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To the addressees set out in the Annex

Dear sir/madam

Implementation of the 2013 periodic review

1. I am writing to inform you that the Office of Rail Regulation (ORR) has today formally initiated the statutory implementation of the 2013 periodic review (PR13). This follows the publication of our final determination on 31 October 2013¹, which set out our overall decisions on Network Rail's outputs and funding for control period 5 (CP5).

2. This letter gives an overview of:

- (a) the formal 'review notices' that we have issued which set out the changes to Network Rail's network licence and relevant track and station access agreements, which we expect to take effect on and from 1 April 2014;
- (b) other documents relating to implementation of PR13, including price lists/schedules of charges published by Network Rail;
- (c) issues relating to the approval of new access agreements and any amendments to access agreements that industry parties plan to make between 20 December 2013 and the date that PR13 is formally implemented; and
- (d) next steps and further work relating to track access agreements for PR13 implementation.

Review notices and the implementation process

3. PR13 is an 'access charges review' under Schedule 4A to the Railways Act 1993 (the Act). By publishing the review notices and serving them on Network Rail and its customers (in this case, holders of track and station access agreements) as well as

¹ *Periodic Review 2013: Final determination of Network Rail's outputs and funding for 2014-19*, October 2013, available at <http://www.rail-reg.gov.uk/pr13/PDF/pr13-final-determination.pdf>.

HM Treasury, the Scottish Ministers and Secretary of State, we are initiating the implementation of our PR13 determination².

4. Overall, we have issued seven review notices which apply to the following:

- (a) **track access agreements** between Network Rail and: franchised passenger operators; open access passenger train operators³; charter passenger train operators; freight train operators; and freight customers;
- (b) **station access agreements** at Network Rail 'managed stations' and stations leased by Network Rail to train operators⁴; and
- (c) Network Rail's **network licence**.

5. Train operators will only receive copies of the review notices that are relevant to the access agreements that they hold and the review notice relating to the network licence. However, copies of all the notices will be available on our website.

6. Some of the review notices contain confidential information in Part 2 of Annex 3⁵. Each train operator (where relevant) will receive only its own confidential information. Network Rail, HM Treasury, the Secretary of State and the Scottish Ministers will receive the full unredacted version. The Welsh Government and concession authorities will receive the confidential information relating to the train operator franchisee/concession that they each oversee.

7. As required by Schedule 4A to the Act, we must give Network Rail a period of at least six weeks in which it may object to the changes that we propose to be made from 1 April 2014. We are giving Network Rail until 7 February 2014 to notify us of any objection.

² See <http://www.rail-reg.gov.uk/pr13/publications/legal-notices.php> for the relevant documentation.

³ This excludes those track access agreements that do not include an access charges reopener provision and so fall outside the scope of PR13.

⁴ With the exception of Stratford, this excludes those stations for which Abellio Greater Anglia Limited is the station facility owner and for which it has taken over the management and operation of the stations on a full repairing lease.

⁵ These are the review notices relating to franchised passenger track access agreements, freight operator track access agreements and open access passenger track access agreements.

8. Further information relating to the implementation process is set out in chapter 22 of our final determination.

Changes to station access agreements made by the stations review notice

9. The stations review notice directs that changes be made to the station access conditions incorporated into all affected station access agreements, in particular to insert the new stations long term charge and revised indexation provisions and, at Network Rail managed stations, to reflect changes to the recovery of costs for Stations Information and Security Systems (SISS).

Changes to track access agreements made by the review notices

10. The changes to be made to track access agreements include (where relevant) amendments to the possessions and performance regimes (Schedules 4 and/or 8) and charges and other payments (Schedule 7), as well as associated consequential changes. These changes follow our consultations on contractual drafting and on the draft determination⁶. As discussed in our final determination, we have also taken into account bespoke arrangements in existing agreements to the extent appropriate to implement the new CP5 provisions.

11. Assuming that PR13 takes effect on 1 April 2014 as planned, franchised passenger and freight track access agreements will incorporate the new Traction Electricity Rules (TER). These will replace the EC4T Metering Rules currently incorporated into the track access agreements of the five train operators that are billed (either partly or wholly) for traction electricity using on-train meters. A copy of the TER will be provided to those parties whose track access agreements will incorporate them. Network Rail will also publish the TER on its website in due course (consistent with the current arrangements for it to publish the EC4T Metering Rules).

Changes to Network Rail's network licence made by the licence review notice

12. Our licence review notice proposes that conditions 3 and 4 of the network licence be amended in connection with our final determination (these are "linked licence" changes under Schedule 4A to the Act).

13. We have also amended our proposed condition 3 of Network Rail's network licence, so that we now have the option to consent in some circumstances to the requirement that

⁶ *Consultation on implementing PR13*, July 2013, and subsequent consultations on contractual drafting, available at <http://www.rail-reg.gov.uk/pr13/consultations/index.php>.

Network Rail pays a financial indemnity mechanism (FIM) fee to the Secretary of State⁷. This provides us with additional flexibility to deal with a situation where there are changes to the way Network Rail raises finance, which could mean that there might need to be changes to the FIM fee Network Rail pays to the Secretary of State. This follows the recent announcement by the UK Government on Network Rail⁸.

14. We consulted in July 2013 on more general changes to the network licence alongside these proposed linked licence changes. Following this consultation, we carried out a statutory consultation in November 2013 and, as the licence holder, Network Rail consented to these changes earlier this month. These changes to the network licence took effect on 16 December 2013⁹.

Other documentation relating to implementation

Network Rail's price lists/schedules of charges

15. Following our final determination, Network Rail has produced the price lists/schedules of charges associated with the track and station access agreements. We have reviewed these price lists/schedules to ensure that these are consistent with our determination and also checked for errors. This follows the significant process of engagement and consultation carried out by Network Rail on the draft versions of the price lists. It is important to note that the price lists are now effectively 'fixed' for the duration of CP5 and cannot be easily reopened.

16. These price lists/schedules are as follows:

- (a) The Track Usage Price List, setting out:
 - (i) variable usage charge rates and default charge rates;
 - (ii) electrification asset usage charge for freight and passenger operators;
 - (iii) coal spillage charge and coal spillage reduction investment charge (applying to freight traffic transporting coal);

⁷ As described in our final determination, the FIM fee reflects the benefit Network Rail receives from having its debt backed by the UK Government.

⁸ This is available at <https://www.gov.uk/government/speeches/ons-decision-on-the-classification-of-network-rail>.

⁹ <http://www.rail-reg.gov.uk/upload/pdf/nr-licence-modification-2013-12-06.pdf>.

- (iv) freight only line charge rates and freight specific charge rates (applying to freight traffic transporting electricity supply industry (ESI) coal, spent nuclear fuel and iron ore);
 - (v) slot charges for charter operators;
 - (b) the Traction Electricity Modelled Consumption Rates List (these are based on CP4 rates);
 - (c) the List of Capacity Charge Rates;
 - (d) the Schedule of Fixed Charges (for franchised passenger train operators); and
 - (e) Franchised Station Long Term Charges and Managed Station Long Term Charges.
17. These are Network Rail's documents and are published on its website¹⁰.

Deed of grant / Agreement as to network grant

18. Network Rail has executed arrangements with both the Secretary of State for Transport (for England & Wales) and the Scottish Ministers (for Scotland) making provision for the payment of network grant to be paid in lieu of fixed track access charges. The Schedule of Fixed Charges reflects the expected network grant payments. These documents are referenced as necessary in franchised passenger operators track access agreements.

19. As set out in Chapter 17 of our final determination, we decided to allow part of Network Rail's income to be provided directly by DfT and Transport Scotland in CP5 through network grants "in lieu of" some fixed track access charges. Earlier this week, the Department for Transport and Transport Scotland provided us with a copy of the deed of grant and grant agreement that the Secretary of State and the Scottish Ministers (respectively) will enter into with Network Rail.

20. These provide an option for the Secretary of State and the Scottish Ministers to make reductions to the grants forecast to be paid in CP5, with these reductions then being offset by increased fixed track access charges paid by franchised train operators. This is consistent with our overall approach to Network Rail's funding, as we would like to see more of Network Rail's funding coming from train operators paying access charges rather than through network grants.

¹⁰ See www.networkrail.co.uk/accesscharges.

21. However, this has required a small and technical amendment to the version of Schedule 7 that will be included in the track access agreements of franchised operators as part of PR13 implementation. Schedule 7 now better describes the situation where the Secretary of State or the Scottish Ministers choose to reduce their grant payments to Network Rail. This has been reflected in the review notices we have issued today.

New access agreements and amendments to existing access agreements made following review notices but before implementation takes effect

22. We recognise that between the serving of review notices today and implementation on 1 April 2014 (assuming Network Rail does not make an objection), Network Rail and train operators may wish to make changes to their access agreements or enter into new access agreements.

New access agreements

23. As any new access agreements entered into following the issue of our review notices will be unable to be amended pursuant to the statutory implementation process, we will need to ensure that suitable contractual provisions are included within these agreements before they are approved so that these agreements will reflect PR13 arrangements. Where this is necessary, we will discuss this with the parties concerned.

24. In connection with this, we have asked Network Rail not to enter into any new freight or charter track access agreements using our general approvals until after PR13 is implemented. It has agreed not to do so. Instead, our specific approval should be sought in respect of any new access agreements during this period.

25. For the same reason, the new General Approval (Stations) 2013 suspends the ability to enter into new station access agreements (or to add stations to existing agreements) until after PR13 has been implemented.

Amendments to existing access agreements

26. The review notices include provisions that provide for any changes *specifically* approved by us under section 22 of the Act to take priority over any changes in the review notices, should there be any conflict. Industry parties, in considering any amendments in this period, and ourselves in deciding whether to approve these changes, will need to be conscious of the potential for inadvertently overwriting the changes set out in the review notices.

27. However, for amendments to track access agreements made under a general approval, different arrangements apply. When the changes set out in our franchised

passenger and open access passenger review notices come into effect, these will overwrite any amendments made to Schedules 7 (excluding Appendix 7C) or 8 of track access agreements using our Passenger Access (Short Term Timetable & Miscellaneous Changes) General Approval 2009. This is most likely to affect changes to Appendix 1 to Schedule 8 relating to berthing offsets. If any changes to these are made before 1 April 2014, they will take effect but will then be overwritten by the new recalibrated version of Appendix 1 to Schedule 8 contained in the review notices. Where this happens, and the recalibrated Appendix 1 to Schedule 8 does not already take into account the berthing offsets corrections, Network Rail and the train operator may wish to seek a further amendment using the recalibrated Appendix 1 as the base¹¹.

28. For **station access agreements**, our new General Approval (Stations) 2013¹² suspends the ability to amend the station long term charge until PR13 is implemented. In the meantime, where such amendments need to be made, industry parties should seek our specific approval. In particular, any amendments to the long term charge should specify the following clearly:

- (i) the current total long term charge for the station;
- (ii) the amount of the increment or decrement to be approved;
- (iii) the total long term charge that will apply up to 31 March 2014; and
- (iv) the total long term charge that will apply from 1 April 2014.

29. Further questions about making or amending access agreements before PR13 is implemented, please contact:

- (a) for track access agreements, Ian Williams (020 7282 2092) or Bill Hammill (020 7282 2088); and
- (b) for station access, stations.depots@orr.gsi.gov.uk.

¹¹ This applies equally to any amendments to berthing offsets made to Appendix 1 to Schedule 8 after the data used for the recalibration exercise for PR13 was provided to Network Rail's consultants Halcrow.

¹² Available at <http://www.rail-reg.gov.uk/upload/pdf/ga-stations-dec2013.pdf>.

Next steps and further work relating to track access agreements for PR13 implementation

Capacity charge baselines for freight, open access passenger and charter operators

30. We are asking Network Rail to calculate capacity charge baselines, subject to our approval (or determination if we disagree with Network Rail's calculations), for freight, open access passenger and charter operators. These will be issued on or before 10 February 2014. However, jointly with Network Rail, we will consult on the baselines prior to finalising these.

Schedule 4 access charges supplements for passenger operators

31. During our recent work to uprate Schedule 4 train mileage cost (TMC) payment rates by RPI, we became aware of an error in the TMC payment rates used by Network Rail in its Schedule 4 payments system for a number of TOCs in the financial year 2011-12. This resulted in the incorrect amount of Schedule 4 cost compensation being paid to those TOCs affected. In most cases, this is likely to have led to an overpayment by Network Rail.

32. Because 2011-12 was used as the base year by Network Rail in its calculation of forecast access charge supplement (ACS) for CP5, which takes into account historic Schedule 4 payments for given levels of maintenance and renewals activity, the error was carried forward into Network Rail's ACS forecast. This means that the levels of the ACS notified to relevant train operators by us on 2 December 2013 could be incorrect. We have asked Network Rail to recalculate the CP5 ACS taking account of the TMC payment rate error. In light of this, the new Schedule 4 provisions included in the review notice leave the ACS levels undetermined, with provision for us to set these separately on or around 10 February 2014, which we plan to do by issuing a letter to train operators.

Further steps in the statutory implementation process

33. Provided that Network Rail does not object to our review notices by 7 February 2014, we will then issue a 'notice of agreement' confirming this. As required by Schedule 4A to the Act, this will give Network Rail's train operator customers a period of 28 days in which to decide whether to terminate their access agreements.

34. We will then – around mid-March 2014 – issue review implementation notices. These will confirm that the changes in the review notices issued today will take effect on 1 April 2014. They will also direct the parties to the relevant access agreements to make the relevant changes specified in the review notices by entering into a short supplemental agreement, a draft of which we will provide at the time.

Revised documentation for CP5

35. Assuming that Network Rail does not object to our review notices and the review is implemented on 1 April 2014, we plan to publish revised model track access contracts and update our *Criteria and procedures for the approval of track access contracts*¹³ shortly thereafter.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'John Larkinson', is positioned above the printed name.

John Larkinson

¹³ Available at http://www.rail-reg.gov.uk/upload/pdf/ta_criteria_and_procedures.pdf.

Annex – List of addressees

Charter passenger train operators

Crossrail Limited (holder of a freight customer track access contract)

Department for Transport

Franchised passenger train operators

Freight train operators

HM Treasury

London TravelWatch

Open access passenger train operators (who hold track access agreements that include an access charges reopener)

Passenger Focus

Passenger Transport Executives

Rail Delivery Group

Rail for London Limited

Scottish Ministers

Secretary of State

Transport Scotland

Welsh Government