

# AGREEMENT

## for access and use of the railway infrastructure – public state property in the Republic of Bulgaria

N...../.....

Today, ....., in the city of Sofia, between the parties:

**STATE ENTERPRISE NATIONAL RAILWAY INFRASTRUCTURE COMPANY, UIC** 130823243, with business seat and headquarters address: Sofia, 110, Knyaginya Maria Louisa Blvd., represented by Dipl. Eng..... - Director General, and by affixing a second signature by Lydia Davidova - Chief Accountant- holding Safety Authorisation with EU identification number BG 212023001, issued on 21.06.2023 by the Railway Administration Executive Agency of the Republic of Bulgaria, hereinafter referred to as (the) RAILWAY INFRASTRUCTURE MANAGER or (the) IM, and

....., with business seat and headquarters address: ....., with UIC ....., represented by..... a NON-RAILWAY UNDERTAKING APPLICANT not licensed for the performance of freight transport, having a civil liability insurance agreement No ..... issued by ..... on ....., valid from ..... to ....., and Single Safety Certificate with EU identification number BG....., issued on ..... with a validity period from ..... to ....., issued by the Railway Administration Executive Agency, hereinafter referred to as NON-RAILWAY UNDERTAKING APPLICANT, which does not hold a license to carry freight or a NON-RU APPLICANT.

Pursuant to Article 30, para. 1 in relation with Article 31, para. 5 and 6 of the Railway Transport Act and Article 6 of Ordinance No 41 dated 27 June 2001 for access and use of the railway infrastructure, this Agreement was concluded regarding the following:

### Section I

#### I. SUBJECT OF THE AGREEMENT

**Article 1. (1)** this Agreement settles the relations between the IM and the NON-RU APPLICANT with regard to the access and use of the railway infrastructure in the Republic of Bulgaria – public state property – and the access to service facilities in compliance with the Railway Transport Act (RTA), Ordinance No 41 dated 27 June 2001 for access and use of the railway infrastructure (Ordinance No 41) and the respective annual Network Statement (NS), elaborated by the IM.

**(2)** The access and use of the railway infrastructure pursuant to Para. 1 refers to the first station of the railway infrastructure necessary for the execution of the activities of the NON-RU APPLICANT.

**(3)** The access and use of the railway infrastructure and the access to service facilities, provided to the NON-RU APPLICANT, include provision of the services under Item 1 and Item 2 of Annex No 1 of Ordinance No 41.

**(4)** The NON-RU APPLICANT undertaking shall use the services for providing access and use of the railway infrastructure and access to the service facilities, represented by the IM against payment of an infrastructure charge, determined in the respective annual Network Statement, in accordance with the Methodology for calculating infrastructure charges collected by the railway infrastructure manager, adopted by Decree of the Council of Ministers No 92 dated 4 May 2012, amended and supplemented with Decree No 283 of 14 November 2019 (Methodology).

**(5)** The IM may provide to the NON-RU APPLICANT use of the services under items 3 and 4 of Annex No. 1, Ordinance No. 41, upon submission of a request at prices determined according to the Methodology and published in the respective Network Statement.

(6) With regard to the operation of the railway infrastructure, the parties apply what is announced in the Network Statement and the relevant annexes therein, published by the IM on its website [www.rail-infra.bg](http://www.rail-infra.bg).

## **Section II**

### **PERIOD OF DURATION OF THE AGREEMENT**

**Article 2.** (1) this Agreement becomes effective at 00:00 o'clock on the date, following the date of its signing. The Agreement is concluded for an indefinite period after the presentation of a valid single safety certificate of the NON-RU APPLICANT and a valid civil liability insurance agreement as well.

(2) The Agreement is updated annually with the adopted Train Timetable (TT). For non-RU applicants, to which capacity has been allocated in the annual TT, the Agreement shall be updated after the parties have signed the list of regular trains for the period of validity of the respective TT.

(3) The list of regular trains is updated according to the deadlines and the methods stated in the Network Statement.

(4) In case of change of the current legislation, related to clauses of the Agreement, the same shall be updated by signing an additional agreement. Until the signing of the additional agreement between the parties, in case of conflict between clauses of the Agreement, which has not been updated, and the current legislation, the provisions of the laws and by-laws shall apply.

(5) In the event of a significant number of amendments to the clauses of the Agreement as a result of legislative changes that require the Agreement to be updated, a new template is drawn up and a new Agreement is signed containing the relevant amendments. Until the signing of the new Agreement between the parties, in case of conflict between clauses of the Agreement and the current legislation, the provisions of the laws and by-laws shall apply.

## **Section III**

### **CAPACITY REQUESTING AND ALLOCATION**

**Article 3.** The NON-RU APPLICANT declares, and the IM allocates capacity in compliance with the provisions of the Railway Transport Act, Ordinance No 41 and in accordance with the conditions and terms set out in the Network Statement.

## **Section IV**

### **PAYMENTS AND DEADLINES**

**Article 4.** (1) For the access and use of the railway infrastructure and the access to the service facilities, the NON-RU APPLICANT shall owe the IM the payment of infrastructure charges, determined in the respective annual Network Statement in accordance with the Methodology for calculating of infrastructure charges, collected by the Railway Infrastructure Manager, adopted by Decree of the Council of Ministers No 92 dated 4 May 2012, amended and supplemented with Decree No 283 of 14 November 2019.

(2) Until the seventh day of the month following the month, for which the infrastructure charges are due, the IM shall prepare and send to the official contact e-mail of the NON-RU APPLICANT as agreed by the Parties for official correspondence, a protocol for the accumulated train kilometers, gross ton kilometers, as well as for the amounts due for the transit charge, charge for requested and unused capacity and the amounts, deducted from the infrastructure charges..

(3) Within 3 (three) days from receipt of the Protocol under Para. 2, the NON-RU APPLICANT shall send to the official e-mail of the IM, as agreed by the Parties for official correspondence, a confirmation about the content of the latter and if there are some objections, it shall set them out together with the respective justification..

(4) Based on the confirmation pursuant to Art. 3, within 2 (two) days, the IM shall issue the NON-RU APPLICANT an invoice for the infrastructure charges due.

(5) When the last day of the deadlines under Paragraphs 2, 3 and 4 is not a working day, it shall be considered that the latter shall expire on the first working day.

(6) If after issuance of the invoice the Parties find some errors or discrepancies regarding the due infrastructure charges stipulated in the signed protocol, a new protocol shall be prepared for the detected differences and on its grounds a debit/credit note shall be issued.

(7) The NON-RU APPLICANT shall pay the infrastructure charges, collected by the IM until 15<sup>th</sup> day of the month, following the month, when they are due, to a specified bank account of the Headquarters of the IM.

## **Section V**

### **RIGHTS AND OBLIGATIONS OF THE IM**

**Article 5.** The IM shall have the right to:

1. receive the infrastructure charges determined in the respective annual Network Statement in the cases and under the conditions stipulated in this Agreement.
2. receive the price of the services, used according to items 2, 3 and 4 of Annex N 1 to Ordinance N 41.
3. specify temporary and constant speed reductions for the network traffic;
4. terminate the operation in the case of construction and repair works on the network, announced in the respective Network Statement.
5. terminate the operation in the case of restoration works on the network, as a result of circumstances representing a force majeure, including accidents and incidents.

**Article 6. (1)** The IM shall:

1. provide the NON-RU APPLICANT with access and use of the railway infrastructure, as well as with access to the service facilities in accordance with items 1 and 2 of Annex I of Ordinance No 41 and the Network Statement.
2. provide the NON-RU APPLICANT annually with information about the condition of the railway infrastructure necessary for the preparation of an assignment for the Train Timetable (TT) through the published Network Statement, as well as timely information about the implemented temporary and constant reductions of the traffic speeds along the railway track and at the facilities, including the cases of saturated infrastructure, through an official written correspondence.
3. notify immediately the NON-RU APPLICANT in writing about the occurred accidents and incidents, which might have consequences regarding the train traffic safety, train timetable disruption and environmental damages and to propose measures for restriction of the consequences;
4. if it is necessary to perform a train shunting for the removal of damaged or other safety-threatening wagons and the NON-RU APPLICANT does not have the necessary staff, the IM shall perform this with its own staff (station master, traffic manager, post switchman);
5. provide the services in the service facilities, operated by it.

(2) From the moment of signing the braking weight certificate by the traffic manager on duty, the train is considered ready for operation on a pre-requested path, as in case of a disrupted schedule and a presence of more than one train of one and the same NON-RU APPLICANT the departure order for a given direction shall be determined by the respective NON-RU APPLICANT.

## **Section VI**

### **RIGHTS AND OBLIGATIONS OF THE NON-RU APPLICANT**

**Article 7.** A NON-RU APPLICANT shall have the right to:

1. submit a request for allocation of capacity by the IM for the annual TT as per the requirements of the RTA, Ordinance No 41 and the Network Statement.
2. request in writing to the IM the necessity of changing the paths established in the TT according to the specified methods and deadlines, stipulated in the Network Statement
3. request additional and ad-hoc paths according to the rules specified in the Network Statement, if necessary.
4. receive in time information on the railway infrastructure, for which it has requested to use capacity.

**Article 8.** A NON-RU APPLICANT shall:

1. not reassign to any other railway undertakings the paths allocated to it;
2. pay the IM the infrastructure charges determined in the respective annual Network Statement;
3. pay the services used under items 2, 3 and 4 of Annex No 1 to Ordinance No. 41 at prices, calculated in compliance with the Methodology, published in the Network Statement;
4. upon arrival of a train at the terminal station on the approved timetable or when some wagons (coaches) are left on the tracks of the MANAGER, the NON-RU APPLICANT shall provide to the traffic manager on duty in the respective railway station for signing a trilateral takeover protocol that justifies the handing over of the rolling stock to the next RU or recipient. The trilateral protocol shall contain the date and time of handing over, inventory of the handed-over wagons (coaches) and it shall be signed by the handing over person, the recipient and by the traffic manager on duty. When no such protocol is provided, all additional prices and charges, incurred due to the dwelling of the train composition after its arrival or for the wagons (coaches) after their leaving, shall be on the account of the NON-RU APPLICANT, which has serviced the train to the station or which has made the shunting operation of their leaving.

## **Section VII ACTIONS FOR RESTORING THE TRAFFIC**

**Article 9. (1)** When restoring the traffic along the infrastructure, the IM shall perform the restoration works.

**(2)** The NON-RU APPLICANT shall participate in the restoration of the traffic along the railway infrastructure by providing shunting staff, mobile rolling stock, mobile equipment and staff, and when it is possible, it shall perform the operation restoration and it shall remove the prerequisites for accidents by itself.

**(3)** The IM shall reimburse the NON-RU APPLICANT for the expenses incurred under para. 2, after the decision of the Commission under Art.12, para. 2 of the Agreement, to which the relevant documents proving the incurred expenses have been provided, in compliance with the Rules under Art. 12, para. 3..

## **Section VIII LIABILITY AND SANCTIONS**

**Article 10. (1)** The IM and the NON-RU APPLICANT, with respect to capacity allocation, charging of infrastructure charges, charges and service prices and in the case of train delays, shall apply what is announced in the Network Statement and in the relevant annexes therein.

**(2)** In the case of canceling a train due to the NON-RU APPLICANT, the latter shall pay the IM the charge for requested and unused capacity in accordance with Section II “Compensations” of the Performance Scheme to the Network Statement.

**(3)** In case of canceling of a train due to the IM’s action, the latter shall pay to the NON-RU APPLICANT compensation amounting to the charge for the requested and unused capacity according to Section II “Compensations” of the Performance Scheme to the Network Statement.

**(4)** In case of change of the train routes due to the IM’s actions, the latter shall compensate the additional costs incurred by the NON-RU APPLICANT according to Section II “Compensations” of the Performance Scheme to the Network Statement.

**(5)** In case of train delays due to the NON-RU APPLICANT’s actions, the latter shall owe the IM compensation amounting to BGN 1,40 per minute of delay of a freight train and BGN 2,50 per minute of delay of a passenger train pursuant to section I “Sanctions”, of the Performance Scheme to the Network Statement.

**(6)** In case of delay of trains due to IM’s actions, the latter shall owe the NON-RU APPLICANT compensation amounting to BGN 1,40 per minute of delay of a freight train and BGN 2,50 per minute of delay of passenger’s train according to Section I “Sanctions” of the Performance Scheme to the Network Statement..

**Article 11. (1)** In the case of canceling or delay in the use of a pre-arranged path or part of a train path due to a force majeure, the IM shall not be liable for the default, and it shall notify the NON-RU APPLICANT in writing in due time of the force majeure and the possible consequences of it for

the execution of the Agreement. In case of its failure to send notification, the IM shall owe compensation for the so caused consequential damages.

(2) Force majeure is an unforeseen or unpreventable event of extraordinary nature, occurred after the conclusion of this Agreement. The force majeure is caused by unforeseen circumstances, which have occurred after the conclusion of the Agreement and it is not caused by act or omission of the parties that could not have been foreseen when providing the due care and that makes impossible the execution according to the agreed terms.

(3) During the force majeure, the performance of the obligations and the reciprocal obligations of the other party related thereto shall be suspended.

**Article 12. (1)** In case of a concluded final report on a railway accident or incident investigation pursuant to Ordinance No 59 on the safety management in the railway transport or in case of a serious railway accident pursuant to the Railway Transport Act, the established reasons for occurrence of the accidents or incident, causing damages to the railway track and facilities, catenary network, signaling and telecommunication, rolling stock, goods and freights /injured people/passengers and employees/, as well as the justified additional costs for change of the agreed path shall be on the account of the Party, responsible for these reasons and in case of joint infliction of damages both parties shall be responsible depending on the extent of such a joint infliction of damages.

(2) The amount of the damages and the extent of their joint infliction in case of accidents, incidents and near misses, shall be determined by a permanent commission, specially nominated by the Parties.

(3) The order and manner of interaction between the SE NRIC and the RU upon determination of the amount of the compensation and extent of their joint infliction is regulated by the Rules for interaction and coordination between SE NRIC and the RU upon determination of the amount of the damages and the extent of their joint infliction in case of accidents, incidents and near misses.

(4) The Rules under Para. 3 shall be elaborated by the IM and agreed with the NON-RU APPLICANT and shall be attached to the Agreement hereby.

(5) The decisions of the Commission under Para. 2 regarding the amount of the damages and extent of joint infliction shall be mandatory for the Parties and if no agreement is reached, the disputes shall be settled by the respective competent court.

**Article 13. (1)** The NON-RU APPLICANT shall owe the legal interest for delay in case of delayed payment of cash debts for infrastructure charges.

(2) The IM shall owe legal interest for delay in case of late payment under Art. 10, para. 3.

(3) The parties shall agree on the following calculation method for the interest rate for delay of the payments on the charges, as follows:

1. the due date for a charge for requested and unused capacity is until the 15th day of the month following the month for which it is due. The interest shall be due from the 16th day of the month following the month for which it is payable until the date before the repayment date.

2. the due date for a charge for the use of the railway infrastructure is until the 15th day of the month following the month for which it is payable. The interest shall be due from the 16th day of the month following the month for which it is payable until the date before the repayment date.

## **Section IX**

### **TERMINATION AND CANCELLATION OF THE AGREEMENT**

**Article 14. (1)** The Agreement is terminated upon revocation of the Single Safety Certificate or upon expiration its term or upon non-renewal of the same. The date of revocation of the Single Safety Certificate or the date of expiration its term shall be considered as a date of termination of this Access Agreement.

(2) The agreement may be terminated by mutual consent of the parties, as well as in case of declaring bankruptcy or insolvency of the NON-RU APPLICANT.

**Article 15.** The agreement may be terminated unilaterally by the NON-RU APPLICANT with a two-month written notification.

## **Section X**

## **CONFIDENTIALITY**

**Article 16. (1)** Each party to this Agreement is obliged not to disclose any confidential data, especially the economic information, research and decisions, related to the activity of the other party, which have been disclosed to the respective party during the preparation and the effective period of the agreement.

**(2)** The party, to which the other party has disclosed confidential information during the negotiations or the enforcement of this Agreement, shall not use this information for any other purposes except those, for which it has been provided. This obligation shall remain effective for a three-year period after termination of the Agreement.

**(3)** The parties may use this confidential information and documentation for operational and insurance purposes.

**(4)** Without violating the confidentiality obligation, each of the parties may reveal information without the approval of the other party, if this is necessary for the performance of legal obligations.

**(5)** If any of the parties to the agreement violates explicitly the confidentiality obligation, it shall be liable for any damages, caused to the other party, unless the first party could prove that it is not its fault.

## **Section XI DISPUTE SETTLEMENT**

**Article 17. (1)** All disputes, resulting from this Agreement or related thereto, shall be settled in good faith by negotiation, mutual consultations and exchange of opinions.

**(2)** In case the NON-RU APPLICANT considers that it has been treated unfair, discriminated or has suffered damages in any way, it may file a complaint to the Railway Administration Executive Agency, pursuant to Article 116, para. 5 of the Railway Transport Act.

**(3)** In case of failure to reach an agreement under Paragraph 1, all disputes resulting from this Agreement or related thereto may be settled via mediation, conducted by (a) mediator/s selected by the parties.

**(4)** In case of failure to reach an agreement under Paragraph 3, all disputes resulting from this Agreement or related thereto, including the disputes resulting from or related to its interpretation, invalidity, execution or termination, as well as the disputes related to filling gaps in the Agreement or its adaptation to new circumstances, shall be settled by the competent court.

**(5)** Mediation shall not be mandatory before the referral of the dispute to the court for settlement.

## **Section XII JOINT PROVISION OF HEALTHY AND SAFE WORKING CONDITIONS**

**Article 18.** The parties under this Agreement shall provide jointly healthy and safe working conditions to their workers and employees in the performance of their official duties by:

1. following the rules for the provision of healthy and safe working conditions arising from the Health and Safety at Work Act and the by-laws;

2. mutually providing a list of the existing dangers and harms resulting from the performance of their duties, on the basis of which a risk assessment for the life and health of the workers is carried out;

3. informing themselves timely about the occurred changes related to dangers and harms in the working conditions of the workers and employees and coordinating their activities for the prevention of these risks by taking the necessary measures to protect the life and health of their workers and employees;

4. performing the registration and reporting of work accidents involving their workers and employees, and informing them immediately in the case of accidents on the territory of the railway infrastructure, as well as cooperating in the investigation by providing the necessary information;

5. on the territory and facilities of the railway infrastructure, the IM shall exercise control via its officials and shall notify the NON-RU APPLICANT of the resolution of the established violations of the rules for healthy and safe working conditions.

### **Section XIII FINAL PROVISIONS**

**Article 19.** The agreement may be amended and/or supplemented only with the consent of both parties via written agreements.

**Article 20.** Within one week from the renewal of the civil liability for each following period, the NON-RU APPLICANT shall provide to the IM the Civil Liability Insurance Agreement (a certified copy).

**Article 21.** For the issues not settled in the present agreement, the regulations, effective in the Republic of Bulgaria, as well as the applicable EU acts and agreements binding for the Parties, shall apply.

**Article 22.** With the entry into force of this Agreement, in connection with Art. 2, para. 5, the validity of the concluded between the parties Contract No. .... /..... for access and use of the railway infrastructure - public state property and the additional agreement concluded thereto.

This Agreement is prepared in 7 (seven) pages and it was signed in 2 (two) uniform copies in Bulgarian – one for each of the parties.

**Annex:** Rules for interaction and coordination between SE NRIC and the Railway Undertaking for determining the amount of damages, recovery costs and the degree of their complicity in accidents, incidents and near misses, according to Article 12, paragraph 3 of the Agreement.

**SE NRIC:**

**NON-RU APPLICANT:**

*Director General*