

RAILWAYS ACT 1993

2023 PERIODIC REVIEW

REVIEW NOTICE: FREIGHT OPERATOR TRACK ACCESS AGREEMENTS

TO:

- (1) the persons whose names are set out in Annex 1 to this Review Notice (the “**Train Operators**”);
- (2) Network Rail Infrastructure Limited (“**Network Rail**”); and
- (3) the Secretary of State for Transport, the Scottish Ministers and the Treasury,

together the “**Addressees**”.

1 General

- 1.1 This review notice (the “**Review Notice**”) is given in accordance with paragraph 4 of Schedule 4A to the Railways Act 1993 (the “**Act**”).
- 1.2 The Office of Rail and Road (“**ORR**”) has undertaken a review of:
 - (a) the amounts payable by Network Rail and each of the Train Operators to each other under each of the track access agreements listed in Annex 1 to this Review Notice (the “**Track Access Agreements**”); and
 - (b) the times at which, and the manner in which, those amounts are payable,(the “**Review**”).
- 1.3 ORR’s conclusions on the Review, and its reasons for those conclusions, are:
 - (a) set out in a series of documents referenced in the document entitled “**PR23 final determination: Consolidated list of decisions – England & Wales and Scotland**” and published by ORR on 31 October 2023; and
 - (b) hereby incorporated into this Review Notice.

1.4 By publishing this Review Notice and serving it on each of the Addressees, ORR is initiating the implementation of the Review.

2 Proposed Relevant Changes

2.1 For or in connection with giving effect to ORR's conclusions on the Review, ORR proposes to direct the parties to each of the Track Access Agreements to amend their Track Access Agreement on the terms specified in Annexes 2 and 3 to this Review Notice (the "**proposed relevant changes**").

2.2 ORR proposes that, subject to paragraph 3, the proposed relevant changes will come into operation on and from 1 April 2024.

3 Regulated Amendments

3.1 Subject to paragraph 3.2 below, if, before the proposed relevant changes come into operation in relation to any Track Access Agreement, such Track Access Agreement is amended in a manner which is:

- (a) approved by ORR under section 22 of the Act; or
- (b) directed by ORR under section 22A or section 22C of the Act,

(each a "**regulated amendment**"), then:

- (i) the proposed relevant changes shall come into operation in relation to that Track Access Agreement subject to the regulated amendments; and
- (ii) if there is any conflict between the proposed relevant changes and the regulated amendments, the regulated amendments shall take precedence.

3.2 Amendments made to the definition of "Liability Cap" in Schedule 9 of a Track Access Agreement under the General Approval for Freight Track Access Contracts dated 1 April 2019 will not be considered a regulated amendment for the purpose of this Review Notice.

4 Objections

4.1 Subject to paragraph 4.2, any person specified in paragraph 4(4)(a) or (b) of Schedule 4A to the Act may make objections with respect to:

- (a) any of the proposed relevant changes; or
- (b) the date on which it is proposed that any such proposed relevant changes shall come into operation.

4.2 Any objection made under paragraph 4.1 must be:

- (a) made in writing;
- (b) received by ORR on or before 9 February 2024; and
- (c) addressed to ORR as follows:

Will Godfrey
Office of Rail and Road
25 Cabot Square
London
E14 4QZ

5 Definitions and Interpretation

5.1 In this Review Notice, unless the context otherwise requires:

- (a) references to “**this Review Notice**” include the Annexes to this Review Notice;
- (b) references to the singular include the plural and *vice versa*;
- (c) words and phrases defined in:
 - (i) the Act;
 - (ii) the Network Code (formerly known as the Railtrack Track Access Conditions 1995 (as amended)); or

(iii) each Track Access Agreement,

shall have the same meanings in this Review Notice; and

(d) any general rules of interpretation contained in:

(i) Condition A1 of the Network Code; or

(ii) each Track Access Agreement,

shall also apply to this Review Notice.



Will Godfrey

Director of economics, finance and markets

FOR AND ON BEHALF OF

THE OFFICE OF RAIL AND ROAD

Dated 20 December 2023

ANNEX 1

TRAIN OPERATORS AND TRACK ACCESS AGREEMENTS

Train Operator Name (collectively, the “Train Operators” and each a Train Operator”.	Train Operator Company Number	Original Date of Track Access Agreement
Colas Rail Limited	02995525	11 December 2016
DB Cargo (UK) Limited	02938988	11 December 2016
Devon and Cornwall Railways Limited	04973992	6 August 2021
Direct Rail Services Limited	03020822	14 December 2019
Freightliner Limited	03118392	11 December 2016
Freightliner Heavy Haul Limited	03831229	11 December 2016
GB Railfreight Limited	03707899	11 December 2016
Hanson & Hall, Rail Services Solutions Limited	11376408	30 June 2021
Harsco Rail Limited	00977100	1 November 2020
Locomotive Services (TOC) Limited	10375954	1 August 2019
Loram UK Limited ¹	06031483	1 February 2022
RailAdventure UK Limited	12448249	1 December 2020
Rail Operations (UK) Limited	08556176	21 March 2020
Varamis Limited	12038291	5 August 2022
Victa Railfreight Limited	03017321	28 May 2020
West Coast Railway Company Limited	03066109	1 December 2020

¹ This Track Access Agreement between Network Rail and Loram UK Limited is due to expire on 31 March 2024. To the extent to which this contract is extended, this review notice shall apply.

ANNEX 2

STANDARD AMENDMENTS

Explanatory Note:

*In order to give effect to ORR's conclusions on the Review, this Annex 2 sets out the standard form proposed relevant changes to be made to Schedules 4, 7, 8 and 9 and the clauses of each Track Access Agreement (the "**standard amendments**").*

In some Track Access Agreements, some of the provisions which are to be amended are not in standard form. Where this is the case, these are also identified in this Annex 2, which sets out how the standard amendments will need to be modified.

There are no bespoke amendments included in Annex 3 to this Review Notice.

The following amendments shall be made to the Track Access Agreements:

1. Consequential and other amendments to the clauses of each Track Access Agreement

1.1 In sub-clause 1.1 (Definitions) of **each** Track Access Agreement, delete the definition of “Service Variation Sum” and replace it with the following definition:

“**Service Variation Sum**” means the Service Variation Sum of £803, as adjusted under paragraphs 2.7.1 and 2.7.2 of Schedule 7;”

1.2 Delete sub-clause 16.1.2 (Delivery of invoices) of **each** Track Access Agreement, and replace it with the following:

“16.1.2 *Delivery of invoices*

All invoices or statements of amounts payable issued under any provision of this contract shall be delivered by hand at, or sent by prepaid first class post or by email to, the address for service for the recipient specified in Schedule 1 and shall be deemed to have been received by the addressee in accordance with Clause 18.4.3.”

1.3 In sub-clause 16.1.3 (Payment and content of invoices and other statements of amounts payable) of **each** Track Access Agreement, delete sub-clause 16.1.3(b) and replace it with the following:

“(b) contain such detail as to the constituent elements of the amounts stated to be payable as shall be necessary or expedient so as to enable the person to whom it is given to understand and check it and, where required by either party, include a purchase order number.”

1.4 In sub-clause 18.4 (Notices) of **each** Track Access Agreement:

(a) delete sub-clause 18.4.1(b) and replace it with the following:

“(b) shall be duly given if signed by or on behalf of a person duly authorised to do so by the party giving the notice and delivered by hand at, or by sending

it by prepaid first class post, recorded delivery, or by email to the relevant address or email address set out in Schedule 1.”

- (b) delete sub-clause 18.4.3(c), and replace it with the following:

“(c) not used; and”.

2. Schedule 4 to each Track Access Agreement

- 2.1 In sub-paragraph 1.1 (Definitions) of Part 1 of Schedule 4 to **each** Track Access Agreement, delete the definition of “Category 1 Disruption” and replace it with the following:

“**Category 1 Disruption**” means a variation to any Base Service which would otherwise have operated, where such variation has one or more of the following effects:

- (a) the Planned departure time from Origin of the Revised Base Service differs from that of the Base Service by more than 60 minutes;
- (b) the Planned arrival time at Destination of the Revised Base Service differs from that of the Base Service by more than 60 minutes;
- (c) the end to end journey of the Revised Base Service exceeds that of the Base Service by more than 10 miles;
- (d) the imposition of more demanding length or weight restrictions for the Revised Base Service compared to the Base Service; or
- (e) the Revised Based Service departs its Origin but does not arrive at its Destination, going forward to its Destination on a further Revised Base Service,

provided that:

- (i) the relevant variation arises as a direct result of a Network Rail Early Notice Possession; and
- (ii) a Category 2 Disruption or a Category 3 Disruption has not been claimed and paid in relation to the relevant Base Service;”

2.2 Delete Appendix 1 (Performance) of Schedule 4 to **each** Track Access Agreement and replace it with the Appendix 1 set out in Appendix 1 of this Annex 2.

3. Schedule 7 to each Track Access Agreement

3.1 In paragraph 1 (Definitions) of Schedule 7 to **each** Track Access Agreement:

(a) delete the definition of “Coal Spillage Charge Rate”;

(b) insert new definition “Disruption Sum” in alphabetical order as follows:

“**Disruption Sum**” has the meaning ascribed to it in Schedule 8;”;

(c) delete the definition of “Electrification Asset Usage Rate” and replace it with the following definition:

“Electrification Asset Usage Rate” means, in respect of electrification asset usage, the rate per electrified kgkm on route type k as set out in the Track Usage Price List and, being an Indexed Figure B, adjusted in accordance with paragraph 2.7.1 and 2.7.2;

(d) insert new definition “Enhanced Planned Disruption Sum” in alphabetical order as follows:

“**Enhanced Planned Disruption Sum**” has the meaning ascribed to it in Schedule 4;”;

(e) delete the definition of “Freight Specific Charge Rate” and replace it with the following definition:

“**Freight Specific Charge Rate**” means in respect of each ESI Biomass Vehicle, ESI Coal Vehicle, IO Vehicle and/or SNF Vehicle used in a Service the rate per kgkm for that ESI Biomass Vehicle, ESI Coal Vehicle, IO Vehicle and/or SNF Vehicle (as applicable) which shall be the amount set out in the Track Usage Price List relating to the freight specific charge rate for an ESI Biomass Vehicle, ESI Coal Vehicle, IO Vehicle or SNF Vehicle and, being an Indexed Figure B, adjusted in accordance with paragraph 2.7.1 and 2.7.2;”;

(f) delete the definition of “Indexed Figures”;

(g) insert new definition “Indexed Figures A” in alphabetical order as follows:

“**Indexed Figures A**” means the Cancellation Sum, the Disruption Sum, the Incident Cap Access Charge Supplement Rate, the Network Rail Cap, the Network Rail Payment Rate, the Train Operator Cap, and the Train Operator Payment Rate;”;

(h) insert new definition “Indexed Figures B” in alphabetical order as follows:

“**Indexed Figures B**” means the Enhanced Planned Disruption Sum, the Late Notice Cancellation Sum, the Normal Planned Disruption Sum, the Service Variation Sum, the VUC Default Rate, the Electrification Asset Usage Rate, and the Freight Specific Charge Rate;”;

(i) delete the definition of “Initial Indexation Factor”;

(j) insert new definition “Late Notice Cancellation Sum” in alphabetical order as follows:

“**Late Notice Cancellation Sum**” has the meaning ascribed to it in Schedule 8;”;

(k) insert new definition “Network Rail Cap” in alphabetical order as follows:

“**Network Rail Cap**” has the meaning ascribed to it in Schedule 8;”;

(l) insert new definition “Network Rail Payment Rate” in alphabetical order as follows:

“**Network Rail Payment Rate**” has the meaning ascribed to it in Schedule 8;”;

(m) insert new definition “New Modelled Train” in alphabetical order as follows:

“**New Modelled Train**” means a type of train for which E_{tmo} is to be calculated for the purposes of paragraph 2.4.1.1 but in relation to which no train category i , and no modelled consumption rate, is shown in the table in the Traction Electricity Modelled Consumption Rates List entitled “Freight Traction Electricity Modelled Consumption Rates for CP7”;”;

- (n) insert new definition “Normal Planned Disruption Sum” in alphabetical order as follows:

“**Normal Planned Disruption Sum**” has the meaning ascribed to it in Schedule 4;”;

- (o) in the definition of “Qualifying Modification” delete the date “1 April 2019” and replace it with the date “1 April 2024”;

- (p) in the definition of “Track Usage Price List” delete the date “20 December 2018” and replace it with the date “20 December 2023”;

- (q) delete the definition of “Traction Electricity Modelled Consumption Rates List” and replace it with the following definition:

“**Traction Electricity Modelled Consumption Rates List**” means the document entitled “Traction Electricity Modelled Consumption Rates List” published by Network Rail on or about 20 December 2023 and specifying freight and passenger traction electricity modelled consumption rates which, for the purposes of this contract, shall be deemed to incorporate:

- (a) any supplements to that document consented to or determined pursuant to paragraph 2.2.3A of Schedule 7 of this contract;

- (b) any supplements to the document entitled “Traction Electricity Modelled Consumption Rates List” published by Network Rail on or about 20 December 2018 which ORR consents to or determines after 20 December 2023;”;

- (r) insert new definition “Traction Electricity Modelled Default Rate” in alphabetical order as follows:

“**Traction Electricity Modelled Default Rate**” means, in respect of any New Modelled Train used on the Network by the Train Operator, the corresponding default consumption rate for that type of vehicle set out in the section of the Traction Electricity Modelled Consumption Rates List entitled “Traction Electricity Modelled Default Rates for CP7;”;

- (s) insert new definition “Traction Electricity Modelled Default Rate Period” in alphabetical order as follows:

“**Traction Electricity Modelled Default Rate Period**” means the period from the date on which the New Modelled Train is first used on the Network by the Train Operator until the date on which ORR consents to or determines a supplement to the Traction Electricity Modelled Consumption Rates List pursuant to paragraph 2.2.3A in respect of that New Modelled Train or the train in question has been added to Appendix 3 of this Schedule;”;

- (t) in the definition of “train category” delete “CP6” and replace it with “CP7”;

- (u) insert new definition “Train Operator Cap” in alphabetical order as follows:

“**Train Operator Cap**” has the meaning ascribed to it in Schedule 8;”;

- (v) insert new definition “Train Operator Payment Rate” in alphabetical order as follows:

“**Train Operator Payment Rate**” has the meaning ascribed to it in Schedule 8;”;

- (w) in the definition of “VUC Default Period” delete the date “1 April 2019” and replace it with the date “1 April 2024”;

- (x) delete the definition “VUC Default Rate” and replace it with the following:

“**VUC Default Rate**” means, in respect of any New Registered Equipment used on the Network by the Train Operator, the corresponding freight default rate for that type of vehicle (locomotive, empty wagon or loaded wagon) set out in the section of the Track Usage Price List entitled “Freight Variable Usage Charge default rates” and, being an Indexed Figure B, adjusted in accordance with paragraphs 2.7.1 and 2.7.2;”;

- (y) in the definition of “VUC Rate” delete the date “1 April 2019” and replace it with the date “1 April 2024”.

3.2 In Schedule 7 to the **following** Track Access Agreements:

- (i) the track access agreement between Network Rail and Colas Rail Limited (the “**Colas TAA**”);
- (ii) the track access agreement between Network Rail and DB Cargo (UK) Limited (the “**DB Cargo TAA**”);
- (iii) the track access agreement between Network Rail and Freightliner Limited (the “**Freightliner TAA**”);
- (iv) the track access agreement between Network Rail and Freightliner Heavy Haul Limited (the “**Freightliner Heavy Haul TAA**”);
- (v) the track access agreement between Network Rail and GB Railfreight Limited (the “**GB Railfreight TAA**”),

in paragraph 1 (Definitions):

- (a) delete the definition of “Freight Capacity Charge”;
- (b) delete the definition of “Freight Capacity Charge Wash-Up”;
- (c) delete the definition of “Freight Only Line Charge Rate”;
- (d) delete the definition of “Route-Level Efficiency Benefit Share”.

3.3 With the **exception** of the following Track Access Agreements:

- (i) the **Colas TAA**;
- (ii) the **DB Cargo TAA**;
- (iii) the **Freightliner TAA**;
- (iv) the **Freightliner Heavy Haul TAA**;
- (v) the **GB Railfreight TAA**,

in paragraph 1 (Definitions) of Schedule 7 delete the definition of “RPI”.

3.4 In sub-paragraph 2.1 (Obligation on Train Operator to pay) of Schedule 7 to the **following** Track Access Agreements:

- (i) the **Colas TAA**;
- (ii) the **DB Cargo TAA**;
- (iii) the **Freightliner TAA**;
- (iv) the **Freightliner Heavy Haul TAA**;
- (v) the **GB Railfreight TAA**,
- (a) delete sub-paragraph 2.1.1 and replace it with the following:

“2.1.1 In respect of each Charging Period, the Train Operator shall pay or procure payment of the Variable Charge, the Traction Electricity Charge, the Electrification Asset Usage Charge, the Incremental Costs, the Incident Cap Access Charge Supplement and the Qualifying Modification Benefit Charge. In respect of each Relevant Year t , the Train Operator shall pay the amount of any sum $S1_w$ and/or $S2_w$ and/or any Charge Correction Amount payable, as provided in paragraph 18 of the Traction Electricity Rules. The charges will be rounded to the nearest penny. Where a calculation ends up exactly half way between whole numbers it will be adjusted upward.”;

- (b) delete sub-paragraph 2.1.3 and replace it with the following:

“2.1.3 Network Rail shall issue to the Train Operator an invoice as soon as practicable, or as otherwise agreed, following the expiry of each Charging Period in respect of the Variable Charge, the Traction Electricity Charge, the Electrification Asset Usage Charge, the Incident Cap Access Charge Supplement and any Incremental Costs or Qualifying Modification Benefit Charge which is or are payable in respect of that Charging Period.”;

- (c) delete sub-paragraph 2.1.4 and replace it with the following:

“2.1.4 If, at the time that Network Rail issues any invoice pursuant to paragraph 2.1.3, any amount under the Traction Electricity Rules is payable by either party to the other, that invoice shall also reflect any amount under the Traction Electricity Rules payable by either party to the other.”.

- 3.5 In sub-paragraph 2.2 (Variable Charges) of Schedule 7 to **each** Track Access Agreement:

- (a) delete the heading “*Bilateral supplements to the Track Usage Price List and Traction Electricity Modelled Consumption Rates List*” and replace it with the following heading:

“*Bilateral supplements to the Track Usage Price List*”;

- (b) delete sub-paragraph 2.2.3 and replace it with the following:

“2.2.3 No supplement to the Track Usage Price List shall have effect unless it has been:

- (a) agreed between the parties and ORR has consented to it; or
(b) determined by ORR.”;

- (c) after sub-paragraph 2.2.3 insert new paragraph 2.2.3A as follows:

“2.2.3A For the purposes of finalising any supplement to the document entitled “Traction Electricity Modelled Consumption Rates List” published by Network Rail on or about 20 December 2018 which has been proposed by either the Train Operator or Network Rail before 1 April 2024, paragraphs 2.2.3 to 2.2.14 of Schedule 7, any relevant definitions in paragraph 1 of Schedule 7, and any further paragraphs of Schedule 7 necessary to give effect to paragraph 1 of Schedule 7 of the version of this contract that was in force up until 31 March 2024 shall continue to apply.”;

- (d) delete sub-paragraph 2.2.4 and replace it with the following:

“2.2.4 Either the Train Operator or Network Rail shall be entitled to propose that the Track Usage Price List be supplemented as necessary to include a new vehicle type and corresponding rate.”;

- (e) delete sub-paragraph 2.2.11 and replace it with the following:

“2.2.11 Not used”;

- (f) delete sub-paragraph 2.2.12 and replace it with the following:

“2.2.12 The supplement shall have retrospective effect from the first day of the VUC Default Period.”;

- (g) delete sub-paragraph 2.2.13(a) and replace it with the following:

“(a) apply the supplement from the date in accordance with paragraph 2.2.12 above; and”;

- (h) delete sub-paragraph 2.2.14 and replace it with the following:

“2.2.14 Any supplement to the Track Usage Price List ORR has consented to or determined pursuant to a freight track access contract previously held by the Train Operator shall also apply to this contract.”;

3.6 In Schedule 7 to the **following** Track Access Agreements:

- (i) the **Colas TAA**;
- (ii) the **DB Cargo TAA**;
- (iii) the **Freightliner TAA**;
- (iv) the **Freightliner Heavy Haul TAA**;
- (v) the **GB Railfreight TAA**,
- (a) in sub-paragraph 2.2.1 delete point 5 and replace it with “has a value of zero;”;

- (b) in sub-paragraph 2.2.1 delete point 6 and replace it with “has a value of zero;”;
- (c) delete sub-paragraph 2.3 in its entirety (Freight Capacity Charge and Freight Capacity Charge Wash-Up) and replace it with the following:

“2.3 Not used”.

- 3.7 In sub-paragraph 2.4 (Traction Electricity Charge) of Schedule 7 to **each** Track Access Agreement delete sub-paragraph 2.4.1.2 and replace it with the following:

“2.4.1.2 E_{tmo} is derived from the following formula:

$$E_{tmo} = \sum E_{tmog}$$

where:

\sum means the summation across all Geographic Areas g , as appropriate;

E_{tmog} is derived from the following formula:

$$E_{tmog} = \sum C_i \cdot EF_{gjt} \cdot UE_{igt}$$

where:

\sum means the summation across all relevant train categories i (determined in accordance with paragraph 2.4.1.1 above), New Modelled Trains and tariff bands j , as appropriate;

C_i means

- (a) the modelled consumption rate:
 - (i) in kWh per electrified Train Mile in relation to passenger electric multiple units (using the rate for the relevant number of units); and
 - (ii) in kWh per electrified kgm in relation to locomotive-hauled units and all freight traffic,

for train category i shown in the Traction Electricity Modelled Consumption Rates List; or

- (b) for New Modelled Trains, the Traction Electricity Modelled Default Rate shown in the Traction Electricity Modelled Consumption Rates List;

EF_{gjt} means the charge for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g, in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 19 of the Traction Electricity Rules; and

UE_{igt} means the actual volume of usage (in electrified Vehicle Miles in relation to passenger electric multiple units or electrified kgm in relation to locomotive hauled units and all freight traffic), if any, of trains operated by or on behalf of the Train Operator in train category i and New Modelled Trains operated by or on behalf of the Train Operator, in Geographic Area g, in tariff band j and in Relevant Year t, pursuant to this contract; provided that where train category i or a New Modelled Train is a Bimodal Electric Multiple Unit or Bimodal Locomotive operating in a Traction-Train Compatible situation, it shall be deemed that all mileage (in Vehicle Miles in relation to passenger electric multiple units or kgm in relation to locomotive-hauled units and all freight traffic), if any, of such trains is electrified.

Where the Train Operator uses a New Modelled Train on the Network, Network Rail shall apply the Traction Electricity Modelled Default Rate in order to calculate the Traction Electricity Charge for the purposes of this paragraph, during the Traction Electricity Modelled Default Rate Period.”

- 3.8 Delete sub-paragraph 2.7 (Price Variation) of Schedule 7 to **each** Track Access Agreement and replace it with the following:

“2.7 Price Variation

2.7.1 For each Relevant Year commencing on and from 1 April 2024, the Indexed Figures A and the Indexed Figures B shall be adjusted in accordance with paragraph 2.7.2.

2.7.2

- (a) For the Relevant Year, Indexed Figures A shall be adjusted as at the applicable 1 April by multiplying them by the Adjustment Factor for the Relevant Year in question (rounded to three decimal places).

For the purposes of this paragraph 2.7.2(a), the Adjustment Factor in respect of a Relevant Year shall be calculated in accordance with the following formula:

$$\text{Adjustment Factor} = 1 + \frac{(CPI_{t-1} - CPI_{2022})}{CPI_{2022}}$$

where:

CPI_{t-1} means the average value of the monthly CPI figures for the 12 months up to and including the month of December immediately preceding 1 April in the Relevant Year in question; and

CPI_{2022} means the average value of the monthly CPI figures for the 12 months up to and including the month of December 2022.

- (b) For the Relevant Year commencing on and from 1 April 2024, Indexed Figures B shall be adjusted as at 1 April 2024 by multiplying them by the Adjustment Factor (rounded to three decimal places). In subsequent years, the adjusted Indexed Figures B from the preceding Relevant Year shall be further adjusted as at the applicable 1 April by multiplying them by the Adjustment Factor for the Relevant Year in question (rounded to three decimal places).

For the purposes of this paragraph 2.7.2(b), the Adjustment Factor in respect of a Relevant Year shall be calculated in accordance with the following formula:

$$\text{Adjustment Factor} = 1 + \frac{(CPI_{t-1} - CPI_{t-2})}{CPI_{t-2}}$$

where:

CPI_{t-1} has the same meaning as set out in paragraph 2.7.2(a) above; and

CPI_{t-2} means the average value of the monthly CPI figures for the 12 months up to and including the month of December which falls 16 months before 1 April in the Relevant Year in question.

- (c) If this contract takes effect after 1 April 2024, the Indexed Figures A and the Indexed Figures B shall be adjusted in accordance with paragraphs 2.7.2(a) and (b) respectively as if this contract had been in effect on and from 1 April 2024.”

3.9 In sub-paragraph 2.7 (Price Variation) of Schedule 7 to **each** Track Access Agreement delete sub-paragraph 2.7.3 and replace it with the following:

“2.7.3 The Phased in Charges Indexation Adjustment shall be derived:

- (a) not used;
- (b) in respect of any Relevant Year t commencing on or after 1 April 2024, from the following formula:

$$PCIA_t = \left(1 + \frac{(CPI_{t-1} - CPI_{2022})}{CPI_{2022}} \right)$$

where:

$PCIA_t$ means the Phased in Charges Indexation Adjustment in respect of the Relevant Year t;

CPI_{t-1} has the same meaning as set out in paragraph 2.7.2 above;

CPI_{2022} means the average value of the monthly CPI figures for the 12 months up to and including the month of December 2022.

The value derived from this formula shall be rounded to three decimal places.”

3.10 In sub-paragraph 2.8 (Incremental Costs) of Schedule 7 to **each** Track Access Agreement:

- (a) in sub-paragraph 2.8.1(b) and 2.8.1(c) delete the date “1 April 2019” and replace it with the date “1 April 2024”;
- (b) in sub-paragraph 2.8.7(b)(i) delete the date “1 April 2019” and replace it with the date “1 April 2024”.

3.11 In paragraph 3 (Freight charging review) of Schedule 7 to **each** Track Access Agreement delete the date “1 April 2024” from sub-paragraph 3.1 and replace it with the date “1 April 2029”.

3.12 Delete paragraph 4 (Route-Level Efficiency Benefit Share Mechanism) of Schedule 7 to the **following** Track Access Agreements:

- (i) the **Colas TAA**;
- (ii) the **DB Cargo TAA**;
- (iii) the **Freightliner TAA**;
- (iv) the **Freightliner Heavy Haul TAA**;
- (v) the **GB Railfreight TAA**,

and replace with the following:

“4 Not used”.

4. **Schedule 8 to each Track Access Agreement**

4.1 In paragraph 1 (Definitions) of Schedule 8 to **each** Track Access Agreement:

- (a) delete the definition of “30% Exposure”;
- (b) delete the definition of “Exposure Level”;
- (c) delete the definition of “Prolonged Disruption”;
- (d) delete the definition of “Prolonged Disruption Amount”;
- (e) delete the definition of “Prolonged Disruption Sum”;
- (f) delete the definition of “Zero Exposure”.

4.2 With the **exception** of the following track access agreements:

- (i) the **Colas TAA**;
- (ii) the track access agreement between Network Rail and Direct Rail Services Limited (the “**DRS TAA**”);
- (iii) the track access agreement between Network Rail and Locomotive Services (TOC) Limited (the “**Locomotive Services TAA**”);
- (iv) the track access agreement between Network Rail and Rail Operations (UK) Limited (the “**Rail Operations TAA**”),

delete the title of paragraph 4 of Schedule 8 and replace it with the following:

“4. Minutes Delay in respect of Train Operator performance

4.1 Prescribed delay period”

4.3 In paragraph 4 (Minutes Delay in respect of Train Operator performance) of Schedule 8 to **each** Track Access Agreement, delete sub-paragraph 4.1.1 and replace it with the following:

“4.1.1 For the purposes of this paragraph 4, the aggregate Minutes Delay to Third Party Trains Attributable to the Train Operator arising as a result of any one incident or event shall be capped at the Incident Cap, so that any such minutes in excess of the Incident Cap shall be disregarded.”

4.4 Delete paragraph 7 (Prolonged Disruption) of Schedule 8 to **each** Track Access Agreement and replace it with the following:

“7. Not used”.

4.5 With the **exception** of the following Track Access Agreements:

- (i) the **Colas TAA**;
- (ii) the **DRS TAA**;
- (iii) the **Locomotive Services TAA**;
- (iv) the **Rail Operations TAA**,

in sub-paragraph 8.2 (Network Rail liability) of Schedule 8 delete sub-paragraph 8.2.2 and replace it with the following:

“8.2.2 Network Rail shall not be liable under this paragraph 8 for any Cancellation Sum in respect of:

- (a) an Empty Service (save that, for the purpose of this paragraph 8, a service pursuant to a contract with a third party (other than, for the avoidance of doubt, the CVL TAC (Freight Services)), conveying empty wagons and/or coaching stock will not be an Empty Service);
- (b) a Short Notice Service or CVL Short Notice Service; or
- (c) an Ancillary Movement or CVL Ancillary Movement.”

4.6 In sub-paragraph 8.2 (Network Rail liability) of Schedule 8 to the **following** Track Access Agreements:

- (i) the **Colas TAA**;
- (ii) the **DRS TAA**;
- (iii) the **Locomotive Services TAA**;
- (iv) the **Rail Operations TAA**,

delete sub-paragraph 8.2.2 and replace it with the following:

“8.2.2 Network Rail shall not be liable under this paragraph 8 for any Cancellation Sum in respect of an Empty Service (save that, for the purpose of this paragraph 8, a service pursuant to a contract with a third party, conveying empty wagons and/or coaching stock will not be an Empty Service), a Short Notice Service or an Ancillary Movement.”.

4.7 In sub-paragraph 10.2.1 of Schedule 8 to **each** Track Access Agreement delete the date “1 April 2020” and replace it with the date “1 April 2025”.

4.8 Delete paragraph 11 (Selection by the Train Operator of the Incident Cap and Exposure Level) of Schedule 8 to **each** Track Access Agreement and replace it with the following:

“11 **Selection by the Train Operator of the Incident Cap**

11.1 *Selection by the Train Operator of the Incident Cap*

11.1.1 On or before the date on which this paragraph 11.1 takes effect, the Train Operator shall notify Network Rail in writing of the level of the Incident Cap it wishes to apply (the “**Initial Incident Cap Notice**”). The Incident Cap Access Charge Supplement Rate applicable to the Train Operator under this contract shall be the rate set out in the column adjacent to the Incident Cap selected by the Train Operator in the Initial Incident Cap Notice until it is replaced by a different level of Incident Cap selected by the Train Operator in an Incident Cap Notice issue pursuant to paragraph 11.1.2.

11.1.2 The Train Operator may change the level of Incident Cap previously selected by it (either in the Initial Incident Cap Notice or any subsequent Incident Cap Notice issued pursuant to this paragraph 11.1.2) with effect from 1 April in any Financial Year by notifying Network Rail in writing of the level of Incident Cap it wishes to apply for that Financial Year (the “**Incident Cap Notice**”). Any such Incident Cap Notice must be served by the Train Operator on Network Rail by no later than 6 weeks prior to 1 April in the Financial Year from which the Train Operator wishes the new level of Incident Cap to apply, and the Incident Cap Access Charge Supplement Rate applicable for that and each subsequent Financial Year shall be the rate set out in the column adjacent to the Incident Cap selected by the Train

Operator in the Incident Cap Notice until it is replaced by a different level of Incident Cap selected by the Train Operator pursuant to this paragraph 11.1.2.

11.2 *Level of Incident Cap and Incident Cap Access Charge Supplement Rate*

For the purposes of paragraph 11.1, the Train Operator shall select one of the following Incident Caps:

Incident Cap	Incident Cap Access Charge Supplement Rate (£ per Contract Mile operated in a Charging Period) expressed in pounds sterling and rounded to four decimal places
1,000 Minutes	0.1662
2,000 Minutes	0.0864
3,000 Minutes	0.0507
4,000 Minutes	0.0357
5,000 Minutes	0.0280
6,000 Minutes	0.0237
7,000 Minutes	0.0206
8,000 Minutes	0.0177
9,000 Minutes	0.0151
10,000 Minutes	0.0126
No Incident Cap	None"

4.9 After paragraph 12 of Schedule 8 to **each** Track Access Agreement, insert new paragraph 13 as follows:

“13. Circumstances in which ORR may amend the Incident Cap Access Charge Supplement Rate and Appendix 1

13.1 ORR may amend the Incident Cap Access Charge Supplement Rate set out in paragraph 11.2 and Appendix 1 of Schedule 8 during CP7 if ORR considers that these should be amended as a consequence of the recalibration undertaken in accordance with the approach outlined in paragraphs 3.22-3.26 of “PR23 final determination: Policy position – Schedules 4 and 8 incentives regime”. In such event, ORR shall issue a notice to the parties setting out the amendments to be made and that they shall take effect on the date specified by ORR in its notice (save that it shall not be earlier than 1 April 2026).

13.2 Notwithstanding paragraph 13.1 above, ORR may amend the Incident Cap Access Charge Supplement Rate set out in paragraph 11.2 and Appendix 1 of Schedule 8 where it considers that there has been a material change in circumstances. In such event, ORR shall issue a notice to the parties setting out the amendments to be made and the date, which shall not be retrospective, from which they shall take effect.”.

4.10 Delete Appendix 1 (Performance) of Schedule 8 and replace it with the Appendix 1 set out in Appendix 2 of this Annex 2 with the following modifications:

(a) in the **following** Track Access Agreements:

(i) the track access agreement between Network Rail and Devon and Cornwall Railways Limited (the “**Devon and Cornwall TAA**”);

(ii) the track access agreement between Network Rail and Hanson & Hall, Rail Service Solutions Limited (the “**Hanson and Hall TAA**”);

(iii) the track access agreement between Network Rail and Harsco Rail Limited (the “**Harsco TAA**”);

- (iv) the track access agreement between Network Rail and Loram UK Limited (the “**Loram TAA**”);
- (v) the track access agreement between Network Rail and RailAdventure UK Limited (the “**RailAdventure TAA**”);
- (vi) the track access agreement between Network Rail and Varamis Limited (the “**Varamis TAA**”);
- (vii) the track access agreement between Network Rail and Victa Rail Freight Limited (the “**Victa TAA**”);
- (viii) the track access agreement between Network Rail and West Coast Railway Company Limited (the “**WCRC TAA**”),

replace the empty square brackets in the table entry for “Train Operator Cap” and the table entry for “Network Rail Cap” with, in each case, the amount of £839,521.

(b) in the **following** Track Access Agreements:

- (i) the **DB Cargo TAA**;
- (ii) the **GB Railfreight TAA**;
- (iii) the **Freightliner TAA**;
- (iv) the **Freightliner Heavy Haul TAA**,

in the empty square brackets in the table entry for “Train Operator Cap” and the table entry for “Network Rail Cap” insert the number approved or determined by ORR in due course; such number shall take effect from 1 April 2024.

4.11 Delete Appendix 1 (Performance) of Schedule 8 and replace it with the Appendix 1 set out in Appendix 3 of this Annex 2 with the following modifications:

(a) in the **following** Track Access Agreements:

- (i) the **Colas TAA**;

- (ii) the **Locomotive Services TAA**;
- (iii) the **Rail Operations TAA**,

replace the empty square brackets in the table entry for “Train Operator Cap” and the table entry for “Network Rail Cap” with, in each case, the amount of £839,521.

- (b) in the **DRS TAA only**, in the empty square brackets in the table entry for “Train Operator Cap” and the table entry for “Network Rail Cap” insert the number approved or determined by ORR in due course; such number shall take effect from 1 April 2024.

4.12 With the **exception** of the following Track Access Agreements:

- (i) the **Colas TAA**;
- (ii) the **DRS TAA**;
- (iii) the **Locomotive Services TAA**;
- (iv) the **Rail Operations TAA**,

in Appendix 3 (Performance Statements) of Schedule 8 delete paragraph 4 (Interim statements provided by the Train Operator) and replace it with the following:

“Interim statements provided by the Train Operator

4. As soon as reasonably practicable after the end of each Week, and using all reasonable endeavours to provide such interim statement within two Working Days after the end of each Week, the Train Operator shall provide to Network Rail the following interim statements:

- (a) an interim statement listing (i) all Combined Network Cancellations occurring during that Week for which the Train Operator considers it is entitled to a Cancellation Sum, and (ii) any Combined Network Late Notice Cancellations for which the Train Operator considers it is entitled to a Late Notice Cancellation Sum, in each case under paragraph 8 of Schedule 8; and

- (b) an interim statement listing all Service Variations arising during that Week for which the Train Operator considers it is entitled to a Service Variation Sum under Schedule 4.”

4.13 In Appendix 3 (Performance Statements) of Schedule 8 to the **following** Track Access Agreements:

- (i) the **Colas TAA**;
- (ii) the **DRS TAA**;
- (iii) the **Locomotive Services TAA**;
- (iv) the **Rail Operations TAA**,

delete paragraph 4 (Interim statements provided by the Train Operator) and replace it with the following:

“Interim statements provided by the Train Operator

4 As soon as reasonably practicable after the end of each Week, and using all reasonable endeavours to provide such interim statement within two Working Days after the end of each Week, the Train Operator shall provide to Network Rail the following interim statements:

- (a) an interim statement listing (i) all Cancellations occurring during that Week for which the Train Operator considers it is entitled to a Cancellation Sum, and (ii) any Late Notice Cancellations for which the Train Operator considers it is entitled to a Late Notice Cancellation Sum, in each case under paragraph 8 of Schedule 8; and
- (b) an interim statement listing all Service Variations arising during that Week for which the Train Operator considers it is entitled to a Service Variation Sum under Schedule 4.”

4.14 In paragraph 9 of Appendix 3 (Performance Statements) of Schedule 8 to **each** Track Access Agreement:

- (a) in sub-paragraph (c), after “,” insert the word “and”;
- (b) in sub-paragraph (d), delete “; and” and replace it with “,”; and
- (c) delete sub-paragraph (e).

4.15 In paragraph 11 of Appendix 3 (Performance Statements) of Schedule 8 to **each** Track Access Agreement:

- (a) delete the words “and Prolonged Disruption Sums”; and
- (b) between the words “Enhanced Planned Disruption Sums” and “Disruption Sums”, replace the “,” with the word “and”.

5. **Schedule 9 to each Track Access Agreement**

5.1 With the **exception** of the following Track Access Agreements:

- (i) the **Colas TAA**;
- (ii) the **DB Cargo TAA**;
- (iii) the **Freightliner TAA**;
- (iv) the **Freightliner Heavy Haul TAA**;
- (v) the **GB Railfreight TAA**,

in paragraph 1 ((Definitions) of Schedule 9 delete the definition of “Liability Cap” and replace it with the following:

“**Liability Cap**” means:

means the sum calculated in accordance with the following formula:

$$C_t = C_1 \bullet \left(1 + \left[\frac{CPI_{t-1} - CPI_{2022}}{CPI_{2022}} \right] \right)$$

where:

- (i) C_t is the relevant figure in Relevant Year t;
- (ii) C_1 is the sum of £8,300,000;
- (iii) CPI_{t-1} is the Consumer Prices Index (defined as CPI in Schedule 7) published or determined with respect to the month of November in Relevant Year t-1; and
- (vi) CPI_{2022} is the Consumer Prices Index (defined as CPI in Schedule 7) published or determined with respect to November 2022.”.

APPENDIX 1 OF ANNEX 2

“Appendix 1: Performance

The Normal Planned Disruption Sum shall be £405 (amount to be expressed in pounds sterling and rounded to zero decimal places).

The Enhanced Planned Disruption Sum shall be £1,080 (amount to be expressed in pounds sterling and rounded to zero decimal places).”

APPENDIX 2 OF ANNEX 2

Appendix 1 (Performance) to Schedule 8 to the **following** Track Access Agreements:

- (i) the **Devon and Cornwall TAA**;
- (ii) the **DB Cargo TAA**;
- (iii) the **Freightliner TAA**;
- (iv) the **Freightliner Heavy Haul TAA**,
- (v) the **GB Railfreight TAA**;
- (vi) the **Hanson and Hall TAA**;
- (vii) the **Harsco TAA**;
- (viii) the **Loram TAA**;
- (ix) the **RailAdventure TAA**;
- (x) the **Varamis TAA**;
- (xi) the **Victa TAA**;
- (xii) the **WCRC TAA**.

“Appendix 1: Performance

Train Operator Performance

Train Operator Payment Rate	£51.98 per Minutes Delay to Third Party Trains which are Attributable to the Train Operator.
Train Operator Cap	£ [■]
Disruption Sum	£2,868

Network Rail Performance

Network Rail Payment Rate	£25.81 per Minutes Delay to Services which are Attributable to Network Rail.
Network Rail Cap	£ [■]

Benchmarks

Train Operator Benchmark

The Train Operator Benchmark (TOB) in relation to each Charging Period shall be 2.74 Minutes Delay per 100 Train Operator Miles.

Network Rail Benchmark

The Network Rail Benchmark (NRB) in relation to a Charging Period shall be 7.67 Minutes Delay per 100 Train Operator Miles;

Cancellation Sum

The Cancellation Sum shall be calculated as follows:

- (a) the Cancellation Sum shall be £2,444 for each Combined Network Cancellation below the Cancellation Threshold;
- (b) the Cancellation Sum shall be £6,520 for each Combined Network Cancellation equal to or above the Cancellation Threshold; and
- (c) the "**Cancellation Threshold**" in any Charging Period shall be 0.56 per cent of the total number of Combined Network Services operated by the Train Operator in that Charging Period.

Late Notice Cancellation Sum

The Late Notice Cancellation Sum in respect of each Combined Network Late Notice Cancellation shall be £2,111.

Baseline Annual Contract Mileage

The Baseline Annual Contract Mileage shall be that number approved or determined by ORR in due course and which shall take effect from 1 April 2024.”.

APPENDIX 3 OF ANNEX 2

Appendix 1 (Performance) to Schedule 8 to the **following** Track Access Agreements:

- (i) the **Colas TAA**;
- (ii) the **DRS TAA**;
- (iii) the **Locomotive Services TAA**;
- (iv) the **Rail Operations TAA**.

“Appendix 1: Performance

Train Operator Performance

Train Operator Payment Rate	£51.98 per Minutes Delay to Third Party Trains which are Attributable to the Train Operator.
Train Operator Cap	£ [■]
Disruption Sum	£2,868

Network Rail Performance

Network Rail Payment Rate	£25.81 per Minutes Delay to Services which are Attributable to Network Rail.
Network Rail Cap	£ [■]

Benchmarks

Train Operator Benchmark

The Train Operator Benchmark (TOB) in relation to each Charging Period shall be 2.74 Minutes Delay per 100 Train Operator Miles.

Network Rail Benchmark

The Network Rail Benchmark (NRB) in relation to a Charging Period shall be 7.67 Minutes Delay per 100 Train Operator Miles;

Cancellation Sum

The Cancellation Sum shall be calculated as follows:

- (a) the Cancellation Sum shall be £2,444 for each Cancellation below the Cancellation Threshold;
- (b) the Cancellation Sum shall be £6,520 for each Cancellation equal to or above the Cancellation Threshold; and
- (c) the "**Cancellation Threshold**" in any Charging Period shall be 0.56 per cent of the total number of Services operated by the Train Operator in that Charging Period.

Late Notice Cancellation Sum

The Late Notice Cancellation Sum in respect of each Late Notice Cancellation shall be £2,111.

Baseline Annual Contract Mileage

The Baseline Annual Contract Mileage shall be that number approved or determined by ORR in due course and which shall take effect from 1 April 2024.”.

ANNEX 3

BESPOKE AMENDMENTS

PART 1 (MODIFICATIONS TO STANDARD AMENDMENTS AND OTHER BESPOKE AMENDMENTS)

Explanatory Note:

There are no modifications to any Track Access Agreements set out in this Part 1 of Annex 3.

NONE

ANNEX 3

PART 2 (CONFIDENTIAL INFORMATION)

Explanatory Note:

There are no modifications to any Track Access Agreements set out in this Part 2 of Annex 3.

NONE