

Modification: 17B

## **GENERAL TERMS AND CONDITIONS OF THE NETWORK ACCESS CONTRACT**

**2024 - 2025**

## General Terms and Conditions of the Network Access Contract

### Chapter I

#### Preamble

Accordingly, under Paragraph 57 (1) of the Railway Act, MÁV Infrastructure Co. Ltd. and GYSEV Zrt shall conclude a Network Access Contract with Railway Undertakings intending to use the open access railway tracks and accessories, if they comply with the requirements set by law.

General terms and conditions for the use of the open access railway network 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 (hereinafter Civil Code) shall apply.

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

General Terms and Conditions of the Network Access Contract (hereinafter T&C) is part of each Network Access Contract on the use of the railway track and accessories used by Railway Undertakings.

#### § 2 Definitions of notions

To the interpretations and application of this T&C, definitions set out in the Network Statement (Annex 1.11) shall adequately apply.

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

1. On the strength of the notice of VPE Nonprofit Ltd. (hereinafter VPE) on the allocation of track network capacity and with a content specified that in, a contract will be established between Infrastructure Manager and Railway Undertaking on the availability of the rail network capacity. Precondition of the submission of a capacity request is the conclusion of the Network Access Contract. Network Access Contract shall be concluded in accordance with the provisions of this T&C. This T&C forms a part of the Contract concluded this way even in absence of any other stipulation or provision.
2. The 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 § 60 (1)) 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. Provisions of which parties are obliged to comply with.

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

Parties may modify the Network Access Contract only in written form in mutual agreement with proper signatures by representatives who are authorized to sign. 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 defined by the notice of VPE on railway infrastructure capacity allocation.

#### § 5 Applicable rules and regulations

Parties are obliged to observe any relevant legal rule regulating the object and are also obliged to observe any legislation of the European Union (EU) that is binding in this subject matter or forms the basis of international law, as well as any instruction, regulation listed in the Network Statement.

## *Chapter II*

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

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

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

Special conditions of obligation to provide information are set out in Chapter IV to this T&C.

2. Liabilities, which are specified in relevant provisions, in the Network Statement and in the Network Access Contract, arisen from the default of providing information rests upon the defaulting party.

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

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

#### **§ 8 Contact person**

1. The 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. The contracting Parties shall share the names and contact details of each other's employees or contributors (mailing address, telephone number, e-mail address, fax number) and - where applicable - their position or role to each other in order to ensure communication and contact necessary for the fulfilment of the Network Access Contract. Beyond the persons referred to in the Network Access Contract, any other employee or contributor to the party whose personal data listed above is notified to the other party during the contractual relationship to facilitate the performance of the contract, shall be declared as Contact Persons, irrespective of the mode of communication and the circumstances thereof.
3. Personal data entered in this manner (the contact details required to complete the contract) shall be subject to a legitimate interest of the parties, which is a proper legal basis for data processing on the basis of Article 6 (1) (f) of GDPR. In the context of a contractual relationship, each party shall be deemed to be the controller of the personal data of the contact persons provided by the other party and both parties agree to communicate the information contained in this section to their own employees, contributors as acting as a contact point and the parties thereby fulfil their obligation to provide information. The contact person's data may be handled by the other party (who is not a worker or contributor of that contact person) during the

existence of the contractual relationship and after the termination of the contract until the obligation arising from termination of the contract may require the parties to contact. If any of the parties use a data processor in connection with the contact data management or transmits the personal data to a third party for the purpose of the performance of the contract, it shall provide the other party with detailed information, except in the case of a confidential counsellor (eg. legal representative) to provide personal data. The parties may conclude an agreement on data management with a more detailed content than this point. In the absence of such agreement, the provisions of this clause are applicable.

4. The contact person as concerned may apply for information on the processing of his / her personal data pursuant to Article 13 of the GDPR and has the right under Article 15 to have access to personal data and information. Under Article 16, the data subject may request the rectification of his / her personal data or, in accordance with Article 17, the deletion or the limitation of the processing of data pursuant to Article 18. In addition, the person concerned may object to the processing of his / her personal data in accordance with Article 21 and shall have the right to data storage in the cases provided for in Article 20. These rights are not of an absolute nature, so the person concerned can only fulfil his / her requirements only if the conditions set out in the statutory regulations are met. Contact persons may initiate the validation of their respective rights by sending a message to the central e-mail address of the parties. Data subjects may also take their rights to the National Authority for Data Protection and Freedom of Information or to court if their rights are infringed.
5. Communication with regard to the Network Access Contract shall at any case be performed in Hungarian language.

#### § 9 Duty of commercial confidentiality

1. The contracting parties shall undertake to confidentially handle all facts, data, information, documents which are qualified as trade secrets of the other party.
2. The 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

- operational licence,
- safety certificate or additional safety certificate,

##### § 11 Conditions for using the rail network service:

- Requirement of submission of capacity requests: conclusion of the Network Access Contract

##### Requirement of the use of a train path

- train path allocated by VPE
- acceptance of the allocated train path, i.e. establishment of the contract on the availability of the rail network capacity.

##### § 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 railway vehicles on the railway infrastructure

1. Railway Undertaking may only run railway 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.
4. Railway Undertaking shall ensure to keep its railway vehicles in excellent state complying with effective regulations in force in the railway traffic. Infrastructure Manager is entitled to check the existence of authority permits of vehicles.
5. Other railway vehicles than licensed are not allowed to run on the railway infrastructure.

### § 16 Instructions

Infrastructure Manager shall publish on its website the instructions required to railway operation and set out in point 6.2.1 of the Network Statement. Infrastructure Manager shall directly hand over to Railway Undertakings or staff of the train instructions for the daily 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

1. As regards changes concerning the 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) Until the deadline defined in legal rule or if it does not exist, 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) the Infrastructure Manager shall immediately inform the Railway Undertaking about the 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. In case of passenger transport Railway Undertaking shall be obliged to provide the following information about the train before the departure:
  - a) composition and parameters of the train (specified in the Annex of the Network Access Contract concerning the management of rolling stock data) 10 minutes prior to departure (except if it's not possible due to time requirements the rail technology), the fact of the transport an exceptional consignments 30 minutes prior to departure.
  - b) Current information concerning the passengers, the Infrastructure Manager shall be obliged to inform the passengers on the dynamic passenger information devices available at the stations. The Railway Undertaking shall be obliged to provide this information to the Infrastructure Manager in a demonstrable way 30 minutes prior to the departure of the train (in case of deviation from SZVÖR 1 hour)
  - c) the extent of the expected delays and their causes (speed limits, limits of the traction unit, malfunction) as soon as possible

- d) other exceptional limitations affecting vehicles or load.
2. In case of freight transport the Railway Undertaking shall be obliged to provide the following information about the train before the departure:
    - a) composition and parameters of the train (specified in the Annex of the Network Access Contract concerning the management of rolling stock data) 10 minutes prior to departure (except if it's not possible due to time requirements the rail technology), the fact of the transport an exceptional consignments 30 minutes prior to departure.
    - b) The fact of the transport of dangerous goods according to 2. Annex of RID or SZMGSZ agreement and in cases specified in 312/2011 Government decree 60 minutes prior to the departure.
    - c) the extent of the expected delays and their causes (speed limits, limits of the traction unit, malfunction) as soon as possible
    - d) other exceptional limitations affecting vehicles or load.
  3. If the Railway Undertaking is operating vehicles with interoperability or without nationalisation markings, he must obtain an authorisation for exceptional consignments from the Infrastructure Manager.

Should Railway Undertaking infringe the obligation for providing information set out in this paragraph, 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 regarding the train transportation from the Infrastructure Manager and are entitled to decide according to information from Infrastructure Manager on behalf of the Railway Undertaking.

#### § 20 Traffic disturbances

Traffic disturbances mean those unforeseeable events, which influence safety, punctuality of rail traffic and the smooth operation of traffic, such as accidents, cases of damage, damages in environment, unforeseeable effects of events of force majeure, 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 traffic disturbances occurred during operation even if they probably 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 traffic 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 traffic disturbances

On request of the Infrastructure Manager and against payment of compensation, Railway Undertaking is obliged to contribute to eliminate traffic 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 environmental damage

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 and for damage arisen through the breach of the contract.

#### § 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 T&C.
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 T&C.
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 imputability. If the degree of imputability cannot be defined, damage shall be born in proportion to their contribution, and if this cannot

be defined as well both Infrastructure Manager and Railway Undertaking shall bear their own damage equally.

#### § 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 Currency of compensation

Compensation shall be defined and paid in HUF.

#### § 32 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.

Every circumstance should be considered force majeure such as unforeseeable and beyond the control of the parties (e.g. war, troop movements ordered in defence, earthquake, flood, fire, terror act, nationwide strike etc.) which are not dependent on the will of the parties and directly prevent the party from fulfilling the contractual obligations.

Parties are obliged to inform each other of force majeure in electronic format. 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.

#### § 33 Liability for contributors

Infrastructure Manager and Railway Undertaking are liable for damage caused by their contributors 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

#### § 34 Network Access charge

Principle for charging of network access fees shall be published in the Charging Methodology, while the tariffs can be seen in the Network Statement, incentives are published in Performance Regime. The customer and receivables rating are based on the Network Access Charge (the amount payable to T&C services), the incentives in Performance Regime and the other financial incentives declared in Network Access Contract (hereinafter collectively referred to as T&C obligations)

#### § 35 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.

MÁV Infrastructure Co. Ltd. shall uniformly regulate in the Network Access Contract with the Railway Undertakings the rules on the receipt of the invoice and the deadline for payment of the invoice after its issue, as well as the starting date of the obligation to pay interest on late payment.

#### § 36 Financial guarantees

GYSEV Zrt as Infrastructure Manager does not claim any financial guarantee from authorised applicants in order to obtain infrastructure access charges.

MÁV Infrastructure Co. Ltd. requirements in order to ensure its legitimate expectations as regards of usage of the infrastructure:

MÁV Infrastructure Co. Ltd. requires a financial guarantee from authorised applicant if, regarding the customer rating concerning the authorised applicant (hereinafter referred to as customer and receivable rating) it can be concluded that it may be difficult for the authorised applicant to regularly pay network access charges.

#### General rules of the customer and receivable rating

Customer and receivable rating shall be carried out continuously during the force of the Network Access Contract under the same conditions in accordance with qualification parameters defined in § 36 of this Terms and Conditions by a customer rating specialist commissioned by the MÁV Infrastructure Co. Ltd. or a customer rating expert specially entrusted by the authorised applicant.

The customer rating specialist classifies the authorised applicant as new customer, good customer, or risky customer. Customer rating specialist shall inform MÁV Infrastructure Co. Ltd. in writing of its proposal for a category. If the customer rating specialist commissioned by the authorised applicant fails to inform the Infrastructure Manager of the result of the classification, then the Infrastructure Manager's customer rating specialist will carry out the rating process and the customer should be classified according to this evaluation.

MÁV Infrastructure Co. Ltd. shall pay the fee of the service performed by customer rating expert commissioned by MÁV Infrastructure Co. Ltd. If the authorised applicant entrusts a customer rating expert to carry out customer rating, MÁV Infrastructure Co. Ltd. Infrastructure Manager shall not pay the fee of the service, authorised applicant shall bear this cost.

On the basis of the performed rating, MÁV Infrastructure Co. Ltd. Infrastructure Manager shall carry out the classification into categories without delay but not later than within 3 working days and notifies authorised applicant thereof. If the rating does not change there'll be no notifications.

During the customer and receivables rating procedure, customer rating specialist on behalf of MÁV Infrastructure Co. Ltd. Infrastructure Manager shall examine exclusively the meeting of payment obligation arising from the Network Access Contract as well as financial documents delivered by MÁV Infrastructure Co. Ltd. Infrastructure Manager and defined by § 36 point A) and B) of this Terms and Conditions.

As regards infrastructure services provided within the framework of the Network Access Contract, customer rating specialist commissioned by MÁV Infrastructure Co. Ltd. Infrastructure Manager shall examine during the rating procedure the observance of deadlines for payment of invoices and partial invoices, however, invoices issued in connection with cases of damage that originate from this contract and also receivables, liabilities under a complaint procedure between the parties are not subject to the classification.

If the risky customer category is defined in the annual customer rating process, the good customer category is only available after the provision of a financial guarantee, the good result of receivables rating does not change the classification to good customer.

MÁV Infrastructure Co. Ltd. Infrastructure Manager may use the received information only for the purpose of rating its customers in compliance with provisions specified by this Chapter. MÁV Infrastructure Co. Ltd. Infrastructure Manager and the customer rating specialist shall treat data obtained as described above confidentially as a trade secret.

### Customer and receivable rating categories

1. On the basis of the report prepared by the customer rating expert, MÁV Infrastructure Co. Ltd. Infrastructure Manager shall classify authorised applicant to be a new customer if authorised applicant and MÁV Infrastructure Co. Ltd. Infrastructure Manager have not concluded Network Access Contract before, consequently MÁV Infrastructure Co. Ltd. Infrastructure Manager has no direct information about the authorised applicant's financial ability to pay.

For 90 days following the conclusion of the Network Access Contract accounting and invoicing shall happen under the conditions relating to a good client. After 90 days the authorised applicant shall be classified into the category of good client or risky client. Customer shall be noticed in writing thereof.

2. On the basis of the report prepared by the customer rating expert, MÁV Infrastructure Co. Ltd. Infrastructure Manager shall classify the authorised applicant into the category of a good client if the customer fulfils all the classification requirements laid down in T&C 36 § section.

The good client may request the application of the charging scheme for risky clients, which will be applied until the client changes the declaration.

3. On the basis of the report prepared by the customer rating expert, MÁV Infrastructure Co. Ltd. Infrastructure Manager shall classify the authorised applicant into the category of a risky client if the customer does not meet any of the classification requirements laid down in T&C 36 § section.

Classification into the category of risky customer shall happen in every case regardless of the fact whether authorised applicant has meanwhile paid its late bills exceeding 5 days.

Authorised applicant may initiate with MÁV Infrastructure Co. Ltd. Infrastructure Manager an agreement for the rescheduling of its payments. This agreement, however, shall not change either the classification of receivables relating to their original due date of payment or the payment deadline of prospective receivables.

Authorised applicant classified as a risky customer may choose whether it provides a payment guarantee or uses the possibility of pre-payment. These obligations for risky customer shall remain in force until the circumstances that led to the risky classification cease to exist.

1. Pre-payment: should authorised applicant not submit a bank guarantee, it is obliged to pay in advance the fees of infrastructure services - which cannot be higher than the average of the last 12 months - provided by MÁV Infrastructure Co. Ltd. under conditions specified in the Network Access Contract. Fuel shall be excepted from pre-payment, a daily invoicing shall apply to fuel.

2. If a bank guarantee is chosen, the amount of the bank guarantee shall continuously reach the value of twice the 12 month arithmetic average of the net T&C liabilities incurred for the last closed financial year plus 10%.

Authorised applicant is obliged to hand over the original copy of the bank guarantee to MÁV Infrastructure Co. Ltd. until the 20th day of the month preceding the actual month. If, the sum of the bank guarantee at any time, and for any reason does not amount to the sum calculated in accordance with this paragraph, and authorised applicant fails to raise it or the period of validity expires, the payment in advance shall apply to the authorised applicant.

Should authorised applicant choose the provision of a payment guarantee, MÁV Infrastructure Co. Ltd. Infrastructure Manager shall apply the rules specified in the Network Access Contract for financial guarantee from the first day of the month following the month when the financial guarantee was submitted.

Bank guarantee shall be submitted to MÁV Infrastructure Co. Ltd. Infrastructure Manager. The text of the bank guarantee shall comprise the followings: the issuing bank irrevocably undertakes that - without examining the fundamental legal relationship - it pays the sum of the bank guarantee to the beneficiary within 5 bank working days after beneficiary received the first notice in writing.

Provider of the bank guarantee may be a financial institution or insurance company having operating licence in an EU or OECD (Organisation for Economic Co-operation and Development) member state, or their subsidiary or branch having a majority ownership, or if the last closed total balance sheet is exceeding 40 billion HUF.

In case of default in paying, MÁV Infrastructure Co. Ltd. Infrastructure Manager is entitled to call in without delay from the bank guarantee at its disposal the sum equal to the charge authorised applicant failed to pay for the network access and is also entitled to directly refund receivables from the bank guarantee.

### Quality parameters used for customer and receivables rating

#### **A. Annual customer rating**

MÁV Infrastructure Co. Ltd. requires the submission of the following financial documents from the authorised applicant -15 days after the statutory deadline for preparing the annual report (15<sup>th</sup> of June of the following year in case of 31<sup>st</sup> May reporting date.)

- annual report for the last closed business year prepared in compliance with the provisions of the law of accountancy, deposited and equipped with an auditor's clause,
- statement of the representative of the company who is authorised to sign whether authorised applicant has any overdue public debts or acknowledged

overdue debt that has expired more than 60 calendar days ago on the date of the statutory deadline for preparing the annual report.

- Besides this, in the event when the first Network Access Contract is signed, MÁV Infrastructure Co. Ltd. Infrastructure Manager requires that authorised applicants should make the following documents available until the day at the latest when the Network Access Contract enters into force:
  - o in the event of an organisation is in operation, a business plan including a balance sheet plan, profit and loss statement plan, cash-flow plan- and prepared for the year when the Network Access Contract was concluded and also for the next business year, in the event of a newly established organisation, a business plan for the first two business years but at least for 12 months
  - o as well as a statement of the representative of the authorised applicant who is authorised to sign, on the volume of services (in Hungarian Forint, with net value and VAT breakdown) planned to be applied for at MÁV Infrastructure Co. Ltd. Infrastructure Manager, related to the Network Access Contract to be expected in the first 3 months beginning on the day of signing the Network Access Contract by the authorised applicant.

Authorised applicant is obliged to submit and supply any kind of documents or data mentioned in this point in Hungarian or in English to MÁV Infrastructure Co. Ltd. Infrastructure Manager by sending at the same time a copied exemplar of the original documents. In case of the documents are prepared in other language, authorised applicant seated abroad is obliged to attach the certified Hungarian or English translation of the original document to the copy of the original document.

If the authorised applicant has several valid Network Access Contracts with MÁV Infrastructure Co. Ltd. , the customer qualification will be applied to all the entities and contracts covered by the contract based on the financial documents of the authorized applicant.

The duration of the annual customer rating is until the next rating based on the closed financial year. The annual customer rating is based on the data from the last closed financial year and the T&C obligations for the same period.

The annual customer rating based on the above documents will classify the authorized applicant as a risky customer if any of these following parameters are met:

- on the basis of the above documents, taking into account the average of total sum of bills invoiced in the last year, customer rating expert on behalf of MÁV Infrastructure Co. Ltd. Infrastructure Manager recognises that in the given month authorised applicant used services in an amount that exceeded 20 % of the sum of equity capital demonstrated in the last submitted annual report
- on the basis of the annual report/ business plan of the authorised applicant, long term liabilities/ (equity capital + long term liabilities) > 70% (when examining the long term liabilities, only factual financial receivables can be taken into account)
- authorised applicant has overdue public debts

- authorised applicant has acknowledged overdue debts that has expired more than 60 days ago, for which no payment agreement was made
- in the case of a new client, the volume of the gross turnover planned - related to the Network Access Contract - in the first 3 months exceeds 30% of the equity capital
- authorised applicant fails to submit on schedule any of the above mentioned documents with the above mentioned content and also fails to submit them within 8 days after receiving the notice sent by MÁV Infrastructure Co. Ltd. Infrastructure Manager thereof, as regards its receivables due from authorised applicant, MÁV Infrastructure Co. Ltd. Infrastructure Manager shall apply a procedure that is used in the case of hazardous clients.
- In the event, if, on the basis of above documents it is not possible to recognise that planned turnout related to the Network Access Contract of the new client in the first 3 months exceeds 30% of equity capital, but this will be, however, the case during the first three months, as regards its receivables due from the authorised applicant, Infrastructure Manager shall apply a procedure that is used for risky clients.

## **B. Receivables rating**

The receivables rating is carried out in the respect of the Network Access Contract liabilities on a monthly basis, by the 15<sup>th</sup> day of the month following the current month (calendar month) in which:

- examines whether the customer has paid the invoices due for the current month (or the instalments due in case of such agreement) within 5 days of the due date and determines the number of invoices paid late
- also examines whether the customer has any invoices (or instalments) overdue more than 5 days on the last day of the period and determines the number of invoices

If according the two points combined the customer rating expert identifies two or more, items that overdue more than 5 days, then the customer will be classified as risky client.

Classification as a risky client is based on the solvency check cover a period of 3 months, starting from the 2<sup>nd</sup> month following the month concerned.

If the customer rating expert finds during the solvency test that the risky client meets the good client criterion for 3 consecutive months, i.e. the maximum number of items under the two rating criteria in a given month is 1, the authorized applicant will be rated as a good client on the basis of solvency.

Any rescheduled payment due date of the access beneficiary shall not be considered for the qualification and shall be made by the due date indicated on the invoice.

MÁV Infrastructure Co. Ltd. may exercise fairness in determining the classification as a risky customer if the total amount of the invoices affected by the delay does not exceed 1% of the access beneficiary's T&C obligation for the previous half-year,

but not more than 50 000 HUF. If this amount is exceeded, the access beneficiary shall be classified as a risky client.

### § 37 Receivables rating of authorised applicants operating public service trains

From customer and receivables rating point of view, that authorised applicant shall be qualified to be an authorised applicant operating public service trains whose network access fee payment liabilities arising from public service performances amount to at least 75% of its total network access fee payment liabilities of the previous year.

As regards bills of fuel, authorised applicant using also infrastructure services required for the provision of its public service tasks shall declare to the Infrastructure Manager the quantity of fuel used by it in the actual month for running of trains providing public services not later than the 10<sup>th</sup> day of the month following the actual month.

On the basis of the report prepared by the customer rating expert, MÁV Infrastructure Co. Ltd. Infrastructure Manager shall classify receivables due from authorised applicant operating public service trains into the category of *good receivables* if authorised applicant met the requirements laid down in this T&C 36 § B point.

State reimbursement ensured to the operation of trains providing public service tasks in accordance with Budget Act and its implementing regulation of the current year as well as statement of the Ministry ordering public services on the guarantee of state reimbursement shall be considered to be a cover for paying of receivables if the amount of receivables due from the authorised applicant does not exceed the amount of state reimbursement specified by the Budget Act that has not been paid yet to the authorised applicant.

Moreover, unpaid parts of supplementary state reimbursements for yearly provided public services of the preceding years recognized by the Ministry ordering public services during the reckoning of these activities shall be considered as a cover for paying of receivables regardless to the availability of the cover in the Budget Act.

On the basis of the report prepared by the customer rating expert, MÁV Infrastructure Co. Ltd. Infrastructure Manager shall classify receivables due from authorised applicant operating public service trains into the category of *late receivables* if authorised applicant does not meet the requirements laid down in this T&C 36 § B point.

Classification into the category of late receivables shall happen regardless of the fact whether authorised applicant has meanwhile paid its late bills exceeding 5 days.

## Chapter VII

### Accounting of financial penalties and compensations resulting from the Performance Regime

#### § 38 Financial penalties and compensations

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

#### § 39 Terms and conditions of payment

1. Payment of financial penalties and compensations is made according to an invoice prepared on the basis of recognized performances, which is issued at the same time as the invoice issued for network access fees.
2. Parties shall agree in the Network Access Contract in the deadline of payment with the provision that it should not be more than 30 days.

#### § 40 Employment of the 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, suspension and cancellation of the contract

#### § 41 Scope, suspension and cancellation of the contract

The scope of the contract shall be defined in the Network Access Contract. Suspension of the Contract shall be the subject to the conditions set out below and may be terminated by either ordinary or immediate termination or by mutual consent.

#### § 42 Suspension of fulfilment of the Network Access Contract by the Infrastructure Manager

1. The Infrastructure Manager shall suspend the contract and its fulfilment until the end of the administrative procedure, but for a maximum of 180 days:
  - a) if the authorized applicant's official authorisations (licence, rail safety certificate, supplementary rail safety certificate) are suspended by the authority,
  - b) if the validity of the official authorisations (rail safety certificate, supplementary rail safety certificate) issued to the authorized applicant and required for the conclusion or validity of the Network Access Contract has expired; the Infrastructure Manager shall inform the authorized applicant of the suspension in writing,
  - c) if the authorized applicant has not fulfilled its payment obligations under the Network Access Contract by the deadline specified in the second written notice and has not complied with the instalment agreement between the authorized applicant and the Infrastructure Manager,
  - d) the authorized applicant has been declared bankrupt or is being wound up, is being compulsorily wound up or is the subject of proceedings for a declaration of bankruptcy by a court having final and binding effect,
  - e) if the authorized applicant seriously breaches any other obligation arising from the contract, in particular the obligation to provide safe transport.
2. Suspension shall take effect on the date specified in the decision to that effect. Suspension shall be deemed to have been notified when the Infrastructure Manager's contact person has sent the notification to the contact person of the authorized applicant and to the authorized represent of the authorized applicant or to the authorized applicant official central email address. The period of suspension lasts until the authorized applicant fails to fulfil the obligations identified in point 1 of this § or until the circumstances caused the suspension has been remedied.
3. Infrastructure Manager shall inform the competent authority and VPE in writing electronically about the cancellation of the contract.
4. If, during the period of suspension, the railway undertaking does not eliminate the circumstance giving rise to the suspension and does not rescind his / her delay, the contract shall be terminated with immediate effect.

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

1. The Infrastructure Manager shall terminate the contract with immediate effect:
  - a) the competent authority has authorized the access authorization (operating license, safety certificate, supplementary railway safety certificate),
  - b) if the vehicles placed on the market do not comply with the safety requirements,
  - c) if the staff employed by the access holder do not have the necessary qualifications,
  - d) if the right of access fails to fulfill his/ her obligations after the expiry of the time limit set for the restoration of the situation in accordance with the contract,
  - e) in case of other serious breach of contract,
  - f) if the liquidation, compulsory cancellation or liquidation of the person entitled to access has been ordered by a final court order.
2. The Infrastructure Manager shall inform the competent authority and VPE in writing by electronic means about the termination.
3. Immediate termination shall be preceded by the suspension of performance of the contract, unless the breach is of such a seriousness that the contract cannot be expected to be maintained by the innocent party.

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

1. The railway undertaking may suspend the performance of the Network Access Contract if the Infrastructure Manager commits a serious breach of his/ her obligation under the Network Access Contract, in particular to ensure safe traffic.
2. Suspension shall take effect on the day following the receipt of the notice of performance, including the time limit. Suspension shall be considered to be complete when the contact person of the Railway Undertaking has sent the notification to the contact person or to the central email address of the Infrastructure Manager. Parties will be considered for delivery 5 days from the date of dispatch. The period of suspension lasts until the Infrastructure Manager has remedied the deficiencies identified in point 1 of this § and has regained the right to operate the railway infrastructure and entitled to continue its activities.
3. If the Infrastructure Manager fails to comply with its obligations after the expiry of the time limit set for the restoration of the situation in accordance with the Network Access Contract, the access holder may terminate the Network Access Contract with immediate effect.

4. The suspension need not necessarily apply to the whole Network Access Contract, it may be limited to certain elements of the Network Access Contract, as specified in the notification.

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

1. The access holder may terminate the Network Access Contract with immediate effect:

- (a) if the Infrastructure Manager has lost the right to operate the railway infrastructure, its activities are prohibited by the competent authority
- (b) if the railway infrastructure does not meet safety requirements,
- (c) in the event of other serious breaches of contract.

2. Immediate termination shall be preceded by the suspension of the performance of the Network Access Contract, unless the breach is of such a seriousness that the contract cannot be expected to be maintained by the innocent party.

#### § 46 Termination of the Network Access Contract by mutual agreement

Both the Infrastructure Manager and the access holder may initiate the termination of the Network Access Contract by mutual agreement if a circumstance exists which no longer justifies the maintenance of the contract.

#### § 47 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.

#### § 48 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

#### § 49 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 the court or - in cases laid down by legal rules - go to the rail regulator body (§ 77 of Railway Act).

#### § 50 Remedy against the decision of the rail regulator body

Against the decision of the rail regulator body a remedy may be applied.

#### § 51 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.

#### § 52 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

#### § 53 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/her 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 Infrastructure Manager 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 Infrastructure Manager 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 to 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 Infrastructure Manager is liable for

compensating damage caused by the person carrying out loco journey or for compensating damage suffered by the person during his/ her 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.