

Modifications: M3B, 16

## **General Terms and Conditions of the Network Access Contract**

**2014 - 2015**

## General Terms and Conditions of the Network Access Contract

### Chapter I.

#### Preamble

With regard to the allocation of capacity of the open access railway network, VPE Rail Capacity Allocation Office (hereafter VPE) shall determine in its notice the infrastructure conditions of the open access railway network in accordance with the provisions of the Network Statement (hereafter NS). This notice of VPE generates an obligation to the infrastructure manager for contracting as regards the allocation of the capacity of the open access railway infrastructure. Accordingly, Infrastructure Business Units of MÁV Zrt and GYSEV Zrt are obliged to sign with the applicant authorised to use the open access railway network and accessories a network access contract in conformity with the content of the notice of VPE.

General terms and conditions for the use of the open access railway infrastructure are laid down in this General Terms and Conditions of Contract.

In issues not regulated by the General Terms and Conditions of the Network Access Contract of the Network Statement and by the Network Access Contract, regulations of Act V of 2013 on Civil Law (hereafter Civil Code) shall apply.

#### 1.§ Scope of the General Terms and Conditions

General Terms and Conditions of the Network Access Contract (hereafter GTC) is part of each Network Access Contract on the use of the railway track and accessories (hereafter railway infrastructure) used by Railway Undertakings. Parties may diverge in the Network Access Contract from detailed conditions for the use of the open access railway infrastructure regulated by the Network Statement and from the provisions of this GTC forming a part of the Network Statement in a sense and to a degree preliminary approved by the rail regulatory body.

#### § 2 Definitions

To the interpretations and application of this GTC, definitions set out in the Network Statement (Annex 1.10) shall adequately apply.

#### § 3 Content and nature of the Network Access Contract

1. By virtue of the notice of VPE on the allocation of rail capacity, infrastructure manager is obliged to conclude with the Railway Undertaking in accordance with the content of the notice. Network Access Contract shall be concluded in compliance with the provisions of this GTC, and GTC shall form the part of this Contract concluded in the above mentioned way even in absence of any further stipulation or provision.
2. Network Access Contract shall be concluded in writing.

3. In order to ensure rail infrastructure capacity, VPE and Railway Undertaking may conclude a framework agreement for a period of 5 years - or in exceptional cases for a longer period- (Railway Act § 57) which must be taken into consideration by the parties when they conclude the Network Access Contract.
4. The Performance Regime published separate forms a part of the General Terms and Conditions of the Infrastructure Managers. Accordingly, the conclusion of the Network Access Contract between the parties establishes a legal relationship between them also from the Performance Regime's point of view.

#### § 4. Conditions for modification of the Network Access Contract

Parties may modify the Network Access Contract only in writing in mutual agreement with proper signatures.

Changes in the data of the register of the parties, concerning in particular headquarters, representatives, bank account numbers and changes in data of organisations and contact persons exercising activities during contracting and performance, do not count as modification of the contract. Party concerned by changes shall notify the other party about the changes within 10 days after the changes occurred (have been registered). Should the changes be effective by the introduction of changes into the register of firms, notification shall happen within 10 days from the introduction of changes into the register of firms.

Parties may not modify contractual provisions covered by the content of the notice of VPE on infrastructure capacity allocation.

#### § 5 Applicable rules and regulations

Parties are obliged to observe any international and Hungarian rules applicable, as well as any instruction, rules and regulations listed in the Network Statement regarding railway traffic.

## ***Chapter II***

### **General obligation for providing information and commercial confidentiality**

#### **§ 6. Obligation of parties to inform each other**

1. Contractual parties are obliged to immediately inform each other of any important facts, circumstances, data relating to the establishment or execution of the Network Access Contract, which may affect the establishment or execution of the contract or any issues, circumstances with regard to safety.

Special conditions of obligation to provide information are set out in Chapter IV to this GTC.

2. Parties shall pay each other compensation for damage arisen from default of providing information.

#### **§ 7. Harmonisation of measures to prevent wilful damage to railway operation**

Contracting parties shall oblige themselves to harmonize measures to be taken in order to prevent wilful damage to railway operation.

#### **§ 8. Contact person**

1. Contracting parties shall be bound to name in the Network Access Contract a contact person or one or more persons or organisations who/which are mandated to make decisions on behalf of the contracting parties within the shortest possible time particularly in the case of disturbances in traffic.
2. Communication with regard to the Network Access Contract shall at any case be performed in Hungarian language.

#### **§ 9 Duty of commercial confidentiality**

1. Contracting parties shall undertake to confidentially handle all facts, data, information, documents which are qualified as confidential by the other party.
2. Contracting parties shall be bound not to give out, publish, or in any other way to make available to third party without the preliminary approval of the other party in writing the Network Access Contract or such part of that Contract, or data, information, documents relating to the Contract which are qualified by the other party as confidential. The contracting party who obtains confidential information from the other party within the framework of negotiations or in the course of fulfilment of the Contract may use the information only for the purpose for which it was provided, so in particular for the purpose of exercising rights and fulfilling obligations arisen from the Network Access Contract. This obligation shall still exist after the

termination of the Network Access Contract, irrespective of the reason for the termination.

3. Without prejudice to confidentiality, both parties are entitled to publish, issue such information obtained regarding the Network Access Contract, the publication, issuing of which is their obligation by the virtue of legal rules, inclusive of particularly the provisions of Act CXII of 2011 on right of self-determination in information and the freedom of information, or by the virtue of decisions of the court or authorities.
4. Parties shall be liable for damage caused by them by breaking the duty of confidentiality.

### Chapter III

#### Preconditions of Network Access Contract

##### § 10 Preconditions for concluding the Network Access Contract with regard to the Railway Undertaking:

- operational licence,
- safety certificate/additional safety certificate,
- notice of VPE on allocation of train path.

##### § 11 Conditions for using the train path:

- train path granted by VPE,
- conclusion of the Network Access Contract.

##### § 12 Specification of the infrastructure used

Specification of the infrastructure to be used by the Railway Undertaking can be found in the Network Statement. Any other information with regard to the railway infrastructure and the use of it shall be provided to the Railway Undertaking by the infrastructure managing company.

##### § 13 Quality and availability of the railway infrastructure

Infrastructure manager shall ensure that under normal operational conditions the railway infrastructure is in working order and suitable for the operation of train traffic covered by the Contract, and is available in accordance with parameters as provided for by the Network Statement or the Network Access Contract.

##### § 14 Use of the railway infrastructure

Railway Undertaking is obliged to use the railway infrastructure properly during the train run, to comply with prescriptions set out in the Network Statement and in the Network Access Contract regarding the use of the infrastructure, as well as to observe regulations of the infrastructure manager relating to traffic safety and traffic control, to provide the infrastructure manager with all required information set out in the Network Access Contract regarding used vehicles and traffic.

Parties shall make agreements required to the safe traffic, if necessary within the framework of the Network Access Contract, and shall also herewith regulate further obligations of railway undertakings in relation to the safe traffic.

### § 15 Conditions for running of vehicles on the railway infrastructure

1. Railway Undertaking may only run vehicles on the railway infrastructure used which are licensed by competent authorities and comply with specific requirements stipulated for certain railway infrastructure (e.g. high speed traffic).
2. Railway vehicles licensed to run also in international traffic shall be supplied with such markings which unambiguously show that the vehicle concerned is also authorised to run in international traffic.
3. On request of the infrastructure manager, Railway Undertaking is obliged to provide evidence of operational licence or any other appropriate certificate. Infrastructure Manager is entitled to check the existence of authority permits of vehicles.
4. Railway Undertaking shall ensure to keep its vehicles in excellent state complying with normal regulations in force in the railway traffic.
5. Other vehicles than licensed are not allowed to run on the railway infrastructure.

### § 16 Instructions

Infrastructure manager shall publish in electronic form on its website instructions required to railway operation and set out in point 2.4.1 of the Network Statement. Infrastructure manager shall directly hand over to Railway Undertakings or staff of the train instructions for the daily operative operation required to run traffic safely in a way as it is regulated by instructions.

## Chapter IV

### Specific rules of obligation to provide information

#### § 17 Information provided by the infrastructure manager operating the railway network

1. As regards changes concerning terms and conditions of access to the network, Infrastructure manager operating the railway network shall be bound to inform Railway Undertaking at least about data as follows, and at the same time, if necessary, shall be also obliged to initiate the modification of the Network Access Contract:
  - a) 48 hours before the scheduled departure of the train at the latest information in writing about changes in the state of the railway infrastructure to be used by the Railway Undertaking, in particular changes affecting the safety of traffic and traffic control (construction works, provisional restrictions of speed, etc.),
  - b) on request of the Railway Undertaking, Information about the position of the train,
  - c) Infrastructure Manager shall immediately inform Railway Undertaking about non-scheduled but urgent works affecting but not hindering access to the network. Infrastructure Manager is obliged to carry out these works in such a way that the influence of such works on Railway Undertakings will be kept at the minimum.
2. Infrastructure manager is not obliged to inform Railway Undertaking of changes not affecting the network access.
3. Obligation of the infrastructure manager laid down in § 17 for providing information does not affect its obligations set out in legal rules and in the Network Statement to ensure train runs in accordance with the allocated train paths.

#### § 18 Obligation of Railway Undertaking to provide information about train operation

1. Railway Undertaking shall be obliged to provide information to the infrastructure manager at least 30 minutes (in the case of exceptional consignments or dangerous goods 1 hour) before the departure of the train as follows:
  - a) composition of train (type of the traction unit, gross tonnage of wagon, braked weight of wagon, number of wagons, length of train, braked weight of train, type of passenger cars),
  - b) dangerous goods in compliance with RID or Annex 2 of SZMGSZ Agreement,
  - c) exceptional limitations affecting vehicles or load,
  - d) facts causing delays (speed limits depending on braked weight percentage, speed limits of traction unit),

e) exceptional consignments.

2. Specific obligations for providing information concerning passenger transport

30 minutes (in the case of deviation from SZVÖR 1 hour) before the departure of the train, Railway Undertaking shall be obliged to provide information to the infrastructure manager in writing arisen in its sphere of interest and concerning also passengers, which the infrastructure manager shall transmit to the passengers via loud speaker installation or in lack of this in any other way.

3. Specific obligations for providing information concerning freight transport

In freight transport Railway Undertaking shall provide information about wagons used in freight traffic as follows:

- a) sequence of wagons in the train at the time of departure,
- b) origin and destination station,
- c) gross tonnage, tare weight, braked weight pro wagons,
- d) length of wagons,
- e) speed limits and dangerous goods.

4. Should Railway Undertaking run rolling stock not bearing RIC or RIV marks, Railway Undertaking shall apply at the infrastructure manager for approval for exceptional consignment.

Should Railway Undertaking infringe the obligation for providing information set out in § 18, infrastructure manager is entitled to refuse the running of train applied for by the Railway Undertaking.

### § 19 Representation of the Railway Undertaking in train

Railway Undertaking shall be bound to ensure staff in every train that may receive information from the infrastructure manager and are entitled to decide in operational issues on behalf of the Railway Undertaking.

### § 20 Traffic disturbances

Traffic disturbances mean those unforeseeable events, which influence safety, punctuality and the smooth operation of traffic, such as accidents, demonstrations, unforeseeable effects of environmental circumstances, technical failure of railway infrastructure and rolling stock, and other unforeseeable incidents relating to the operation of railway infrastructure and rolling stock.

Parties shall be mutually obliged to inform each other in a justifiable way of every abnormality, modifications to the timetable, disturbances and every other event, which may affect safety, punctuality and running of transport according to plan.

Railway Undertaking shall immediately inform the infrastructure manager of disturbances occurred during operation even if they probable will not directly influence safety and the planned operational performances.

#### § 21 Measures to restore the normal situation

1. In the event of disturbance parties shall do their utmost to restore the normal operating conditions according to timetable.

2. In the event of disturbances infrastructure manager shall apply rules in force to control traffic. Railway Undertaking shall also be informed of these rules, or on its request, infrastructure manager shall make the relevant rules available.

#### § 22 Contribution of the Railway Undertaking to eliminate disturbances

On request of the infrastructure manager and against payment of compensation, Railway Undertaking is obliged to contribute to eliminate disturbances by making its traction unit or staff available or in any other way, even if other Railway Undertakings are also affected by the incident.

#### § 23 Obligation for providing information in the event of causing damage to the environment

1. In the event of causing damage to the environment relating to railway operation, explosions, fire, or in other events risky to the railway operation, Railway Undertaking is obliged to immediately inform infrastructure manager of the event even if they probably will not directly influence the planned operational performances.
2. The fulfilment of the aforementioned obligation for providing information does not relieve Railway Undertaking from the fulfilment of other obligations prescribed by legal rules in the event of damage caused to the environment.

## Chapter V

### Liability for damage caused while using the open access railway infrastructure and for damage arisen through the breach of the contract

#### § 24 General rules of liability of parties

Rules of this chapter regulate liability of contracting parties for damage caused during the use of the railway infrastructure.

#### § 25 General rules of liability of the infrastructure manager

Infrastructure manager shall be liable in accordance with rules defined by § 6:142 and 6:519 of the Civil Code for all damage (depending on the damage caused by breach of contract or by tort) caused by him to Railway Undertakings when making the railway infrastructure available for use and providing services, or by breaking legal rules, prescriptions of authorities, technical rules relating to the operation of the railway infrastructure, or by violating the provisions contained by the network access contract and damage arose in connection with a non-hazardous operational liability.

#### § 26 Liability of the infrastructure manager for damage resulting from its hazardous operational activity

Infrastructure manager shall particularly but not exclusively be liable for damage in accordance with rules for compensation of damage resulting from highly risky activity laid down in § 6:535 of Civil Code in cases if causality exists between the damage and the dangerous operational activity of the infrastructure manager or between the damage and the running of operational (working) trains operated by the infrastructure manager.

Rules for the compensation of damage related to the activity of hazardous operation are specified in details by § 28.

#### § 27 General rules of liability of the Railway Undertaking

Railway Undertaking shall be liable in accordance with rules defined by § 6:142 and 6:519 of the Civil Code for all damage (depending on the damage caused by breach of contract or by tort) caused by him to the infrastructure manager in connection with the usage of the railway infrastructure and services or by breaking legal rules, prescriptions of authorities, vocational rules relating to the railway transportation, or by violating the provisions contained by the network access contract, or when using the railway infrastructure and damage arose in connection with a non-hazardous operational liability.

Railway Undertaking is liable for damage belonging to the hazardous operation liability area and caused by Railway Undertaking during the use of the railway

infrastructure, in accordance with rules for compensation of damage resulting from highly risky activity laid down in § 6:535 of Civil Code.

Rules for the compensation of damage resulting from activity of hazardous operation are specified in details by § 28.

#### § 28 Liability for damage resulting from activities of hazardous operation

If the damage is resulted from an activity of highly risky operation, the party causing damage shall be obliged to compensate damage resulted from this activity. Party causing damage shall be relieved of the liability if he can prove that the damage was caused by such an inevitable reason which was beyond the scope of activities of high risk.

Damage shall not be compensated if it was caused by behaviour imputable to the party who suffered damage.

If damage was caused by more than one Railway Undertaking, or Railway Undertaking and the infrastructure manager caused it commonly due to their activity of high risk, damage shall be paid to each other in proportion to their imputability.

If damage cannot be imputed to either of the parties, damage shall be compensated by the party whose sphere of activity of high risk resulted in abnormality causing damage.

If damage was caused to each other by abnormality occurred in the sphere of activity of high risk of both parties or if such abnormality cannot be attributed to any of the parties, in lack of imputation, both parties shall bear their own damage.

Provisions implied in this § shall be applied to the relation between parties in the case if they cause damage commonly by carrying out an activity of high risk and by bearing their own damage in lack of imputation and abnormality.

#### § 29 Liability of contracting parties in case of damage or operation disturbances resulted from failing to fulfil information obligations

1. Infrastructure manager shall be liable for damage caused by him provably to the Railway Undertaking by a non-adequate fulfilling or by failing to fulfil general and specific obligation for providing information defined in details in Chapter II and Chapter IV of this GTC.
2. Railway Undertaking shall be liable for damage caused by him provably to the infrastructure manager by a non-adequate fulfilling or by failing to fulfil general and specific obligation for providing information defined in details in Chapter II and Chapter IV of this GTC.
3. Should contracting parties be commonly liable for a non-adequate fulfilling or for failing to fulfil certain obligations, damage shall be born in proportion to their liabilities. If the degree of liability cannot be defined,

both Infrastructure Manager and Railway Undertaking shall bear their own damage.

#### § 30 Way of compensation in the event of bodily injuries

Regarding bodily injuries, parties try to settle the compensation of any damage in an out-of-court settlement based on the claim backed with documents of the injured party as soon as possible after the claim has been announced.

Initiation of a discussion or an ongoing discussion for settlement does not limit the right of the injured party to bring its claim to court.

#### § 31 Contribution of party suffered losses

If damage or a part of damage was caused by the contributory negligence of the party suffered losses parties may be totally or partly relieved of liability in accordance with the provisions of relevant legal rules.

#### § 32 Currency of compensation

Compensation shall be defined and paid in HUF.

#### § 33 Liability in the event of force majeure

Parties shall be relieved of legal consequences of breach of the contract if the default in fulfilling obligation can be attributed to force majeure.

Force majeure means any extraordinary, unforeseeable fact, circumstance which is out of the interest sphere of the party being in breach of contract and is unavoidable, so, in particular natural disasters, events of war, movement of military troops ordered for international or national safety reasons, nationwide strike.

Parties are obliged to inform each other of force majeure by telegram or in registered letter. The party whose obligation is to provide information shall be liable for damage caused by failing to provide information.

The existence of force majeure shall be proved by a legal statement involved in a private deed of demonstrative force.

#### § 34 Liability for auxiliaries

Infrastructure manager and Railway Undertaking are liable for damage caused by their auxiliaries participating in the fulfilment of their obligations and employed by them as if damage had been caused by themselves.

## Chapter VI

### Network access charges and terms and conditions for paying charges

#### § 35 Network Access charge

Principle for charging of network access fees shall be published in the Charging Methodology of VPE on its website, while tariffs can be seen in the Network Statement.

#### § 36 Terms and conditions of payment

1. Unless otherwise agreed by the affected parties in the Network Access Contract, network access charges shall be paid in HUF.
2. Payment of charges shall be on the basis of acknowledged invoice.
3. Parties shall define the deadline for payment in the Network Access Contract on the condition that it may not exceed 30 days.
4. In the event of late payment, infrastructure manager is entitled to levy a late interest as set out in the Civil Code.

Infrastructure Manager qualifies the network access charging demands based on the required rail network services necessary to provide public service (hereinafter public service demand) and the demands of network access charges based on the required rail network services which are not providing public service (hereinafter non-public service demand). Demands are qualified as they are determined in points A) and B).

If the Railway Undertaking uses rail network services providing public service and non-public service as well, the demands for network access charges to be paid by the Railway Undertaking should be qualified differently depending on the type of demand.

During the qualification only compliance with payment obligations originating from Network Access Contract should be examined by the Infrastructure Manager. Regarding services provided by the infrastructure managers in the framework of Network Access Contract, the infrastructure manager during the qualification examines whether the client had meet conditions for payment in case of invoices and partial invoices on schedule, however, invoices related to cases of damage originating from this contract do not come under the scope of the qualification process.

To define the type of the demand in case of invoices of ensuring of fuel Railway Undertaking using rail network services to provide public service as well shall declare towards the Infrastructure Manager until the 10<sup>th</sup> day of the current month

following the actual month the quantity of the fuel used to operate trains providing public service.

A) Qualification of network access charging demands based on the use of rail network services necessary to provide public service:

1) Public service demands against Railway Undertaking are qualified as new demands, if the Railway Undertaking had not been in a Network Access Contractual relationship with the Infrastructure Manager before, therefore the Infrastructure Manager does not have direct data of the Railway Undertaking's payment ability.

During this period the accounting and invoicing occur on the basis of the conditions for good demands.

After the 90<sup>th</sup> day following the signing of the first Network Access Contract the public service demands against the Railway Undertaking are ranked as good demands or risky demands. Railway Undertaking gets written information as long as public service demands against the Railway Undertaking are ranked as risky demands.

2) Public service demands against Railway Undertaking are qualified as good demands if within the 90-day period from any examination date after their compliance with payment obligations has got only once into default in paying that exceeds 5 days concerning the public service demands.

3) Public service demands against Railway Undertaking are qualified as risky demands if within the 90-day period from any examination date after their compliance with payment obligations has got at least twice into default in paying that exceeds 5 days concerning the public service demands.

In case of payment default exceeding 5 days, public service demands against Railway Undertaking will be qualified as risky demands even if the Railway Undertaking settled its invoices later.

Infrastructure Manager does not take into account those numbers of default days, which are within the 5<sup>th</sup> day of the invoicing and after the proved receipt day of payment maturity of the Railway Undertaking.

Infrastructure Manager informs the Railway Undertaking in writing about the requalifying of public demands into risky demands. The Railway Undertaking could initiate a payment rescheduling agreement with the Infrastructure Manager; on the other hand this agreement does not modify the qualification of the demand's origin payment maturities and the deadline for payment arising for future demands.

State refund of expenses for the operation of trains providing public service is ensured according to the concerned year's Finances Act and regulation of distraint. In addition, the statement of ensuring state refund of expenses of the Ministry who ordered public utility is qualified as security for risky public service demands' payment. This is valid if the sum of the risky public service demand against the Railway Undertaking does not exceed the still not granted sum of state refund of

expenses laid down in Finances Act. In this case invoices for network access charges issued for using rail network services to provide public service, invoicing process consistent with good demands has to be applied.

The Infrastructure Manager practices equity in case of determining the requalifying of risky demand if the common sum of the invoices affected with default does not reach 1% of the public service turnover of the Railway Undertaking fixed in the signed accomplishment document of the last half-year but at most the sum of 50.000 HUF. If the public service demand exceeds this sum, the demand should be qualified as risky demand.

Railway Undertaking who owns risky public service demand could ask for the re-examination of the public service demand's status against him and the public service demands' rating as good demands, if

1. within 90 days after being classified as risky demand the Railway Undertaking has got only once into default in paying that exceeds 5 days concerning the public service demands, or
2. Railway Undertaking cannot meet the requirement described in point 1 but within 180 days following the 90<sup>th</sup> day owning risky demand classification, the Railway Undertaking has got only once into default in paying that exceeds 5 days concerning the public service demands, or
3. Railway Undertaking cannot meet requirement described in point 2 but within any consecutive 365 days following the 270<sup>th</sup> day owning risky demand classification, the Railway Undertaking has got only once into default in paying that exceeds 5 days concerning the public service demands.

The current requalifying rules can be applied to Railway Undertakings who have public service demand against them classified as risky demand on 14 December, 2014 or the requalifying process took place after this date but under the scope of the current general terms and conditions. In case of Railway Undertakings who have public service demand against them classified as risky on 14 December 2014, the calculation of 90 and 270 days mentioned above starts from 14 December 2014.

Infrastructure Manager is obliged to revise the Railway Undertaking's request for re-examination and inform the Railway Undertaking about the result in writing within 15 working days after receiving the request. During the judgement of the request besides the payment discipline of the Railway Undertaking, Infrastructure Manager (MÁV Zrt) shall examine the last documents submitted by the Railway Undertaking specified in point C). If the Railway Undertaking meets all the requirements, the public service demands against him will be ranked as good demands.

- 4) Public service demands against Railway Undertakings are qualified as demands that need particular attention, if:
  - a. the still not granted sum of state refund of expenses is less than the sum of the demand against the Railway Undertaking, or
  - b. Railway Undertaking had not fulfilled its public service payment obligation originating from its Network Access Contracts until the fixed deadline stated in multiple written notice, or

- c. Railway Undertaking undertook prepayment and based on the above mentioned points it did not fulfil it, or
- d. the Railway Undertaking does not comply with the agreement regarding part-payment signed between the Railway Undertaking and the Infrastructure Manager, or
- e. against the Railway Undertaking liquidation, forced cancellation, bankruptcy proceedings or last settlement starts.

In respect of public utility type of railway passenger transport service, which is the object of public service contract, the operation of public service trains could be suspended only if the Railway Undertaking in case of demand against him, which needs particular attention, is not able to verify that payment default that occurred by the different temporal granting of state refund of expenses from the deadline for payment and/or the necessary security exceeds the still not granted sum of state refund of expenses and also if against the Railway Undertaking liquidation, forced cancellation, bankruptcy proceedings or last settlement starts.

The Infrastructure Manager and Railway Undertaking quarterly, until the 15<sup>th</sup> day after the current quarter harmonize the public service demand payment's status against the Railway Undertaking and also the actual sum of refund of expenses, which serve as security.

B) Qualification of network access charging demands based on the use of rail network services necessary to provide non-public service:

1) Non-public service demands against Railway Undertaking are qualified as new demands, if the Railway Undertaking had not been in a Network Access Contractual relationship with the Infrastructure Manager before, therefore the Infrastructure Manager does not have direct data of the Railway Undertaking's payment ability.

During this period the accounting and invoicing occur on the basis of the conditions for good demands.

After the 90<sup>th</sup> day following the first signing of the Network Access Contract the non-public service demands against the Railway Undertaking are ranked as good demands or risky demands. Railway Undertaking gets written information as long as public service demands against the Railway Undertaking are ranked as risky demands.

2) Non-public service demands against Railway Undertaking are qualified as good demands if within the 90-day period from any examination date after their compliance with payment obligations has got only once into default in paying that exceeds 5 days concerning the non-public service demands.

3) Non-public service demands against Railway Undertaking are qualified as risky demands if within the 90-day period from any examination date after their compliance with payment obligations has got at least twice into default in paying that exceeds 5 days concerning the non-public service demands.

In case of payment default exceeding 5 days, demands against Railway Undertaking are qualified as risky demands even if the Railway Undertaking settled its invoices later.

Infrastructure Manager does not take into account those numbers of default days, which are within the 5<sup>th</sup> day of the invoicing and after the proved receipt day of payment maturity of the Railway Undertaking.

Infrastructure Manager informs the Railway Undertaking in writing about the requalifying of public demands into risky demands. The Railway Undertaking can choose between providing payment security and having possibility for prepayment. He should declare his choice and the form of payment security in writing within 10 working days after the receipt of notice.

Should the Railway Undertaking fail to make this statement on schedule, or in the case of choosing the possibility of the payment guarantee he fails to provide the payment guarantee within 5 working days after making statement about the provision of a payment guarantee, rules of payment in advance laid down in the network access contract shall automatically apply.

- a) If Railway Undertaking chooses the possibility of payment guarantee, the total sum of any of the below listed guarantees must continuously figure out a value originated from the use of rail network services providing non-public service projected to 2.5 months calculated from the average performance - inclusive of VAT - related to the 2<sup>nd</sup> and 3<sup>rd</sup> months prior to the 25<sup>th</sup> day of the month before the actual month under review including electric traction current as well. If the sum of payment guarantee does not reach the sum calculated in this paragraph for any reason and at any time and the Railway Undertaking fails to raise it or the period of validity expires and the Railway Undertaking fails to extend it, rules of payment in advance shall be applied to non-public service demands against the Railway Undertaking.

If the Railway Undertaking chooses the possibility of payment guarantee, it is obliged to provide one of the below mentioned payment guarantees to the Infrastructure Manager as follows:

- i) Bank guarantee

Bank guaranty shall be handed in to the Infrastructure Manager. Text of the bank guarantee must comprise the followings:

- The issuing bank irrevocably undertakes that - without examining the fundamental relationship - it pays the sum of the bank guarantee to the beneficiary within 5 bank working days after receiving by the beneficiary the first notice.

Bank guarantee must come from

- a lending institution holding a public rating of investment grade (BBB or Baa3 or higher ratings) issued by at least one of the credit rating agencies Moody's, Standard&Poor's, Fitch. The lending institution must hold operational licence in any member states of the EU or OECD, or from a

subsidiary or branch of this lending institution with the majority ownership of this institution,

- or from a lending institution holding a rating of non-investment grade and having a significant market share in Hungary (its balance-sheet total of the previous closed business year exceed HUF 250 billion).

ii) Security deposit

Railway Undertaking shall pay a security deposit to the Infrastructure Manager to a bank account assigned by the Infrastructure Manager.

iii) Bond issued on the basis of an insurance contract including cash surety

Bonds issued by the insurance company shall arise from

- an insurance company holding a public rating of investment grade (BBB or Baa3 or higher ratings) issued by at least one of the credit rating agencies Moody's, Standard&Poor's, Fitch. The insurance company must hold operational licence in any member states of the EU or OECD,
- or from a subsidiary of the insurance company with the majority ownership of this company,
- or from a branch of the insurance company,
- or from a subsidiary or branch of the insurance company in majority ownership of a bank holding a public rating of investment grade (BBB or Baa3 or higher ratings) issued by at least one of the credit rating agencies Moody's, Standard&Poor's, Fitch, also holding operational licence in the EU or in any member states of OECD,

iv) guarantee of claim insurance of a credit insurance company undertaken by the insurance company must arise from

- credit insurance company holding a public rating of investment grade (BBB or Baa3 or higher ratings) issued by at least one of the credit rating agencies Moody's, Standard&Poor's, Fitch. The credit insurance company must hold operational licence in the EU or in any member states of OECD
- or from a subsidiary of the credit insurance company with the majority ownership of this company,
- or from a branch of the credit insurance company
- or from a subsidiary or branch of the credit insurance company in majority ownership of a bank holding a public rating of investment grade (BBB or Baa3 or higher ratings) issued by at least one of the credit rating agencies Moody's, Standard&Poor's, Fitch, also holding operational licence in the EU or in any member states of OECD,

In case of default in paying, Infrastructure Manager is entitled to withdraw without delay from the payment guarantee the sum equal to the charge failed to be paid by the Railway Undertaking for the network access.

- b) payment in advance: should the Railway Undertaking choose none of the payment guarantees listed under point a), Railway Undertaking is obliged to pay in advance the charges of using rail network services to provide non-

public service. In case of prepayment fuel is an exception, daily invoicing should be applied.

The indebted Railway Undertaking could initiate a payment rescheduling agreement with the Infrastructure Manager; on the other hand this agreement does not modify the qualification of the demand's origin payment maturities and the deadline for payment arising for future demands.

Infrastructure Manager shall treat fairly the qualification of a risky demand if the total sum of invoices affected by late payment is not as high as 1% of turnover of the Railway Undertaking providing non-public services, defined in the signed performance acknowledgement document of the previous half year, or not as high as 50 000 HUF. Should the demand exceeds this sum of money it must be rated as a risky demand.

Railway Undertaking rated with a risky non-public service demand may request the review of its qualification with non-public service demands against him and may also request the changing of this status, if:

1. within 90 days after being classified as risky demand the Railway Undertaking has got only once into default in paying that exceeds 5 days concerning the non-public service demands, or
2. Railway Undertaking cannot meet the requirement described in point 1 but within 180 days following the 90<sup>th</sup> day owning risky demand classification, the Railway Undertaking has got only once into default in paying that exceeds 5 days concerning the non-public service demands, or
3. Railway Undertaking cannot meet requirement described in point 2 but within any consecutive 365 days following the 270<sup>th</sup> day owning risky demand classification, the Railway Undertaking has got only once into default in paying that exceeds 5 days concerning the non-public service demands.

The current requalifying rules can be applied to Railway Undertakings who have non-public service demand against them classified as risky demand on 14 December, 2014 or the requalifying process took place after this date but under the scope of the current general terms and conditions. In case of Railway Undertakings who have non-public service demand against them classified as risky on 14 December 2014, the calculation of 90 and 270 days mentioned above starts from 14 December 2014.

Infrastructure manager is obliged to review the request of the Railway Undertaking and shall notify in writing the Railway Undertaking of the result of the review within 15 working days after receiving the request. When judging the request, infrastructure manager (MÁV Zrt) shall examine besides the payment discipline also the last documents submitted by the Railway Undertaking specified in point C). If Railway Undertaking corresponds to all requirements, non-public service demands against him will be rated again - on request - as good demands.

#### 4) Demands against Railway Undertakings need particular attention, if:

- Railway Undertaking had not fulfilled its non-public service payment obligation originating from Network Access Contracts until the fixed deadline stated in multiple written notice, or
- he undertook prepayment and based on the above mentioned points he did not fulfil it, or
- the Railway Undertaking does not comply with the agreement regarding part-payment signed between the Railway Undertaking and the Infrastructure Manager, or
- against the Railway Undertaking liquidation, forced cancellation, bankruptcy proceedings or last settlement starts.

In case of demand, which needs particular attention the operation of trains providing non-public service will be suspended. Further conditions are in chapter VIII.

- C) MÁV Zrt as infrastructure manager, besides the above mentioned record, makes client qualification; he examines all Railway Undertakings' payment ability and for this requires solvency information from the client as follows:
- annual report for the last closed business year, prepared in compliance with the provisions of the law of accountancy, equipped with an auditor's clause; this annual report must be submitted to the Infrastructure Manager until 15 July of the year following the actual year,
  - a statement from the representative of the company who is authorised to sign if the Railway Undertaking has any overdue public debts or acknowledged overdue debt that expired more than 60 calendar days. The statement must be submitted to the Infrastructure Manager quarterly until the 15<sup>th</sup> day of the month following the actual quarter.

Besides this, from those who recently signed a Network Access Contract, Infrastructure Manager (MÁV Zrt) requires that Railway Undertakings should make the following documents available until the day at the latest when the network access contract enters into force:

- if the organisation is in operation, balance sheet plan - checked by the auditor - and prepared for the year when the network access contract has been concluded and also for the next business year,
- if the organisation has newly been established, a business plan involving a profit and loss statement plan and a cash flow plan for the first two business years but at least a business plan for at least 12 months that has been checked by auditor,
- statement from the representative of the Railway Undertaking who is authorised to sign on the volume of the turnover related to the network access contract (in Hungarian forint) to be expected in the first 3 months beginning on the day of signing the network access contract.

Railway Undertaking is obliged to submit and supply any kind of documents or data mentioned in this point in Hungarian to the Infrastructure Manager (MÁV Zrt) by sending a copied exemplar of the original documents via post. Railway Undertaking

seated abroad may meet his data supply obligation also in English or German if the document is available in English or German. Otherwise, Railway Undertaking seated abroad is obliged to attach to the document the authentic Hungarian, English or German translation of the original document.

For an Railway Undertaking seated abroad, if legislation in force in the country of his seat foresees a deadline to prepare and approve the annual report in a later date than it is foreseen in the Hungarian legislation, submission of documents listed above after the deadline may not be considered as a late data supply if they exceed the deadline by 30 days at the most. Railway Undertaking seated abroad is bound to verify in writing to the infrastructure manager if legislation abroad stipulates otherwise.

If, as regards the Railway Undertaking:

- based on the above documents, taking into account the total sum of bills invoiced in the last month, Infrastructure Manager (MÁV Zrt) recognises that in the given month Railway Undertaking used services that exceeds 20 % of the sum of equity capital demonstrated in the last submitted annual report with the exclusion of fuel, or
- based on the above documents Infrastructure Manager (MÁV Zrt) recognises that
  - long term liabilities / (equity capital + long term liabilities) > 70% (when examining the long term liabilities, only factual financial demands can be taken into account), or
  - Railway Undertaking has overdue public debts, or
  - Railway Undertaking has overdue acknowledged debts that expired more than 60 days ago, or
  - in the case of a new client, the volume of the turnover planned - related to the network access contract - in the first 3 months exceeds 30% of the equity capital, or
  - Railway Undertakings fails to submit on schedule any of the above mentioned documents with the above mentioned content to the Infrastructure Manager (MÁV Zrt), and also fails to submit them within 8 days after receiving the notice sent by the Infrastructure Manager thereof,

for demands against Railway Undertakings, Infrastructure Manager (MÁV Zrt) applies procedure for risky demands stated in points A) and B).

In the event if based on the above documents it is not possible to recognise that planned turnout related to the network access contract of the new client who recently signed a Network Access Contract in the first 3 months exceeds 30% of equity capital, but this will be, however, the case, Infrastructure Manager may apply procedure for risky demands stated in points A) and B).

Obligation of payment in advance or provision of payment guarantee shall exist until conditions verifying these obligations will cease, and Railway Undertaking will request to review the status of demands against him, therefore non-public service demands against him will be rated again as good demands. Infrastructure Manager is obliged to review the request of the Railway Undertaking and shall notify in

writing the Railway Undertaking about the result of the review within 15 working days after the day of receiving the request. When judging the request, Infrastructure Manager shall examine besides the payment discipline also the last documents submitted by the Railway Undertaking specified in point C). If Railway Undertaking corresponds to all requirements non-public service demands against him will be rated again as good demands.

In order to achieve unanimity, it shall be laid down, that Infrastructure Manager shall require from Railway Undertaking the payment in advance or the provision of payment guarantee exclusively in the case if the demand against Railway Undertaking has been rated as a risky demand or based on the above documents conditions of this rating exist.

Infrastructure Manager shall use the information as it is determined in the current chapter exclusively for the purpose of decision. Infrastructure Manager shall handle the information acknowledged this way as strictly confidential.

## Chapter VII

### Accounting of penalties and bonuses resulting from the Performance Regime

#### § 37. Penalties and bonuses

Calculation principles and amounts of penalties and bonuses resulting from the Performance Regime are published on the website of VPE under title Performance Regime.

#### 38. Terms and conditions of payment

1. Payment of penalties and bonuses shall happen on the basis of acknowledged invoice issued by the Infrastructure Manager simultaneously with invoices on the network access charges.
2. Parties shall agree in the Network Access Contract in the deadline of payment with the provision that is should not be more than 30 days.

#### § 39 Employment of a performance regime

By signing the Network Access Contract, Parties shall note the provisions of the Performance Regime and shall consider these provisions as binding on themselves.

## Chapter VIII

### Scope, termination, suspension of the Contract

#### § 40 Scope and termination of the contract

1. The scope of the contract shall be defined in the Network Access Contract.
2. Railway Undertaking is entitled to cancel the applied train path in accordance with conditions set out by the Network Statement, and consequently, to terminate the concluded Network Access Contract in an ordinary cancellation process.

#### § 41 Extraordinary termination of the Network Access Contract with immediate effect

1. Infrastructure manager shall cancel the contract with immediate effect if:
  - a) the licence of the Railway Undertaking was withdrawn by the competent authority,
  - b) rolling stock in operation do not meet safety requirements,
  - c) staff employed by Railway Undertaking do not have the defined and required qualification,
  - d) Railway Undertaking fails to fulfil his obligation even after the deadline set to him to restore the status in accordance with the contract,
  - e) in the event of serious breach of the contract,
  - f) if the liquidation of the company of the Railway Undertaking was ordered by a juridical decree in force.
2. Termination of the contract with immediate effect shall be preceded by the suspension of fulfilment of the contract, if breach of contract is so serious, that guiltless party cannot be expected to further maintain the contract.

#### § 42 Suspension of fulfilment of the Network Access Contract by the infrastructure manager

1. Infrastructure manager may suspend the fulfilment of the contract
  - a) if the demand against the Railway Undertaking stated in 37. § points A/4 and B/4 is qualified as a demand that needs particular attention.
  - b) if Railway Undertaking seriously infringes its other obligation, deriving from the Contract, relating in particular to the safety of traffic.
2. The suspension shall enter into force on the day following the date of receipt of a notice reminding - with a deadline - to the appropriate fulfilment of the contract. Parties shall take into account 5 days for delivery from the date of mailing. Duration of suspension shall last until the

Railway Undertaking fulfils its obligation set out in this Section under points 1 a) and 1 b).

#### § 43 Termination of the Network Access Contract with immediate effect by the Railway Undertaking

1. Railway Undertaking may cancel the Network Access Contract with immediate effect:
  - a) if infrastructure manager loses its right to operate the railway infrastructure,
  - b) if the railway infrastructure does not meet safety requirements,
  - c) in the event of other serious infringement of obligations.
2. A cancellation with immediate effect shall be preceded by the suspension of the execution of the Network Access Contract unless the infringement of obligation is so serious that a further maintenance of the Contract cannot be expected from the innocent party.

#### § 44. Suspension of the fulfilment of the Network Access Contract by the Railway Undertaking

1. Railway Undertaking may suspend the execution of the Network Access Contract if the infrastructure manager seriously infringes its obligation derived from the Network Access Contract relating in particular to the safety of traffic.
2. The suspension shall enter into force on the day following the date of receipt of a notice reminding - with a deadline - to the appropriate fulfilment of the contract. Parties shall take into account 5 days for delivery of the notice from the date of mailing. Duration of suspension shall last until the infrastructure manager eliminates deficiencies indicated by § 49 and this Section under point 1, and receives back the right to operate the railway infrastructure.
3. Should the infrastructure manager not fulfil its obligation even after the deadline defined to him for restoring the status in accordance with the Network Access Contract, Railway Undertaking may terminate the Network Access Contract with an immediate effect.
4. Suspension should not definitely affect the Network Access Contract as a whole, suspension may be limited to some elements of the Network Access Contract specified in details by the notice.

#### § 45. Recourse in the event of infringement of the Network Access Contract

In the event of infringement of the Network Access Contract, parties may apply for relief at the rail regulatory body or may take civil legal action in the competent court.

§ 46. Liabilities for damage caused by termination and suspension of the Network Access Contract with immediate effect

That party which gave reason for the termination or suspension of the Network Access Contract with immediate effect shall be liable for damage caused. Rules of the Civil Code shall apply to the compensation of damage and to the relief of liability.

## Chapter IX

### Legal disputes, limitation, governing law

#### § 47. Settlement of legal disputes

Parties shall try to reach an amicable settlement of their disputes arising from the Network Access Contract. To this end they are obliged to initiate a conciliation procedure. The party the right or legitimate interest of whom is affected by the dispute shall initiate conciliation procedure.

Record shall be taken of the conciliation procedure. If the conciliation procedure fails to settle the dispute, to assert the right, any of the parties is entitled to go to a court or - in cases laid down by legal rules - go to the rail regulator body.

#### § 48. Petition of review against the decision of the rail regulator body

Against the decision of the rail regulator body a petition of review may be applied which shall be initiated in accordance with Chapter XX of Act III of 1952 on administrative legal proceedings.

#### § 49. Limitation

1. The period of limitation for enforcing a claim based on the Network Access Contract shall be 3 years. Limitation period begins on the maturity day of the claim.
2. Should the party entitled not be able to enforce a claim for excusable reasons, the limitation period is suspended.

If the limitation period is suspended, the party may enforce the claim within one year from the elimination of the hindrance even then if the limitation period has been expired or less than one year has been left of it. During this period there is no opportunity to suspend the limitation period. After interrupting the limitation period, only the one-year deadline period starts again.

3. Limitation period shall be interrupted by:
  - acknowledgement of the liability by the party bound;
  - modification of the claim through agreement -inclusive of compromise-;
  - enforcing the claim in a judicial proceeding if the court brings legally final and binding decision;
  - submitting the claim during the bankruptcy proceedings.

Limitation period shall start again after the interruption of the limitation period, or after the final decision of the juridical proceeding interrupting the limitation period.

## 50. Governing law

Parties stipulate the application of the Hungarian law for the conclusion, fulfilment of the Network Access Contract, for the enforcing any claims deriving from this Contract, inclusive of disputes arising from the interpretation of this Contract.

## Chapter X

### Other provisions

#### 51. § Staying on the board of locomotives to carry out track supervisory activity

1. In order to carry out track supervisory activity of the Infrastructure Manager on board of a locomotive (hereinafter loco journey), Infrastructure Manager is entitled to use any traction unit of the Railway Undertaking which run on the networks operated the Infrastructure Manager, not disturbing without reason the traffic of trains, while paying the justified costs of the journey under conditions regulated in this chapter and in the Network Access Contract or in any other agreement between the parties.
2. Railway Undertaking is obliged to enable the Infrastructure Manager to carry out loco journey if conditions, stipulated in this chapter, exists.
3. When carrying out track supervisory activity of the infrastructure manager by using locomotive for travelling, person entrusted by the Infrastructure Manager to perform loco journey is bound to take into account the followings:
  - to indicate to the loco staff the intention to use the locomotive in such a time before the departure of the train to be hauled by the locomotive in question that the entitlement to use the locomotive could be checked.
  - boarding and getting off the locomotive is permitted only at stoppings scheduled in the timetable of the train.
  - it is prohibited to disturb or hinder the driver of the traction unit in his work; to give instructions to the driver of the traction unit, is only allowed to take measures to stop the train exclusively in cases stipulated in F.2 Traffic Instructions, further on is obligatory to keep operational and safety rules regarding the staying in the drivers' cab, prescribed by the railway undertaking operating the traction unit.
- 4) Determination of the circle of staff of the IM entitled to carry out track supervisory activity and consequently loco journey, verification of the entitlement, methodology of determination of costs of the Railway Undertaking shall be carried out as it is set out by the parties in the Network access Contract or in any other agreement between them. Staff of the IM assigned in the above mentioned way is only entitled to carry out loco journey.
- 5) If the person carrying out loco journey violates the operational and safety rules, driver of the traction unit is entitled to summon this person to leave the locomotive or to refuse the boarding the locomotive by this person.
- 6) Entitlement for loco journey is valid for staying exclusively in the driver's cab; staying in any other part of the locomotive (engine area) is not allowed.

- 7) Infrastructure manager is in full range liable for the person carrying out loco journey on behalf of it. In this framework IM is liable for compensating damage caused by the person carrying out loco journey or for compensating damage suffered by the person during her/his staying in the driver's cab of the locomotive, exclusive of the event when responsibility for the occurrence of the damage lies on the Railway Undertaking or its staff using the traction unit. This provision cannot be interpreted as a disclaimer statement of the Infrastructure manager as regards a claim for compensation to be enforced towards those causing damage.