

# RAILWAYS ACT 1993

## 2013 PERIODIC REVIEW

### REVIEW IMPLEMENTATION NOTICE: FREIGHT OPERATOR TRACK ACCESS AGREEMENTS

TO:

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

- 1 This notice is a review implementation notice given under paragraph 7 of Schedule 4A to the Railways Act 1993 (the “**Act**”).
- 2 On 20 December 2013, the Office of Rail Regulation (“**ORR**”) gave a review notice entitled “Review Notice: Freight Operator Track Access Agreements” (the “**freight track access review notice**”) specifying the relevant changes (within the meaning of Schedule 4A to the Act) which ORR proposed to make for or in connection with giving effect to its conclusions on a review of each of the relevant track access agreements, which are listed in Annex 1 to this notice (the “**relevant track access agreements**”), and in particular of:
  - (a) the amounts payable by Network Rail and each of the Train Operators to each other under each of the relevant track access agreements; and
  - (b) the times at which, and manner in which, those amounts are payable,

(the “**freight periodic review**”).

Copies of the freight track access review notice were served on each of the Addressees.

- 3 On 11 February 2014, the ORR gave a notice of agreement entitled “Notice of Agreement: Freight Operator Track Access Agreements” (the “**freight track access notice of agreement**”) in respect of the freight track access review notice.
- 4 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 track access notice of agreement was served on it.
- 5 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 hereby:
  - (a) gives notice that its conclusions on the freight periodic review are to be implemented as proposed in the freight track access review notice; and
  - (b) directs Network Rail and each of the Train Operators to amend the relevant track 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 track access agreement come into operation on and from 1 April 2014.
- 6 Amendments made pursuant to the direction in paragraph 5(b) of this notice shall be made by means of an agreement in the form specified in Annex 2 to this notice.
- 7 Notwithstanding:

(a) the date on which any agreement is made pursuant to the direction in paragraph 5(b) of this notice; or

(b) the form in which any such agreement is made,

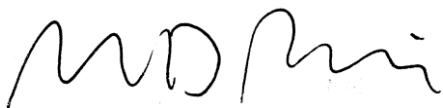
any provision of any such agreement which gives effect to the relevant changes specified in the freight track access review notice shall come into operation on and from 1 April 2014.

8 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*.



**RICHARD PRICE**

**Chief Executive**

**For and on behalf of**

**THE OFFICE OF RAIL REGULATION**

**18 March 2014**



**ANNEX 1: TRAIN OPERATORS AND RELEVANT TRACK ACCESS  
AGREEMENTS**

<b>Train Operator Name</b>	<b>Train Operator Company Number</b>	<b>Original Date of Track Access Agreement</b>
Colas Rail Limited	02995525	21 December 2006
DB Schenker Rail (UK) Limited	02938988	9 February 2006
Devon & Cornwall Railways Limited	04973992	27 October 2011
Direct Rail Services Limited	03020822	8 January 2010
Europorte Channel SAS	518454-301	18 May 2011
Freightliner Limited	03118392	17 December 2007
Freightliner Heavy Haul Limited	03831229	26 September 2007
GB Railfreight Limited	03707899	29 January 2008
GB Railfreight Limited	03707899	16 April 2012
West Coast Railway Company Ltd	03066109	6 April 2011

**ANNEX 2: TEMPLATE SUPPLEMENTAL AGREEMENT**

**(ATTACHED)**

**[•]th SUPPLEMENTAL AGREEMENT**

**DATED**

**Between**

**NETWORK RAIL INFRASTRUCTURE LIMITED**

**- and -**

***[Insert name of Train Operator]***

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**relating to the implementation of the  
freight periodic review**

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THIS [●]th **SUPPLEMENTAL AGREEMENT** is dated the [ ] day of  
[ ] 2014 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 2014 in connection with the implementation of the freight periodic review.

**IT IS AGREED AS FOLLOWS:**

**1 INTERPRETATION**

In this Supplemental Agreement, unless the context otherwise requires:

- (a) “**freight periodic review**” means the access charges review known as the 2013 periodic review, implementation of which was initiated by the Office of Rail Regulation publishing and serving the freight track access review notice;

- (b) “**freight track access review notice**” means the document entitled “Review Notice: Freight Operator Track Access Agreements” given by the Office of Rail Regulation on 20 December 2013 in relation to the proposed relevant changes to be made to, among other things, the Agreement;
- (c) “**regulated amendments**” has the meaning ascribed to it in paragraph 3.2;
- (d) “**relevant changes**” means the amendments specified, to the extent applicable to the Agreement, in Annexes 2 and 3 of the freight track access review notice;
- (e) “**relevant date and time**” means 1 April 2014 at 02:00 hours; 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 paragraph 3.2, the relevant changes shall be made to the Agreement.

### **3.2 Regulated amendments**

- 3.2.1 If, before the relevant changes come into operation in accordance with this paragraph 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 paragraph 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.

## **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.

**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]