

Addendum to the Track Access Agreement between XX and Infrabel

Responsibility of the railway undertaking designated by a non-railway undertaking applicant

This **Addendum** to the Track Access Agreement is concluded between:

the infrastructure manager, Infrabel, a limited liability company under public law, Place Marcel Broodthaers 2, B-1060 Brussels – LER 0869.763.267, represented by [NAME, FUNCTION]

and

the railway undertaking [NAME OF RAILWAY UNDERTAKING, ADDRESS] – registered in the CBE with the registration number [*] – represented by [NAME, FUNCTION].

THE FOLLOWING HAS BEEN STATED FIRST OF ALL:

The infrastructure manager and the railway undertaking concluded an agreement for the use of the infrastructure on [*] (hereinafter referred to as the “**Track Access Agreement**”).

The railway undertaking intends to use the capacity allocated by the infrastructure manager to one or more non-railway undertaking applicant(s) . The railway undertaking will be designated for that purpose by each non-railway undertaking applicant.

As the non-railway undertaking applicant is not a railway undertaking, it has no system of recognition or accreditation in the field of safety and bears no responsibility for safety whatsoever. It is the railway undertakings’ responsibility to carry out the necessary checks.

The purpose of this Addendum is to implement these principles by confirming that the railway undertaking bears responsibility for the use that is made of the railway infrastructure, even when it is using the capacity allocated to a non-railway undertaking applicant.

IT HAS THEREFORE BEEN AGREED AS FOLLOWS:

Article 1: Object

The purpose of this Addendum is to regulate the use of the railway infrastructure by the railway undertaking in the event that capacity has been allocated to a non-railway undertaking applicant. For the avoidance of doubt, this addendum shall not apply to situations in which the railway undertaking uses the capacity allocated to it; such situations remain subject only to the Track Access Agreement.

Article 2: Amendments to the Track Access Agreement

In all cases in which the railway undertaking uses capacity allocated to the non-railway undertaking applicant, the Track Access Agreement shall apply with the following amendments:

- a) All references in the Track Access Agreement to allocated capacity shall be understood to refer to the capacity allocated to the non-railway undertaking applicant.
- b) In Article 1.3, the definition of the word “non-railway undertaking applicant” is added: *"the term " non-railway undertaking applicant" means an entity referred to in Article 3, 11° of the Rail Code, but which does not have the status of a railway undertaking"*.
- c) In Article 1.3, the definition of “railway undertakings’ rolling stock” is additionally defined as follows: *"the term “railway undertakings’ rolling stock” shall be understood to mean all types of vehicles (locomotives, wagons and other vehicles) used by the railway undertaking, by the undertakings acting on its behalf for the performance of its railway transport services or by its subcontractors; to avoid any misunderstanding, this term also includes vehicles placed at the disposal of the railway undertaking by the non-railway undertaking applicant, irrespective of its legal form"*.
- d) Article 2.1, last paragraph, shall be replaced by the following text: *“The non-railway undertaking applicant shall designate the railway undertaking on a strictly personal basis to use the capacity allocated to the non-railway undertaking applicant. The railway undertaking may not transfer that capacity or give it to a third party in return for a benefit or for any other service.”*
- e) Article 2.5.1, first paragraph, shall be replaced by the following text:

“2.5.1 a) All communication concerning the use of the infrastructure and safety takes place between Infrabel and the designated railway undertaking only.

b) The infrastructure manager shall provide the railway undertaking, where it has been mandated by the non-railway undertaking applicant, in good time with information on:

 - *Major changes to the quality or capacity of the infrastructure used*
 - *Suspension or withdrawal of capacity under the conditions set out in the NS*
 - *Modification of capacity under the conditions set out in the NS.*

c) The designated railway undertaking shall submit this mandate to Infrabel at Infrabel's request.

d) The railway undertaking shall use the capacity for which it has been designated by the non-railway undertaking applicant , taking into account:

 - *The technical and functional characteristics of the infrastructure*
 - *Conditions regarding safety, the performance of the service and the environment as determined by the infrastructure manager.”*
 - f) Article 2.7 is adapted as follows:

- The title of the article is replaced by "Modification, Cancellation, Suspension and Withdrawal of Infrastructure Capacity Allocated to the Non-Railway Undertaking Applicant"
- Paragraph 2 is replaced by the following text: *"In the event that it has been mandated by the non-railway undertaking applicant to deal with Infrabel with any request for modification or cancellation of the infrastructure capacity allocated to the non-railway undertaking applicant, the railway undertaking designated by the non-railway undertaking applicant to use the infrastructure capacity allocated to the latter may request the modification or cancellation of the use of all or part of the capacity concerned in accordance with the provisions of the NS. When submitting such a request to Infrabel, the designated railway undertaking guarantees to Infrabel that it has been duly authorised to do so by the non-railway undertaking applicant. The designated railway undertaking must present this mandate to Infrabel at Infrabel's request. This modification or cancellation submitted by the designated railway undertaking mandated by the non-railway undertaking applicant is deemed to be made by the non-railway undertaking applicant."*
- g) The following provisions of the Track Access Agreement shall not apply:
 - i. Chapter 3
 - ii. Chapter 6, paragraph 3
 - iii. Chapter 6, paragraph 4
 - iv. Chapter 6, paragraph 5, last hyphenated bullet point
 - v. Special Terms and conditions, Articles 5 and 6

All of the other provisions of the Track Access Agreement shall continue to apply unamended.

Article 3: Responsibility of the railway undertaking for infrastructure use

The railway undertaking shall be fully responsible for the use of the railway infrastructure according to the provisions set out in the Track Access Agreement.

In particular, the railway undertaking shall not, in any manner whatsoever, deny or limit its liability towards the infrastructure manager due to i) the non-conformity of railway material provided to the railway undertaking in the case concerned, whatever its legal form; or ii) due to the inaccuracy of the information concerning the use of the infrastructure that has been supplied to the infrastructure manager and/or the railway undertaking by a non-railway undertaking applicant. Without any claim to completeness, that information shall include:

- Information on whether or not dangerous goods, as defined by the regulations, are being transported in each run
- Information on the composition of the trains and the particular circumstances of the intended traffic
- Information on the railway equipment made available to the railway undertaking by a non-railway undertaking applicant, if applicable
- Information on capacity restrictions (such as temporary speed restrictions) received by the non-railway undertaking applicant from the infrastructure manager.

It is the task of the railway undertaking to obtain this information from the non-railway undertaking applicant in a timely and correct manner. The railway undertaking shall carry out the necessary checks, where appropriate. The use of the capacity allocated to an applicant shall be covered by the insurance policy or equivalent measure referred to in Article 4.2 of the Track Access Agreement.

Article 4: Designation agreement

The railway undertaking shall provide Infrabel with a guarantee of the existence of a designation agreement with the non-railway undertaking applicant. The railway undertaking shall submit the designation agreement to Infrabel at its request.

Article 5: Miscellaneous

In accordance with Article 9.3 of the Track Access Agreement, this Addendum shall be attached to the Track Access Agreement.

Article 6: Implementation

This Addendum shall apply from the date of signature by the Parties.

Done in [*], on [*], in two originals, each party acknowledging receipt of its own copy.

On behalf of Infrabel,

On behalf of the railway undertaking,