

## APPENDIX 3.6

# AGREEMENT ON THE OPENING OF ADDITIONAL LINES, STATIONS AND SIGNAL BOXES

TIMETABLE XX – CUSTOMER XX

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Between the undersigned,

**SNCF RÉSEAU SA**, a limited liability company with share capital of €621,773,000, entered on the trade and companies register of Bobigny under number B.412 280 737, with registered headquarters at 15-17, rue Jean-Philippe Rameau, CS 80001, 93418 La Plaine Saint-Denis Cedex, represented by [...], as [...], duly authorised for the purposes hereof,

Hereinafter referred to as **"SNCF RÉSEAU"**

And,

[...] with capital of €[...], entered on the trade and companies register of [...] under No. [...], with registered headquarters at [...], represented by [...], as [...], duly authorised for the purposes hereof,

Hereinafter referred to as **"the Customer"**

**SNCF RÉSEAU** and the Customer being hereinafter referred to as the **"Parties"** collectively and a **"Party"** individually.

## WHEREAS

The infrastructure manager allocates train path-days according to the available infrastructure capacities on the national rail network, as well as according to the opening of lines, stations and signal boxes regime.

Should the capacity applicants, solicit capacities requiring the opening of lines, stations and signal boxes in addition to what is already set out the infrastructure manager's offer as at December Y-2, and insofar as it is deemed technically feasible and economically relevant, SNCF Réseau shall accept to conduct such additional openings under the terms and conditions set out in this agreement.

This agreement thus forms a contractual, mutual commitment, under which

- SNCF Réseau guarantees its customers the opening of additional stations, lines and signal boxes, without surcharge on the date of publication of the timetable in September Y-1,
- Provided the capacity applicants do not suppress the train path-days for which these additional openings were scheduled. Failing this, in the event of deletion at the initiative of applicants, the latter shall bear the costs incurred by SNCF Réseau.

## ARTICLE 1. DEFINITIONS

**National Rail Network Statement (NS)**: refers to the finalised document, published and updated by SNCF Réseau for each Timetable and whose content is defined in Article L.2122-5 of the Transport Code and specified by Decree No. 2003-194 of 7 March 2003 on the use of the national rail network.

**Timetable (HDS)**: refers to the Timetable for year Y is drawn up from April Y-1 to September Y-1 based on the requests submitted before the deadlines by railway undertakings and non-RU candidates requesting capacity:

- An initial draft Timetable is sent to applicants in July (Y-1).
- The definitive Timetable is finalised at the beginning of September (Y-1). The Timetable is then adapted continuously as necessary from September (Y-1) until D to take account of late and last minute Train Path requests, as well as interval requests.

**Confidential Information**: designates the Appendix to this agreement and all information in any form (particularly of a technical, commercial, financial, accounting, legal and administrative nature) provided, by whatever means, to either Party or its representatives or councils as part of this framework agreement or in connection with the negotiation of this framework agreement (including during informal discussions and negotiation discussions), which may not be made known, either directly or indirectly, in whatever medium, to third parties, its employees, representatives, bankers or advisers, excluding those who need to know this Confidential Information for the normal performance of the obligations subject to this framework agreement. Furthermore, the Parties undertake to ensure that before any information is divulged to third parties the latter must sign a statement of confidentiality.

**Train path**: refers to the infrastructure capacity necessary to enable a given train to be worked from one point to another over a given period of time (Article L.2122-3 of the Transport Code). More precisely, a train path consists of a route marked out in relation to a sequence of landmarks on that part of the network covered with an indication of the time at which the train should pass each landmark.

**Train path-day**: refers to a train path for a given day.

## ARTICLE 2. PURPOSE

This agreement defines the mutual rights and obligations of SNCF Réseau and the Customer as regards the order and use by the Customer of train path-days allocated by SNCF Réseau for which additional openings of lines, stations and/or signal boxes were programmed by the infrastructure manager.

The characteristics of the additional openings requests, covered by the this agreement, are described in Appendix 1.

## FIRST SECTION: RIGHTS AND OBLIGATIONS OF THE PARTIES

### ARTICLE 3. SCHEDULE FOR THE PROCESSING OF ADDITIONAL OPENING REQUESTS

The Customer shall issue its additional opening requests:

- Either during the pre-construction phase of the timetable (between May Y-2 and December Y-2), as part of their requirements forms and possible iterations between the Customer and SNCF Réseau;
- Or during the construction phase of the timetable (between December Y-2 and April Y-1) as part of their train path requests.

Once received, the requests are subject to a technical feasibility and economic relevance study by the infrastructure manager's services.

Upon the publication of the draft timetable in July Y-1, if SNCF Réseau is able to provide a positive response to the additional opening requests, the Customer shall receive a draft agreement including the commitment by SNCF Réseau to bear the costs incurred for this purpose, to be returned initialled and signed at the latest the Thursday before the publication date of the timetable in September Y-1.

NOTE: The process applies in the same way to requests for optional train paths.

### ARTICLE 4. CLARIFICATIONS

For requests formulated during the pre-construction phase

As a reminder, during the pre-construction phase, the train path-days are not yet allocated, but simply pre-constructed, pending their order during the construction phase. Consequently, as regards these pre-constructed train path-days, additional openings will not be registered in the OLGA tool in December Y-2, but will be specified in the catalogue, through a specific reference.

For requests formulated during the construction phase

The requests to open additional stations, lines and signal boxes only concern train path-day orders formulated to the service, i.e. between December Y-2 and April Y-1.

As a result, the following are excluded from the scope of application of this agreement: additional opening requests linked to late requests, requests for adapted train paths and last-minute train path-day requests, which may be subject to a specific agreement.

Concerning requests for additional opening formulated during the construction phase (from December Y-2 to April Y-1), the terms of this agreement shall apply, as of the conclusion of the timetable in September Y-1.

## ARTICLE 5. OBLIGATIONS OF THE PARTIES

### 5.1. Coverage of the costs linked to the additional openings

SNCF Réseau undertakes to proceed with the additional openings set out in Appendix 1 to this agreement, without any surcharge to the Customer, provided the latter does not cancel the same allocated train path-days (defined in the same appendix) for which an additional opening was scheduled by the infrastructure manager.

### 5.2. Compensatory consequences should the Parties fail to fulfil their commitments

- **For SNCF Réseau**

If on day D when the train is due to run, SNCF Réseau did not ensure the contractual additional openings defined in the Appendix hereto, the Customer shall be entitled to ask for reparation of the prejudice suffered, only for cases of cancellations of train path-days on the initiative of the infrastructure manager, from the services in charge of handling complaints of the Sales Division of SNCF Réseau, as per the provisions under Appendix 3.5.2 to the NS.

- **For the Customer**

If:

- between the conclusion of the timetable at the start of September Y-1 and day D on which the train is due to run, the Customer has cancelled ((or deregulated in the case of optional paths) the train path-day(s) for which the contractual additional openings defined in the Appendix hereto were scheduled, the Customer shall be required to pay SNCF Réseau all the costs incurred, corresponding to the training and assignment of staff, as well as to any repair works for the infrastructures concerned, until the reassignment of the resources and staff initially assigned to these additional openings,

The amounts invested in the training and the assignment of staff are calculated in proportion to the agent's intervention time, from the annual amount of an 8-hour shift, as defined in Appendix 5.4 of the Network Statement.

- This coverage of costs is due subject to:
  - The cancellations (or deregulations in the case of optional paths) of the allocated train path-days for which the contractual additional openings defined in the Appendix hereto were scheduled, is exclusively due to the Customer;
  - And should the additional openings defined in the Appendix hereto benefit several customers, within the limits of the costs specifically incurred by the infrastructure manager to guarantee said additional openings over the sole time slot dedicated to the Customer or when the openings are necessary for trains to run (in the event of crossing trains).
  - For example: Case of an additional opening over a period of 4 hours, of which 4 hours are useful for customer 1 and just 2 hours are useful for customer 2:

- ◆ In the event that the train path-days are cancelled by both customers, customer 1 will be responsible for  $\frac{3}{4}$  of the amounts invested and customer 2 for  $\frac{1}{4}$  of the amounts invested.
  - ◆ In the event that the train path-day is cancelled by customer 1 only, customer 1 shall be responsible for half of the amounts invested.
  - ◆ In the event that the train path-day is cancelled by customer 2 only, no costs will be borne by customer 2 (if there are no surcharges for the infrastructure manager).
- Case of a train path crossing over a period of 2 hours:
    - ◆ In the event that the train path-day is cancelled by one of the customers, said customer shall be responsible for all of the amounts invested.

## ARTICLE 6. SUSPENSION OF COMMITMENTS AND TERMINATION

### 6.1. Suspension due to events outside the Parties' control

The commitments undertaken by SNCF Réseau and the Customer shall be suspended, excluding the confidentiality obligation as stipulated under Article 1, when the non-execution or partial execution of their obligations is due to the occurrence of one of the events outside their control set forth below:

- In the event of a case of force majeure that designates any uncontrollable or unpredictable event external to the Parties that makes it impossible to perform all or some of the obligations of one or other of the Parties to this agreement as defined in Article 21 of the General Terms & Conditions of Use of the infrastructure to which it refers (accidental incidents and/or criminal or malicious acts, natural catastrophes or climactic phenomena of exceptional intensity and/or scale, strike among the staff of SNCF Réseau or the railway undertaking, measures sought or taken by the public authority, judicial authorities or by the emergency or fire services) .
- Adoption of a law, regulation or decision by the State, the Transport Regulation Authority or any European Union institutions that significantly affects Capacity allocation and the performance of transport services during the period of application of this agreement, and prevents the Parties from fulfilling their obligations, in whole or in part, such as major decisions pertaining to a Capacity reinforcement plan set out in Article 26 of Decree No. 2003-194, or requests for defence or public safety purposes.
- In the event of early termination by the Customer with whom a commercial contract was entered into and for the execution of which the Train Paths pertaining to this agreement were ordered. In this hypothesis, the Customer may request the suspension of its commitments for the train paths-days that have become non applicable due to the termination of the commercial contract. In order to do so, it must inform SNCF Réseau, by e-mail, accompanied by all useful supporting evidence, sent to the referent account manager, as soon as possible and within fifteen (15) days at the latest from the date on which it receives the letter announcing the early termination of the commercial contract.

In all instances where the contractual obligations cannot be performed due to the occurrence of one of the events mentioned above, these shall be suspended automatically throughout

the duration of the said event (and until the date of return to normal operating conditions ) but only as concerns the obligations of the Parties regarding the additional opening affected by the event.

If an event set out in the sub-paragraphs above affects all or part of the performance of the this agreement Parties shall come together to agree in good faith the arrangements that may be made to preserve their reciprocal interests.

## 6.2. Suspension due to events affecting one of the Parties

The commitments made by SNCF Réseau and the Customer shall be suspended, excluding the confidentiality obligation, when the non-execution or partial execution of their obligations is due to the occurrence of one of the events set forth below:

- For the Customer: loss of its right to exercise activities in relation to the object of the agreement (such as suspension or cancellation of its railway undertaking licence), being placed in court-supervised liquidation or loss (for whatever reason) of its right to benefit from the railway infrastructure capacity;
- For SNCF Réseau: suspension or total or partial removal of its safety authorisation. The occurrence of such an event, likely to cause a suspension of obligations, must be reported by the defaulting Party by registered letter with acknowledgement of receipt.

Once the conditions that justified the suspension of the agreement are no longer fulfilled, all the terms of this agreement shall apply once again. On the other hand, if, at the end of a three-month period, the defaulting Party has not remedied the conditions that justified the suspension of this agreement, the other Party may inform the defaulting Party that it is terminating this agreement, without prejudice to the compensation due once the existence of direct, genuine and certain injury has been proven.

## SECOND SECTION: ENTRY INTO FORCE, TERM AND MODIFICATION OF THE AGREEMENT

### ARTICLE 7. ENTRY INTO FORCE AND TERM OF THE AGREEMENT

This agreement enters into force when the XXX Timetable is decided and will come to an end when the timetable ends.

### ARTICLE 8. MODIFICATION OF THE AGREEMENT

Modifications to the terms and conditions of this agreement may be envisaged if a change in the normative or economic context results in the unavoidable upheaval of the general economic conditions of this agreement, with it being understood that the Parties must have agreed on such a modification before the conclusion of the service order timetable. These modifications shall take the form of a written addendum to this agreement.

## THIRD SECTION: MISCELLANEOUS PROVISIONS

### ARTICLE 9. DUTY OF INFORMATION

The Parties hereby agree to keep each other informed, at all times and at the earliest opportunity, of any event, circumstance or information of any kind that is likely to have a significant impact on the performance of this agreement.

### ARTICLE 10. PAYMENT OF THE SUMS DUE AS PART OF THIS AGREEMENT

The amounts of the charges for using the infrastructure corresponding to the allocated train paths-days for which additional openings were granted shall be invoiced by SNCF RÉSEAU and paid by the Customer under the same conditions as for other train paths-days. These conditions shall be set out in the Network Statement and the contract for use of the national rail network infrastructure. Any challenges will be handled in accordance with the procedures and conditions set out in the same documents.

Any compensation due to SNCF Réseau in application of article 5.2 of this agreement shall be billed annually by SNCF Réseau in the event of cancellation of train-path days in December Y at the end of the previous working timetable.

The amounts due as compensation shall fall outside the scope of application of VAT and are therefore invoiced excluding tax. The invoice payment and challenging terms and conditions are the same as for the charges to use the infrastructure.

Any compensation due to the Customer in application of Article 5.2 of this agreement will be paid according to the rules and terms applicable to the processing of claims set out under Appendix 3.5.2 to the NS.

### ARTICLE 11. TRANSFER OF THE RIGHTS AND OBLIGATIONS OF THE PARTIES

Neither Party may transfer any of its rights or obligations under the scope of this agreement without the prior written consent of the other Party.

### ARTICLE 12. EMPLOYEES APPOINTED BY THE PARTIES

For the execution of this contract:

- **SNCF Réseau appoints the following person as contact for the Customer:** to be completed

(name, job title, address, telephone/email).

- **The Customer appoints the following contact person for SNCF Réseau:** to be completed

(name, job title, address, telephone/email).

Any exchanges between the Parties can be validly transmitted to the previously designated addresses and persons.

### **ARTICLE 13. INVOICING TERMS**

Invoices shall be sent to the Customer at the following address:

(to be completed)

SNCF Réseau undertakes to inform the Customer by registered letter with acknowledgement of receipt of the modification of the data communication format, subject to six months' notice, unless the ART recommends, or legislative or regulatory provisions lead SNCF Réseau to reduce this six period.

### **ARTICLE 14. TERMS OF PAYMENT**

The Customer shall pay the invoices issued by SNCF Réseau in accordance with the conditions laid down in the Network Statement and the General Conditions.

On the payment date, the Customer shall provide SNCF Réseau with the payment details at the following email address:

The SNCF Réseau bank details are:

Account holder: SNCF RÉSEAU péages  
Address: PARIS OPERA  
Bank code: 30003  
Account number: 03620 00020216907  
RIB: 50  
IBAN: FR76 30003 03620 00020216907 50  
BIC ADDRESS SWIFT: SOGEFRPPHPO

The Customer's bank details are as follows: (to be completed)

Account holder:  
Bank code:  
Domiciliation:  
Account number:  
RIB:  
IBAN:  
BIC:

### **ARTICLE 15. DISPUTING INVOICES**

The Customer may contest invoices issued by SNCF Réseau within one year of their due date, in accordance with the procedure described in Appendix 3.5 of the network reference document.

## **ARTICLE 16. CONFIDENTIALITY**

The Parties shall refrain from disclosing any confidential information of a commercial nature set out in this agreement including its appendices, to third parties, without the prior formal agreement of the other party, unless:

It is forced to do so by the laws and regulations in force or by a public administration or any other authority or jurisdiction;

The contents of this information forms part of the public domain or if the Party providing the confidential information has given its written permission for it to be divulged.

In cases where one Party is obliged to divulge Confidential Information, said Party shall undertake to limit the communication to the Confidential Information strictly required to satisfy the communication request. A list of the information concerned will be communicated in advance to the other Party, if the law allows.

More particularly, SNCF Réseau shall respect the confidentiality of the information of a commercial nature transmitted to it by the Framework Agreement Customer in connection with the management of the Infrastructure Capacity offered to it under the terms of this agreement. However, in application of Article 19 of Decree No. 2003-194 of 7 March 2003, this does not concern information that SNCF Réseau may be obliged to issue with reference to the train path-days allocated after the Timetable construction process and corresponding to the Infrastructure Capacity.

## **ARTICLE 17. INVALIDITY OF CERTAIN CLAUSES**

If any of the terms, conditions or stipulations of this agreement should be considered invalid or illegal during the term thereof, by a court, arbitration tribunal, governmental or regulatory authority or any other French administration, national or European public body, said term, condition or stipulation will be considered null and void and will not affect the validity, legality or implementation of the other provisions of this agreement, except for cases where said term, condition or stipulation is essential for the application of this agreement.

If any of the terms, conditions or stipulations of this agreement should be considered invalid or illegal, the Parties shall implement their best efforts to agree on the amendments to make to this agreement to replace the term, condition or stipulation in question, to enable the agreement to remain fully in effect between the Parties, from both a financial and practical perspective.

## **ARTICLE 18. NON-WAIVER PROVISION**

It is explicitly agreed by the Parties that if one Party does not ensure the strict application of the conditions of this agreement, this shall never constitute renunciation of any of the rights contained therein.

## ARTICLE 19. INDEPENDENCE OF THE PARTIES

This agreement is not intended and should not be interpreted as giving rise to the signing of a mandate or the creation of a de facto partnership between the Parties. Neither Party shall be authorised to commit the other Party contractually or to make statements in their name.

## ARTICLE 20. FEES

Each Party shall bear all costs incurred by them for the preparation, negotiation, performance and implementation of this agreement.

## ARTICLE 21. INTERPRETATION

The appendices form an integral part of this agreement. The terms and expressions used in the appendices are defined as in the agreement.

## ARTICLE 22. LAW GOVERNING THIS AGREEMENT

This agreement is governed by and interpreted according to French law. This principle shall apply to both substantive and formal rules.

## ARTICLE 23. DISPUTES BETWEEN THE PARTIES

- **Settlement of disputes via conciliation or court procedures**

Any disputes arising between the Parties in the course of the execution of this agreement may be resolved through a conciliation process without any prejudice for one or the other Party's having recourse to emergency procedures in order to protect its rights or seize the Transports Regulation Authority.

A conciliation process is initiated with a registered letter with acknowledgement of receipt addressed to the other party. The chosen conciliators must be natural persons who are impartial to both parties and who can furnish guarantees of independence and professionalism, with each Party then appointing one such person, unless they agree on a single conciliator, in which case such a conciliator shall act with the costs shared. In the event that the conciliation process should fail, the matter may be initiated, when appropriate, to the Paris courts to examine the disputes, irrespective of the number of defendants or introduction of third parties, even in the event of urgent referrals or emergency injunctions.

- **Recourse in front of the Transports Regulation Authority**

The appeal procedures mentioned above shall not prevent one or other of the Parties from lodging an appeal with the relevant railway regulation authority.

## ARTICLE 24. LIST OF APPENDICES

The appendices to this agreement are:

- Appendix 1: Additional openings granted by SNCF Réseau to the Customer.

Drawn up in two (2) original copies, one (1) for each of the Parties.

**For SNCF Réseau**  
Group Business Development Director

**For the Customer**

# APPENDIX 1

## ADDITIONAL OPENINGS GRANTED BY THE INFRASTRUCTURE MANAGER

After study and analysis by the infrastructure manager's services, SNCF Réseau accepts to open the stations/lines/signal boxes below, for the purposes of the train path-days mentioned and for the amount of compensation per train path-day deleted specified (see tables) :

Monitoring of contractualisation – Timetable xx – Version of xx/xx/xx									
Affected train path(s)	Customer	Impacted day(s)	Request number in GESICO-DSDM	Source-Destination	Station/involved line	Type of train paths	Traffic infrastructure facility concerned	Amount to be paid (in €) per train path-day for the additional opening requested	SNCF Réseau sales contact