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18 September 2018

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Dear All,

**Supplemental Agreements to make amendments to Schedule 8**

1. On 18 September 2018 the Office of Rail and Road (**ORR**) approved the Supplemental Agreements (**SAs**) to the track access contracts (**TACs**) between Network Rail Infrastructure Limited (**Network Rail**) and:
  - Colas Rail Limited (**Colas**);
  - DB Cargo (UK) Limited (**DBC**);
  - Direct Rail Services Limited (**DRS**);
  - Freightliner Limited (**Freightliner**);
  - Freightliner Heavy Haul Limited (**FHH**) and
  - GB Railfreight Limited (**GBRf**)

under section 22 of the Railways Act 1993 (**the Act**). The agreements were formally submitted to us on 8 August 2018 and 29 August 2018. This letter sets out the reasons for our decision.

**Background**

2. The purpose of the SAs are to amend Schedule 8 of the TACs to reflect the installing of equipment for the European Train Control System (**ETCS**). ETCS transfers part of the signalling equipment from physical signals on railway infrastructure to digital signals on board each train. The parties agreed to the principle that the liability of the parties under Schedule 8 should be no greater or less during the transitional stages of ETCS implementation.



3. The SAs set out stages of how any incidents caused by ETCS equipment are attributed to each party during the implementation phases of ETCS, to a final stage where responsibility for the equipment is transferred from Network Rail to the Train Operator.

### **Consultation**

4. Freightliner Limited ran an industrial consultation on behalf of Network Rail. The consultation ran from 8 September 2017 to 6 October 2017. Other than Freightliner Group, responses were received from GBRf, DRS, DBC and Colas. No outstanding objections were declared.

### **ORR review**

5. We received the informal submissions from the parties on 1 November 2017. The changes were drafted and finalised over several months as part of a working group led by Freightliner, DBC and Network Rail. All of the parties have agreed to these amendments, and the same terms are being offered to all the parties. We reviewed the amendments and we are content with them, and that the changes did not affect the current Periodic Review.
6. We invited the parties to formally submit on 8 January 2018. The formal submissions of all the agreements were received on 8 August 2018. Network Rail then withdrew the Colas and DRS agreements due to an error in the submitted agreements, and re-submitted them on 29 August 2018. There were no other issues with the formal submitted agreements.

### **ORR decision**

7. These applications are under section 22 of the Act and therefore are agreed between the parties, who are prepared to enter into the agreement as submitted. Therefore, we are content to approve these agreements.
8. In making this decision, we are satisfied that this decision reflects our duties under section 4 of the Act, in particular:
  - (i) to protect the interests of users of railway assets;
  - (ii) to promote the use of railway network in Great Britain for the carriage of passengers and goods and the development of that railway network, to the greatest extent ...economically practicable;
  - (iii) to promote efficiency and economy on the part of the persons providing railway services; and
  - (iv) to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.
9. Under clause 18.2.4 of the TAC, Network Rail is required to produce a conformed copy, within 28 days of any amendment being made, and send copies to ORR and all involved freight operating companies. I look forward to receiving the conformed copy.

Yours sincerely



**Caroline Webber**