

Index: 01 18.02.2016 Prepared by: xxxx xxx	<b>STANDARD TERMS AND CONDITIONS OF  BUSINESS</b> <b>OF THE INFRASTRUCTURE USAGE CONTRACT</b> <b>(AGB)</b>	
--	--	---

**These Standard Terms and Conditions of Business apply with regard to access to the railway infrastructure made available by Graz Köflacher Bahn und Busbetrieb GmbH (hereinafter referred to as GKB) in its role as a rail infrastructure company in addition to the sourcing by railway undertakings (hereinafter referred to as RUs) of other related services provided by GKB in connection with the provision of railway services.**

## 1. Definition of terms

Unless otherwise specified herein, reference is made here in particular to the Federal Railways Act (*EisbG 1957*), as amended, relating to railways, rail vehicles and rail transportation.

### 1.1 Approval

The authorisation defined in accordance with the EU Railway Safety Directive 2004/49 for the provision of railway services or a transport license / concession as defined by the Federal Railways Act, based on the laws and regulations of the nation state in which the railway undertaking / the international group of railway undertakings (RU) maintains its registered offices.

### 1.2 Auxiliary persons

Employees or other individuals tasked by GKB or the RU with the performance of the contract in as far as these employees or other individuals act in accordance with their assigned tasks.

### 1.3 Third parties

Every natural person or legal entity other than GKB and RU, including their auxiliary persons.

### 1.4 Track capacity

Track capacity is the option of scheduling, for a desired part of the infrastructure and for a defined period of time, the usage of tracks, whereby the term tracks relates to that track capacity which is necessary in order for a train to be used to travel between two locations at a defined point in time.

### 1.5 Disruptions to operations

Deviations from normal operating conditions, particularly on the grounds of accidents, vehicle breakdowns, failures relating to safety equipment, power supply interruptions, track work, natural events (*force majeure*) and other unavoidable events.

### 1.6. Allocation and fee collection body of GKB

Since the Network Timetable 2006/2007, the rail network service provider Schieneninfrastruktur-Dienstleistungsgesellschaft mbH (hereinafter referred to as SCHIG) has assumed responsibility for performing track allocation tasks on behalf of GKB and is responsible for all tasks related to the collection of fees and charges with effect from the Timetable Year 2016/2017.

Index: 01 18.02.2016 Prepared by: xxxx xxx	<b>STANDARD TERMS AND CONDITIONS OF  BUSINESS</b> <b>OF THE INFRASTRUCTURE USAGE CONTRACT</b> <b>(AGB)</b>	
--	--	---

## 2. Prerequisites for exercising rights of access and scope of use

- 2.1. The precondition for exercising rights of access in accordance with the infrastructure usage contract is an approval as defined by Point 1.1., the safety certificate (Article 37 of the *EisbG*), valid third-party liability insurance cover (refer to Point /.) and the valid allocation of track capacity by the allocation body of GKB. Evidence of these preconditions is to be provided by the RU (Point 3). Prior to the provision of this evidence as defined by Point 3, the RU shall not be entitled to exercise the rights assigned by the infrastructure usage contract.
- ~~2.2.~~ The services (rail infrastructure usage and the services provided by GKB) offered by GKB to the RU associated with the allocation of track capacity, as well as the fees to be paid in connection therewith, are set out in the Network Access Product Catalogue. The usage of the rail infrastructure of GKB, in addition to recourse to the services offered by the same, are only permissible in the contractually-agreed scope, for the contractually-agreed purpose and only to the extent usually associated with operations.

## 3. Evidence and documentation

- 3.1. The RU shall provide GKB in writing and within a deadline to be determined by GKB all of the documentation necessary for exercising the rights assigned by the infrastructure usage contract (hereinafter referred to as the Contract), namely the approval as defined by Point 1.1., the safety certificate (Article 37 of the *EisbG*), valid third-party liability insurance cover (refer to Point /.) in order to establish that it meets the prerequisites for access to the rail infrastructure.
- 3.2. The entity with right of access (RU) shall declare in writing that, at the point in time of the conclusion of the contract, it has neither applied for an amendment to all of the authorisations defined under Point 1.1, nor that any amendment has been made in the meantime and also that no revocation procedure has been initiated. The entities with right of access shall be required to inform GKB without delay of any amendment with regard to the preconditions for use or any revocation of its authorisation. Any indemnity claims of GKB shall remain unaffected thereby.
- 3.3. The original or notarially certified copies of requested evidence/documentation in German, or legally certified translations thereof, are to be presented.

## 4. Assignment of rights and obligations

- 4.1. The entity with right of access shall, with the exception of Point 4.2, not be entitled to assign any rights or obligations arising out of this Contract to other natural persons or legal entities. For details of the right of the allocation body of GKB to terminate the contract without notice, refer to Point 29.
- 4.2. Subject to *a priori* approval obtained from the allocation body of GKB, the entity with right of access may appoint other railways undertakings as subcontractors to provide services in as far as this is covered by the safety certification of the entity with right of access. The entities with right of access shall be obligated and responsible for complying with the terms and conditions of the safety certificate and the Contract. At the request of the allocation body of GKB, the entities with right of access shall be required to present the contractual terms of the agreement concluded with the subcontractor to the allocation body of GKB, which

Index: 01 18.02.2016 Prepared by: xxxx xxx	<b>STANDARD TERMS AND CONDITIONS OF  BUSINESS</b> <b>OF THE INFRASTRUCTURE USAGE CONTRACT</b> <b>(AGB)</b>	
--	--	---

regulates the use of the infrastructure made available by GKB and the use of other services, in particular that of personnel and rolling stock. The contract concluded between the entity with right of access and the allocation body of GKB shall remain unaffected thereby. The entities with right of access shall only be permitted to draw upon the services of those railways undertakings which are commercially and technically able to comply with the terms of this Contract. The entity with right of access shall be liable for those actions and any failures to act on the part of a railway undertaking it appoints and for its own. Refer to Point 29 for details of termination rights.

- 4.3. The entity with right of access is prohibited from any trading with the track capacity or capacities allocated to the RU or RUs. Any non-compliance with the above shall entitle the allocation body of GKB to terminate the contract without notice (refer to Point 29).

## 5. Personnel

- 5.1. The entity with right of access shall be responsible for ensuring that the personnel necessary for ensuring the safety and orderliness of rail transport and railway operations comply with the requirements as defined by the relevant legislation and other regulations and rules pertaining to the provision of the intended transportation services, in particular those relating to the safety and the orderliness of rail transport and railway operations.
- 5.2. In as far as the safety certification does not provide details hereto, the entity with right of access shall, at the request of GKB, be required to provide evidence at any time during the term of the Contract that the personnel:
- 5.2.1. Possess the necessary local and line-based knowledge as well as professional skills and qualifications necessary for the fulfilment of the obligations arising out of this Contract,
  - 5.2.2. Are aware of and comply with the regulations applicable to the tracks of GKB,
  - 5.2.3. Have a sufficient command of the operational language (refer to Point 10) in order to be able to apply the regulations both verbally and in writing as well as to facilitate the exchange of information both during normal operations and in the event of any operational disruptions.

## 6. Rolling stock

- 6.1. The entity with right of access shall be obliged to only deploy rolling stock on the railway infrastructure to be used which has been approved for use by the competent authority. In terms of its contents, this authorisation must at least be equivalent to the vehicle type authorisation and operating license defined in the current version of the Federal Railways Act.
- 6.2. The entity with right of access shall, in particular, ensure that the rolling stock complies with the stipulations relating to the safety certification during the entire contractual term. Failure to do so shall authorise GKB to terminate the contract without notice. Any indemnity claims of GKB shall remain unaffected thereby.

Index: 01 18.02.2016 Prepared by: xxxx xxx	<b>STANDARD TERMS AND CONDITIONS OF  BUSINESS</b> <b>OF THE INFRASTRUCTURE USAGE CONTRACT  (AGB)</b>	
--	---	---

## 7. Insurance

- 7.1. Prior to this contract coming into effect, the entity with right of access shall be required to provide evidence of the existence of third-party liability cover by means of presenting a confirmation from the relevant insurer relating to the conclusion, existence, scope and cover of an insurance policy in accordance with Article 22 of EU Directive 2012/34/EU and shall be required to maintain the necessary level of cover for the entire contractual period. Amendments to the insurance policy or in terms of the cover are to be advised to GKB without delay and accompanied by a corresponding confirmation issued by the insurer. In the event of any undercoverage after the conclusion of the contract or the loss of insurance cover, adequate third-party liability coverage is to be taken out without delay. Any indemnity claims of GKB shall remain unaffected thereby.
- 7.2. The entity with right of access explicitly authorises GKB to request details from the third-party liability insurer regarding the insurance policy and the coverage of risks. Furthermore, GKB shall be entitled to inspect the insurance documentation of the entity with right of access.
- 7.3. GKB may refrain from insisting on evidence of existing accident liability insurance cover in the event that the entity with right of access provides evidence of a guarantee issued to cover accident liability concluded on the basis of industry-standard conditions. In this connection, the entity with right of access shall, within a deadline defined by GKB prior to the Contract coming into effect, provide evidence of existing third-party liability cover by means of the presentation of suitable documentation relating to the existence, scope and cover of a guarantee issued on the basis of industry-standard conditions and shall be required to maintain the necessary level of cover for the entire contractual period. Amendments relating to the equivalent provisions or the cover are to be advised to GKB without delay and accompanied by the relevant documentation. In the event of any undercoverage after the conclusion of the contract or the lapse of relevant guarantee, adequate third-party liability coverage is to be taken out without delay. Any indemnity claims of GKB shall remain unaffected thereby.
- 7.4. For details of the right of the allocation body of GKB to terminate the contract without notice, refer to Point 29.

## 8. Operational documents

- 8.1. GKB shall provide a description of all railway lines in the available network online at [www.gkb.at](http://www.gkb.at) and ensure that this information is regularly updated and available to all (Annex 1). This description includes, in particular, the following information for every line:
- Maximum operating speeds depending on the train type, wheel set load, minimum clearance outline, type of electrification, type of signalling system, positioning systems and train radio system.
- 8.2. No later than the point in time that this Contract is concluded, GKB shall provide the entity with right of access with all of the documentation which contains this information, the detailed timetable documents, in accordance with Annex 1, as well as any changes thereto, in a timely manner and shall obtain a receipt therefor.

Index: 01 18.02.2016 Prepared by: xxxx xxx	<b>STANDARD TERMS AND CONDITIONS OF  BUSINESS</b> <b>OF THE INFRASTRUCTURE USAGE CONTRACT</b> <b>(AGB)</b>	
--	--	---

## 9. Operational rules

- 9.1. The operational rules and the relevant amendments thereof can be accessed by the RU on the website of GKB. On request, the RU can also be provided with a printed copy of the operational rules. The RU will be automatically advised of any amendments, supplements or newly applicable operational rules.
- 9.2. The RU shall be obliged to distribute the operational rules and to ensure compliance therewith to and on the part of its employees and any other natural persons and legal entities associated with the use of the railway infrastructure.

## 10. Operational language

The language to be used in the GKB network is German. Guidelines based on special agreements shall remain unaffected thereby and shall be based on the operational rules.

## 11. Railway infrastructure quality

- 11.1. GKB shall ensure that the railway infrastructure quality is sufficient under normal operating conditions for the provision of the relevant contractually-agreed transportation services intended.
- 11.2. Irrespective of the above, GKB shall have the right to improve the quality of the rail infrastructure in as far as this is necessary, albeit not arbitrarily. In the event of such a change during the contractual term, GKB shall be obliged to minimise the negative impacts on the RU, in particular by the means defined under Point 16, in as far as this is commercially viable.
- 11.3. In the event of the RU imposing special requirements over and above the existing railway infrastructure quality, particularly with regard to track equipment or the accelerated performance of work, then a separate agreement is to be reached with regard, in particular, to implementation, scope, duration and funding. The allocation body of GKB shall be entitled to refrain from concluding the contract, albeit not arbitrarily.

## 12. Information and reporting obligations

- 12.1. In as far as the operational rules do not prescribe other information and reporting obligations, the entity with right of access shall report the following to GKB before the train departs:
- 12.1.1. The composition of the train (locomotive model, length, weight, wagon numbers and number of units, braking performance),
  - 12.1.2. Special characteristics such as non-RIC/RIV rolling stock, hazardous goods (RID), in particular relating to restrictions with regard to the rolling stock or its load,
  - 12.1.3. Factors relevant to delays (e.g. engine failures in the case of locomotives),
  - 12.1.4. Other details which may be relevant to the invoicing of services.
- 12.2. The entity with right of access shall ensure that personnel are on board every train who can receive information from GKB and who are authorised and able to make operational

Index: 01 18.02.2016 Prepared by: xxxx xxx	<b>STANDARD TERMS AND CONDITIONS OF  BUSINESS</b> <b>OF THE INFRASTRUCTURE USAGE CONTRACT</b> <b>(AGB)</b>	
--	--	---

decisions relating to the relevant transport service on behalf of the entity with right of access.

- 12.3. On the basis of the resources at its disposal, GKB shall, on request, inform the entity with right of access of the position of its train. The relevant points of contact, means of communication and the possible timing thereof shall be defined in the agreement pertaining to the allocation of track capacity (Annex 2).

### **13. Right of GKB to perform track work during the contractual term**

- 13.1. GKB shall have the right to perform work on and take action involving its railway infrastructure associated with the provision and expansion of the railway infrastructure.
- 13.2. GKB shall inform entities with right of access as early as possible with regard to planned work and any resulting action (such as detours, railway replacement services). With regard to work planned long in advance, this notification should ideally be provided six months in advance and no later than two months in advance of the commencement of the work or action. In the case of all other work, GKB should inform the entity with right of access as soon as it becomes aware of the need for such work to be performed or action taken.
- 13.3. GKB shall perform the work or take the action in such a manner that the impact on the transportation services of the entity with right of access shall be as limited as possible.
- 13.4. Disruptions in terms of operations arising as a result of work on the rail infrastructure shall entitle the entity with right of access to assert claims for compensation only in those cases in which GKB or its agents (as defined by Article 1313a of the Austrian Civil Code, *ABGB*) have caused the disruptions with wilful intent or due to gross negligence.

### **14. Rights to inspect and issue instructions**

- 14.1. Where grounds exist, GKB shall be entitled to check, at any time and place, whether the entity with right of access is performing the railway services in compliance with the operational rules, in particular with regard to the integrity of the railway infrastructure. GKB shall, for good cause, have the right to assure itself at any time of the awareness and knowledge of the personnel of the entity with right of access assigned to perform transportation services with regard to the nature of the services provided and their qualifications. GKB may also ascertain whether the entity with right of access is complying with its contractual rights and obligations pertaining to the usage of the railway infrastructure.
- 14.2. For the purposes of exercising the abovementioned rights, the personnel of GKB charged with performing these inspections shall have the right to issue instructions to the personnel of the entity with right of access and shall have the right to enter the vehicles, facilities and premises of the entity with right of access in as far as this is necessary for the purposes of performing the inspection. In the case of accidents or suspected breaches of the operational rules, GKB shall, *inter alia*, also be authorised to remove and/or copy the records of locomotive equipment (e.g. tachometer records). If these records are IT-based, GKB is to be provided access to the software necessary for analysing the data, in as far as this has not already been provided in the course of granting the safety certification.
- 14.3. The rights of GKB set out under Points 14.1 and 14.2 shall apply in particular in the case of any damage to railway infrastructure systems (tracks, safety equipment, catenaries, etc.).

Index: 01 18.02.2016 Prepared by: xxxx xxx	<b>STANDARD TERMS AND CONDITIONS OF  BUSINESS</b> <b>OF THE INFRASTRUCTURE USAGE CONTRACT</b> <b>(AGB)</b>	
--	--	---

14.4. The above rules shall have no bearing on the competences of, in particular, public sector authorities nor on the responsibility of the RU.

## **15. Disruptions to operations**

15.1. The entity with right of access and GKB are to immediately inform the other respective party in the event of every imminent and actual disruption to operations, particularly with regard to those disruptions which could lead to deviations from the agreed track capacity (delays, etc.), as well as every imminent or actual case of damage which could have an impact on the safety and orderliness, punctuality, the correct sequence of transportation services, the integrity of the railway infrastructure or the environment, other users or third parties.

## **16. Traffic management with the aim of re-establishing normal operating conditions**

- 16.1. GKB shall strive to minimise deviations from the agreed track capacity as far as is possible.
- 16.2. In the event of disruptions to operations, GKB shall draw on all of its resources in order to re-establish normal operations. To this effect, GKB may, ideally after consultation with the entity with right of access, impose speed restrictions or accelerate trains or allocate them another route than that previously agreed, albeit without imposing a high track usage fee than that for the agreed route.

## **17. Access to railway infrastructure**

- 17.1. The RU shall be obliged to vacate the railways infrastructure used in a timely manner at the end of the contractually agreed period of use defined in infrastructure usage contract.
- 17.2. In the event that the entity with right of access fails to comply with its contractual obligation as defined by Point 17.1, GKB shall have the right, in particular in the case of disruptions to operations as a result of rolling stock defects (locomotive breakdowns, etc.), to have the track cleared or to undertake this itself at the expense and risk of the entity with right of access.
- 17.3. Furthermore, the entity with right of access which has been allocated track capacity on the relevant railway infrastructure shall, at the request of GKB, be obliged to cooperate in resolving the disruption to operations as defined by Article 66 of the Federal Railways Act.
- 17.4. GKB shall have comprehensive disposition rights and rights to issue instructions. Its instructions are to be followed unconditionally. Point 14 applies correspondingly.

Index: 01 18.02.2016 Prepared by: xxxx xxx	<b>STANDARD TERMS AND CONDITIONS OF  BUSINESS</b> <b>OF THE INFRASTRUCTURE USAGE CONTRACT</b> <b>(AGB)</b>	
--	--	---

## 18. Principles of liability

18.1. In as far as not contradicted by international agreements and relevant legislation, in particular the Rail and Road Traffic Liability Act (*EKHG*), the Austrian Civil Code (*ABGB*) and the Austrian Commercial Code (*UGB*), the following provisions shall apply to the liability of the contractual parties hereto.

They shall not apply to other legal relationships, in particular:

18.1.1. The liability of the contractual partners vis-a-vis their respective employees, or other individuals which they resort to in order to perform their respective tasks;

18.1.2. The liability between one of the contractual parties and third parties.

## 19. Liability of GKB

19.1. GKB shall be liable for:

19.1.1. Personal injury (death, injury or other physical or mental health impairments),

19.1.2. Damage to property (destruction or damage to real and personal property),

19.1.3. Financial losses in as far as the entity with right of access is obliged to pay compensation pursuant to national or international rail transport legislation

as a result of actions by the entity with right of access or its auxiliary persons associated with the operation of the railway infrastructure during the period of use.

19.2. GKB shall be free of liability:

19.2.1. In the case of personal injury or financial loss resulting in the entity with right of access being required to pay compensation pursuant to the Railway and Motor Vehicle Liability Act (*EKHG*), the Railway Transport Act (*EisbBFG*), and the Uniform Rules concerning the Contract for International Carriage of Passengers and Luggage by Rail (*CIV-CGT*).

- In the event of an accident caused as a result of circumstances not related to operations which GKB could neither have prevented nor the consequences of which it could have averted,
- In as far as the accident is the responsibility of the damaged or injured party,
- In the event of an accident caused by a third-party which GKB could neither have prevented nor the consequences of which it could have averted.



Index: 01 18.02.2016 Prepared by: xxxx xxx	<b>STANDARD TERMS AND CONDITIONS OF  BUSINESS</b> <b>OF THE INFRASTRUCTURE USAGE CONTRACT  (AGB)</b>	
--	---	---

19.2.2. In the case of personal injury or financial loss resulting in the entity with right of access being required to pay compensation pursuant to the Railway Transport Act (*EisbBFG*) and the Uniform Rules Concerning the Contract of International Carriage of Goods by Rail (CIM) if the loss or damage was due to the culpability of the entity with right of access, an instruction issued by the RU for which GKB was not responsible, or caused by circumstances which GKB could not have avoided or the consequences of which GKB could not have averted.

## 20. Liability of the RU

20.1. The entity with right of access shall be liable for:

20.1.1. Personal injury (death, injury or other physical or mental health impairments),

20.1.2. Damage to property (destruction or damage to real and personal property)

incurred by GKB or its auxiliary persons caused by the entity with right of access, by the rolling stock used by the same, or by persons or goods transported by the same during the period of use.

20.2. The entity with right of access shall be free of liability:

20.2.1. In the case of personal injury

- In the event of an accident caused as a result of circumstances not related to operations which the entity with right of access could neither have prevented nor the consequences of which it could have averted,
- In as far as the accident is the responsibility of the damaged or injured party,
- In the event of an accident caused by a third-party which the entity with right of access could neither have prevented nor the consequences of which it could have averted,

20.2.2. In the event of damage to property if the loss was due to the culpability of GKB, an instruction issued by GKB not issued as the result of culpable action on the part of the entity with right of access, or circumstances which the entity with right of access could neither have prevented nor the consequences of which it could have averted.

## 21. Combined liability

21.1. In the event of a combination of causal factors for which both GKB and the entity with right of access are responsible, each contractual party shall be liable only to the extent to which the circumstances defined under Points 19 and 20 above contributed to the claim. Should it not be determinable the extent to which the relevant cause contributed to the claim, then each party shall bear the losses or damage it has respectively incurred.

21.2. Point 20.1 shall also apply analogously if the causes for which GKB is responsible apply in combination with causes for which multiple entities with rights of access using the same railway infrastructure are responsible.

Index: 01 18.02.2016 Prepared by: xxxx xxx	<b>STANDARD TERMS AND CONDITIONS OF  BUSINESS</b> <b>OF THE INFRASTRUCTURE USAGE CONTRACT</b> <b>(AGB)</b>	
--	--	---

21.3. In the event of claims as defined under Point 20, the first sentence of Point 20.1 shall apply analogously if causes for which multiple entities with rights of access using the same railway infrastructure are responsible. If it is not possible to determine the extent to which the relevant cause has contributed to the resulting claim, then the entities with rights of access shall be liable vis-a-vis GKB to equal shares.

21.4. The second sentence of Point 21.1 shall apply analogously should the entity responsible for the claim not be identified.

## **22. Liability in the event of third-party losses**

22.1. In the event of losses incurred by third parties in connection with the use of the railway infrastructure by the contractual parties, then, with the exception of claims as defined by Point 19.1.3, the following provisions shall apply in relation to both contractual parties:

22.1.1. The contractual party which is responsible for the cause shall be liable.

22.1.2. In the event of a combination of causal factors for which both GKB and the entity with right of access are responsible, each contractual party shall be liable only to the extent to which the circumstances defined under Points 19 or 20 above contributed to the claim.

22.1.3. If it cannot be determined the extent to which the relevant cause has contributed to the claim, then the contractual parties shall be liable in equal shares.

22.1.4. Points 22.1.1 to 23.1.3 shall apply analogously if the causes for which GKB is responsible apply in combination with causes for which multiple entities with right of access using the same railway infrastructure are responsible.

22.1.5. Point 22.1.3 shall apply analogously should the entity responsible for the claim not be identified.

## **23. Liability of personnel**

The employees of the contractual partners shall not be liable to a greater extent than the respective contractual partner. The employees of one contractual partner shall not be liable vis-a-vis the contractual partner incurring the loss. These provisions shall apply in as far as not contradictory to compelling law.

## **24. Vicarious liability**

Should one of the contractual partners resort to employing auxiliary persons, the former shall be liable as if it had caused the loss directly (Article 1313a ABGB).

## **25. Environmental liability**

The entity with right of access shall indemnify and hold GKB harmless and be liable for compliance with the relevant legislation in connection with the use of the railway infrastructure. In the event that GKB, in particular as the owner of the railway infrastructure, is obligated to alleviate any environmental damage caused by the entity with right of access, even if at no fault of itself, then the entity with right of access shall indemnify GKB for the costs and other expenses incurred. Any indemnity claims of GKB shall remain unaffected

Index: 01 18.02.2016 Prepared by: xxxx xxx	<b>STANDARD TERMS AND CONDITIONS OF  BUSINESS</b> <b>OF THE INFRASTRUCTURE USAGE CONTRACT</b> <b>(AGB)</b>	
--	--	---

thereby.

## 26. Environmental impacts

- 26.1. In the event of environmental impacts (emissions, contamination, etc.) or should there arise risks of explosion, fire or other threats to railway operations, then the entity with right of access shall inform the relevant department of GKB defined in the operational rules without delay.
- 26.2. This report and any action to be undertaken by GKB in accordance with the operational rules or general legal requirements shall have no bearing on the responsibility of the entity with right of access to immediately initiate action and on the obligations of the same (e.g. notification of competent police authorities and the fire brigade).

## 27. Third-party claims

In the event of any claims asserted by a third party vis-a-vis a non-liaible contractual party, the liable party is to be informed thereof without delay. The latter party is to indemnify and hold the other contractual partner harmless.

## 28. Access to GKB infrastructure

To the extent that this is necessary for the performance of transport services by the entity with right of access, GKB shall grant approval for the personnel of the entity with right of access and those third parties appropriately authorised, as defined by Point 4, to access its railway infrastructure facilities. In this regard, the safety regulations of GKB and Article 46 of the *EisbG* legislation are to be complied with in particular.

## 29. Termination of the contract

- 29.1. Irrespective of any claim for compensation, the contractual partners shall be required to reach an understanding with the allocation body of GKB as to whether the infrastructure usage contract is to be terminated in writing with immediate effect for good cause, in particular, on the following grounds:
- 29.1.1. In the event of grave violations of the underlying provisions of the infrastructure usage contract, in particular the standard terms and conditions of business (*AGB*);
- 29.1.2. If the entity with right of access no longer meets the preconditions for access to the railway infrastructure of GKB; in particular if the relevant safety certification or the license is no longer valid or in the event of undercoverage or non-coverage of the insurance risk;
- 29.1.3. If, in contravention of Points 4.1 or 4.3, the entity with right of access assigns the rights and obligations accorded by the infrastructure usage contract without the prior approval of GKB to another natural person or legal entity or fails to comply with the obligation to refer as defined by Point 4.2;
- 29.1.4. If the safety standards of the rolling stock of the entity with right of access, or that of a natural person or legal entity appointed by the entity with right of access and previously approved by GKB, defined in the safety certification and necessary for the provision of rail services, are no longer met;

Index: 01 18.02.2016 Prepared by: xxxx xxx	<b>STANDARD TERMS AND CONDITIONS OF  BUSINESS</b> <b>OF THE INFRASTRUCTURE USAGE CONTRACT</b> <b>(AGB)</b>	
--	--	---

29.1.5. If the reliability, as defined under Point 5, of the personnel of the entity with right of access or that of a third party authorised by the same previously approved by GKB is no longer assured during the contractual term.

29.2. The allocation body of GKB shall be entitled to terminate the infrastructure usage contract subject to a notice period of 14 days by means of a written termination notice and confirmed receipt in the event that the entity with right of access has not exercised its right of access to the allocated track capacity within the last three months prior to the termination on grounds for which the latter is responsible.

29.3. The allocation body of GKB retains the right to only conclude future contracts relating to the usage of railway infrastructure with entities with rights of access whose infrastructure usage contracts have been terminated in accordance with Points 29.1 or 29.2 after an in-depth assessment of the reliability and the credibility thereof.

### **30. Disclosure of network user data**

30.1. Irrespective of existing legal obligations, the entity with right of access hereby explicitly grants consent for its data advised to GKB to be captured by the same and by its allocation body, and to be subsequently used, and that these documents and the specific data contained therein are forwarded to insurers for the purposes of assessing insurance risk as well as to public authorities in as far as the entity with right of access has not established, in a particular case, that the disclosure of the data or the handing over of the documentation is not compatible with well-founded commercial interests.

30.2. In the case of trains transferring to the networks of other railway infrastructure companies, the entity with right of access grants permission for the disclosure of its data provided to GKB by GKB and its allocation body in accordance with Point 12 to the relevant railway infrastructure company in as far as the entity with right of access has not established, in a particular case, that the disclosure of the data or the handing over of the documentation is not compatible with well-founded commercial interests.

### **31. Confidentiality**

31.1. The contractual partners mutually commit to respect the confidentiality of all of the information, data and documentation obtained in the context of the contractual performances in as far as the relevant contractual partner does not relieve the other respective contractual partner of this obligation in writing in a specific case.

31.2. Moreover, the contractual partners commit to bind any third parties charged with the provision of the contractual performances to this confidentiality obligation or shall otherwise bear an obligation to pay compensation irrespective of the question of responsibility. In particular, the contractual partners commit to comply with Article 15 of the Data Protection Act (*DSG 2000*) as amended.

### **32. Special terms and conditions**

In the event that the entity with right of access also draws on services and facilities for the purpose of access to the rail infrastructure which are not compensated by the track usage fee as defined by Annex 10, then this shall be subject solely to the special terms and conditions applicable to this area in as far as not determined otherwise therein.

Index: 01 18.02.2016 Prepared by: xxxx xxx	<b>STANDARD TERMS AND CONDITIONS OF  BUSINESS</b> <b>OF THE INFRASTRUCTURE USAGE CONTRACT  (AGB)</b>	
--	---	---

### **33. Amendments to the standard terms and conditions (AGB)**

GKB shall inform the entity with right of access of amendments to the *AGB* in writing and shall inform the latter at the beginning of the notice period that the amendments shall be deemed to have been accepted if not objected to in writing by the RU within a period of four weeks.

### **34. Invoicing**

Invoices issued by GKB to the entity with right of access shall be in accordance with the terms of the agreement concerning the allocation of track capacity (Annex 4).

### **35. Late payment**

In the event of payment arrears, the entity with right of access shall, from the day following the due date, pay interest on arrears at a rate of 8 % p.a. over and above the relevant applicable base lending rate of the ECB (published by the Austrian National Bank) and an amount of EUR 10.00 as a reminder fee for every dunning letter issued.

### **36. Right of set-off**

The entity with right of access shall only be permitted to set off the demands of GKB if its counterclaims are undisputed or have been legally determined.

### **37. Severability clause**

In the event that specific provisions of this Contract should prove to be ineffective or non-enforceable on legal grounds without this making the continuation of the contract unacceptable to one of the contractual partners, such shall have no bearing on the validity of the remaining provisions contained herein. The same applies in the case of any loopholes. The Contract is to be supplemented or amended to rectify or replace the ineffective, unenforceable or missing provisions such that the objectives sought by the contractual partners can be achieved to the greatest extent possible.

### **38. Right of retention**

The entity with right of access shall have no right of retention of any kind with regard to contractually due payments.

### **39. Applicable law and venue**

Austrian law shall apply exclusively hereto. The venue for any disputes arising in connection with this Contract between the allocation body and/or GKB and the entity with right of access shall – in as far as no other competencies or legal protection systems apply – be that of the relevant competent court of law in Graz, Austria.