

RAILWAYS ACT 1993

ACCESS CHARGES REVIEW 2008

REVIEW IMPLEMENTATION NOTICE: FREIGHT TRACK ACCESS CHARGES

TO:

- (1) the persons whose names are set out in Annex 1 (the “**relevant train operators**”);
- (2) Network Rail Infrastructure Limited (“**Network Rail**”); and
- (3) the Secretary of State, the Scottish Ministers and the Treasury.

- 1 This notice is a review implementation notice given under paragraph 7 of Schedule 4A to the Railways Act 1993.
- 2 On 18 December 2008, the Office of Rail Regulation (“**ORR**”) gave a review notice (the “**freight track access review notice**”) specifying its proposed relevant changes for or in connection with giving effect to its conclusions on a review of:
 - (a) the amounts payable by Network Rail and each of the relevant train operators to each other under each of the relevant access agreements; and
 - (b) the times at which, and manner in which, those amounts are payable,(the “**2008 freight track access charges review**”).
- 3 Copies of the freight track access review notice were served on each of the addressees of this notice.
- 4 On 11 February 2009, the ORR gave a notice of agreement (the “**freight track access notice of agreement**”) in respect of the freight track access review notice.
- 5 No relevant person gave a termination notice pursuant to paragraph 6 of Schedule 4A to the Railways Act 1993 during the period of 28 days beginning with the day on which the freight notice of agreement was served on it.
- 6 The ORR is therefore required by paragraph 7(1)(a) of Schedule 4A to the Railways Act 1993 to give a review implementation notice, and the ORR now:

- (a) gives notice that its conclusions on the 2008 freight track access charges review are to be implemented as proposed in the freight track access review notice; and
 - (b) directs Network Rail and each of the relevant train operators to amend the relevant access agreements to which they are a party so that the proposed relevant changes specified in the freight track access review notice in relation to each relevant access agreement come into operation on and from 1 April 2009.
- 7 Amendments made pursuant to the direction in paragraph 6(b) of this notice shall be made by means of an agreement in the form specified in Annex 2 to this notice.
- 8 Notwithstanding:
 - (a) the date on which any agreement is made:
 - (i) pursuant to the direction in paragraph 6(b) of this notice; or
 - (ii) by way of implementation of the ORR's conclusions on the 2008 freight track access charges review; or
 - (b) the form in which any such agreement is made,any provision of any such agreement which gives effect to the relevant changes specified in the freight track access review notice shall come into operation on and from 1 April 2009.
- 9 In this notice, unless the context otherwise requires:
 - (a) words and phrases defined in the Railways Act 1993 (as amended) have the same meaning in this notice;
 - (b) words and phrases defined in the freight track access review notice have the same meaning in this notice; and
 - (c) the singular includes the plural and *vice versa*.

BILL EMERY
For and on behalf of
THE OFFICE OF RAIL REGULATION
18 March 2009

ANNEX 1: RELEVANT TRAIN OPERATORS AND RELEVANT ACCESS AGREEMENTS

Relevant train operator	Original Date of Track Access Agreement
Advenza Freight Limited	16 October 2003
Colas Rail Limited (formerly AMEC Spie Rail (UK) Limited)	21 December 2006
Direct Rail Services Limited	31 January 2003
English Welsh & Scottish Railway Limited ¹	9 February 2006
Fastline Limited	24 January 2005
Freightliner Limited	17 December 2007
Freightliner Heavy Haul Limited	26 September 2007
Freight Europe (UK) Limited	30 November 2007
GB Railfreight Limited	29 January 2008
Société Nationale des Chemins de Fer Français	15 August 2007
West Coast Railway Company Ltd	7 December 2005
Serco Limited	30 September 2008

¹ Now known as DB Schenker Rail (UK) Limited

**ANNEX 2: TEMPLATE SUPPLEMENTAL AGREEMENT
(ATTACHED)**

[•]th SUPPLEMENTAL AGREEMENT

DATED

Between

NETWORK RAIL INFRASTRUCTURE LIMITED

- and -

[Insert name of Train Operator]

**relating to the implementation of the
2008 freight access charges review**

THIS [●]th SUPPLEMENTAL AGREEMENT is dated the [] day of [] 2009 and made

BETWEEN

- (1) Network Rail Infrastructure Limited, a company registered in England under number 2904587, having its registered office at Kings Place, 90 York Way, London N1 9AG (“**Network Rail**”); and
- (2) [**INSERT NAME OF [TRAIN OPERATOR]**], a company registered in [] under number [] having its registered office [] (the “**Train Operator**”).

WHEREAS

- (A) The parties entered into a track access agreement dated [] (the “**Agreement**”).
- (B) The parties now propose to enter into this Supplemental Agreement in order to comply with and give effect to the directions set out in the review implementation notice given by the Office of Rail Regulation on 18 March 2009 in connection with the implementation of the 2008 freight access charges review.

IT IS AGREED AS FOLLOWS:

1 INTERPRETATION

In this Supplemental Agreement, unless the context otherwise requires:

- (a) “**2008 freight track access charges review**” means the access charges review, implementation of which was initiated by the Office of Rail Regulation giving the 2008 freight track access review notice;
- (b) “**regulated amendments**” has the meaning ascribed to it in Clause 3.2;
- (c) “**relevant changes**” means the amendments specified, to the extent applicable to the Agreement, in Annexes 2 and 3 to the 2008 freight track access review notice;
- (d) “**relevant date and time**” means 1 April 2009 at 02:00 hours;
- (e) “**2008 freight track access review notice**” means the document entitled “Review notice: freight track access charges” given by the Office of Rail Regulation on 18 December 2008 in relation to the proposed relevant changes to be made to, among other things, the Agreement; and

- (f) words and phrases defined in, and rules of interpretation set out in, the Agreement shall have the same meaning and effect when used in this Supplemental Agreement.

2 EFFECTIVE DATE

Notwithstanding the date on which the parties signed this Supplemental Agreement, it shall take effect on and from the relevant date and time.

3 AMENDMENTS TO THE AGREEMENT

3.1 Standard amendments

Subject to Clause 3.2, the relevant changes shall be made to the Agreement.

3.2 Regulated amendments

If, before the relevant changes come into operation in accordance with this Clause 3, the Agreement is amended in a manner which is:

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

(each a “**regulated amendment**”), then:

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

3.3 Continuing Agreement

Except as provided in this Clause 3, the Agreement, as amended by this Supplemental Agreement, shall remain in full force and effect in accordance with its terms.

4 GOVERNING LAW

This Supplemental Agreement shall be governed by and construed in accordance with the laws of [England and Wales] [Scotland].

5 [COUNTERPARTS]

This Supplemental Agreement may be executed in two counterparts which, taken together, shall constitute one and the same document. Either party may

enter into this Supplemental Agreement by signing either of such counterparts.]²

² This Clause is not required in any Supplemental Agreements which are subject to Scottish Law.

IN WITNESS of which the duly authorised representatives of Network Rail and the Train Operator have executed this Supplemental Agreement on the date first above written.

Signed by.....

Print name

Duly authorised for and on behalf of

NETWORK RAIL INFRASTRUCTURE LIMITED

Signed by

Print name

Duly authorised for and on behalf of

[NAME OF TRAIN OPERATOR]