

SPECIMEN OF THE CONTRACT FOR FINANCIAL APPLICATION OF EPR

– *With payments to be made*

European Performance Regime

A joint project by UIC / RNE



AGREEMENT FOR THE IMPLEMENTATION OF THE “EUROPEAN PERFORMANCE REGIME” SYSTEM

With payments to be made

BETWEEN:

- Company [name of the Company] , with headquarters at [address/place of the Company's seat] Infrastructure Manager, represented by [name of the representative] duly authorised to this effect, hereinafter referred to as "[name/abbreviation of the Company]" and
- Company [name of the Company], with headquarters at [address/place of the Company's seat], Infrastructure Manager, represented by [name of the representative] duly authorised to this effect, hereinafter referred to as "[name/abbreviation of the Company]" and
- Company [name of the Company], with headquarters [address/place of the Company's seat], Infrastructure Manager, represented by [name of the representative] duly authorised to this effect, hereinafter referred to as "[name/abbreviation of the Company]" and
- ...

Collectively referred to as "Infrastructure Managers"
and

- Company [name of the Company], with headquarters at [address/place of the Company's seat], Railway Undertaking, represented by [name of the representative] duly authorised to this effect, hereinafter referred to as "[name/abbreviation of the Company]" and
- Company [name of the Company], with headquarters at [address/place of the Company's seat], Railway Undertaking, represented by [name of the representative] duly authorised to this effect, hereinafter referred to as "[name/abbreviation of the Company]" and
- Company [name of the Company], with headquarters at [address/place of the Company's seat], Railway Undertaking, represented by [name of

the representative] duly authorised to this effect, hereinafter referred to as “[name/abbreviation of the Company]” and

- ...

Collectively referred to as “Railway Undertakings”.

The Railway Undertakings and Infrastructure Managers are referred to together as “the Parties”.

FOREWORD

The Parties have agreed to implement a “European Performance Regime” (EPR) based on the principles outlined in Article 11 of Directive 2001/14/EC of 26 February 2011, which provides for the implementation of a performance regime (PR), at the level of each Member State. PRs exist to encourage Railway Undertakings and Infrastructure Managers to reduce failures to a minimum and to improve the performance of the rail network.

The International Union of Railways (UIC) has thus considered it appropriate to develop a PR for international transport to prevent it becoming subject to several national PRs.

UIC and Rail Net Europe (RNE) worked towards this objective together, culminating in the adoption, in December 2008, of a model known as the “Reference Model” of the EPR system by the UIC Regional Assembly for Europe.

At the same time, several UIC members signed a Memorandum of Understanding relating to the development of the EPR system.

In 2009 the project became a joint UIC/RNE project.

From 2010, the “pioneer EPR companies” began the Pilot Application of the EPR system. With this, an initial stage of the performance system was put in place for carrying out international services running on particular corridors.

The EPR system¹, established in accordance with the provisions of European law, aims to provide a financial incentive for quality improvement. Parties

¹ See EPR Handbook for more details

that caused delays to pay for the *malus* minutes and parties that suffered from these delays or reduced the delay benefit from bonus minutes².

This Agreement has been prepared on the basis of a standard model, negotiated at an international level to guarantee the uniform and non-discriminatory implementation of the EPR principles.

IT IS UNDER THESE CONDITIONS THAT THE FOLLOWING HAS BEEN AGREED

ARTICLE 1: OBJECT

The aim of this Agreement is to define the reciprocal rights and obligations of the Parties, with regard to the implementation methods of the EPR system (without the financial consequences) and as defined in the Handbook for the European Performance Regime (EPR) – Guidelines for actual and potential users – (Appendix 3), from now on called “Handbook”.

For the running of international services subject to the EPR system, the conditions for infrastructure use by the Railway Undertakings remain regulated by the national reference documents and the relevant contracts of use that each Railway Undertaking concludes with the relevant Infrastructure Manager

The EPR system specifically does not prejudice the responsibilities that could devolve upon the Parties in the case of delays affecting each national section of an international service running on one of the corridors defined in Appendix 1, nor the resulting consequences,

ARTICLE 2: SCOPE OF THE AGREEMENT

This Agreement applies to international services operated by the Railway Undertakings on the corridors in Appendix 1, where these services are identified in Appendix 2.

If there are differences between the content of this contract and the content of an Appendix, this contract shall prevail.

² However, full implementation of this system requires the Parties to trial it, minus the financial conditions. This Agreement has been prepared on the basis of a standard model, negotiated at an international level to guarantee the uniform and non-discriminatory implementation of the EPR principles.

ARTICLE 3: OBLIGATIONS OF THE PARTIES

The Parties both agree that the Handbook (without the financial consequences), provided as Appendix 3, is applicable to their contractual relationship. As a result, they undertake to apply its provisions in full in good faith.

They also agree that each time the Handbook (without the financial consequences) is updated, any modifications will automatically come into force when the service immediately following is changed.

Throughout the period covered by this contract, the Parties undertake to participate in the implementation of the EPR system, principally with regards to running and administrative costs.

ARTICLE 4: FINANCIAL CONSEQUENCES OF DELAYS

The Handbook determines the general principles governing the calculation of bonus/malus amounts (in minutes) attributable to the Parties.

On the basis of these general principles the Parties agree the following:

5.1 Amount per delay minute

The amount per minute of delay shall be [€] and it is the same for all companies.

5.2 Ceiling for the amount for payments

The maximum ceiling for payments is defined as follows [to be specified],

5.3 Revision of the amounts

The amounts given above shall be revised each year, starting from the year this Agreement is signed (year A), in accordance with the average rate of change of the scales of charges imposed by the Infrastructure Managers in the year in question, as compared to the previous year.

ARTICLE 6: ESTABLISHING AND PAYING INVOICES

Bills are issued and invoices paid according to the rules governing the Brussels Clearing Centre (BCC)'s procedures.

6.X. Late payment

Each of the Parties shall specify the consequences of failure to make payment by the due date in the invoices they issue.

6.X. Tax provisions

VAT shall be applicable according to the tax provisions in force.

ARTICLE 7: FORCE MAJEURE CIRCUMSTANCES

Each Party shall be relieved of this liability to the extent that the loss or damage has been caused by circumstances such as force majeure or the behaviour of a third party which the Party, 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.

Should a Party not fulfil its responsibilities as a result of an event of force majeure, it shall be required to immediately notify the other Parties, by electronic mail, of this event and the resulting impact on the performance of its obligations.

ARTICLE 8: CONFIDENTIALITY

RUs, IMs and RNE have agreed on exchange of data in the respective contracts on the use of the RNE Train Information System (TIS), which will apply also for EPR.

Each of the Parties undertakes not to disclose to any third party, in any form, without the prior written consent of the other Parties, any information of a

confidential nature, in particular relating to the content or performance of this Agreement, as well as all items, information and data exchanged orally or in writing (including electronic data and data in written form on paper or other material) by each of the Parties, as part of the implementation of the EPR (and particularly data and information relating to services, to delay minutes, etc.).

Each of the Parties shall take all necessary steps to ensure that their employees are informed of this duty of confidentiality and will respect the relevant provisions, as well as all service providers who could be aware of these elements as a result of the tasks assigned to them. In this respect, each Party undertakes to implement and maintain security procedures and measures, in order to ensure the protection, integrity and authenticity of exchanged data against the risks of unauthorised access, alteration, delay, destruction or loss.

However, this duty of confidentiality, which is underwritten for the duration of this Agreement and for five (5) years after its expiry, does not apply to facts, studies, information and decisions that form part of the public domain or that one Party is obliged to provide as part of a proceedings before a court or an administrative authority or following the express written permission of the Party concerned.

The Parties agree to provide and share all non-confidential information needed to meet their legal duties, notably if they are related to passenger information according to EC Regulation 1371/2007.

ARTICLE 9: DURATION AND REVISIONS

This Agreement shall enter into force on [Date] for the duration of the service in question or until [Date] inclusive.

It may be tacitly renewed by the Parties four (4) times, for successive terms of one service.

Any changes to the Agreement must necessarily be formalised as amendments, excluding the appendices, subject to a notification.

Six months before the end of the Agreement, of which the total duration may not exceed five (5) service timetables under the conditions set out in

paragraph 1 above, the Parties undertake to meet again to agree the terms of a new contractual commitment.

ARTICLE 10: TERMINATION

This Agreement may be terminated:

- In the event of serious misconduct or serious and repeated failure of one of the Parties, leading to a disruption of the performance of this Agreement, the affected Parties shall provide the Party with formal notice in the form of a registered letter with acknowledgement of receipt to remedy this situation within thirty (30) days. In obvious cases of refusal to comply, the affected Parties shall have the right to terminate this Agreement by sending a registered letter with acknowledgement of receipt;
- By one of the Parties, subject to sending the other Parties written notice in the form of a registered letter with acknowledgement of receipt, six (6) months before its expiry date.

ARTICLE 11: NOTIFICATIONS

Except when specifically indicated otherwise, all notifications (reports, etc.) that would be essential or accepted as part of this Agreement shall be made in writing either by registered letter with acknowledgement of receipt, or by fax, where the sender receives confirmation that the entire document has been transmitted to the recipient, or by electronic mail with read receipt.

The addresses given in Appendix 4 shall be used for sending notifications to the Parties. However, if required, an alternative address may be requested by giving the other Parties the written notice specified in Appendix 4, using the same methods stated in the preceding paragraph.

Notifications come into effect the day after they are received.

When registered letters are sent, the date of receipt is the date shown on the acknowledgement of receipt. Notifications sent by the other methods referred to above shall be considered received on the date they are sent.

ARTICLE 12: AUTHORITATIVE VERSION

This Agreement is written in English.

In the event that a translation is established in a language other than English, this English version shall be the authoritative version should there be any conflict between the different versions.

ARTICLE 13: ENTIRE AGREEMENT

These provisions, including the appendices which are deemed to be integral parts, constitute the entire Agreement between the Parties. They supersede and replace all prior agreements, discussions, commitments or declarations made between the Parties on the same subject.

ARTICLE 14: AUTONOMY OF THE CLAUSES

Should one of the clauses of the present Agreement appear to contradict the applicable legal provisions, or if one of the clauses is declared null and void by a competent court, the other clauses shall remain in full force and effect, unless it becomes impossible to perform the Agreement.

ARTICLE 15: NON-TRANSFERABLE NATURE

This Agreement is concluded on an *intuitu personae* basis between the Parties.

As a result, each Party undertakes not to assign, transfer or subcontract the benefits of this Agreement, in whole or in part, either against payment or free of charge, to any natural person or legal entity, without the prior written consent of the other Parties.

It is understood that this prior written consent, which may be rejected by each Party at its sole discretion, shall be necessary in the event of any division, merger, acquisition or change of control relating to the structure of the Parties.

ARTICLE 16: APPLICABLE LAW

This Agreement is governed by Austrian law.

ARTICLE 17: DISPUTES – CHOICE OF FORUM CLAUSE

Any difficulties relating to the allocation of delays shall be governed in accordance with the procedures specified in the Handbook.

Excluding disputes on the application of the EPR model (cf. validation/dispute resolution system), in the event of a dispute relating to the interpretation or performance of the provisions of the Agreement, the Parties shall first attempt to reach an amicable resolution. Failing this and if the dispute persists, a notification shall be sent by the first party to act and the signatories to the Agreement shall meet one (1) month after the date of this notification to resolve the contentious issues.

Failing this and if it is not possible to come to an agreement by a second deadline one (1) month from the date of the meeting of the signatories to the Agreement, the Parties may bring the dispute before the UIC arbitration tribunal. In such cases, UIC Internal Regulation 4 or any document that has replaced it and concerns the “arbitration proceedings” is applicable. The Parties agree to recognise the binding judgement of the UIC arbitration tribunal.

ARTICLE 18: ELECTION OF DOMICILE

For the performance of this Agreement, the Parties shall elect domicile at their respective headquarters.

ARTICLE 19: LIST OF APPENDICES

Appendix 1: List of corridors

Appendix 2: List of services

Appendix 3: Handbook

Appendix 4: Contacts – parties to be notified of any revisions

Concluded in [place], on [date], in [n°], original copies.

APPENDIX 1 List of corridors

APPENDIX 2 List of services

2.1 Corridor X

2.1.1 Services affected

2.1.2 Final destinations and link between EPR and the affected PES

2.1.3 ...

2.2 Corridor Y

2.2.1 Services affected

2.2.2 Final destinations and link between EPR and the affected PES

2.2.3 ...

Etc.

APPENDIX 3

Handbook [version, valid from ... to ...]

APPENDIX 4

Contacts – parties to be notified of any revisions

The addresses listed below shall be used for sending notifications to the Parties. However, if required, an alternative address may be requested by giving the other Parties a minimum of 5 days' written notice.

Company A	
Company B	
Company C	
Company D	
Company E	
Company F	
Company ...	