains...] on the lines of the network defined in appendix 1 and the charges to be levied as a consequence.

Article 2 – Capacity offered by the IMs/ABs

- 1) The IMs/ABs undertake to offer to the RU/applicant, for every timetable period programmed for the duration of the present framework agreement, the capacity described in appendix 2.

To that purpose, the IMs/ABs will take into consideration the requests of the RU/applicant, but in accordance with the provisions of EC directive 2001/14 of 26 February 2001, the offered train paths might nevertheless differ from one timetable period to another.

- 2) [**OPTION 1 up to decision of IMs depending on concrete case**] This capacity takes into account:
 - the state and the known evolutions of the infrastructure at the date of conclusion of the present framework agreement, as specified in appendix 1 ;

- the planning of the works of maintenance and investment on the lines of the network as defined for each national network, and specified in appendix 1 ;
- the characteristics and technical performances of trains of the RU as communicated by the RU/applicant and described in appendix 2 **[or in a separate appendix]** ;
- the existence of congested infrastructure **[if relevant]**.

According to EC directive 2001/14 of 26 February 2001, a reserve of capacity is kept by the IMs/ABs at the disposal of the other services of transport assured by the RU/applicant or by the other railway undertakings.

[OPTION 2 up to decision of IMs depending on concrete case : No provision on this matter]

- 3) Should the IMs/ABs fail to offer the paths corresponding to the capacity described in appendix 2, except in the cases foreseen in article 4 of the present framework agreement, then the IMs/ABs will indemnify the RUs/applicant in the form of :

[IDEAS OF OPTIONS up to decision of IMs depending on concrete case]

- *refunding the RU/applicant a sum defined in Appendix 3 [calculated in correspondence with the compensation due by the RU]*
- *refunding the RU/applicant the “ lump sum ” or a percentage of national charges defined in Appendix 3*

Article 3 – Obligations of the RU/applicant

- 1) The RU/applicant undertakes to apply for each timetable period, according to the calendar and deadlines of appendix 5, for paths corresponding to the full capacity and its characteristics as detailed in appendix 2. Trains of the RU using paths have to respect the performances described in the appendix 2 for the duration of the framework agreement.

When the application concerns the renewal of the same paths offered by right of the present framework agreement and obtained for the previous timetable period, the application, subject to the provisions of the second paragraph of article 2.1, is then made by a list of renewal of paths.

Without prejudice to the provisions of article 10 below, and except in the cases foreseen in article 4 of the present framework agreement, a compensation is levied by the IMs/ABs corresponding to the offered capacity when the capacity described in appendix 2 is not effectively requested in part or in totality for each timetable period.

The amount and terms of payment of this compensation to the IMs/ABs is foreseen as stipulated in appendix 4.

[OPTION 1 up to decision of IMs depending on concrete case] In case the RU/applicant does not fulfil its commitments to pay for this compensation, the IMs/ABs are entitled to get the bank guarantee the RU/applicant has constituted before the signature of the present framework agreement. *[The receipt of the mentioned bank guarantee is attached as Appendix 6].*

[OPTION 2 – link with option of article 7.1 – up to decision of IMs depending on concrete case] In case the RU/applicant does not fulfil her commitments to pay for this compensation, the

IMs/ABs are entitled to keep the sum collected from the RU/applicant in the form of the advance payment as stipulated in article 7.1 of the present framework agreement, without any possibility for the RU/applicant to ask the IMs/ABs for a refund of this sum.

Notwithstanding the provisions above, the terms of advanced payment or financial guarantees of each IMs/ABs are in application for the charges established by national rules.

2) *Special clause for applicant :*

The applicant undertakes to designate the RU [or RUs] which will carry out the transport activities corresponding to the capacity granted on the basis of the present framework agreement in the form of a written notice to be sent to each concerned IM at least one month before the fixed deadline (X-8) to present the train-path orders.

Should the designated RU not apply for the paths corresponding to the capacity granted in appendix 2, this will be considered as a failure of the applicant itself.

Article 4 – Exception to commitments of the parties

The commitments stated in article 2. 1 and article 3.1 above shall not be of application for all the signing IMs/ABs or for RU/applicant, for the concerned capacities, in the cases below :

1) **[Two options about force majeure event definition, up to decision of IMs depending on concrete case]**

[OPTION 1] arising of a force majeure event, which shall be defined as any event, which is not imputable to a party to the framework agreement and that can not be foreseen and prevented, such as, but not exclusively, the following events :

- an act of the public enemy or terrorists or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage ;
- acts of vandalism ;
- natural disaster or phenomena, including extreme weather or environmental conditions (such as, but not limited to : lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice) ;
- nuclear, chemical or biological contamination ;
- pressure waves caused by devices travelling at supersonic speeds ;
- discovery of fossils, antiquities or unexploded bombs ;
- and, when recognised by national law or courts and in the conditions of them, strike or similar actions.

[or]

[OPTION 2] arising of a force majeure event, which shall be defined as any event which is not imputable to a party to the framework agreement and that cannot be foreseen and prevented ;

2) decision of a public authority having an impact on the allocation of capacities and train paths, for example implementing national priority rules or prior requests for defence or civil security needs.

- 3) Should the above cases arise on the network of only one signing IM/AB, the IMs/ABs will make their best efforts to offer capacities, taking into consideration the characteristics and technical performances of the trains described in Appendix 2.

Article 5 – Commitment of the IMs/ABs concerning the planning of works on the infrastructure

The IMs/ABs undertake to consult the RU/applicant on the planning of the works of investment and communicate to the RU/applicant at the latest on **[a deadline should has to be defined here by the Timetabling persons]** of every year the project of that planning for year X + 1, as far as it has an impact on the granted capacities.

Article 6 – Contract of use of the infrastructure

In accordance with article 10. 5 of directive 91/440 of 29 July 1991 (as modified by directive 2001/12 of 26 February 2001) and in accordance with national rules, the RU undertakes to conclude the RNE contract of use of the infrastructure with the IMs/ABs for the paths to be allocated for every timetable period, in lack of which paths cannot be used.

Article 7 – Charging system

The RU/applicant undertakes to pay to the IMs/ABs the infrastructure charges related to the train-paths corresponding to capacity as described in the present framework agreement in compliance with rules in force on their respective network as specified in article 5 of the RNE contract of use of the infrastructure and for the entire validity of the present framework agreement.

[OPTION up to decision of IMs depending on concrete case] The RU/applicant will pay to the IMs/ABs an advance payment for the future services resulting from the contract for the use of infrastructure allocated capacity for the consecutive annual timetables period within the present framework agreement. The amount of advance payment, terms of payment and procedure of settlement of payments are determined in the Appendix 6.

Article 8 – Duration of the framework agreement

The present framework agreement comes into force of the date of the signature for the duration of **[five]** years until 24 o'clock the day before the 20XX timetable period enters into effect.

Article 9 – Modifications or limitations to the terms of the framework agreement

- 1) Any modification of the conditions of the present framework agreement can be foreseen only for two reasons :
 - at the request of one party and agreed to by all the others ;
 - new legal/regulatory measures (also at national level) that must upset necessarily the general economy of the present framework agreement.

These modifications take the shape of an amendment signed by the parties.

- 2) As provided by article 17.3 of directive 2001/14/EC of 26 February 2001, the IMs/ABs are also entitled to modify or limit the terms of the present framework agreement to enable better use to be made of the railway infrastructure, when no other reasonable mean to achieve this goal can be foreseen.

The above modifications or limitations may concern the capacities offered by the IMs/ABs and described in appendix 2 to the extent that, the IMs/ABs will in priority adapt the characteristics of the capacity (such as journey times or time windows of departure of trains), and when necessary, propose capacity on alternative routes on which the RU is legally authorised to run trains and, could no other possibility be foreseen or reasonably be implemented, reduce the offered capacity.

The IMs/ABs commit themselves to take into account the legitimate commercial interests of the RU/applicant for the definition of modifications or limitations to the terms of the present framework agreement.

The IMs/ABs will in advance, and at least with a written notice of twelve months before the working timetable comes into force, inform the RU/applicant of their intention to modify or limit the terms of the present framework agreement. The RU/applicant can make any comments or remarks about the foreseen modification or limitation. The parties will strive to arrange conditions which meet commercial needs of the RU/applicant in a better way and the necessity to enable a better use of the infrastructure, without any prejudice for the possibility of the IMs/ABs to implement the modification or limitation of the terms of the present agreement.

Article 10 – Termination of the framework agreement

- 1) The present framework agreement will be cancelled with immediate effect by the IMs/ABs, without prejudice of any damages the IMs/ABs could claim and without indemnity for the RU/applicant, in the following cases :
 - revocation of the licence of railway undertaking of the RU ;
 - withdrawal of the safety certificate of the RU. In case of partial withdrawal, the provisions of the framework agreement are maintained only for the capacity not affected by the decision of withdrawal ;
 - RU/applicant declared bankrupt or against which similar proceedings are commenced, when this case of termination of this agreement is allowed by national laws ;
 - **[Special clause for applicant]** Applicant no longer authorised to apply for capacity, for a least the network of one of the signing IMs/ABs.

In case of suspension of the licence of railway undertaking, the provisions of the present framework agreement are still in force, without prejudice of the termination of the RNE contract of use of the infrastructure, until a regularisation of the situation in a delay that can not be longer than **[1 or 3]** months.

- 2) The RU/applicant may cancel the present framework agreement with a written twelve months notice before a timetable period for which it has been offered capacity comes into force. The notice shall be sent to each signatory IM or AB.

- 3) The IMs/ABs may cancel the framework agreement, without prejudice of any damages the IMs/ABs can claim and without indemnity for the RU/applicant, in the following cases :
- no request of all or part of the capacity described in appendix 2 is presented in due time for the next timetable period ;
 - failing the payment at maturity of an invoice sent by the IMs/ABs to the conditions defined in the RNE contract of use of the infrastructure [**option** : failing to pay the advance payment stipulated in article 7.1 in due time] ;
 - no signing of RNE contract of the use of the infrastructure for the paths allocated for every timetable period ;
 - **[Special clause for AP]** failure to designate, in the time frame stated in article 3.2, the RU which shall perform the services indicated in the present framework agreement ;
 - **[OPTION up to decision of IMs depending on concrete case]** no use by the RU of the paths granted on the basis of the offered capacity [for a period longer thansuccessive months during one timetable period] **or** [for more than a threshold of% of the granted paths for a period of ... months].

Article 11 – Other provisions.

- 1) When the needs of capacity are different or superior to those described in appendix 2 for all or part of the timetable period, the RU/applicant has to present specific requests for additional paths. These requests will be handled according to the standard procedures of the allocation process.
- 2) In case of an opposition between the present framework agreement and the RNE contract of use of the infrastructure, the provisions of the RNE contract of use are applicable.
- 3) No party to the present framework agreement is entitled to transfer the rights and obligations arising from the present framework agreement to any other entity without prior consent of the other parties.

Article 12 – Dispute.

- 1) All disputes between the IMs/ABs and RU/applicant arising from or connected with the present framework agreement, notably the offered capacity and the specific charges levied as a consequence thereof (notably the indemnity from the IM and the compensation by the RU of articles 2.1 and 3.1 of the present framework agreement, excluding the national charges) and involving more than one IM or AB, shall be regulated by either :
 - a) A conciliation procedure carried out by a Committee composed by members equally appointed by the concerned parties ; or
 - b) An arbitration procedure as defined [**the parties have to choose the procedure for the arbitration : it can be the UIC Internal regulation A20, a procedure inspired of this UIC Internal regulation or a procedure specially defined by the parties**].

The arbitrators will decide on the basis of the European rules (regulation, directive, courts decision or other rules) concerning the railway sector or competition, the provisions of the present framework agreement and the most admitted commercial practices in international affairs, taking in due consideration the provisions of national rules when relevant

It is up to the parties involved in the dispute to decide whether a conciliation procedure or arbitration procedure is best suitable for the regulation of the conflict. If the parties have not agreed on this question or if a conciliation procedure turns out unsuccessful, the dispute shall be regulated by an arbitration procedure as referred to in b).

- 1) All dispute or claims related to the capacities shall be brought against a contracting party within 20 working days after a timetable has been adopted [when allowed by national laws to regulate a period of limitation of actions].
- 2) All disputes between the IM or AB on the one hand and RU or applicant on the other hand, if relevant to the access and use of one single infrastructure, shall be regulated by the national provisions of the concerned IM or AB.

Article 13 – Confidentiality

- 1) Without any prejudice to the provisions of article 17.6 of directive 2001/14/EC of 26 February 2001, the RU/applicant and the IMs/ABs agree that commercial aspects of this contract shall be held confidential and will not be transferred to other parties – including subcontractors, within the limits of the relevant national legislation. This provision does not apply to information on the timetable and operational aspects of the RNE network [train path] use.
- 2) The IMs/ABs and the RNE association can quote the name of the RU/applicant as commercial reference, according to the commercial manners.

Article 14 - Concluding provisions

- 1) Should one provision of this agreement become invalid or inapplicable for legal reasons, the other provisions shall remain – as far as possible - unaffected by this.
- 2) In case of invalid or inoperable provisions, such provisions shall be amended by provisions that meet the objectives of this agreement in the best manner.
- 3) Amendments and additions to this agreement shall, after due consultation and agreement between the parties, be made in writing.

* *
*

This framework agreement has been drawn up in **XXX** identical examples.

For the IM/AB 1..... For the IM/AB 2..... For the IM/AB 3.....

For the RU/applicant.....

APPENDIX 1 – Lines concerned by the framework agreement

*** Updates of concerned Network Statements will prevail**

Contents of this Appendix will be defined case by case

APPENDIX 2 – Capacity offered by the IMs/ABs

Contents of this Appendix will be defined case by case

The Legal Matters WG suggests here some first ideas of content for such an Appendix

- | | | |
|-----|--|-----|
| 1. | Technical parameters : | ... |
| 1.1 | Rolling stock concept | ... |
| 1.2 | Weight | ... |
| 1.3 | Speed (km.p.h.) | ... |
| 1.4 | Loading gauge | ... |
| 1.5 | Length (freight transport only) | ... |
| 1.6 | Braking ratio | ... |
| 1.7 | Requested Services | ... |
| 2. | Operating concept | ... |
| 2.1 | Periodicity and traffic period | ... |
| 2.2 | Specific traffic relation (connection) | ... |
| 2.3 | Stabling concept | ... |
| 2.4 | Operating system interface | ... |
| 2.5 | Time window | ... |
| 2.6 | Travel time | ... |
| 2.7 | Connections | ... |
| 2.8 | Operating system interface | ... |

APPENDIX 3 – Amount and terms of payment of the indemnity due by the IMs/ABs

Contents of this Appendix will be defined case by case

APPENDIX 4 – Amount and terms of payment of the compensation due by the RU/applicant

Contents of this Appendix will be defined case by case

APPENDIX 5 – Calendar and deadlines

Contents of this Appendix will be defined case by case

APPENDIX 6 – Bank guarantee evidence (receipt) or advanced payment procedure

Contents of this Appendix will be defined case by case