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Network Rail  
Franchised and non-franchised passenger train operators

9 August 2013

Dear colleagues

## **Contingency arrangements for a delay to the statutory implementation of the periodic review**

Following our consultation with you earlier this year, this letter asks you to enter into our proposed contingency arrangement to deal with the scenario of a delay to the statutory implementation of the 2013 periodic review (PR13).

### **Background**

On 17 April 2013, we wrote to Network Rail, train operators and other relevant parties proposing a contingency plan<sup>1</sup> in the event that there is a delay to the statutory implementation of PR13. This might arise if, for example, Network Rail objected to our PR13 review notice (to be issued on 20 December 2013) and we then had to refer our determination to the Competition Commission.

Our contingency plan was based on Network Rail and passenger train operators including a provision within their track access contracts that would implement the amendments specified in our PR13 review notices on 1 April 2014, even if there is a delay to the process for any reason. This would then provide for Network Rail to start the delivery of regulated outputs as per our determination, with the revenue stream set by the determination. This arrangement is essentially the same as the approach used in the 2008 periodic review (PR08).

Under this arrangement, if ultimately our determination had to be changed (e.g. if the Competition Commission disagreed with our determination), all affected track access contracts would then be amended as necessary to implement this.

Following our consideration of consultation responses, we confirmed in our draft determination<sup>2</sup> that we would proceed with this arrangement and ask Network Rail and passenger train operators to enter into a supplemental agreement to give effect to this.

The Department for Transport has confirmed that it supports our proposed contingency plan. It has said it will implement the CP5 charges for each franchised TOC as required

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<sup>1</sup> See <http://www.rail-reg.gov.uk/pr13/consultations/contingency-planning.php>.

<sup>2</sup> See paragraphs 22.29-22.44 of Determination of Network Rail's outputs and funding for 2014-19, available at <http://www.rail-reg.gov.uk/pr13/PDF/pr13-draft-determination.pdf>.



under its franchise agreement, should the contingency arrangement be triggered in the event of a delay to PR13 implementation. Similarly, Transport Scotland has confirmed it will apply schedule 9 of the ScotRail franchise agreement under these circumstances as well.

Please note that freight and charter passenger operators do not need to enter into this arrangement as the particular provisions in their contracts will not 'time out' at the end of CP4. Nonetheless, we asked these operators whether, collectively, they would want to enter into the contingency arrangement anyway so that they would pay the proposed new CP5 access charges from 1 April 2014 in the event of a delay. This option was not widely supported and so we are not asking these operators to make this amendment.

### **Next steps**

We have attached to this letter a template supplemental agreement for Network Rail and each relevant train operator to use to include the contingency arrangement within their track access contracts. As some track access contracts currently contain the contingency provision relating to PR08 (which is now defunct), the template supplemental agreement provides for the deletion of this clause if required.

We have today issued a general approval<sup>3</sup> relating to this supplemental agreement. This provides for the amendments to take effect upon signature, without the need for our specific approval.

We would be grateful if Network Rail and each passenger train operator would enter into the supplemental agreement by 15 October 2013 to ensure that the provision is in place in good time before we issue our review notices.

If you have any further questions in relation to these contingency arrangements, please contact Richard Gusanie at [richard.gusanie@orr.gsi.gov.uk](mailto:richard.gusanie@orr.gsi.gov.uk).

I have copied this letter to DfT, Transport Scotland, Passenger Transport Executives, Transport for London and the Welsh Government.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'John Larkinson', is written over a light blue horizontal line.

**John Larkinson**

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<sup>3</sup> The Supplemental Agreement (Interim Treatment of the 2013 Periodic Review) General Approval 2013.