



**COMPANIA NAȚIONALĂ DE CĂI FERATE**  
**CFR S.A.**

Bucharest, 010873, 38 Dinicu Golescu Blvd., 1<sup>st</sup> district, Romania

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No. ....../2018

# **RAILWAY INFRASTRUCTURE ACCESS CONTRACT**

**CONCLUDED BETWEEN**

**CFR and the RU**

Valid from: December 09, 2018  
until: December 14, 2019

# **Railway Infrastructure Access Contract no.**

## **Preamble**

This Railway Infrastructure Access Contract shall be concluded in accordance with the provisions of Art. 18(1) of the Government Emergency Ordinance no. 12/1998 *on the Romanian railway transport and the reorganisation of the Romanian National Railway Company (SNCFR)*, republished, with its further amendments and supplements, and the provisions of Art. 12(1) of the Government Decision no. 581/1998 *on the setting up of the National Railway Company "C.F.R." - S.A. by means of the reorganisation of the Romanian National Railway Company (SNCFR)*, with its further amendments and supplements.

## **The Contracting Parties:**

**Compania Națională de Căi Ferate „C.F.R.”-S.A.**, with its registered office in 1 Bucharest, 38 Dinicu Golescu Blvd., mail code 010873, registered with the Bucharest Trade Registry under no. J/40/9774/1998, single registration code RO 11054529, duly represented by Mr. ...., Director General, in its capacity as the railway infrastructure manager in accordance with the Government Decision no. 581/1998, hereinafter called **CFR**,

**and**

....., with its registered office in ....., registered with the Trade Registry under no. ...., single registration code ....., duly represented by Mr. ...., Director General, in its capacity as a railway undertaking, hereinafter called the **RU**.

The Parties have agreed to conclude this Railway Infrastructure Access Contract, hereinafter called the Contract, as follows:

### **Art.1. Applicable Definitions**

In this Contract, the following terms shall have the following content and shall be interpreted as follows:

**1.1. Third Party** means the legal entity/individual (the person) which/who has no connection whatsoever to this legal document, i.e. the person who cannot make any profit on this legal document or be bound by it in any way.

**1.2. Subunits** mean the subunits held by CFR for the train movement or shunting activities or other operating activities as follows:

- CFR station;
- MH - movement halt affiliated to a CFR station;
- MP - movement point on the running line;
- PH - affiliated passenger halt;

- PFH – affiliated passenger and freight halt for wagons forwarded to the public or industrial line;
- PHw/oT - passenger halt without ticketing.

These subunits in which the RU performs railway operations shall be presented in Annex no. 2.

**1.3. Minimum Access Package** means the services supplied in order to ensure at least the transit of a train between two points of the network, except for the shunting services or other operations. The RU shall have the right to receive, in a non-discriminatory manner, the minimum access package which shall be supplied by CFR in accordance with the law in force, and shall be presented in Annex no. 3 hereto.

**1.4. Access, including track access, to service facilities (if they exist) and supply of services within these service facilities,** means the services supplied by CFR, in a non-discriminatory manner, for the access to service facilities and supply of services within these service facilities. The service facilities for which the relevant services are supplied shall be presented in Annex no. 4 hereto.

**1.5. Additional services** mean the services which shall be supplied by CFR to the RU upon request. These services shall be presented in Annex no. 5 hereto.

**1.6. Ancillary services** mean the services which shall be optionally supplied by CFR upon the request of the RU, on the basis of the agreement of the Contracting Parties. These services shall be presented in Annex no. 6 hereto.

**1.7. Optional services** mean other services agreed by the Parties and included in Annex no. 9.

**1.8. Force Majeure** is a circumstance which is absolutely unpredictable and inevitable, and makes impossible – in an objective manner, and without any fault of the debtor – the fulfilment of the obligations under the contract, respectively the objective impossibility of fulfilling the obligations caused, without any fault of the debtor, by a case of force majeure. The concept of *force majeure* is exclusively associated with events which are unpredictable and insurmountable, and have a severe overall impact on an extended territorial or socio-economic area, such as natural disasters (hurricanes, floods, volcanic eruptions) or serious social events (outbreak of war or of a popular revolution).

**1.9. Unforeseeable circumstance** is a relative event which can be neither foreseen nor prevented by the Party which should have borne the liability if the event had not occurred. The concept of unforeseeable circumstance is associated with:

a) circumstances which originate in the field of activity of the Party which is or should be liable, and are intrinsic to things and/or animals and/or actions, such as: hidden defects of things, manufacturing defects, animal fright, death of the engine driver, failures of the transportation means or of the railway infrastructure components, other than those that occur due to the fault of the keeper of the transportation means, respectively due to the fault of the railway infrastructure manager, theft of railway components, etc.;

b) events which are closely related to the activity carried out by the one whose liability is relieved, but which could not have been foreseen by him;

c) external circumstances which cannot be attributed to the liable person, which does not have an extraordinary nature, and which could have been neither foreseen nor prevented nor avoided: earthquakes of low intensity which frequently occur in certain territorial areas, floods

which commonly occur in some places every spring, events occurring at level crossings caused by road vehicles, falling trees, landslides and/or falling rocks, etc.

**1.10. day** – is interpreted as calendar day; **year** – is the period of time between the 1<sup>st</sup> of January and the 31<sup>st</sup> of December.

**1.11. Ancillary Agent** means an economic agent which carries out specific activities for the Parties on the basis of a contract.

## **CHAPTER 1 PURPOSE AND DURATION OF CONTRACT**

### **Art.2. Purpose of the Contract**

**2.1.** CFR shall make the interoperable, as well as the non-rented non-interoperable public railway infrastructure available to the RU in accordance with this Railway Infrastructure Access Contract.

**2.2.** CFR shall supply to the RU the **Minimum Access Package** as defined at Art. 1.3 hereof, for which the RU shall pay the Infrastructure Access Charge (IAC).

**2.3.** CFR shall supply to the RU the following additional services:

- access, including track access, to service facilities and supply of services within these service facilities;
- additional services;
- ancillary services;
- optional services

as defined at Art. 1 hereof. For these services, the RU shall pay other charges, not the IAC, as necessary.

**2.4.** For other services and facilities requested by the RU, the RU shall pay to CFR specific charges, as necessary.

**2.5.** The RU shall supply, on its own liability and behalf, railway transport services on the railway infrastructure in accordance with the legal regulations, and the conventions to which it is a party. These services shall be set down in Annex no. 1 hereto.

**2.6.** The RU shall use the railway infrastructure in order to supply transport services by complying with the safety conditions set down in the instructions and regulations in force, and with its liabilities hereunder.

### **Art.3. Contract Duration**

**3.1.** The Contract shall come into force on December 09, 2018, and shall be valid until December 14, 2019, inclusively.

**3.2.** The Contract may be extended for new periods of time upon the written agreement of the Parties by means of an addendum. The request to extend the Contract shall be submitted to CFR 30 days before the termination hereof.

## **CHAPTER 2**

### **CHARGES AND PAYMENT CONDITIONS**

#### **Art.4. Tariffs and Charges**

- 4.1.** During the validity period of the Contract, the level of the public railway infrastructure access charge (IAC) shall be that which is calculated with the help of the methodology in force for charging the use of the public railway infrastructure.
- 4.2.** The value of the basic charging elements shall be presented in the CFR Network Statement, and the list with the classification of the traffic sections per line categories for the IAC calculation used within the methodology shall be that approved in the CFR Performance Contract in force. The obtained value shall not include VAT.
- 4.3.** The IAC calculation modality shall be updated in accordance with the potential binding legal provisions to apply after the conclusion of this Contract.
- 4.4.** The charges and tariffs for the services included in Annexes no. 5, 6 and 9 hereto shall be determined by CFR in accordance with the regulations in force, and shall be notified to the RU at least 30 calendar days before the date of application. These shall be regularly updated, whenever there appear significant changes of the underlying elements.

#### **Art.5. Payment Conditions and Deadlines**

- 5.1.** The IAC invoice shall be issued by CFR each month, until the 15<sup>th</sup> day of the month for the ongoing traffic month, on the basis of some partial data, according to the previous traffic (50% of the traffic of the previous month). The settlement shall be usually performed until the 20<sup>th</sup> day of the month following the month in which the service was supplied. The due date of the IAC invoices shall be 30 calendar days from their receipt date. The date of receipt shall be the 5<sup>th</sup> calendar day from the date at which CFR issued the invoices.
- 5.2.** If the RU does not pay the equivalent value of the invoiced service until the due date, CFR may suspend its access to the railway infrastructure as follows:
- 5.2.1.** after 3 business days from the expiry of the due date of the invoices if the RU has not set up a guarantee under Chapter 5;
  - 5.2.2.** after a period of 15 calendar days from the expiry of the due date of the invoices, if the RU has set up a guarantee under Chapter 5.
- 5.3.** The other invoices shall be usually issued within 15 days from the receipt of the confirmation of the services, and shall be due within 30 calendar days from their issuance. In case of the invoices to be issued on the basis of a check list, these shall be sent by CFR to the RU, as a rule, within 30 days from the expiry of the month in which the service was supplied. The RU shall acknowledge, as appropriate, the check lists for the services supplied within 25 days from the date of their transmission by CFR, after which CFR shall issue the relevant invoices.
- If the RU does not acknowledge the check lists received or does not raise objections to them within this deadline, the check lists shall be considered accepted, and CFR shall issue the relevant invoices.

**5.4.** If the Parties do not fulfil or fulfil with delay or inadequately their financial obligations hereunder, they shall pay 0.03% interests and penalties per each day of delay commencing with the first day after the expiry of the payment deadline, whereas the debtor shall be in delay by operation of law. The total amount of the interests and penalties may not exceed the total amount on which they have been calculated.

### **CHAPTER 3 RIGHTS, OBLIGATIONS AND LIABILITIES OF THE PARTIES**

#### **Art.6. General Provisions**

**6.1.** CFR and the RU shall fulfil their obligations under the Contract in good faith so that they may cause no damage to the other Contracting Party (they shall fulfil their obligations under the Contract by limiting the negative effects as much as possible).

**6.2.** CFR and the RU shall send to each other all the information necessary to achieve a high efficiency and safety degree of the railway traffic management and activity.

**6.3.** The Parties may register the data on the Contract, the settlements and the services in common databases.

**6.4.** CFR and the RU shall make available to each other the indicators needed for statistical purposes regarding the assessment of the railway traffic structure.

**6.5.** The train-km volume achieved by the RU shall be determined by CFR by using IT applications. The results may be analysed and checked by the RU.

**6.6.** The operational structures which are designated by CFR and the RU, which are authorised to take, without delay, operational decisions on their behalf, shall be:

- for CFR - The Traffic Directorate
- for the RU – The Dispatcher’s Office.

#### **Art.7. Public Railway Infrastructure Capacity Allocation**

**7.1.** The access to the public railway infrastructure shall be granted on the basis of:

- a) the railway transport licence;
- b) the safety certificate;
- c) the timetable documents (rail service books);
- d) the instructions and regulations specific to the railway activity;
- e) the national legislation and the international conventions to which CFR and the RU are parties;
- f) the provisions of this Contract.

**7.2.** The use of the public railway infrastructure shall involve the allocation by CFR of the train paths for supplying transport services, on the basis of the requests for railway infrastructure capacity submitted in writing to CFR within the deadlines agreed under the law in force.

**7.3.** The allocated train paths shall be registered in the timetable documents (rail service books) to be regularly prepared by CFR, and shall represent Annex no. 15 hereto.

**7.4.** The train paths shall be allocated to the RU by means of the (annual) timetable. For the passenger traffic, CFR may modify or adapt the requests of the RUs with its consent, in accordance with the provisions of the regulations in force.

**7.5.** The train paths allocated to the RU by means of the (annual) timetable shall be operationally planned in the monthly traffic framework plan prepared by CFR on the basis of the requests of the RUs, in accordance with the dispatching schedule. For a better organisation of the traffic, CFR shall also prepare traffic plans for each week (or decade) and for each day, by including the potential changes requested by the RU in the monthly traffic framework plan. Moreover, CFR may amend, adapt or cancel the requests of the RUs in accordance with the objective criteria regarding the condition of the railway infrastructure or the necessity to comply with the defence needs or the regulations in force.

**7.6.** (1) For increasing the quality of the passenger and freight railway transport services, the Parties shall agree to apply the provisions of the document “The Performance Regime of the Train Traffic on the CFR Railway Network” presented in Annex no. 16 hereto.

(2) “The Performance Regime of the Train Traffic on the CFR Railway Network” aims at achieving the stability of the traffic plan, and at improving the train traffic punctuality by applying a system of payments made by the Party causing the damage to the Party suffering it.

(3) The Performance Regime presented in Annex no. 16 shall be valid until the entry into force of the similar provisions approved by means of the order of the Minister of Transport.

**7.7.** The RU and CFR shall communicate to each other any setting-up of units or subunits or any significant changes (winding-ups and reopenings) for a certain type of the traffic carried out by their own or common units.

## **RIGHTS AND OBLIGATIONS OF THE PARTIES**

### **Art.8. Information on Operation**

**8.1.** CFR shall make available to the RU, in due time, at least the following information:

- a) on the condition of the railway infrastructure before the departure of the train, especially on the changes related to the track, and those which are related to the train traffic (speed restrictions or limitations, signalling changes, etc.);
- b) on the position of the train held by the RU, upon its request;
- c) information on the contracted activity;
- d) other information relevant to the performance hereof;
- e) all scheduled line closures, at least 3 days before the closing; the information shall be made by telegram, fax and/or e-mail to the addresses specified in the Contract.

**8.2.** The RU shall make available to CFR, in due time, before the departure of the train, at least the following information:

- a) on the formation of the train (type of locomotive, length of train, number of train vehicles, and their operation features, mass (tonnage) of train, braked weight percentage, result of the technical inspection, and of the brake test (braking sheets, halting sheets, etc.), rolling

stock restricted for movement or shunting, out-of-loading gauge rolling stock or rolling stock overloaded per axle or linear meter, etc.);

- b) on the possible peculiarities (vehicles which are not proper for traffic in accordance with the specific domestic or international regulations, the special restrictions on the vehicle or its load, etc.);
- c) on important issues which could cause delay (speed limitations caused by the braking percentage (by mentioning the limitations), failures of the rolling stock, etc.);
- d) on other possible issues necessary for ensuring the traffic safety, and the settlement of the services.

**8.3.** The RU shall make available to CFR a list of the documents with the information specified at Art. 8.2 hereof, as well as with the specific regulations related to the access to and the use of the railway infrastructure (Annex no. 14).

#### **Art.9. CFR's Right to Carry Out Works on the Railway Infrastructure**

**9.1.** CFR shall have the right to carry out on the railway infrastructure all the works necessary for ensuring the operation of the lines, installations and other railway infrastructure components within the agreed parameters.

**9.2.** CFR shall inform the RU about any significant planned works (involving speed restrictions or line closures) within the deadlines set down in the “Instructions for Speed Restrictions, Line Closures, and Contact Line Disconnections no. 317”.

**9.3.** The line closures or capacity restrictions caused by the renewal or upgrading works on the railway infrastructure shall be approved by CFR in accordance with the legal provisions in force.

**9.4.** The works involving speed restrictions or limitations or line closures which are caused by a force majeure case/unforeseeable circumstance, and are scheduled after the entry into force of the timetable shall be notified (made known) by CFR to the RU within the deadlines set down in the railway instructions in force.

**9.5.** CFR shall immediately inform the RU about any accidental, urgent or non-scheduled works which involve line closures or speed limitations or restrictions, and shall carry out the relevant works so that their effects on the transport services supplied by the RU may be as low as possible.

**9.6.** In case of the line closures involving traffic interruption or in case of the congested railway infrastructure sections, CFR shall make available, upon the request of the RU, alternative traffic routes, without levying any additional IAC as to the reference route.

#### **Art.10. Verification**

**10.1.** At any moment or in any place, CFR may verify whether the train movement or the handling of the shunting convoys belonging to the RU is carried out in accordance with the provisions in force with regard to the use of the railway infrastructure.

**10.2.** The RU shall grant to CFR’s personnel assigned to perform these verifications access to the driving cabin of the RU’s traction rolling stock in accordance with the regulations in force and if the access is crucial for the use of the railway infrastructure.



**10.3.** If any non-compliance is found out by the personnel of one Party, the relevant personnel shall inform the representatives of the other Party, in writing, about the measures to be taken, and the remedying modality.

**10.4.** If any non-compliance which could affect the railway traffic safety is found out, the RU's personnel shall comply with the instructions and measures specified by CFR's personnel, in order to prevent any accidents/incidents occurring on the railway infrastructure.

**10.5.** The modality of performing the verification shall be presented in Annex no. 11 hereto.

## **RIGHTS AND OBLIGATIONS OF THE CONTRACTING PARTIES IN CASE OF INCIDENTS**

### **Art.11. Deviations from the Agreed Timetable and Disturbances**

**11.1.** CFR and the RU shall inform each other, as soon as possible, about any disturbance which could have effects on the safety, punctuality, and adequate performance of the railway transport or on the environment.

**11.2.** In this Contract, disturbance means any deviation from the agreed rail service book or plan, any interruption or breakdown, as well as the RU's request to amend the traffic plan.

**11.3.** In case of a deviation from the agreed timetable (train path) or of a disturbance, irrespective of their cause, CFR and the RU shall inform each other about their consequences for the traffic.

**11.4.** In case of train delays, the delay minutes and their cause shall be determined in accordance with "The Performance Regime of the Train Traffic on the CFR Railway Network".

**11.5.** If there is found out any non-compliance or failure which prevents the management or continuation of the movement of a train, CFR shall reserve the right to act in accordance with the law in force regarding the access to and the use of the railway infrastructure, by removing the defect rolling stock from the train or even by stopping (limiting) the train in the first sectioning point of the line until the failure has been remedied.

### **Art.12. Traffic Organisation for Resuming Normal Operating Conditions**

**12.1.** CFR shall organize and carry out the interventions necessary for resuming the railway traffic in case of any accidents/incidents occurring on the railway infrastructure, natural disasters or other circumstances disturbing the train traffic or affecting the railway traffic safety.

**12.2.** For this purpose, CFR may take measures to organise the traffic with a view to carrying out the intervention works.

**12.3.** CFR shall apply the regulations in force regarding the organisation of the traffic under failure conditions.

**12.4.** Upon CFR's request, the RU shall ensure, against payment, the means, rolling stock and specialised personnel for the working trains, with a view to re-establishing the operating parameters of the railway infrastructure.

**12.5.** CFR and the RU shall ensure the compliance with the common document "The Unitary Management of the Forces Taking Part in the Interventions related to Railway Accidents". The

provisions of the documentation related to the signatory RUs shall also be complied with by the RU.

**12.6.** In all cases, the equivalent value of the supplied services, and the suffered damages shall be paid by the Party causing them, in accordance with the investigation reports.

**Art.13. Clearing of the Railway Infrastructure**

**13.1.** After using the train path, the RU shall clear the public railway infrastructure in accordance with the technological processes or the common regulations.

**13.2.** In case of a failure of the RU's train hauling means, the RU shall take all the necessary measures to clear the running line as soon as possible, by supplying emergency locomotives. If the RU cannot supply the emergency locomotive within a reasonable period of time, CFR shall take measures to supply an emergency locomotive from any other RU so that the consequences for the railway traffic may be as low as possible.

**13.3.** Upon CFR's request, the RU shall collaborate in the removal of the effects of the accidents/incidents occurring on the railway infrastructure, and of the contingencies, even if Ancillary Agents or Third Parties are involved, whereas the equivalent value of the services shall be paid by the faulty party.

**13.4.** Moreover, upon CFR's request, the RU shall supply, against payment, the available traction means in order to remove the effects of snow blockages along the routes on which it operates, in accordance with the specific conventions.

**Art.14. Consequences Harmful to the Environment**

**14.1.** If the environment is affected by the operation of the railway infrastructure by the RU or if there are environment accidents/incidents, danger of explosion or fire or any other dangers to the operation, the RU shall warn the nearest CFR subunit (especially station).

**14.2.** This warning shall not exempt the RU from its liability to take immediate measures, and to comply with its legal obligations (intervention, information of the competent authorities as set down in the law in force, etc.).

**14.3.** The Parties shall ensure the compliance with the applicable legal regulations on environmental protection and the specific requirements of the Convention on Environmental Protection concluded between CFR and the RU.

**Art.15. Causes Simultaneously Contributing to Damages**

**15.1.** In case that the damages were produced by some causes for which both Parties are liable, each Contracting Party shall be responsible only if the causes for which it is liable under Art. 19 and 20 have contributed to the occurrence of the relevant damages.

If it is impossible to assess their individual liability, the Parties shall be equally liable for the damages they have caused.

**15.2.** In case of the damages under Art. 20, Art. 15.1(1) shall apply by analogy if the damages were produced by some causes for which several railway undertakings using the same railway infrastructure are liable.

**15.3.** If it is impossible to assess the extent to which the relevant causes have contributed to the occurrence of the damages, the railway undertakings shall be equally liable to CFR.

**Art.16. Damages for Injuries or Death**

The damages for injuries or death shall be established in accordance with the law in force.

**Art.17. Parties' Liability for their Ancillary Agents**

**17.1** The Contracting Parties shall be liable for their Ancillary Agents.

## **LIABILITIES**

**Art.18. Principles**

**18.1.** These provisions shall apply for regulating the liabilities of the Contracting Parties, unless the law in force at the place where the breakdown (incident) took place as well as the border agreements or intergovernmental agreements provide otherwise.

**18.2.** These provisions shall not apply in case of other legal relations, mainly in case of:

a. the liability of the Contracting Parties to their agents and/or to other persons to which they resort in order to perform their tasks;

b. the liability between the Contracting Parties and Third Parties.

**18.3.** In accordance with the provisions of the Civil Code, the debtor of the obligation "to be fulfilled" shall be in delay by operation of law upon the expiry of the deadlines set down in the Contract.

**18.4.** For the non-fulfilment or inadequate fulfilment of the obligations hereunder, the Party in default shall pay penalties and damages.

**18.5.** If the penalties set down hereunder or through the established tariffs do not cover the damages suffered, CFR or the RU may claim additional damages in accordance with the provisions of the common law.

**Art.19. CFR's Liability**

**19.1.** CFR shall be liable for:

- bodily injuries (wounding or any other injury to the body or health of a person);
- material damages (destroying or damaging of movable and immovable property);
- pecuniary losses resulting from the damages owed by the RU under the domestic and

international conventions to which it is a party.

CFR shall be liable for these damages only if they have been exclusively caused due to or as a result of the performance of the specific activities.

**19.2.** CFR shall not be liable:

**19.2.1.** In case of any bodily injuries or other pecuniary losses resulting from the damages owed by the RU under the domestic and international conventions,

- if the incident/accident was caused under some circumstances not connected to the operation, which CFR could not have avoided and could not have any possibility to avoid, and the consequences of which could not have been prevented;
- if the incident/accident is caused by the fault of the person who suffered the damages;
- if the incident/accident is caused as a result of the actions of a third party which CFR could not have avoided and could not have any possibility to avoid, and the consequences of which could not have been prevented or the effect of which could not have been limited;

**19.2.2.** CFR shall not be liable for the material damages and the pecuniary losses resulting from the damages owed by the RU pursuant to the domestic and international conventions, if the damages are caused by the fault of the RU, by an order of the RU or under some circumstances that CFR could not have avoided or the consequences of which could not have been prevented, or in case of the occurrence of unforeseeable circumstances.

**19.3.** If CFR is not relieved of its liability under Art. 19.2, it shall be liable within the limits of this Chapter, retaining its right to a possible recourse action against the relevant Third Party.

**19.4.** If the Contracting Parties have not agreed otherwise, CFR shall not be liable for the direct damages (pecuniary losses) unless the RU has to pay damages in accordance with the legal provisions or the intergovernmental conventions. Art. 19.2 shall apply correspondingly.

## **Art.20. RU's Liability**

**20.1.** The RU shall be liable to CFR or to CFR's Ancillary Agents for the damages caused by the rolling stock it uses or by the passengers or goods it transports, in accordance with the conditions set down in the Regulation on the Romanian Railway Transport, in the Railway Technical Operation Regulation, and in the law in force.

**20.2.** The RU shall be liable for the trains, convoys and rolling stock which it uses for supplying railway transport services (including shunting operations), and which have access to CFR's public or private railway infrastructure, in accordance with the Regulation on the Romanian Railway Transport.

**20.3.** The RU shall ensure and be liable for the integrity of its transports, unless the law in force provides otherwise.

**20.4.** The RU shall be relieved of the pecuniary liability:

- if the incident was caused by some circumstances not connected to the operation, which the RU could not have avoided, and the consequences of which could not have been prevented by the RU;
- if the incident is caused as a result of the actions of a Third Party which the RU could not have avoided, and the consequences of which could not have been prevented by the RU.

## **CHAPTER 4**

### **SPECIFIC CONTRACT CLAUSES**

#### **RU**

##### **Art.21. Authorisations**

**21.1.** The RU shall submit to CFR certified copies of its railway transport licence and safety certificate which shall become Annexes no. 7 and 8 hereto.

**21.2.** The RU shall state that, until the conclusion date of the Contract, it has neither required any amendment nor opened any procedure for cancelling the above-mentioned documents. The RU shall immediately inform CFR about any amendment to them or, if necessary, about any withdrawal or suspension of the licence or safety certificate.

**21.3.** The later requests for amending the provisions of the Railway Infrastructure Access Contract and the relevant regulations shall be submitted in writing to CFR at least 10 working days before the requested date of enforcement, with a view to ensuring the preparation of the relevant documentation, as well as its distribution and the training of the relevant personnel of CFR and the RU.

##### **Art.22. Personnel**

**22.1.** For each train, the RU shall ensure the necessary personnel, authorised and competent to take, on behalf of the RU, decisions related to the performance of operations.

**22.2.** For supplying the services specific to its business purpose, the RU shall use only trained and authorised personnel, regularly tested in accordance with the specific regulations in force, and acquainted with:

- the Romanian language;
- the railway regulations and instructions on the traffic and shunting activity as well as those on the use of infrastructure;
- the local conditions and the relevant line;
- the local working conditions;
- the specific domestic and international regulations.

##### **Art.23. Performance of the RU's Activity in CFR's subunits**

**23.1.** The RU shall specify in Annex no. 2 the subunits held by CFR in which it is to carry out the activities specific to its business field.

**23.2.** The activities to be carried out in CFR's subunits opened to the RU's traffic shall be performed in accordance with the convention on work health and safety, and the convention on handling emergency situations concluded between the Parties.

**23.3.** CFR may supply the Optional Commercial Services set down in Annex no. 9.

##### **Art.24. Rolling Stock**

**24.1.** For supplying the specific services, the RU shall use only rolling stock complying with the specific domestic and international regulations in force, as the case may be.

The compliance with these conditions shall be verified by the RU in accordance with its business purpose.

**24.2.** For ensuring the traffic and transport safety, when the relevant rolling stock is held by other agents, but is hauled by it, the RU shall act as if it were its own rolling stock.

**24.3.** The RU shall perform, against payment, the inspections set down in the regulations for the rolling stock held by CFR or the agents carrying out works on behalf of CFR.

**Art.25. Reserved**

**Art.26. Operation Documents**

**26.1.** CFR shall make available to the RU an overview of the assembly of public railway infrastructure lines, in accordance with the safety certificates. This overview shall be regularly updated by CFR, and sent to the RU.

**26.2.** CFR shall make available to the RU a copy of the documents including this information, the timetable documents (rail service books), and all their updates. The documents to be made available to the RU shall be specified in Annex no. 12.

**26.3.** CFR shall state that, until the conclusion date of the Contract, it has neither required any amendment nor opened any procedure for cancelling the public documents or the setting-up legislation.

**Art.27. Operation Prescriptions**

**27.1.** CFR's own specific regulations, and the own or common conventions shall be in accordance with the law in force on using the public and private railway infrastructure applicable to all the relations between CFR and the RU for achieving the business purpose of each Party.

**27.2.** CFR's regulations on the access to and the use of the railway infrastructure which are necessary and binding for the RU shall be made available by CFR, and shall be presented in Annex no. 13.

**27.3.** The modality of working on and of the access to the CFR infrastructure in and through the border stations shall be specified in all the conventions and minutes concluded by the border commissions.

**Art.28. Railway Infrastructure**

**28.1.** CFR shall ensure the functioning of the railway infrastructure, and shall manage the traffic safety and operation systems and installations by complying with the conditions set down in the Government Decision no. 581/1998, and in the CFR Performance Contract.

**28.2.** If the RU requires higher railway infrastructure quality standards as compared to this Contract, and those provided for by the CFR Performance Contract, there shall be concluded addenda to this Contract.

**28.3.** CFR shall reserve the right to categorise or change the classification of the railway infrastructure lines according to the specific technical components, in accordance with the regulations in force.

**28.4.** CFR shall annually update the list of traffic sections classified per classes if the classification of some sections does not correspond any more due to a modification of their technical characteristics, and shall include it in the next Performance Contract of CNCF „CFR” – SA or in the addendum, as necessary.

**28.5.** According to its business purpose, CFR shall ensure the maintenance of the railway infrastructure at the parameters corresponding to the classification of the traffic sections.

## **CHAPTER 5 GUARANTEE**

### **Art.29. Guarantee Setting-Up**

**29.1.** In order to guarantee the fulfilment of all its obligations hereunder, the RU shall set up, within 30 calendar days from signing this Contract, an irrevocable financial guarantee in one of the following forms:

- a) guarantee bank deposit at CFR's disposal;
- b) advance payment to an account indicated by CFR;
- c) letter of bank guarantee issued by a banking financial institution which is legally registered and authorized in Romania, specifying that the letter can be unconditionally executed by CFR at its first request and without any other formality;
- d) an insurance policy concluded with an insurer which is legally registered and authorized in Romania, specifying that the policy can be unconditionally executed by CFR at its first request and without any other formality.

**29.2.** In accordance with the provisions of the Regulation (EU) 2015/10 on criteria for applicants for infrastructure capacity, CFR shall require the guarantee if the credit rating of the RU is below the rating limit established by CFR and published in the CFR Network Statement. The credit rating assessment services of the RU shall be purchased by CFR.

**29.3.** The guarantee instrument provided in Art. 29.1 (a) to (d) shall be set up in favour of CFR at a bank or insurer, which is not undergoing bankruptcy, reorganization or liquidation.

**29.4.** The guarantee shall be set up in Lei, shall cover the equivalent value of the IAC for at least two traffic months at the estimated average level of train-kms as agreed by the Parties on the basis of the previous traffic data (if applicable), and shall be valid until the expiry of the validity period of this Contract, plus two calendar months. When the RU records debits arising from the performance of this Contract, the RU shall extend the validity of the guarantee until the full payment of the debits.

**29.5.** If there is an increase/decrease in the average monthly traffic volume for three successive months, as compared to the guaranteed volume, the RU shall supplement/update the guarantee according to the progress of the traffic. The modality of calculating the updated guarantee shall be similar to that specified at Art. 29.4 where the estimated average level of train-kms shall be the average monthly traffic volume indicated above.

**29.6.** If this Contract is extended for a new period of time by means of an addendum, the RU shall correspondingly extend the validity of the guarantee.

**29.7.** In case of a significant traffic volume exceeding 50 000 train-kms per month, the Parties may accept, by means of separate conventions, the setting-up of larger guarantees covering the equivalent value of the IAC for more than two traffic months, by correspondingly modifying the periods of time set down at Art. 5.3 and Art. 30.1 (without suspending the access to the railway infrastructure), and the guarantee enforcement period.

**Art.30. Enforcement of Guarantee**

**30.1.** If the RU does not pay the equivalent value of the due invoices within 30 calendar days from the due date, CFR may enforce the guarantee within the limits of the owed amounts, without any prior notice to the RU.

**30.2.** In case of the partial or total enforcement of the guarantee, the RU shall supplement the guarantee up to the initial value. Until the guarantee has been supplemented, CFR may maintain the suspension of the access or, where appropriate, suspend the access to the railway infrastructure.

## **CHAPTER 6 CONTRACT TERMINATION AND CANCELLATION**

**Art.31. Contract Termination**

**31.1** The Contract shall be terminated by operation of law, without any intervention of a court or other judicial body, in the following situations:

a) upon the expiry of the period for which it was concluded, if it has not been extended by means of an addendum in accordance with the law;

b) in case of force majeure/unforeseeable circumstances claimed and established in accordance with the law.

**31.2** The Contract may also be terminated upon the wilful agreement of the Parties.

**31.3** The Party claiming the termination of the Contract shall notify in writing the other Party about the cause of termination at least 30 days before the date at which the termination is to produce its effects.

**Art.32. Contract Cancellation**

**32.1.** This Contract shall be cancelled by operation of law, without any intervention of a court or other judicial body, in the following situations:

**32.1.1.** the RU does not hold any more a valid license or safety certificate or CFR does not hold any more the concession of the public railway infrastructure in accordance with the law;

**32.1.2.** the RU has partially or fully transmitted/transformed its rights and obligations hereunder in favour of a Third Party or another RU, without the prior approval of CFR;

**32.1.3.** one of the Parties cannot fulfil its obligations hereunder;

**32.1.4.** the RU has not used, for 6 successive months, at least 10% of the train paths allocated to it;



**32.1.5.** the RU has not set-up, supplemented or updated the guarantee in accordance with Chapter V.

**32.2.** The Party which faultily caused the cancellation of the Contract shall be liable to the other Party for the damages resulting from it.

**32.3.** The Party claiming the cancellation of the Contract shall notify the other Party at least 15 days before the date at which the cancellation is to produce its effects. The notice of cancellation shall contain the legal grounds for cancellation, the legal and/or contractual provisions not complied with, the claims, being signed by the legal representative of the Party issuing the notice.

**32.4.** The cancellation or termination of the Contract shall not exempt the Parties from fulfilling their financial obligations already due between the Parties for the period in which the Contract was performed.

**32.5.** The provisions of this article shall not relieve the liability of the Party which faultily caused the cancellation of the Contract.

**32.6.** The intention to cancel the Contract may be registered in a finding report which shall be concluded by the Parties before the transmission of the notice set down at Art. 32.2, and shall also include provisions regarding the obligations already due and not fulfilled.

**32.7.** Commencing with the conclusion date of the finding report, the Parties shall agree with the definitive withdrawal of the RU's right of access to the railway infrastructure. The conclusion of the finding report shall not exempt the Party intending to cancel the Contract from complying with its obligation of sending to the other Party the cancellation notice set down at Art. 32.3.

## **CHAPTER 7 FINAL PROVISIONS**

### **Art.33. Communications**

**33.1** The Contracting Parties shall agree that any notice sent by one Party to the other is validly sent if it is sent to the address/registered office set down in the introductory part hereof.

**33.2** Any communication between the Parties with regard to the performance hereof shall be made in writing.

**33.3** Any written document shall be recorded both upon its transmission, and upon its receipt.

**33.4** If the notice is sent by post, it shall be sent by registered letter with acknowledgment of receipt (AR), and shall be considered received by the addressee at the date mentioned on the acknowledgment of receipt.

**33.5** The communications between the Parties may also be performed by phone, facsimile or e-mail if the receipt of the communication is confirmed in writing.

**33.6** If the notice is sent by telex or telefax, it shall be considered received on the first working day after the day on which it was sent.

**33.7** The verbal notices shall be taken into consideration by neither of the Parties if they are not confirmed through one of the modalities set down in the preceding paragraphs.

### **Art.34. Confidential Nature of the Contract**

CFR and the RU shall keep confidential the received information and documents related to the use of the railway infrastructure.

**34.1.** In the absence of the written approval of the other Party, a Party shall not:

- a) make known this Contract or any provision hereof to a Third Party, except to those involved in the performance hereof, and to the competent authorities;
- b) use the information and documents obtained or made available during the performance period hereof for any other purpose than that related to the fulfillment of its obligations hereunder.

The disclosure of any information to those involved in the performance hereof shall be confidential, and shall refer only to those pieces of information which are necessary for the performance hereof.

**34.2.** A Contracting Party shall be relieved of its liability for the disclosure of information regarding the Contract if:

- a) the Contracting Party knew the information before receiving it from the other Contracting Party; or
- b) the information was disclosed after receiving the written approval of the other Contracting Party with regard to such disclosure; or
- c) the Contracting Party was legally forced to disclose the information.

**Art.35. Transmission and Transformation of the Obligations**

The RU shall not partially or fully transmit/transfer the rights and obligations hereunder in favour of a Third Party or another RU..

**Art.36. Force Majeure/Unforeseeable circumstance**

**36.1.** Neither of the Parties hereto shall be liable for the complete or partial failure to fulfil in due time and/or adequately any of its obligations hereunder, if the non-fulfilment of such obligation was caused by force majeure/unforeseeable circumstances, the consequences of which cannot be removed by the invoking Party.

**36.2.** The Party invoking the force majeure shall inform the other Party about its occurrence within 72 hours and in a complete way, and shall take all the available measures in order to limit the consequences of the relevant force majeure case.

**36.3.** If the force majeure case lasts or is estimated to last more than 30 days, any Party may notify the other Party about the termination of this Contract by operation of law, but no Party may claim damages from the other Party.

**Art.37. Amendments, Supplements**

The amendments and supplements to this Contract shall be performed only by means of addenda which shall be an integral part hereof.

**Art.38. Applicable Law**

The law governing this Contract shall be the Romanian law. This contract shall be supplemented by the provisions of the Civil Code and other relevant regulations.

**Art.39. Disputes**

- 39.1.** Any possible dispute between the Parties shall be amicably settled, if possible.
- 39.2.** Before opening any procedure for the settlement of the dispute, CFR and the RU shall have the right to send notices with regard to the non-compliance with the contract provisions.
- 39.3.** The amicable settlement to be expressly accepted in writing by both Parties shall be recorded in a document to be an integral part hereof.
- 39.4.** If the summoned Party does not appear within 5 days from the date specified in the request for amicable settlement, it shall be deemed that it tacitly acknowledges the opinion of the other Party communicated by means of the summons for the meeting with regard to the amicable settlement.
- 39.5.** If the amiable settlement is not possible, any dispute arising out of or in connection with this Contract, including its conclusion, performance or cancellation, shall be settled by the courts of common law having jurisdiction for the place where the registered office of CFR is situated.

**Art.40. Language Governing the Contract**

- 40.1.** The language governing the Contract shall be Romanian. The working language between CFR and the RU shall be Romanian. The international documents shall be submitted after having been translated into Romanian.
- 40.2.** The language used in the border stations shall be mentioned in all the conventions and minutes of the border commissions.

**Art.41. Annexes to the Contract**

The Contract shall have 16 annexes which are an integral part hereof, namely:

- Annex no. 1 – Services to be Supplied by the RU;
- Annex no. 2 – CFR Subunits Performing Operation Activities, the RU's Commercial Activities, and CFR's Activities on behalf of the RU;
- Annex no. 3 – Minimum Access Package;
- Annex no. 4 – Access, including Track Access to Service Facilities and Supply of Services within these Facilities;
- Annex no. 5 – Additional Services to be Supplied by CFR;
- Annex no. 6 – Ancillary Services to be Supplied by CFR under Separate Contracts/Conventions;
- Annex no. 7 – The RU's Transport Licence;
- Annex no. 8 – The RU's Safety Certificate;
- Annex no. 9 – List of Optional Commercial Services to be Supplied by CFR;
- Annex no. 10 – List of the Regulations Made Available to CFR by the RU, which are Necessary for Supplying the Optional Commercial Services;
- Annex no. 11 – Verification Modality;
- Annex no. 12 – Documentations to be Made Available to the RU by CFR;
- Annex no. 13 – List of the Regulations in Force Applicable to the Railway Infrastructure to be Made Available to the RU by CFR against payment;

- Annex no. 14 – List of the Documentations and Regulations in Force Applicable to the Public Railway Infrastructure to be Made Available to CFR by the RU;
- Annex no. 15 – Train Paths Allocated to the RU.
- Annex no. 16 - The Performance Regime of the Train Traffic on the CFR Network

**Art.42. Place and Date of Contract Conclusion**

The Contract was concluded in Bucharest, today ....., in three copies of 19 pages (annexes excluded), each of them being considered original and having the same legal effect, one copy for CFR and one copy for the RU.

On behalf of  
**Compania Națională de Căi Ferate „CFR” SA**

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Director General

On behalf of

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Director General



# **ANNEXES**

## **SERVICES TO BE SUPPLIED BY THE RU**

1. Supply of the service of railway transport of freight and other goods in the domestic and international traffic;
2. Supply of the service of railway transport of passengers;
3. Management, organisation, planning and control of the railway transport activity it carries out;
4. Services of rental of transportation means;
4. Guarding and order services for its own activities in its business purpose;
5. Development of prescriptions, technologies and norms specific to its own activity.

**CFR SUBUNITS PERFORMING OPERATION ACTIVITIES, THE RU'S  
COMMERCIAL ACTIVITIES AND CFR'S ACTIVITIES  
ON BEHALF OF THE RU**

- All the stations and movement halts on the traffic sections/routes listed in the annex with routes to the Safety Certificate;
  - o The masters of the stations (the Traffic Divisions where the activity is performed) listed in the annex with routes to the Safety Certificate shall make available the technical operation plans (TOPs) to the RU. The RU's representative shall confirm by signing that he holds a copy of the TOP, with a view to instructing the own personnel;
  - o The RU shall comply with all the provisions of the technical operation plans regarding the specific railway transport activity in stations.



## **MINIMUM ACCESS PACKAGE**

It shall include the services to be supplied by CFR for the:

- a) Handling of the requests for railway infrastructure capacity;
- b) Right to use the allocated infrastructure capacity;
- c) Use of the railway infrastructure, including of the switches and junctions;
- d) Coordination of the railway traffic, including the signalling, regulating, and dispatching activity, as well as the communications and the supply of information on train traffic;
- e) Use of the electrical supply system for traction current, if available (without the electrical power supply);
- f) Any other information necessary for enforcing or operating the service for which the infrastructure capacity was allocated.

## **ACCESS, INCLUDING TRACK ACCESS TO SERVICE FACILITIES AND SUPPLY OF SERVICES**

It shall include the services to be supplied by CFR for the access to the following facilities and the supply of services within these facilities:

- a) Passenger stations, their buildings and other systems, including the display of travel information and the appropriate location for ticketing services;
- b) Freight terminals;
- c) Marshalling yards and Train formation facilities, including shunting facilities;
- d) Parking lines;
- e) Maintenance facilities;
- f) Other technical facilities, including cleaning and washing facilities;
- g) Sea port and inland facilities related to the railway activities;
- h) Intervention facilities;
- i) Refuelling facilities.

## ADDITIONAL SERVICES TO BE SUPPLIED BY CFR

It shall include the following services to be supplied by CFR:

- a) Traction power based on the specific contracts concluded between the RU and SC "Elettrificazione CFR" SA;
- b) Pre-heating of the passenger trains;
- c) The support (scheduling, traffic endorsements, agreements or approvals, transport management, additional infrastructure works, etc.) for:
  - the control of transport of dangerous goods;
  - the operation of special trains (including transports of dangerous goods or out-of-loading gauge transports).

**ANCILLARY SERVICES TO BE SUPPLIED BY CFR  
UNDER SEPARATE CONTRACTS/CONVENTIONS**

- Supply of additional information (based on separate conventions concluded with „Informatica Feroviară” SA);
- Other services established by mutual agreement.

**ANNEX NO. 7**

**The RU's TRANSPORT LICENCE**

**ANNEX NO. 8**

**The RU's SAFETY CERTIFICATE**

**LIST OF OPTIONAL COMMERCIAL SERVICES  
TO BE SUPPLIED BY CFR**

- Approval of wagons (transports) in arrival stations;
- Rental or use of land, premises and rooms or systems belonging to CFR (based on separate conventions, if any)
- Check of the accompanying personnel in the agreed stations (based on separate conventions, if any);
- Other services agreed by the Parties;

**LIST OF THE REGULATIONS MADE AVAILABLE TO CFR BY THE  
RU, WHICH ARE NECESSARY FOR SUPPLYING  
THE OPTIONAL COMMERCIAL SERVICES**

The provisions of the “Railway Transport Regulation”, as well as the existing regulations and instructions shall apply to the commercial services to be supplied by CFR.

## **VERIFICATION MODALITY**

In principle, CFR has confidence in the current operations and inspections performed by the RU in advance, in accordance with its business purpose, and the law in force.

The control has a preventive nature determined by the necessity to ensure the optimum reliability of the railway infrastructure operation with the aim to prevent railway incidents/accidents, and to ensure the railway traffic safety on the CFR infrastructure.

The aim of CFR's verification is the compliance with the railway infrastructure operation and use prescriptions.

CFR is also entitled to check the condition of the rolling stock, and the RU's personnel who have access to the railway infrastructure.

The negative or unclear aspects identified by the control bodies of CFR shall be notified to the RU which shall immediately take remedy measures, whereas, if these can affect the traffic safety, CFR may restrict or even suspend the access to the railway infrastructure and its use until the situation has been remedied.

The list of the positions of CFR's personnel who have access to the driving cabin of the RU's traction rolling stock shall be communicated by CFR



## **DOCUMENTATIONS TO BE MADE AVAILABLE TO THE RU BY CFR**

- the technical characteristics of the interoperable and non-rented non-interoperable public railway infrastructure lines;
- the rail service books (location of the sectioning points and of other units (H, PFH, PH, PHw/oT), journey times, length of the trains, and the maximum admitted tonnages of trains, other speed limitations).

**LIST OF THE REGULATIONS IN FORCE APPLICABLE TO THE RAILWAY  
INFRASTRUCTURE TO BE MADE AVAILABLE TO THE RU BY CFR AGAINST  
PAYMENT**

**a) Instructions:**

<b>Crt. No.</b>	<b>Codification</b>	<b>Name</b>
1	002	Technical Operation Regulation (TOR)
2	GD no. 117/2010	Regulation on Investigating Railway Accidents and Incidents, and Developing and Improving Safety on the Romanian Railway and Subway Network
3	004	Signalling Regulation
4	005	Regulation on Train Movement and Railway Vehicle Shunting
5	OMTCT no. 539/2004	Regulation on the Operation of the Oravita – Anina Line
6	114	Instruction on Preparing and Processing Job Telegrams
7	311	Instructions on Preventing and Removing Snow Blockages on the Railway Lines
8	317	Instructions on Speed Restrictions, Line Closures and Disconnections
9	322	Use of Radio and Phone Systems
10	328	Instructions on Allowing and Dispatching Exceptional Transports on the Public Railway Infrastructure
11	115	Instructions on the Calculation of the Capacity of Stations and Traffic Sections

**b) Indications and orders**

1	25A/206/75	Traffic of Transposed SZD Wagons
2	OMTI no. 1584/2012	Specific Regulations on Train Numbering on the CFR Network
3	ICPTT no. 5855/81	Guide for the Use of Drag Shoes on the CFR Network
4	CFR Indication no. 56/2006	Guide for the Preparation of the TOPs

- c) Other instructions, indications and orders issued in accordance with the law in force (border conventions, border instructions, etc.)
- d) Other regulations shall be made available to the RU in electronic format, as available.

**LIST OF THE DOCUMENTATIONS AND REGULATIONS IN FORCE  
APPLICABLE TO THE PUBLIC RAILWAY INFRASTRUCTURE TO BE  
MADE AVAILABLE TO CFR BY THE RU**

Wagon display

Brake note

Railroad map

Notices regarding the rolling stock traffic conditions

The hauling and braking regulation (006)

Instructions on giving-over/taking-over wagons and on remedying wagon defects and damages (no. 271)

Work protection norms

Instructions on filling in the form „Railroad map”

Regulations on the duration of the maximum admitted service per locomotive

Instructions on the activity of the locomotive personnel in the railway transport (no. 201)

Instructions on the technical inspection and maintenance of the wagons in operation (no. 250)

Transport Regulation

Instructions on the automated speed control and INDUSI stopping systems

Agreements and/or conventions concluded with the railway undertakings in the neighbouring countries

Other specific regulations

**TRAIN PATHS ALLOCATED TO THE RU**

The RAIL SERVICE BOOK with the timetable for the RU

**THE PERFORMANCE REGIME  
OF THE TRAIN TRAFFIC ON THE CFR NETWORK**