

APPENDIX 3.5.1

OUTLINE OF A TRAIN PATH QUALITY AGREEMENT

BETWEEN SNCF RESEAU AND THE COMPANY XXX

REGARDING FREIGHT TRAFFIC

Between:

SNCF RESEAU, hereinafter referred to as "**SNCF Réseau**", a national public industrial and commercial undertaking, registered at the Trade and Companies Register of Bobigny under No. B 412 280 737, whose registered office is located at 15-17 rue Jean-Philippe Rameau, CS 80001, 93418 La Plaine Saint-Denis Cedex, represented by Arnaud SOHIER, Sales and Marketing Director,

and

XXX, hereinafter referred to as "**XXX**", (*legal form*) with share capital of (*amount in euros*), registered at the Trade and Companies Register of (*Town/City*) under number, whose registered office is located at (*address*), represented by (*surname, first name, position*),

The following has been agreed:

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ARTICLE 1. PURPOSE

The purpose of this contract is to ensure the monitoring of definitive responses to train path-days under examination contained in certain train paths that have been allocated conditionally to XXX and are considered a priority by XXX.

Furthermore, this contract, which supplements the provisions of the Network Statement, defines a compensation mechanism in the event of late definitive responses or no definitive response for the train paths covered, as defined in Article 2.

The performance of the financial provisions of this contract is subject to the signature of the special conditions of the contract for use of the infrastructure/allocation of train paths between SNCF Réseau and XXX.

ARTICLE 2. TRAIN PATHS COVERED BY THIS CONTRACT

This contract exclusively concerns the monitoring of train path-days under examination included in the train paths, listed in the appendix, that are subject to a conditional allocation by SNCF Réseau at the date of the timetable period Y.[*specify date*].

ARTICLE 3. DATE OF EFFECT – DURATION

This contract shall take effect from [*date to be specified*]. It shall terminate on the last day of the Y timetable [*to be specified*], with the exception of the part concerning full settlement of the sums owed by each of the parties.

ARTICLE 4. OBLIGATIONS OF THE PARTIES

4.1 Obligations of SNCF Réseau

SNCF Réseau shall undertake to provide a definitive response for each train path-day under examination at the latest two months (60 days) before the day (d) on which the train is planned to run and to also give XXX, on this date, a positive (allocation) or negative (no allocation) response for this train path-day.

If the response is positive (allocation), SNCF Réseau shall undertake to allocate the train path-day, as far as possible in a timetable period varying by around two hours (tolerances) with regard to the characteristics of the train path as included in the timetable diagram.

If SNCF Réseau allocates a provides a final response before D-60, no penalty shall be due.

If SNCF Réseau allocates a train path-day between D-60 and D-15, penalties for a late "positive" response shall apply (see Article 5.1).

If SNCF Réseau gives a negative response (no allocation) between D-60 and D-15, penalties for a late "negative" response shall apply (see Article 5.2).

If SNCF Réseau does not issue a response before D-14, penalties for "no response" shall apply (see Article 5.3).

4.2 Obligations of XXX

If SNCF Réseau gives a negative response (no allocation) and in order to guarantee the quality of the allocation process, XXX shall undertake not to repeat the same request (identical train path), except when making last minute requests (SDM). One single request applies for all requests within the tolerances set out in Article 4.1 above.

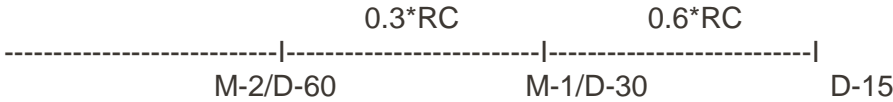
ARTICLE 5. COMPENSATION AS A CONSEQUENCE OF SNCF RÉSEAU'S FAILURE TO MEET ITS OBLIGATIONS

The methods for calculating compensation on the basis of the running charge (RC) are defined in Article 10 of this contract.

5.1 Late "positive" response

If SNCF Réseau gives XXX a late "positive" response, SNCF Réseau shall pay compensation to XXX in the form of penalties according to the rule below:

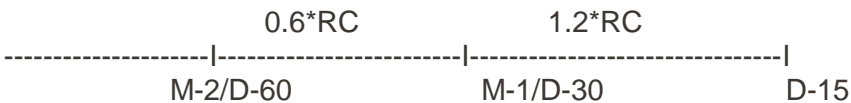
- If the response is given between 60 and 31 days before the day D of the train movement (between D-60 and D-31), SNCF Réseau shall pay compensation equal to the running charge (RC).
- If the response is given between 30 and 15 days before the day D of the train movement (between D-30 and D-15), SNCF Réseau shall pay compensation equal to 0.6 RC.
- If the response is issued after D-14 (inclusive), Article 5.3 shall apply.



5.2 Late "negative" response

If SNCF Réseau, despite the actions taken, gives a late "negative" response (no allocation), SNCF Réseau shall compensate XXX in the form of penalties according to the rule below:

- If the response is given between 60 and 31 days before the day D of the train movement (between D-60 and D-31), SNCF Réseau shall pay compensation equal to 0.6 RC.
- If the response is given between 30 and 15 days before the day D of the train movement (between D-30 and D-15), SNCF Réseau shall pay compensation equal to 1.2 RC.
- If the response is issued after D-14 (inclusive), Article 5.3 shall apply.



Example of the application of this rule: should SNCF Réseau provide a late "negative" response 40 days before day D of the train movement, SNCF Réseau pays compensation equal to 0.6 RC.

5.3 Lack of response

If no response is received by the fourteenth day before the train movement (D-14), SNCF Réseau shall pay compensation equal to 2.4 RC it being specified that the payment of this compensation is definitive so long as it:

- covers a possible "negative" response which may be given between D-14 and D
- is not challenged if a "positive" response is given during this period



5.4 Conditions for monitoring train path-days under examination and calculating compensation

The date used for the calculation of compensation is the date of reply (allocation or non-allocation) for one train path-day, as it figures in the SNCF Réseau information systems ("Train path life" module for GESICO).

Every week starting from the date this contract is signed, SNCF Réseau sends XXX a follow-up table indicating the status (allocated, not allocated or under examination) for all the train path-days covered by this contract.

The person responsible at SNCF Réseau for industrial dialogue works together with the equivalent person at XXX to facilitate the development of solutions in collaboration with the substantial train path unit of the SNCF Réseau Capacity and Train Path Division.

5.5 Limitation of the compensation amount

SNCF Réseau and XXX agree to limit the amount of compensation paid under this contract to (*amount in euros*).

ARTICLE 6. RENUNCIATION

The parties expressly agree that the payment of compensation agreed within the conditions of this contract shall cover any harm suffered by XXX owing to SNCF Réseau not upholding its obligations for the deadlines for the definitive response for train path-days under examination covered by this contract, on a once and final, all-inclusive basis.

Consequently, in return for the payment of such compensation, XXX shall renounce all other claims or legal action in connection with the subject of this contract.

This renunciation shall not apply in the context of modifications or cancellations of allocated train path-days, as these are not subject to this contract.

ARTICLE 7. EXCEPTIONS TO THE OBLIGATIONS OF THE PARTIES

7.1 Force majeure

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

In this context, the follow events in particular constitute force majeure:

- accidental occurrences (such as fire, explosion, collision with road vehicles, 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 network 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 or judicial authorities for reasons linked with national defence, public or civil safety or by 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.

The contractual obligations that cannot be performed because of a case of force majeure 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 shall be obliged to deploy all the resources at its disposition 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 an event exonerating a party from its obligations lasts for more than one month and if it affects the performance 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.

Finally, the two parties may, by common agreement, waive their respective obligations for one or several set train paths, on the condition that this agreement be formally expressed.

7.2 Failure of a manager of neighbouring railway infrastructure

SNCF Réseau cannot be held responsible in the event that it cannot fulfil its obligations due to the manager of neighbouring railway infrastructure. In this case, SNCF Réseau shall not be obliged to pay any compensation to XXX.

ARTICLE 8. DEFINITION OF THE COMPENSATION MONITORING TOOLS

A monthly dashboard will be drawn up by SNCF Réseau to monitor the fulfilment of these obligations for each of the train paths of this contract.

This dashboard will make clear, for each day of the Y timetable, any discrepancies between the actual situation and the obligations undertaken, as well as the compensation to be paid by SNCF Réseau, as a guideline.

Monitoring indicator: measure of the number of handling processes for train path-days under examination for the three following time periods:

- from M-2 before day D on which a train is to run to M-1 before day D on which a train is to run (D-60 to D-31)
- from M-1 before day D on which a train is to run to D-15 before day D on which a train is to run (D-30 to D-15)
- from D-14 before day D on which a train is to run

ARTICLE 9. MANAGEMENT OF THE CONTRACT

The representatives of each party for the management of this contract are Arnaud SOHIER as Sales and Marketing Director of SNCF Réseau and (surname, first name), as (job title) of XXX.

The implementation of this contract will necessarily require close collaboration and enhanced communication between the teams of the two parties: a technical discussion will take place at technical-commercial meetings during which SNCF Réseau will present the results of the indicator defined in Article 8, and a management committee will convene at commercial meetings.

The dashboard defined above (Article 8) will be sent to XXX each month by SNCF Réseau and discussed as part of these meetings, whose particular task it will be to ensure an agreement is achieved so that the invoicing can be prepared.

The reporting elements must be validated at these meetings. In addition to these elements, these meetings are intended to resolve any difficulties arising from the implementation of this contract.

ARTICLE 10. CONDITIONS AND PROCEDURE FOR THE PAYMENT OF COMPENSATION

The amount of any compensation shall be established and invoiced at the end of the year.

The sums due as single and final compensation fall outside the scope of application of VAT and are therefore invoiced excluding tax.

The amounts of the running charge which constitute the basis for the calculation of the penalties are the amounts of the Net RC, published in Appendix 6.2.3 of the Railway Network Statement, calculated from the price per kilometre (PKC) corresponding to the 1st tariff band for light-running train paths and to the 2nd tariff band for loaded train paths, multiplied by the number of kilometres of train path.

Payment by SNCF Réseau of any compensation is dependent on the customer sending an invoice to the following address: SNCF Réseau - Comptabilité fournisseurs – TSA 80813 – 69908 LYON Cedex 20. It is obligatory for this invoice to indicate the total amount of compensation due and the reference, as previously communicated to the customer by SNCF Réseau.

The payment and invoicing dispute conditions are those provided for in the contract for use of the infrastructure/allocation of train paths signed by the parties for the Y timetable.

ARTICLE 11. COMMUNICATIONS

This contract is strictly confidential. SNCF Réseau and XXX undertake not to communicate the existence or content of this contract without the prior written consent of the other party.

All data or information, regardless of its media format, communicated from one party to the other as part of the performance of this contract and in particular information that has enabled the development of quality indicators, even including the indicators themselves, is bound by an obligation of confidentiality. The parties shall take all special measures to ensure the protection of the documents and media containing this information or data, whatever nature or format.

Each of the parties is particularly prohibited from any written or verbal communication of documents or passing them on to third parties without the prior written consent of the other party.

The obligations resulting from this article do not apply if the recipient of the information or data is forced to communicate the said data or information by the laws and regulations in force or by a public administration, in particular the Railway Safety Authority (EPSF), 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 the information of a commercial nature transmitted to it by XXX.

ARTICLE 12. DISPUTES BETWEEN THE PARTIES

12.1 Settlement of disputes via conciliation or court procedures

Any disputes arising between the parties in the course of the execution of this contract may be resolved through a conciliation process without any prejudice for one or the other party having recourse to emergency procedures in order to protect its rights or to take primary control of the Railway and Road Regulation Authority (ARAFER).

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 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.

12.2 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 and Road Regulation Authority (ARAFER).

ARTICLE 13. LIST OF APPENDICES

- The list of train paths (containing train path-days under examination) that fall within the scope of the contract.

Made in two copies, at _____, on _____.

For XXX:
(*surname, first name*)
(*Job title*)

For SNCF Réseau:
Arnaud SOHIER
Sales & Marketing Director

APPENDIX 1: LIST OF TRAIN PATHS (CONTAINING TRAIN PATH-DAYS UNDER EXAMINATION) THAT FALL WITHIN THE SCOPE OF THE CONTRACT

Train path life number	Train path number	Origin	Destination