

Making the railway system  
work better for society.

## GENERAL CONDITIONS APPLICABLE TO CONTRACTS FOR CHARGEABLE SERVICES PROVIDED BY THE EUROPEAN UNION AGENCY FOR RAILWAYS

### 1. SCOPE

These general conditions govern the contract (“the Contract”) between the European Union Agency for Railways (“the Agency”) and an applicant or potential applicant or any other person (“the Service Receiver”) whereby the Agency provides chargeable services in conformity with Articles 64(2)(d) and 80(2)(c) of Regulation (EU) 2016/796<sup>1</sup> and Article 2(3) and (4) of the Regulation (EU) 2018/764<sup>2</sup>.

These general conditions govern the provision of one or more of the chargeable Service(s) provided by the Agency<sup>3</sup> as requested upon expression of interest by the Service Receiver.

Any derogation from these general conditions must expressly be agreed upon in the Contract.

### 2. PERFORMANCE OF THE CONTRACT

2.1. The Agency shall provide the Services with due care, efficiency and diligence in accordance with the Contract and on the basis of the relevant EU legal framework in force.

Such Services shall be provided on the basis of the relevant information and documents provided to the Agency by the Service Receiver promptly after entry into force of the Contract.

The Agency shall return such documents to the Service Receiver promptly upon its request to do so at completion of the Services or termination of the Contract.

2.2. The Service Receiver is solely responsible for the accuracy, completeness and relevance of the information and documents provided to the Agency to enable it to render the Services. The Service Receiver shall provide the Agency with any reasonable clarification or further information requested by the latter for the proper provision of the Services.

2.3 The Service Receiver cannot claim any right or obligation related to the outcome of the provided services in the assessment of an application for single safety certificate, vehicle (type) authorization (including pre-engagement) and ERTMS trackside approval.

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<sup>1</sup> Regulation (EU) 2016/796 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004 (OJ L 138, 26.5.2016, p. 1).

<sup>2</sup> Commission Implementing Regulation (EU) 2018/764 of 2 May 2018 on the fees and charges payable to the European Union Agency for Railways and their conditions of payment (OJ L 129, 25.5.2018, p. 68).

<sup>3</sup> The exhaustive list of which is published at the Agency’s website pursuant to Art 2 (4) of Regulation (EU) 2018/764.

### 3. LIABILITY

3.1. The Agency can be held liable to the Service Receiver for non- or defective performance of the Contract solely in the case that the provision of the Services does not meet the quality standards that can be reasonably expected from a public authority in its role as professional advisor.

3.2. As the authoritative interpretation of the EU legislation is the exclusive competence of the Court of Justice of the European Union (“CJEU”), the Agency cannot be held liable for any assessment, advice or opinion issued by any means to the Service Receiver in relation to the Services which later appears to be contradicted, in whole or in part, by a decision of the CJEU on points of EU legislation. In such case, the Service Receiver could ask the Agency for a revised opinion or advice at no additional costs.

3.3. The Agency’s liability for any direct or indirect loss or damage caused to the Service Receiver as a consequence of performance of the Contract, shall be limited to an amount not exceeding the total amount of the charges paid by the Service Receiver. However, if the damage or loss is caused by the gross negligence or willful misconduct of the Agency or of its personnel following a court judgment, the Agency is liable for the whole amount of the damage or loss.

3.4. If a third party brings any action against the Agency in connection with the performance of the Contract, including any action for alleged breach of intellectual property rights, the Service Receiver shall indemnify and hold the Agency harmless from any adverse consequences resulting from such third-party claim. The Service Receiver shall assist the Agency in the legal proceedings initiated by such third-party, including by intervening in support of the Agency upon its request or requested by a court.

### 4. CONFIDENTIALITY

4.1. To the extent permitted by their respective applicable legal framework, in particular on public access to documents, the Agency and the Service Receiver shall treat with confidentiality any information or documents, in any format, disclosed in writing or orally or with electronic means relating to the performance of the Contract and identified in writing as confidential.

4.2. Each Party must:

- (a) not use confidential information or documents for any purpose other than to perform its obligations under the Contract without the prior written agreement of the other Party;
- (b) ensure the protection of such confidential information or documents with the same level of protection as its own confidential information or documents and in any case with due diligence;
- (c) not disclose directly or indirectly, confidential information or documents to third parties without the prior written agreement of the other party.

4.3. The confidentiality obligations set out in this provision are binding on the Agency and the Service Receiver during the performance of the Contract and for as long as the information or documents remain confidential unless:

- (a) the disclosing party agrees to release the receiving party from the confidentiality obligation earlier;
- (b) the confidential information or documents become public through other means than a breach of the confidentiality obligation;
- (c) the applicable law or a court order requires the disclosure of the confidential information or documents.

4.4 In case the Service Receiver is a National Safety Authority (NSA) of the European Economic Area or Switzerland and receives a request for access to a document exchanged in the framework of the provision of the Services, if such document originates from ERA, it shall apply article 5 of Regulation (EC) 1049/2001<sup>4</sup>. In case an NSA receives a request to access a document exchanged in the framework of the provision of the Services and such document does not originate from ERA, it shall apply its relevant national legal framework.

## 5. PROCESSING OF PERSONAL DATA

### 5.1 Processing of personal data by the Agency

Any personal data included in or relating to the Contract, including its implementation, shall be processed in accordance with Regulation (EU) 2018/1725<sup>5</sup>. Such data shall be processed solely for the purposes of the implementation, management and monitoring of the Contract by the data controller.

The Service Receiver or any other person whose personal data is processed by the data controller in relation to the Contract has specific rights as a data subject under Chapter III (Articles 14-25) of Regulation (EU) 2018/1725, in particular the right to access, rectify or erase their personal data and the right to restrict or, where applicable, the right to object to processing or the right to data portability.

Should the Service Receiver or any other person whose personal data is processed in relation to the Contract have any queries concerning the processing of its personal data, it shall address itself to the data controller. They may also address themselves to the Data Protection Officer of the data controller. They have the right to lodge a complaint at any time to the European Data Protection Supervisor.

### 5.2 Processing of personal data by the Service Receiver

The processing of personal data by the Service Receiver shall meet the requirements of Regulation (EU) 2016/679<sup>6</sup>.

## 6. INTELLECTUAL PROPERTY RIGHTS

6.1 The Service Receiver retains full ownership of any information and documents provided to the Agency to enable the latter to render the Services in the most effective manner, without prejudice however to the rights of third parties applying to such materials.

6.2 The Agency retains full ownership of any advice, assessment and documents provided to the Service Receiver in relation to the Services. The Service Receiver shall be entitled to use such Agency's advice and documents for the sole purpose to prepare any future application with the Agency, by itself or any affiliated company, for a single safety certificate, a vehicle or vehicle type authorization or an ERTMS track side approval project.

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<sup>4</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

<sup>5</sup> Regulation (EU) 2018/1725 of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295/39, 21.11.2018, p. 39).

<sup>6</sup> Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

6.3. The Service Receiver is obliged neither to make publically available nor to present as a general line of the Agency any result related to the assessment or opinion of the Agency connected to the provision of the specific Service pursuant to the Contract.

## **7. FORCE MAJEURE**

7.1. If a Party is affected by force majeure, it must immediately notify the other Party, stating the nature of the circumstances, their likely duration and foreseeable effects.

7.2. A party is not liable for any delay or failure to perform its obligations under the Contract if that delay or failure is a result of force majeure. If the Agency is unable to fulfil its contractual obligations owing to force majeure, it has the right to remuneration only for the services actually provided.

7.3. The parties must take all necessary measures to limit any damage due to force majeure.

7.4. For the purpose of this provision, the term 'force majeure', as used herein covers any unforeseeable events, not within the control of either Party and which by the exercise of due diligence neither party is able to overcome such as acts of God, strikes, lock-outs or other industrial disturbances, acts of terrorism insurrection, riots, epidemics, landslides, earthquakes, storms, lightning, floods, washouts, civil disturbances, explosions.

## **8. SUBCONTRACTING**

The Agency is entitled to subcontract to natural or legal persons all or part of its tasks related to the provision of the Services under the Contract. The Agency remains solely responsible and liable for the acts of its subcontractors.

## **9. SUSPENSION OF THE PERFORMANCE OF THE CONTRACT**

9.1. Suspension by the Agency

The Agency may suspend the Contract in the following cases:

- (a) the Service Receiver does not provide the Agency with the information and documents needed by the Agency for the performance of the Services, within 15 [fifteen] calendar days after entry into force of the Contract; by way of derogation, the parties can agree on a different date in the Contract;
- (b) the Service Receiver remains in default of paying invoices that are due and payable for more than 15 [fifteen]calendar days;
- (c) if the Agency is affected by force majeure.

The Agency must immediately notify the Service Receiver of the suspension. The notification must include a description of the reason for the suspension. In the case of force majeure, the Agency shall indicate the likely duration of the suspension and must notify the Service Receiver as soon as it is able to resume performance of the Contract, unless the Service Receiver has already terminated the Contract.

9.2. Suspension by the Service Receiver

The Service Receiver may at any time suspend the performance of the Contract or any part of it. The Service Receiver must formally notify the Agency of the suspension in writing or by electronic means. Suspension takes effect on the date of receipt by the Agency of such formal notification, or at a later date if the formal notification so provides.

If the suspension lasts for more than 10 [ten] calendar days, the section 10.3 shall apply.

## 10. TERMINATION OF THE CONTRACT

10.1. The Agency may terminate the Contract in the following cases:

- (a) if performance of the Contract cannot resume 60 [sixty] calendar days after its suspension by either party;
- (b) if the Service Receiver remains in default to fulfill any of its obligations towards the Agency, whether under the Contract or otherwise, and such default has not been remedied within 30 [thirty] calendar days from a notification by the Agency to the Contractor that it is in default and should remedy such default by a certain deadline.

The Agency must formally notify the Service Receiver of its intention to terminate the Contract and the grounds for its intention for termination.

The Service Receiver has 30 [thirty] calendar days following the date of receipt to submit observations, including the measures it has taken or will take to continue fulfilling its contractual obligations. Failing that, the decision to terminate becomes enforceable the day after the time limit for submitting observations has elapsed.

If the Service Receiver submits observations, the Agency must thereafter formally notify it either of the withdrawal of its intention to terminate or of its final decision to terminate in which case the date on which the termination takes effect must be specified in the formal notification.

10.2. The Service Receiver may terminate the Contract at any time without cause by sending a termination notice in writing to the Agency specifying the effective date of termination that shall not be earlier than the date of receipt of such notice by the Agency. If the date of receipt is not a working day at the Agency, the termination shall take effect on the first succeeding working day.

10.3. Effects of termination

Within 30 [thirty] calendar days of the date of termination, the Agency shall submit its invoice(s) for such services that were provided before the date of termination.

Such invoice shall be due and payable by the Service Receiver, except where termination of the Contract is at the initiative of the Service Receiver by reason of a breach of its obligations by the Agency and the Agency acknowledges such breach.

## 11. CHARGES AND INVOICES

11.1 The charges levied by the Agency for the provision of the Services cover the full costs of the Services rendered by the Agency.

11.2 The Agency shall issue an invoice for the charges due, within 30 [thirty] calendar days of the date when the Services rendered ended pursuant to the Contract or when the Contract is terminated.

11.3 The time spent by the Agency to provide the Services are invoiced at an hourly rate.

11.4 The Agency shall apply an hourly rate of EUR 130.

11.5 The charges comprise of the number of hours spent by each Agency staff and/or external experts multiplied by the hourly rate of the Agency.

11.6 The Agency's invoices shall specify the number of hours spent by each Agency staff and/or external experts, the amount due, the Services provided until completion or termination of the Contract, as well as the Contract reference.

11.7 The Agency is allowed to issue invoices on a regular basis, no later than each 6 months, when the service rendered is spread over a longer period.

11.8 The Agency is exempt from all taxes and duties, including VAT, in accordance with Articles 3 and 4 of the Protocol 7 of the Treaty on the Functioning of the European Union on the privileges and immunities of the European Union.

## 12. PAYMENTS

12.1 The Service Receiver shall pay the amount due in full, including any bank charges related to the payment, within 60 [sixty] calendar days from the date on which the invoice is sent to the Service Receiver electronically. The notification date shall be the date on which the invoice is sent by the Agency. If such date is not a working day for the Service Receiver, the date of notification will be the first following working date.

12.2 Should the Service Receiver request clarification about the content or cost breakdown of an invoice, this request will not suspend the payment period. In case the Service Receiver's request finally leads to a correction of the invoice, a credit note will be issued and the undue amount will be reimbursed or offset against a new invoice.

12.3 Payments shall be denominated in EUR and can exclusively be made by bank transfer in EUR to the bank account indicated in the contract. All payments should bear the Agency invoice number, to ensure that the payment is identified and allocated to the correct account.

12.4 The payment shall be deemed to have been effected on the day the Agency's financial account is credited.

12.5 If the Agency's account is not credited by the deadline, interest shall accrue and be payable for each additional calendar day at the rate applied by the European Central Bank to its principal refinancing operations as published in the C Series of the Official Journal of the European Union, in force on the first calendar day of the month in which the deadline falls, namely [example: "February 2019"] + 8 [eight] percentage points.

12.6 If the Agency's account is not credited by the deadline, the Agency shall:

- (a) immediately launch the procedure for effecting recovery by any means offered by the law, including, where appropriate, by offsetting and, if this is not possible, by enforced recovery.
- (b) exercise the right to initiate an enforced debt recovery of all outstanding amounts including late interest through a legal action.
- (c) exercise the right to invoke any measures separately or together as stipulated in Article 6 of Commission Implementing Regulation (EU) No 2018/764, in particular rejecting an application

referred to in such Regulation unless the Service Receiver provides a bank guarantee or a secured deposit, and rejecting any new application<sup>7</sup>.

### 13. COMMUNICATION BETWEEN THE PARTIES

13.1. The Parties shall communicate and exchange information and documents in English or a commonly agreed language by emails or in any other means supporting electronic communication.

Any communication of information, notices or documents under the Contract must: (a) be made in writing in paper or electronic format order; and (b) bear the Contract number.

The Parties agree that any communication has full legal effect and is admissible as evidence in judicial proceedings.

#### 13.2. Date of communications by mail and email

Any communication is deemed to have been made when the receiving party receives it, unless the Contract or another provision of these General Conditions refers to the date when the communication was sent.

E-mail is deemed to have been received by the receiving party on the day of dispatch of that e-mail, provided that it is sent to the e-mail address indicated in the Contract. In the event that the sending party receives a non-delivery report, it must make every effort to ensure that the other party actually receives the communication by email or by mail sent by post or by express courier.

Mail sent by post or express courier to the other Party is deemed to have been received by the latter two working days after such mail has been sent as evidenced by the post services or by the express courier.

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<sup>7</sup> « Article 6

#### *Failure to pay*

1. *Where the Agency has not received the payment within the periods laid down in Article 5(8) and (9), it may charge interest for each additional calendar day until the payment is received and shall apply the recovery rules provided for in Article 80 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council\*.*
2. *The interest rate shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Union, in force on the first calendar day of the month in which the due date falls, increased by eight percentage points.*
3. *Where the Agency has evidence that the Service Receiver's financial ability is at risk, it may reject an application unless the Service Receiver provides a bank guarantee or secured deposit.*
4. *The Agency may reject a new application, where the Service Receiver has not fulfilled its payment obligations arising out of previous authorisation, certification and approval tasks or services performed by the Agency, unless the Service Receiver pays for the outstanding amounts due for those authorisation, certification and approval tasks or services provided.*
5. *The Agency shall take all appropriate legal steps to ensure full payment of invoices issued. To this end, NSAs which have submitted a statement of cost for reimbursement shall support the Agency in this process”.*

\* [now replaced by Regulation (EU, Euratom) 2018/1046 of 18 July 2018 on the financial rules applicable to the general budget of the Union (OJ L 193, 30.7.2018, p. 1)]

**14. AMENDMENTS TO THE CONTRACT**

14.1. Any party may request an amendment to the Contract which shall be formalised by means of an addendum signed by both Parties.

14.2. The party requesting an amendment must formally notify the other party the requested amendment. The party receiving the request must formally notify its agreement or disagreement, within 30 [thirty] calendar days of receiving notification. In case of mutual agreement, the Parties shall proceed with the signature of an addendum to the Contract.

**15. APPLICABLE LAW AND DISPUTE SETTLEMENT**

15.1 The Contract is governed by European Union law and is supplemented, where necessary, by the laws of France (excluding choice of law provisions).

15.2 Disputes concerning the Contract's interpretation, application or validity that cannot be settled amicably must be brought before the competent courts of Valenciennes (France).

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