

## **APPENDIX 3.1**

# **GENERAL TERMS AND CONDITIONS OF THE CONTRACT FOR THE USE OF NATIONAL RAIL NETWORK INFRASTRUCTURE AND THE CONTRACT ALLOCATING TRAIN PATHS ON THE NATIONAL RAIL NETWORK**

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## ARTICLE 1 – PURPOSE

Within the framework defined by the Network Reference Document (Network Statement) in accordance with the official European and national texts, these General Terms and Conditions set out the general administrative, technical and financial conditions for the railway undertaking's use of the national rail network infrastructure and associated services and/or the allocation of train paths to the authorised candidate or the railway undertaking, without prejudice to the special conditions to be agreed upon with the concerned railway undertaking/authorised candidate. The following stipulations complete the provisions of the Network Statement.

They apply to any use of the national rail network infrastructure and associated services as well as any allocation of train path days for the relevant timetable, regardless of their allocation date.

They also apply to any use of the national rail network infrastructure directly related to the allocation of a freight corridor path, in application of Regulation No. 913/2010 of 22 September 2010 concerning a European rail network for competitive freight.

"National rail network infrastructure" means all the main tracks of the national rail network and service facilities managed by SNCF Réseau.

The stipulations of these general terms and conditions apply:

- ◆ to relations between SNCF Réseau and a railway undertaking or an international group of railway undertakings, with the exception of the provisions relating to:
  - the provision to a railway undertaking of train paths that are allocated to the authorised candidate (Article 5.2.1)
  - the authorised candidate's financial guarantee (Article 18a)
  
- ◆ relations between SNCF Réseau and an authorised candidate, with the exception of the provisions relating to:
  - services related to train traffic (Article 5.2.2),
  - the Conditions of Use of the national railway network infrastructure by the railway undertaking (Chapter II), unless otherwise specified.
  - the railway undertaking licence and safety certificate (Article 23.1), unless otherwise specified.
  - the conditions of liability in the event of an accident or damage to equipment (article 19.1, article 19.2).
  
- ◆ They shall also apply to the use of national rail network infrastructure and related services by a railway undertaking which is provided train paths by an authorised candidate and for train paths directly allocated to the authorised candidate, with the exception of provisions relating to:
  - capacity processing (Article 5.1),
  - the cancellation of train paths by SNCF Réseau or the railway undertaking (Article 14),
  - the compensatory consequences of SNCF Réseau cancelling train paths (Article 20).

These General Terms and Conditions govern all relations between the parties, unless otherwise provided in an *ad hoc* contract (such as the contract governing the use of SNCF Réseau information systems).

The signing of the Contract for the use of national rail network infrastructure or the Contract for train path allocation on the national rail network is a prerequisite for the signature between SNCF Réseau and the railway undertaking/authorised candidate of any other contract relating to services connected to the use of national rail network infrastructure.

## **ARTICLE 2 – CONTRACT DOCUMENTS**

The Contract for the use of the national rail network infrastructure signed between SNCF Réseau and each railway undertaking or the Contract for train path allocation on the national rail network signed between SNCF Réseau and each authorised candidate (hereinafter the "Contract") includes the following items:

- these General Terms and Conditions,
- the special conditions signed with each railway undertaking or authorised candidate,
- the special conditions of use of the CANIF badge and authorisation.

In case of contradiction, the special conditions take precedence over the General Conditions.

## **ARTICLE 3 - OPPOSABILITY**

3.1 The General Terms and Conditions govern the contractual relations between SNCF Réseau and the railway undertaking/authorised candidate.

The order and allocation of train paths as well as the use of the national rail network infrastructure by the railway undertaking/authorised candidate implies acceptance of the General Terms and Conditions.

The railway undertaking/authorised candidate declares they have read the General Terms and Conditions and accepted the terms and conditions.

3.2 The order as well as the use of CANIF badges and authorisations by the railway undertaking/authorised candidate implies acceptance of the Special conditions of use concerning the CANIF badge and authorisation, annexed to the Network Statement. The railway undertaking/authorised candidate declares they have taken cognizance of the special conditions mentioned above and are committed to respecting them and to ensure they are respected by their staff and/or agents.

## **ARTICLE 4 - CONTRACTUAL PARTIES**

The parties to the Contract for the use of the national rail network infrastructure are SNCF Réseau and the railway undertaking.

The parties to the Contract for train path allocation on the national rail network are SNCF Réseau and the authorised candidate.

They are defined as follows:

- ◆ SNCF Réseau: designates, in accordance with Article L.2111-9 of the Transport Code, the manager of the national rail network responsible for ensuring access to the rail infrastructure of this network (including capacity allocation and the pricing of this infrastructure) and the associated services which depend on its responsibility for the needs of the Contract for the use of national rail network infrastructure and the Contract for train path allocation on the national rail network infrastructure,

It ensures the operational management of traffic on the national rail network as well as the maintenance of the national rail network infrastructure, including servicing and renewal.

For certain of the network's low-traffic lines as well as for service facilities, these missions may be performed (excluding the access mission to the railway infrastructure of the national rail network) by a person who has concluded an agreement with SNCF Réseau, in accordance with the objectives and management principles defined by SNCF Réseau pursuant to the last paragraph of article L. 2111-9 of the French Transport Code.

- ◆ "authorised candidate" denotes one of the other individuals authorised to submit train path allocation requests for the purpose of making them available to railway undertakings, in accordance with the provisions of Article L. 2122-11 of the Transport Code ;
- ◆ "railway undertaking" means any private or public sector undertaking holding a licence in accordance with the applicable Community legislation, and whose main activity is the supply of goods and/or passenger transport services by rail, such undertakings also providing traction as a matter of obligation; this term shall also extend to those undertakings that only provide traction.

For the purposes of this contract, the term "railway undertaking" also includes that of "international groupings of railway undertakings"; accordingly, and unless otherwise stipulated in the contract, the provisions that are applicable to railway undertakings are also applicable to international groupings of railway undertakings.

The term "railway undertaking's personnel" means all the agents employed by it, its representatives, and the personnel of undertakings acting on its behalf and whose duties and tasks have any connection with the operation of its rail transport services.

The term "railway undertaking's rolling stock" means all vehicle types (locomotives, wagons and other vehicles) used or towed by the railway undertaking or undertakings acting on its behalf to perform its rail transport services (including related manoeuvres), regardless of their ownership or management plan.

Unless otherwise stipulated, the railway undertaking which is provided train paths by the authorised candidate is not deemed, vis-à-vis SNCF Réseau, as acting on the behalf of the authorised candidate.

- ◆ It is specified that the employees, agents, service providers or partners called upon by SNCF Réseau and each railway undertaking/authorised candidate to perform their particular activities are not considered as third parties. SNCF Réseau, the railway undertaking/authorised candidate, are therefore each respectively liable for the persons acting within the scope of their tasks or missions.

They benefit from the limitations of liability stipulated in these General Terms and Conditions in favour of SNCF Réseau, the railway undertaking/authorised candidate, uniquely when they are acting on behalf of SNCF Réseau or the railway undertaking/authorised candidate. Consequently, SNCF Réseau, the railway undertaking/the authorised candidate cannot seek the liability of these persons on a basis that differs from those stipulated in these general conditions.

# CHAPTER I: SNCF RÉSEAU SERVICES PROVIDED TO THE RAILWAY UNDERTAKING/AUTHORISED CANDIDATE

## ARTICLE 5 - MINIMUM SERVICES SUPPLIED ON MAIN TRACKS

### 5.1 General principle

In application of the regulations in force, SNCF Réseau is obliged to provide the minimum services to any holder of access rights to the national rail network.

These services are described in Chapter 5 of the Network Statement.

SNCF Réseau therefore provides:

- to the railway undertaking:

- ◆ the processing of its infrastructure capacity requests;
- ◆ the right to use the allocated train paths;
- ◆ the use of network switches and turnouts, traffic signalling, regulation and control, the communication and provision of traffic information and the information required to implement or perform the railway undertaking's service.

- to the authorised candidate:

- ◆ the processing of its infrastructure capacity requests, with a view to providing them to railway undertakings for the transport services they organise.

Access from the network to service facilities is integrated into the minimum services.

### 5.2 Specific provisions related to the authorised candidate

#### ***5.2.1 Provision of train paths to a railway undertaking that were allocated to the authorised candidate***

It is specified that the railway undertaking designated by the authorised candidate must be authorised to use these train paths in accordance with the regulatory or contractual provisions in force at the time of use, failing which SNCF Réseau will refuse the use, without the possibility of the authorised candidate raising any claim against SNCF Réseau on this ground.

Similarly, the authorised candidate is solely responsible for the arrangements by which train paths are provided to the railway undertaking of his choice, as SNCF Réseau is not involved in this aspect of the relationship established between the authorised candidate and the railway undertaking.

Only one railway undertaking may be designated by the authorised candidate for the same train path, SNCF Réseau must be notified of the change of railway undertaking 30 days before the actual use of the train path under the conditions laid down in Chapter 4 of the Network Statement.



With a view to ensuring the proper use of the national rail network by all the railway undertakings, the authorised candidate guarantees SNCF Réseau that the designated railway undertaking is able to respect the rail traffic timetable provided by SNCF Réseau in accordance with capacity allocation, except for the exceptions provided by the regulations. To this end the authorised candidate shall pass on the information he possesses to the railway undertaking enabling the latter to deploy trains compatible with the characteristics of the allotted train path and, in particular, to ensure that his train(s) pass the designated landmarks on this train path at the appointed time in each case.

### **5.2.2 Services related to train traffic**

The authorised candidate remains completely detached from the relationship established between SNCF Réseau and the railway undertaking in matters concerning trains and rolling stock traffic.

As such, neither SNCF Réseau nor the authorised candidate can claim rights or conditions in terms of train traffic that are more favourable than those stipulated in these general conditions, in particular chapter II.

In addition, where the payment of compensation by SNCF Réseau to the railway undertaking is provided for under Chapter II of these General Conditions (with the exclusion of Article 14), such payment shall be deemed to cover the possible prejudice suffered by the authorised candidate on a flat-rate and final basis, the latter taking up his case with the railway undertaking concerning the possible distribution of compensation between them, the authorised candidate not being able claim any other compensation vis-à-vis SNCF Réseau.

## **ARTICLE 6 - SERVICES RELATED TO THE USE OF NATIONAL RAILWAY NETWORK INFRASTRUCTURE**

In accordance with the regulations in force, services using the national rail network infrastructure are described in chapter 5 of the Network Statement.

For the purposes of this clause, all services provided by SNCF Réseau may be indistinctly referred to under the generic term "services".

### **6.1 Principles**

The railway undertaking/authorised candidate may benefit from these services provided that they have available train paths which justify the request.

The railway undertaking/authorised candidate shall ensure, in general terms, that the services that are provided to them are adapted to the requirements of their activity.

### **6.2 Request for service**

**6.2.1** The services provided to the railway undertaking/authorised candidate are designated *ab initio* in the Special Conditions of the Contract, unless specific provisions are made in the Network Statement.

**6.2.2** During the Contract performance, the railway undertaking/authorised candidate may apply for other services which are not provided for in the original Special Conditions.

SNCF Réseau undertakes to acknowledge receipt of these requests within eight days and will endeavour to investigate them in collaboration with the railway undertaking within a maximum period of one month, endeavouring to satisfy them within the limits of available resources, network operating conditions and respecting the rights granted to third-party users of the national rail network.

Any refusal will be justified.

The provision of new services gives rise to the conclusion of an amendment to the Contract, which in the cases provided for in the Special Conditions, may take the form of an exchange of registered letters with acknowledgement of receipt.

**6.2.3** During the performance of the Contract, the railway undertaking/authorised candidate may request the modification of the contents of a service it provides or its invoicing arrangements in cases where this is provided for in the reference document.

Any modification of the content or invoicing arrangements of a service results in the conclusion of an amendment to the Contract which may, in the cases provided for in the Special Conditions, take the form of an exchange of registered letters with acknowledgement of receipt.

### **6.3 Termination of a service**

The railway undertaking/authorised candidate may request the termination of a service at any time. This request is sent by registered letter with acknowledgement of receipt to SNCF Réseau's One Stop Shop.

The termination will take effect at the beginning of the month following the request's date of reception by SNCF Réseau.

## **ARTICLE 6 A: Use of CANIF badges and authorisations**

The methods for ordering CANIF badges and authorisations and associated pricing are described in the Network Statement.

The special conditions for the use of CANIF badges and authorisations are described in the Network Statement appendix. The railway undertaking/authorised candidate using the CANIF badges and authorisations undertakes to respect the special conditions mentioned above and to ensure they are respected by his staff or agents.

## **CHAPTER II: RIGHTS AND OBLIGATIONS OF SNCF RÉSEAU AND THE RAILWAY UNDERTAKING CONCERNING THE USE OF INFRASTRUCTURE AND SERVICES**

### **ARTICLE 7 – COMPLIANCE WITH THE RULES GOVERNING THE OPERATION OF THE NATIONAL RAIL NETWORK AND THE MANAGEMENT OF TRAFFIC**

SNCF Réseau shall provide the railway undertaking with the technical and operational documentation it has drawn up and published, in particular the documentation pursuant to Article 10 of Decree No 2006-1279 of 19 October 2006 on rail traffic safety and the interoperability of the rail system and the "Principles concerning traffic management on the national rail network" annexed to the Network Statement, and relating to the use of the

services provided under the contract.

The conditions governing this provision are those provided for by European legislation (such as technical interoperability specifications) or national legislation.

The railway undertaking takes note of and complies with this technical and operational documentation before and during the use of the infrastructure and services.

## **ARTICLE 8 - RAIL INFRASTRUCTURE PERFORMANCE**

**8.1** SNCF Réseau shall ensure that the railway infrastructure and the services relating to rail traffic permit the railway undertaking/authorised candidate to safely perform its transport services in accordance with the specifications of the allocated capacities.

SNCF Réseau is responsible vis-a-vis the railway undertaking/authorised candidate for the maintenance of the railway infrastructure and can intervene during operation to guarantee this maintenance.

SNCF Réseau will take into account the operational consequences of its infrastructure work on the railway undertaking.

**8.2** The principles of the Performance Improvement System and its methods of application are set out in Article 6.4 of the Network Statement.

A performance improvement objective is defined for each railway undertaking in Article 4 of the Special Conditions of the Contract.

## **ARTICLE 9 – ROLLING STOCK IMPLEMENTED BY THE RAILWAY UNDERTAKING TO PROVIDE ITS TRANSPORT SERVICES**

### **9.1 General**

The obligations and conditions provided for in this article apply to all rolling stock making up a train for which the railway undertaking is responsible for traction, irrespective of this equipment's owner, and for any traction equipment placed under the responsibility of the rail undertaking. The railway undertaking is responsible for informing third parties who are contracted to provide rolling stock about the relevant provisions of these General Conditions.

### **9.2 Requirements related to the railway undertaking's rolling stock**

The railway undertaking may use only rolling stock authorised by the competent authorities.

At the specific request of SNCF Réseau, the railway undertaking shall provide evidence of such authorisation in the form of certificates issued by the competent authority or other appropriate certificates if this evidence is not already available through official records.

The railway undertaking guarantees compliance with the safety rules regarding rolling stock maintenance. In the event of incomplete or improper inspection or incorrect rolling stock maintenance, the following provisions regarding the removal of unfit equipment shall apply.

The railway undertaking shall ensure that its rolling stock is fit for the infrastructure's use, that it complies with the commercial operation authorisations and that it is compatible with the specifications concerning the planned use of the railway infrastructure (note: the railway

undertaking is not responsible for the prior verification of traction unit compatibility when the compatibility check is carried out by SNCF Réseau in accordance with the provisions of the Network Statement).

Rolling stock that is not used in standard situations (for example, equipment running in exceptional conditions, such as oversized vehicles) must comply with the rules in force and may only be used with the agreement of SNCF Réseau and after the conditions of use have been finalised.

### **9.3 Loading rolling stock**

The loading of goods or any other items in freight trains must be performed in a manner that is compatible with the regulations in force and with accepted practices regarding the safety of persons, goods and the environment.

In particular, the railway undertaking shall ensure that its trains are loaded safely and securely throughout the journey, taking into special consideration the weight distribution, the axle load, the securing of the load, the kinematic envelope and load's protective cover.

### **9.4 Removal of rolling stock unfit to run on the national rail network**

The term "rolling stock unfit to run on the national rail network" means unauthorised rolling stock, or rolling stock which was previously authorised by the competent authorities but no longer satisfies the requirements of their authorisation for commercial operation for any cause post-dating this authorisation, the safety rules or the specifications of the railway infrastructure for which it was intended to be used.

In the event of a serious or imminent safety risk (e.g.: if the alarm that detects abnormal axle box heating is triggered, detective loading, etc.), as a precautionary measure and indicating the reasons for this decision, SNCF Réseau may immobilise a train incorporating one or more rolling stock elements that are unfit for use on the national rail network. The train in question will nevertheless be allowed to resume its journey after the equipment that is unfit to circulate on the national rail network has been removed.

The railway undertaking shall immediately remove and evacuate vehicles that are unfit for use on the national rail network. To this end, it may request the assistance of other railway undertakings or other companies if the removal is not by rail, these companies being recognised as competent and which act under its full responsibility.

The practical arrangements for the removal and evacuation of vehicles unfit for use on the national rail network will be established between the railway undertaking and SNCF Réseau, which may participate in the definition of these modalities as required. SNCF Réseau can arrange the removal and evacuation of vehicles unfit for use on the network national railway on its own initiative when this is necessary to ensure the correct operation of national rail network infrastructure and in the event of a justified emergency, even in the absence of an agreement to that effect.

If the railway undertaking is unable to remove or evacuate the vehicles, SNCF Réseau may arrange this itself or request the service from another railway undertaking or competent recognised company.

## **9.5 Consequences of removing rolling stock that is unfit to run on the national rail network**

In the cases provided for in point 9.4 above, the railway undertaking shall bear the expenses and risks that may result from the decisions taken by SNCF Réseau for the removal and/or evacuation of rolling stock unfit to run on the national rail network, without prejudice to the application of the liability rules provided for in these general conditions. SNCF Réseau bears the expenses and risks resulting from an action or omission that it commits intentionally or with particular negligence in the knowledge that damage or loss would probably result.

The railway undertaking may not raise any claim for any damage or disruption of its operations resulting from any SNCF Réseau decision concerning the use or removal and/or evacuation of rolling stock unfit to run on the national railway network.

The railway undertaking will also not be able to claim reimbursement of paid fees or non-payment of fees due to the resulting lack of infrastructure use.

If use of the SNCF Réseau powers provided for in 9.4 above are unjustified, or if the rolling stock has become unfit for circulation on the national rail network as a result of SNCF Réseau, the expenses and risks mentioned above will be borne by SNCF Réseau, without prejudice to the application of the liability rules provided for in these general conditions. The railway undertaking bears the expenses and risks resulting from an action or omission that the railway undertaking commits intentionally or with particular negligence in the knowledge that damage or loss would probably result.

## **ARTICLE 10 - PERSONNEL INVOLVED IN RAILWAY UNDERTAKING TRAIN TRAFFIC**

### **10.1 Requirements relating to railway undertaking personnel**

The railway undertaking shall ensure that its personnel comply with the requirements of the safety and operating rules.

The railway undertaking shall ensure that its personnel possess the requisite knowledge of the national rail network lines and the facilities which are the subject of the services provided to it, and that it has the necessary understanding of the language commonly used on the railways lines which are the subject of the provided services in both ordinary and exceptional conditions.

## **10.2 Removal of unauthorised or inappropriate personnel**

In order to prevent any safety, health or environmental risks and on the basis of the principle of immediate precaution and with justification for its decision, or in the absence of driver authorisation, SNCF Réseau may immobilise any train or vehicle to remove one or more individuals involved in the security and traffic operations if these individuals are proven to be unauthorised or inappropriate. The train or the vehicle may, however, be allowed to continue its journey after the railway undertaking has replaced the personnel in question.

In cases where the personnel cannot be replaced, the train or the vehicle remains immobilised and may be removed in accordance with the provisions of Article 9.4 above.

## **10.3 Consequences of removing unauthorised or inappropriate personnel**

In the cases mentioned above, the railway undertaking shall bear all costs and risks that may result from the measures implemented by SNCF Réseau, without prejudice to the application of the liability rules provided for in these general conditions. SNCF Réseau bears the expenses and risks resulting from an action or omission that it commits intentionally or with particular negligence in the knowledge that damage or loss would probably result.

The railway undertaking may not raise any claim and claim any compensation due to the disruptions caused to its operation that may result from any SNCF Réseau decision concerning the removal of its unauthorised or inappropriate personnel.

It will also not be able to claim reimbursement of paid fees or non-payment of fees due to the resulting lack of infrastructure use.

If the railway undertaking proves that these employees in fact meet the conditions imposed by the safety regulations, the costs and risks associated with removal or evacuation operations will be borne by SNCF Réseau, without prejudice to the application of the liability rules provided in these terms and conditions. The railway undertaking bears the expenses and risks resulting from an action or omission that the railway undertaking commits intentionally or with particular negligence in the knowledge that damage or loss would probably result.

## **ARTICLE 11 – PERSONNEL EMPLOYED BY SNCF RÉSEAU**

SNCF Réseau ensures that the personnel employed to carry out the services provided by SNCF Réseau comply with the requirements of the safety and operating rules.

SNCF Réseau shall ensure that such personnel possess the requisite knowledge of the lines and facilities that are the subject of the services provided to the railway undertaking, and that they have the necessary understanding of the language commonly used on the railway lines which are the subject of the services provided to the railway undertaking, under both ordinary and exceptional conditions.

In order to prevent any safety, health or environmental risks and on the basis of the principle of immediate precaution, after receiving an alert generated by the railway undertaking, SNCF Réseau will remove the personnel involved in the safety and security operations if the personnel are proven to be unauthorised or inappropriate.

## **ARTICLE 12 - TERMS AND CONDITIONS FOR THE USE OF NATIONAL RAILWAY NETWORK INFRASTRUCTURE**

## **12.1 Preliminary information concerning the use of train paths and service facilities**

In application of the regulations, the railway undertaking may only use allocated train paths and accessible service facilities under the strict condition of having provided SNCF Réseau with the information required by the applicable technical safety regulations and operating documentation in the form (deadlines, content, format) and in the manner defined in the Network Statement, relating to the composition of its trains, to any special conditions of the planned traffic (modification of traction unit performance or incompatibility with the traction to perform, uses of materials that differ from their standard use ...) and the terms of use for the service facilities which it has obtained access rights to.

Consequently, SNCF Réseau reserves the right to cancel train paths made available to the railway undertaking if it is established that it has not fulfilled this condition. To this end, SNCF Réseau informs the railway undertaking of its intention to cancel the related train path(s) and asks it to submit its observations related to the circumstances in a timely manner. If there is no satisfactory answer, SNCF Réseau may organise a meeting with the railway undertaking following which it shall notify its decision to delete the train path under the conditions defined in Article 14.1.5 or authorise it to use the corresponding train path infrastructure.

## **12.2 Exchange of information**

SNCF Réseau and the railway undertaking shall ensure that their personnel are effectively available to receive information communicated by the other party and are authorised to make operational decisions on behalf of the institution or company they represent.

## **12.3 Reciprocal guarantees relating to the specifications of the allocated path in normal circumstances**

SNCF Réseau shall ensure that the national rail network infrastructure and the conditions under which it operates in normal circumstances allows the railway undertaking to use the train paths allocated to it in accordance with their specifications.

With a view to ensuring that all railway undertakings correctly use the national rail network, the railway undertaking is bound to respect the specifications of the train paths which have been allocated to it, in normal circumstances, without prejudicing potential timetable adjustments provided for by the technical safety regulations and operating documentation relating to the timetable (for example, procedures allowing the train to depart ahead of its scheduled time with SNCF Réseau's agreement).

For this purpose and with the exceptions provided for by the regulations, the railway undertaking must only use trains or vehicles compatible with the specifications of the allocated path (in particular respecting the timetable of designated landmarks), unless otherwise agreed to by SNCF Réseau who the railway undertaking have informed in advance in accordance with Article 12.1.

## **12.4 Departure conditions of trains**

Any train departing on national rail network tracks may only be run by the railway undertaking once it has obtained the assurance that the conditions for infrastructure access have been fulfilled. This insurance is obtained:

- by the presence of signalling authorising mobilisation, when this signalling has been opened;
- in the absence of such signalling, by SNCF Réseau authorisation granted under the conditions provided for by the technical safety regulations or the local operating instructions given to the railway undertaking.

## **12.5 Railway undertaking recourse to partners and service providers**

The railway undertaking who has recourse to a partner or service provider company is responsible for ensuring compliance with the conditions set out in the file(s) used to obtain its safety certification.

As such, the railway undertaking cannot rely on the failure of a partner or service provider to justify the performance of its transport service if it does not comply with the conditions laid down in the file(s) used to obtain its security certificate.

When the railway undertaking uses service providers or partners on the national rail network rights-of-way that SNCF Réseau has provided, it assumes the sole responsibility of being the user undertaking within the meaning of the provisions of the Labour Code, in particular its articles R 4511-1 and following, and implements the corresponding measures. In particular, it ensures that personnel take into account the risks associated with rail traffic or electrical traction installations.

## **ARTICLE 13 - DISRUPTIONS AND CORRECTIVE ACTIONS**

### **13.1 Notification of disruptions by the SGTC and the railway undertaking.**

In accordance with the technical safety regulations and operating documentation in force, SNCF Réseau informs the railway company of the infrastructure status and actual traffic conditions in accordance with the procedures defined by these texts and the "Principles concerning traffic management on the national rail network" annexed to the Network Statement.

In principle and under the same conditions, it must immediately inform the railway undertaking of any disruption on the national rail network (or in particular those arising from other railway undertakings' traffic) which could alter the characteristics of the allocated train path, irrespective of the cause (in view of the consequences for the railway undertaking's traffic).

The railway undertaking must immediately report any incident detected during its traffic in accordance with the procedures laid down in the above-mentioned texts, even if there is no direct consequence for the safety and performance of other traffic.



## 13.2 Principles

In the event of operating disruptions, accidents, environmental effects, bad weather, unforeseen maintenance due to safety requirements or other events, SNCF Réseau may adapt the planned timetables or take measures likely to modify these timetables in the context of the applicable regulations and the "Principles concerning the management of traffic on the national rail network" annexed to the Network Statement and taking into account the requirements of public service and the public interest. The railway undertaking complies with the measures taken by SNCF Réseau.

## 13.3 Measures taken to ensure normal the re-establishment of traffic

SNCF Réseau implements the necessary provisions to ensure that normal circumstances are re-established in the event of a traffic disruption, within the framework of the applicable regulations and the "Principles concerning traffic management on the national rail network" annexed to the Network Statement.

During an incident that affects a railway undertaking traffic service, it must constantly take the necessary actions to minimise the consequences of the incident for itself, the other railway undertakings, SNCF Réseau and third parties, while respecting the safety rules.

In particular, the railway undertaking is required to comply with the provisions made by SNCF Réseau for managing these situations.

Without prejudice to the provisions of Article 20.1, when the measures decided by SNCF Réseau consist of a pure and simple cancellation of traffic without the possibility of using alternative rail routes, substitute transport services that are not part of the national rail network infrastructure will be organised, where necessary, at the expense and risk of the railway undertaking.

## 13.4 Obligation to assist in aiding a train in distress

In its own interest, as well as that of SNCF Réseau and the other railway undertakings, the railway undertaking shall assist SNCF Réseau, within the limits of its resources and as far as can be considered reasonable, to implement these measures.

The assistance it may be required to provide could include making its equipment and/or driving personnel available to SNCF Réseau.

This provision is limited to the strict necessities involved in evacuating a train in distress on the main tracks of the national rail network and delivering it to the closest facility capable of accepting the related train. It can also be implemented on other tracks where an obstruction is likely to significantly compromise the network's operation.

In the event that the recovered train is another railway undertaking's train, SNCF Réseau will bear the expenses, upon presentation of supporting documents:

- of the expenses incurred by the undertaking responsible for the recovery (additional driving time, provision of traction units and energy consumption ...)
- and the operating losses it incurs.

The railway undertaking responsible for the recovery may therefore request that SNCF Réseau reimburses these sums in accordance with the procedure described in Annex 7 of the Network Statement, within a period of one year from the recovery date of the train in

distress. These expenses will then be re-invoiced by SNCF Réseau to the company whose train was recovered.

### **13.5 Consequences in terms of timetable punctuality**

SNCF Réseau and the railway undertaking cannot claim one from the other, and vice versa, any compensation for any damage they may suffer as a result of delays in train traffic regardless of their origin and/or their originator, including third parties (including accidents and/or damage to third parties).

Consequently, SNCF Réseau and the railway undertake to individually bear the costs and damages associated with such a delay and waive the right to bring any legal action against the other party in this regard or to sue the other party before the courts.

### **13.6 Feedback**

The organisational arrangements for the feedback of experience relating to disruptions are provided for in the "Principles concerning traffic management on the national rail network" annexed to the Network Statement, without prejudice to any discussion specifically organised between SNCF Réseau and the railway undertaking at the initiative of the most diligent party.

### **13.7 Obligation to contribute to recovery exercises**

SNCF Réseau is entitled to ask the railway undertakings and the Station Manager to contribute, in terms of the provision of material, technical or personnel resources, to the Intervention and Emergency Plan validation exercises as well as exercises requested by State services. This contribution extends from the preparation of the Experience Feedback phase through to the completion of the exercise.

SNCF Réseau is responsible for allocating capacities (train paths and work timetables) for the exercises that require it. These capacities are exempt from the payment of the related fees.

The priority of the result of these exercises may result in the modification of the previously established train traffic diagram.

The costs related to these emergency exercises (installation of equipment and personnel, excluding capacity reservation) are the responsibility of the contributing railway undertakings.

## **ARTICLE 14 - MODIFICATION AND CANCELLATION OF ALLOCATED TRAIN PATHS-DAYS**

### **14.1 Modification and cancellation of train paths-days by SNCF Réseau**

**14.1.1** SNCF Réseau can modify or cancel assigned train paths-days:

- to allow works to be performed on the infrastructure that were not programmed during the preparation of the service schedule,
- to restore infrastructure use under normal safety conditions following an event defined in Article 13 or for any other event preventing the use of the infrastructure under normal safety conditions.

If train paths-days are cancelled, SNCF Réseau provides the railway undertaking/authorised candidate with a possible alternative traffic offer which must comply with the safety certificate provisions, be compatible with the specifications of the transport service provided by the railway undertaking, and which takes into account the capacities of the railway undertaking/authorised candidate.

**14.1.2** SNCF Réseau may also modify or delete assigned train paths-days in order to make all or part of its facilities available to the State or to implement potential State decisions concerning transport priorities in terms of:

- Defence Code provisions,
- law No. 87-565 of July 22nd, 1987, relating to the organisation of civil security,
- article L 2215-1 4° of the General Code of Territorial Collectivities,
- Article 9 of Decree No 97-444 of 5 May 1997 amended by Decree No 2015-140 of 10 February 2015 on the SNCF Réseau missions and statutes,
- Article 25 II, 2° of Decree No. 2003-194 of 7 March 2003 amended on the use of the national rail network.

In this context and in application of State decisions, SNCF Réseau may notably be required to modify or delete train path-days allocated to the railway undertaking/authorised candidate, with or without notice.

The stipulations of article 14.1.1 of these General Conditions apply to the management of these situations.

**14.1.3** If the activity defined in Article 23 of this contract cannot be performed temporarily or only performed partially, SNCF Réseau has free access to the train paths-days that have been allocated in the service timetable in force.

If a safety certificate is partially withdrawn, SNCF Réseau only has the rights to train paths-days which can no longer be used by the railway undertaking as a result of the decisions taken by the competent authorities.

If the ban is lifted or the situation has been rectified, the railway undertaking/authorised candidate will be required to submit a new train path request for the current service timetable within the framework of the provisions of Article 23 of Decree No. 2003-194 of 7 March 2003 as amended concerning the use of the national rail network.

**14.1.4** If an RU under-utilises a train path as defined in point c) of Article 25 of Decree No. 2003-194 of 7 March 2003 as amended concerning the use of the network national rail network, SNCF Réseau can decide on the cancellation of train paths-days in accordance with the procedure defined in the network's reference document.

In this case, SNCF Réseau has free access to the cancelled train paths-days.

**14.1.5** SNCF Réseau may decide to cancel train paths-days if the prerequisite information is not produced, as defined in Article 12.1 and in the conditions of this article. In this case, SNCF Réseau has free access to the cancelled train paths-days.

## **14.2 Modification and cancellation of train paths-days by the railway undertaking/authorised candidate**

During the performance of the contract the railway undertaking/authorised candidate may request SNCF Réseau to modify or cancel certain or all of the allocated train paths-days.

SNCF Réseau will grant applications that are submitted in accordance with the procedures and terms specified in chapter 4 of the Network Statement applicable to the service schedule.

## **ARTICLE 15 - INSPECTION AND VISIT RIGHTS**

**15.1** Authorised personnel of SNCF Réseau can intervene on the railway network at all times and places, possibly without notice and within the framework of the missions entrusted to SNCF Réseau by the laws and regulations, to ensure that the railway undertaking complies with its contractual obligations with regard to the use of allocated train paths and accessible equipment and does not exceed the usage rights it has been granted.

SNCF Réseau communicates the written observations made during these inspections as soon as possible to the railway undertaking. The latter can reply in writing.

The railway undertaking may inform SNCF Réseau of any difficulties that have arisen during these inspections or other interventions.

If SNCF Réseau informs the Minister of Transport or the Public Railway Safety Establishment that SNCF Réseau's authorised personnel have identified safety-related issues, these issues are likely to have serious consequences on the validity of the railway undertaking's licence or safety certificate. The railway undertaking is immediately informed of these steps in writing.

**15.2** The railway undertaking must accept the presence of any authorised SNCF Réseau agent aboard its traction units, without charge, for the purpose of visiting railway facilities or for agents who are travelling to perform their services. SNCF Réseau waives all recourse against the railway undertaking in the event of bodily injury suffered by its agents on these occasions.

## **CHAPTER III: PRICING FOR THE USE OF NATIONAL RAILWAY NETWORK INFRASTRUCTURE AND THE ALLOCATION OF TRAIN PATHS AND TERMS OF PAYMENT**

### **ARTICLE 16 - GENERAL PRICING RULES**

The railway undertaking's use of the national rail network infrastructure gives rise to the payment to SNCF Réseau of charges in accordance with the regulations in force and with the Network Statement.

These rules are recalled and specified in the Network Statement approved by SNCF Réseau.

The railway undertaking and the authorised candidate are required to pay the fees which concern them in accordance with these rules.

### **ARTICLE 17 - TERMS OF INVOICING AND PAYMENT**

**17.1** In addition to the laws and regulations in force and the Network Statement, sums due by the railway undertaking/authorised candidate are invoiced and paid according to the following additional provisions.

In case of error, it is specified that SNCF Réseau can produce additional invoicing within one year from the completion date of the service, upon presentation of the relevant supporting documents and specifying the amount of the additional invoicing.

**17.2** Invoices issued by SNCF Réseau may be challenged within one year of their due date by registered letter with acknowledgement of receipt sent to SNCF Réseau, in accordance with the procedure described in Appendix 7 of the Network Statement.

The notification of an invoice challenge does not have the effect of suspending the obligation to pay the amounts invoiced within the required payment periods.

**17.3** The railway undertaking/authorised candidate specifies his invoicing address in the Special Conditions.

The will pay the invoices by bank transfer.

The railway undertaking/authorised candidate notifies SNCF Réseau of any change to their invoicing address. This change takes effect on the 1st of the second month following SNCF Réseau notification.

**17.4** The railway undertaking may request that invoices be sent to a third party for payment. If SNCF Réseau accepts this request, the Special Conditions specify the legal framework for this third party's intervention and the related invoicing methods.

In any case, the railway undertaking remains the sole debtor of the sums due to SNCF Réseau.

**17.5** For train paths allocated to an authorised candidate, invoices for train traffic-related charges shall be sent to the railway undertaking declared by the authorised candidate in the SNCF Réseau applications.

If the authorised candidate has failed to declare the railway undertaking using the network, invoices for train traffic-related charges are sent by SNCF Réseau to the authorised candidate for payment. The latter may, however, contest the invoice in accordance with the procedure described in Annex 7 of the Network Statement.

## **ARTICLE 18 - PROVISIONS FOR CASES OF LATE PAYMENT OR NON-PAYMENT**

### **18.1 Late payments**

If no payment has been effectuated within 40 days of the invoice's date of issue,

- the due amounts are increased as of right, and without the need for formal notice, late payment interest being equivalent to the interest rate of the main financing facility applied by the European Central Bank in force at the invoice's date of issue, plus ten percentage points, without being less than three times the legal interest rate. This penalty is calculated per late day from the due date until the actual payment date of the amounts due.

- the railway undertaking/authorised candidate will also pay SNCF Réseau a flat-rate compensation of 40 (forty) euros for recovery costs, in accordance with the provisions of Article D.441-5 of the Commercial Code introduced by Decree No. 2012- 1115 of 2 October

2012 fixing the amount of flat-rate compensation for recovery costs in commercial transactions provided for in Article L. 441-6 of the Commercial Code.

In the event that there is a difference of more than two business days between the date of issue and the delivery date of the invoice and if the railway undertaking/authorised candidate pays after the due date, late day penalties related to the difference between the aforementioned dates will not be applied.

In addition, if there has been no response within 30 calendar days of the receipt of formal notice, SNCF Réseau may suspend the railway undertaking's use of an allocated train path/use of the national rail network infrastructure and related equipment and services, as default interest continues to accrue.

Fees that are owed by the railway undertaking in relation to suspended services or equipment continue to be owed by the railway undertaking in full.

SNCF Réseau will reinstate the use of the allocated train paths/national rail network infrastructure, related equipment and services as soon as possible after receiving the railway undertaking/authorised candidates' payment of all due amounts and associated late interest.

## **18.2 Payment Default**

When the railway undertaking/authorised candidate is in arrears for two successive instalments and for a sum exceeding the value of the fees due for a month, the Contract is automatically terminated by SNCF Réseau after their formal notice (sent by registered letter with acknowledgement of receipt) has remained ineffective for 15 calendar days after its receipt by the railway undertaking/authorised candidate.

Notwithstanding this termination, SNCF Réseau may exercise any legal remedy against the railway undertaking/authorised candidate in order to recover the contractual amounts due.

## **18.3 Operational consequences**

In the cases provided for in 18.1 and 18.2 above, SNCF Réseau may take any operational measure that suspends or cancels the use of national rail network infrastructure and related equipment and services. All costs and possible damages relating to the implementation of the measures referred to in this article shall be borne by the railway undertaking, which will be specifically invoiced.

## **ARTICLE 18a - FINANCIAL GUARANTEE OF THE AUTHORISED CANDIDATE**

The Special Conditions may provide for the authorised candidate to supply a financial guarantee.

In this case, the authorised candidate is committed to taking all necessary measures to preserve the accepted financial guarantee over the Contract performance period.

It must submit a document to SNCF Réseau certifying the existence of a financial guarantee, at the latest at the Contract signing and before the entry into force of each timetable for which it has been granted train paths.

This document will state the amount and scope of the financial coverage taken out, including any possible restrictions, and the period covered by this measure.

The authorised candidate shall notify SNCF Réseau of any significant change to its financial guarantee conditions.

## **ARTICLE 18b - PROVISIONS PROVIDED IN THE EVENT OF UNDUE PAYMENTS BY THE RAILWAY UNDERTAKING/AUTHORISED CANDIDATE**

Any fees for the use of the national rail network that are unduly invoiced by SNCF Réseau and which are paid by the railway undertaking/the authorised candidate to SNCF Réseau will produce interest equivalent to the interest rate of the main financing facility applied by the European Central Bank in force on the due date of the related SNCF Réseau invoice(s) plus ten percentage points, the current interest from this invoice payment (without this date being earlier than the payment deadline) until the effective date of issue of the corresponding credit.

SNCF Réseau will not owe any interest on a credit or a refund resulting from the invoicing of a provision (when provided for by the Network Statement) that is higher than the final invoice.

If the refund results from a challenge made by the railway undertaking/authorised candidate, the interest shall only be paid if the challenge is made no later than one month after the invoice's due date and in accordance with the procedure described in appendix 7 of the Network Statement.

## **CHAPTER IV: LIABILITY OF THE PARTIES**

### **ARTICLE 19 - LIABILITY IN CASE OF ACCIDENT OR MATERIAL DAMAGE**

#### **19.1 Liability of the railway undertaking towards SNCF RÉSEAU in the case of accident or material damage**

##### ***a) Conditions in which liability shall be incurred.***

The railway undertaking will be held liable for bodily, material and immaterial damage to SNCF Réseau, its property, its agents, or its service providers or to third parties during its use of the national rail network infrastructure and which originates from the persons or goods being transported, a defect in equipment or an error in infrastructure use.

The railway undertaking is exonerated, in whole or in part, from its liability insofar as the harmful event results from:

- a fortuitous event of force majeure or similar event;
- a fault or an order of SNCF Réseau.

##### ***b) Scope of responsibility***

The railway undertaking bears the full cost of repairing or, as the case may be, replacing damaged property, reconstruction of the damaged property, notably including all company, project management, engineering, surveillance and security costs associated with the locations or worksites, or the rolling stock belonging to SNCF Réseau or its service providers within the national rail network rights-of-way and its technical or administrative control, taxation included. It is specified that the repairs also include the costs of lifting and

evacuating equipment, the security of property, whenever these costs would be borne by SNCF Réseau.

The railway undertaking shall also reimburse SNCF Réseau the amount of the uncollected fees (or those refunded to other railway undertakings/authorised candidates) as a result of the cancellation or modification of train paths forced upon SNCF Réseau following an accident or infrastructure damage which the railway undertaking is responsible for. It also reimburses SNCF Réseau the sums that SNCF Réseau has paid to other railway undertakings/authorised candidates in application of Article 20 of these General Conditions.

Consequently, SNCF Réseau shall be wholly responsible for relations with other railway undertakings using the national rail network.

In addition, the railway undertaking guarantees SNCF Réseau that they shall bear all the costs and fees directly resulting from SNCF Réseau measures following an accident or environmental risk for which the undertaking has sole responsibility, unless the latter provides evidence of the disproportionate or unjustified nature of these measures. This also applies to the evacuation of related public spaces or neighbouring buildings belonging to any third party, or the subsequent unavailability of these places or buildings. The same is true of the environmental remediation requirements for the concerned sites.

Without prejudice to the above paragraphs, the railway undertaking shall under no circumstances assume any liability for immaterial damage such as financial or commercial prejudice, loss of customers, commercial inconvenience, increases in costs and overheads, loss of profits, damage to brand image and operating losses that could result from accidents or damage suffered by SNCF Réseau.

The fees owed to SNCF Réseau by the railway undertaking are paid on presentation of the corresponding supporting documents.

### ***c) Limits of liability.***

The liability of the railway undertaking is limited to an amount of fifty (50) million euros excluding tax per event.

SNCF Réseau waives the right to request payment from the railway undertaking for any sum other than that which corresponds to all the indemnities provided for under b) of this article.

## **19.2 Liability of SNCF RÉSEAU towards the railway undertaking in the case of accident or material damage**

### ***a) Conditions in which liability shall be incurred.***

SNCF Réseau will be held liable for bodily, material and immaterial damage to the railway undertaking, its property, its agents, or its partners and service providers during the use of the national rail network infrastructure and which originates from a fault of the rail infrastructure or an error in infrastructure management.

SNCF Réseau is exonerated, in whole or in part, from its liability insofar as the harmful event results from:

- a fortuitous event of force majeure or similar event;
- a fault or an order of the railway undertaking.



### ***b) Scope of responsibility.***

SNCF Réseau bears the full cost of repairing or, as the case may be, replacing damaged property, including, in particular, all company, project management, engineering, surveillance and security costs associated with the locations or worksites, or the rolling stock belonging to the railway undertaking within the national rail network rights-of-way and its technical or administrative control, taxation included. It is specified that the repairs also include the costs of lifting and evacuating equipment, the security of property, whenever these costs would be borne by the railway undertaking.

SNCF Réseau liability also covers damages related to the immobilisation of the railway undertaking's rolling stock. The term "immobilisation" means the following three durations: transportation of the damaged property from the accident site to a close and available qualified repair site, immobilisation in the workshop including the time required for expert analysis, the time taken to handle and repair the goods, which includes the transfer of the repaired goods to the operating site.

This liability also includes any compensation that the railway undertaking must pay to Contractual third parties, namely customers or users of the transport services provided by the railway undertaking (such as passengers or shippers):

- in application and within the limits of the mandatory provisions of the national law or the international law of rail transport;
- in application of jurisdictional or arbitral convictions under which the railway undertaking would be required to compensate third parties on a basis that differs from the aforementioned mandatory provisions, if and only if SNCF Réseau has been able to intervene in the procedure. In addition, SNCF Réseau will be under no obligation to take responsibility for compensation of any kind paid by the railway undertaking to third parties on a commercial basis or as part of an amicable transaction when it has not previously had the possibility of favourably expressing its agreement in writing.

As a result, the railway company shall be wholly responsible for relations with customers or users of its transport services.

In addition, SNCF Réseau shall bear all the costs and fees resulting from the measures taken by the railway undertaking in agreement with SNCF Réseau following an accident or environmental risk for which it has sole responsibility and will guarantee the railway undertaking, unless evidence is provided to demonstrate the disproportionate or unjustified nature of these measures. This also applies to the evacuation of related public spaces (such as railway stations) or neighbouring buildings belonging to any third party, or the subsequent unavailability of these places or buildings. The same is true of the environmental remediation requirements for the concerned sites.

Without prejudice to the above paragraphs, SNCF Réseau shall under no circumstances assume any liability for immaterial damage such as financial or commercial prejudice, loss of customers, commercial inconvenience, increases in costs and overheads, loss of profits, damage to brand image and operating losses that could result from accidents or damage suffered by the railway undertaking.

The fees owed to the railway undertaking by SNCF Réseau are paid on presentation of the corresponding supporting documents.

### ***c) Limits of liability.***

The liability of SNCF Réseau is limited to an amount of fifty (50) million euros excluding tax per event.

The railway undertaking waives the right to request payment from SNCF Réseau for any sum other than that which corresponds to all the indemnities provided for under b) of this article.

### **19.3 Accidents or damage caused by SNCF RÉSEAU or the authorised candidate**

If the authorised candidate and SNCF Réseau were to cause accidents or damage due to their respective activities of requesting or allocating train paths and which are particularly related to the completeness or accuracy of the exchanged information (to the exclusion of any other activity, even railway activities such as loading wagons or rail maintenance), then they will respond under the conditions of common law vis-à-vis third parties other than railway undertakings.

Regarding any kind of damage caused to each other, they will respond under the same conditions and limits as those stipulated between SNCF Réseau and the railway undertakings in points 19.1 and 19.2 of this article.

It is specified that the relations between the railway undertaking and the authorised candidate remain governed by the contracts concluded separately between them.

### **19.4 Prescription**

Except when otherwise provided in international law or in conflicting laws or regulations, actions based on this Article shall be prescribed over a five-year period from the day on which such an event occurred.

They are suspended when SNCF Réseau and the railway undertaking/authorised candidate implement the conciliation procedure provided for in Article 31.1 of these General Terms and Conditions and any other amicable action relating to this event, or when a legal action is in progress.

## **ARTICLE 20 - COMPENSATORY CONSEQUENCES OF CANCELLING ALLOCATED TRAIN PATH- DAYS**

### **20.1 Principles**

SNCF Réseau compensation can only result from the harmful consequences of cancelling a train path-day which was allocated under the conditions provided for in article 14.1.1. The harmful consequences of cancelling an allocated train path in the cases provided for in articles 14.1.2, 14.1.3, 14.1.4 and 14.1.5 do not give rise to any SNCF Réseau compensation.

The cancellation of the train path-days referred to in the preceding paragraph may result in the payment of compensation in a period calculated between the closing date of the timetable and the train traffic D-day.

For the purpose of this clause, the concept of cancellation which confers an entitlement to compensation is defined as the cancellation of an allocated train path which does not allow for train traffic on D-day.

The prejudice suffered by the railway undertaking/authorised candidate must be direct, fully existent and substantial. It is the railway undertaking/authorised candidate's responsibility to prove this and justify the amount thereof.

### **20.1 Bis - Linked train path-days**

In certain circumstances, the deletion by SNCF Réseau of an assigned train path-day (referred to as the "initial train path" in this article) under the conditions provided for in Article 14.1.1, may have the effect of compelling the candidate to cancel a train-path day directly linked to it, as defined below.

A train-path day said to be "linked" to an initial train path is a train path-day:

- consisting of the return trip (origin-destination) of the initial train-path,
- whose time difference compared with the initial train path does not exceed 24 hours (between the arrival of one and the departure of the other).

SNCF Réseau shall indemnify the direct, real and certain damage suffered by the candidate as a result of the deletion of a single linked train path-day for the purposes of this article, where the following conditions are met cumulatively:

- the deletion of the initial train path-day allocated is exclusively attributable to SNCF Réseau because it does not allow traffic on the related train path (see Article 20.1);
- the railway undertaking/candidate has demonstrated objectively and justifiably that the train path for which compensation is requested is actually linked to the initial train path-day deleted. Proof that this train path-day is connected to the initial train-day deleted is done by providing the details from the command tool of the deletion and information allowing the identification of the initial train path-day deleted by SNCF Réseau (by its path number, its day of operating, its Train path Life number).

### **20.2. Exceptions**

The following cases are not compensable:

- ◆ provision of a train path or a possibility of train traffic under the conditions defined in Article 14.1.1;
- ◆ the fact that the railway undertaking/authorised candidate itself or its service providers and partners, or SNCF Réseau becoming aware of the fact, that the railway undertaking clearly did not have the possibility to employ the related train path(s) for its own reasons, or for the authorised candidate for reasons specific to the railway undertaking operating trains on its behalf;
- ◆ the occurrence of a case of force majeure or similar event, as defined in Article 21 of these General Conditions;
- ◆ events related to a third party, except for events by another railway undertaking or other authorised candidate under Article 19 above;
- ◆ interventions on the infrastructure or its operating systems that are necessary to restore normal traffic conditions after an unforeseeable infrastructure failure or any operational event, provided that such interventions do not result from negligence or failure to observe the normal national rail network infrastructure maintenance and operating rules. In this case, SNCF Réseau shall take the necessary measures to minimise the long-term impact of such interventions on the allocated train paths.

### **20.3 Limitation of liability**

For each train path-day taken in isolation, the total amount of compensation which the railway undertaking/authorised candidate can claim as a result of the cancellation is limited to €50 000 excluding taxes.

Any compensation paid by SNCF Réseau for a related train path-day may only be awarded to the train path's sole beneficiary (railway undertaking or authorised candidate), and in the case of train paths made available to a railway undertaking by an authorised candidate it covers the damages suffered by both parties, without any cumulation of compensation.

### **20.4 Complaint handling procedure of the railway undertaking/authorised candidate**

To be admissible, any claim established on the basis of article 20 must be sent to SNCF Réseau in accordance with the procedure described in appendix 7 of the Network Statement within one year from the end of the month in which the related train path-day(s) should have been used.

Failing compliance with this deadline, the application is no longer admissible and any action relating thereto is prescribed. As a result, the railway undertaking/authorised candidate is deemed to have waived all compensatory claims against SNCF Réseau.

In the event of disagreement on SNCF Réseau's position, the railway undertaking/authorised candidate shall have six months from the reception date of this position to initiate the dispute settlement procedure provided for in Article 31 below. Failing this, any action based on this article is prescribed.

In the event of compensation being due from SNCF Réseau, it is paid after a statement is issued by SNCF Réseau stating "Agreed and Signed" which is signed by the railway undertaking/authorised candidate.

Payment of compensation shall represent the single and final settlement for all the prejudice suffered by the railway undertaking/authorised candidate. In return for the payment of such compensation, the railway undertaking/authorised candidate shall renounce all other claims or legal action in connection with the particular occurrence.

## **ARTICLE 20 A - RECIPROCAL INCENTIVE MEASURES**

The parties are bound by the reciprocal incentive measures described in section 6.3 of the Network Statement. These measures do not replace the compensation measures in Article 20 described *above*.

## **ARTICLE 21 - FORCE MAJEURE AND SIMILAR EVENTS**

A case of force majeure shall be any irresistible, unpredictable event outside the control of the parties to the contract, making it impossible for one or the other of them to fulfil its obligations in full or in part.

Moreover, within the meaning of these general conditions, the following events shall be deemed to explicitly constitute events that are similar to cases of force majeure:

- ◆ accidental occurrences (such as fire, explosion, collision with road vehicles, suicides and attempted suicides, collisions with people or animals on railway property, etc.) or acts of wilful or criminal damage (sabotage, vandalism, etc.) ascribable to third parties;
- ◆ natural disasters or weather-related phenomena (frost, snow, heat waves, floods, storms,

etc.) of an intensity and/or on a scale deemed exceptional by comparison with normal conditions in metropolitan France;

- ♦ any strikes among the personnel of the railway and action taken on such occasions. Other than in cases falling into the context of force majeure as recognised by the Cour de cassation (Court of Justice) in its judgement dated 11 January 2000 (appeal no. 97-18215), the railway undertaking and SNCF Réseau will not be allowed to use strikes among the members of their own workforce as an argument to escape from their obligations under this contract;
- ♦ measures taken or demanded by the public authorities for reasons linked with national defence, public or civil safety or by the judicial authorities or the fire and emergency services, and the inconvenience caused by their operations.

The parties to the contract shall incur no liability and shall have no obligation to repair the damage suffered by one or the other because of failure to perform or deficient performance of all or part of their obligations, if such failure to perform or deficient performance is due to the occurrence of an event falling into the category of force majeure or a similar event.

The contractual obligations that cannot be performed because of a case of force majeure or similar event shall therefore be suspended throughout the duration of the said event but only as concerns the individual train paths that are in fact affected by the event.

The party reporting a case of force majeure or a similar event shall be obliged to deploy all the resources at its disposal to limit the scale of the event and its duration. Any party which, by action or omission, has aggravated the consequences of the event shall only be entitled to invoke the event with respect to those effects that would have occurred, if such action or omission had not taken place.

If a case exonerating a party from its obligations lasts for more than one month and if it affects the execution of the contract in its entirety, either party may terminate the contract, without the other party being entitled to compensation of any sort, by sending the other a registered letter with acknowledgement of receipt. Termination shall come into effect on expiry of a period of 15 calendar days from the date on which the said letter was despatched. In the event that the contract is not affected as a whole by the event, the Parties shall come together to determine in good faith which obligations may be considered to be terminated and the concrete conditions governing this termination.

## **ARTICLE 22 - TERMINATION OF THE CONTRACT**

**22.1** In the event of serious or repeated failure on the part of one of the parties to the Contract to meet any one of its essential obligations under the laws and regulations in force or under the terms of the Contract, the other party may serve notice by means of a registered letter with acknowledgement of receipt demanding that an end be put to such failure within a maximum of 15 days and that all measures be deployed to ensure that such behaviour not recur.

If at the end of this period the situation has not been put to rights or if suitable arrangements have not been adopted to this end, the other party may rightfully terminate the Contract, without prejudice to all the damages and interest it may be entitled to claim.

**22.2** The Contract shall be rightfully terminated by SNCF Réseau, in full or in part, by means of a registered letter with acknowledgement of receipt, without prejudice to all the damages and interest or the complete settlement of the sums due it may be entitled to claim and without the railway undertaking/authorised candidate being entitled to compensation, in the following cases:

- ♦ for the railway undertaking, loss of its railway operator's licence or safety certificate;
- ♦ if the railway undertaking/authorised candidate can no longer meet its payments or is placed in the hands of a receiver;
- ♦ pursuant to Article 18 of these General Conditions, failure to pay user fees for the national rail network.

The Contract may be immediately terminated by SNCF Réseau by registered letter with acknowledgement of receipt in the case of a serious breach of obligations provided for in Article 23.2, without prejudice to all the damages and interest it may be entitled to claim and without compensation for the railway undertaking/authorised candidate.

**22.3** The railway undertaking/authorised candidate may also terminate the Contract if it no longer wishes to use the network by means of a registered letter with acknowledgement of receipt, subject to a prior request to cancel train paths allocated by SNCF Réseau, the provision of one month's notice and the complete settlement within this period of the sums due to SNCF Réseau on the date on which such termination shall take effect.

## **CHAPTER V: MISCELLANEOUS PROVISIONS**

### **ARTICLE 23 – LEGAL CONDITIONS GOVERNING THE ACTIVITIES OF THE RAILWAY UNDERTAKING/AUTHORISED CANDIDATE**

#### **23.1 Railway undertaking licence and security certificate**

In order to use the national rail network infrastructure for which it has been allocated train paths (or which have been made available by an authorised candidate), the railway undertaking must hold a railway undertaking licence and a security certificate issued in accordance with the applicable and valid regulations.

The railway undertaking will inform SNCF Réseau as soon as possible of any renewal, suspension or withdrawal, total or partial of the safety certificate or licence, producing the corresponding documents.

The railway undertaking/authorised candidate must also immediately inform SNCF Réseau of any other decision preventing the total or partial pursuit of their professional activity (notably any prohibition pronounced by a criminal or commercial jurisdiction).

#### **23.2 Insurance or equivalent measures**

The railway undertaking/authorised candidate shall undertake to take out and maintain insurance cover or an equivalent measure throughout the duration of the Contract, to meet the requirements specified by its railway operator's licence, in order to cover it against all the financial consequences of its liabilities in relation to SNCF Réseau or third parties in the execution of this contract.

The authorised candidate must submit a document to SNCF Réseau certifying that insurance cover has been obtained, at the latest at the time of signing the Contract for infrastructure use or allocation of train paths on the national rail network infrastructure, and before the start of each timetable for which they have been granted train paths.

This document will state the amount and scope of the financial coverage taken out, including any possible restrictions, and the period covered by the insurance.

The authorised candidate shall notify SNCF Réseau of any significant change in the conditions of the insurance covering it in the contract.

#### **ARTICLE 24 - GENERAL COLLABORATION BETWEEN THE PARTIES**

The parties undertake to fulfil their contractual obligations in good faith and in the most constructive and effective manner possible in order to best serve their respective interests. In particular, the parties undertake to maintain an active and regular collaboration at all times by immediately exchanging all information in their possession and the elements required for implementing the Contract's stipulations.

Each party designates a high-level representative in the Special Conditions who is authorised by their company to take the appropriate decisions at any time, in particular in the event of a specific problem.

#### **ARTICLE 25 - ENTRY INTO FORCE OF NEW LEGISLATIVE OR REGULATORY PROVISIONS**

Laws or regulations that enter into force after the Contract signature date but which are related to the object of the Contract or its conditions of performance are automatically applicable to the Contract as of right (unless transitional provisions are provided in the related text) and in accordance with the terms they include.

As and when necessary, the parties amend the Contract to bring it into compliance with the new provisions in force.

#### **ARTICLE 26 – CONFIDENTIALITY**

Each party undertakes not to disclose the special conditions of the contract or any of the contract's confidential commercial information to a third party without the prior consent of the other party, unless it is obliged to do so by the laws and regulations in force or by a public administration, in particular the Railway Safety Authority or any other authority or jurisdiction entitled to force disclosure, or in conjunction with a conciliation or arbitration procedure.

More particularly, SNCF Réseau shall respect the confidentiality of commercial information which has been communicated by the railway undertaking/authorised candidate in the context of the management of train paths it has been allocated.

#### **ARTICLE 27 – REFERENCES**

SNCF Réseau may quote the name of the railway undertaking/authorised candidate for reference purposes.

The railway undertaking/authorised candidate may reference the use of the SNCF Réseau network in its commercial documentation.

#### **ARTICLE 28 – INVALIDITY**

If one or more of the Contract's stipulations are held to be invalid or declared as such

pursuant to a law, a regulation, or following a decision that has become final pronounced by a competent court, the other stipulations will retain all their strength and enforceability unless they cannot be dissociated.

## **ARTICLE 29 – NON TOLERANCE**

The fact that one of the parties tolerates a situation of complete non-compliance with the stipulations of the Contract for the Use of the National Rail Network Infrastructure cannot under any circumstances have the effect of granting the other party the acquired rights.

Moreover, such a tolerance cannot be interpreted as a waiver by the aggrieved party to assert their rights.

## **ARTICLE 30 – APPLICABLE LAW**

The Contract is governed by French law.

This principle shall apply to both substantive and formal rules.

## **ARTICLE 31 - DISPUTES BETWEEN THE PARTIES**

### **31.1 Settlement of disputes via conciliation or court procedures**

Any disputes arising between the parties in the course of the execution of this contract for the use of a national rail network infrastructure may be resolved through a conciliation process provided that the dispute does not concern the level of the charges for using the infrastructure and without any prejudice for one or the other party having recourse to emergency procedures in order to protect its rights or to appeal to the Railway and Road 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 present guarantees of their 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 is not implemented or fails, the matter will be submitted to the Paris courts who will examine the disputes, notwithstanding multiple defendants or the introduction of third parties, even in the event of urgent referrals or emergency injunctions.

### **31.2 Appeals to the Railway and Road Regulation Authority (ARAFER)**

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