

RAILWAYS ACT 1993
2018 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 (as amended) (the “**Act**”).
2. On 20 December 2018, the Office of Rail and Road (“**ORR**”) gave a review notice entitled “Review Notice: Freight Operator Track Access Agreements” (the “**freight operator 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:
 - (a) the amounts payable by Network Rail and each of the Train Operators to each other under each of the relevant track access agreements, which are listed in Annex 1 to this notice (the “**relevant track access agreements**”); and
 - (b) the times at which, and manner in which, those amounts are payable,(the “**freight operator periodic review**”).

Copies of the freight operator track access review notice were served on each of the Addressees.
3. On 8 February 2019, ORR gave a notice of agreement entitled “Notice of Agreement: Freight Operator Track Access Agreements” (the “**notice of agreement**”) in respect of the freight operator track access review notice.
4. No relevant person gave a termination notice pursuant to paragraph 6 of Schedule 4A to the Act during a period of 28 days beginning with the day on which the notice of agreement was served on it.

5. ORR is therefore required by paragraph 7(1)(a) of Schedule 4A to the Act to give a review implementation notice, and ORR hereby:
 - (a) gives notice that its conclusions on the freight operator periodic review are to be implemented as proposed in the freight operator 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 operator track access review notice in relation to each relevant track access agreement come into operation on and from 1 April 2019.
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 operator track access review notice shall come into operation on and from 1 April 2019.
8. If, before the proposed relevant changes come into operation in relation to any relevant track access agreement, such relevant track access agreement is amended in a manner which is:
 - (a) approved by ORR under section 22 of the Act; or
 - (b) directed by ORR under section 22A or section 22C of the Act,(each a “**regulated amendment**”), then:
 - (i) the proposed relevant changes shall come into operation in relation to that relevant track access agreement subject to the regulated amendments; and
 - (ii) if there is any conflict between the proposed relevant changes and the regulated amendments, the regulated amendments shall take precedence.

9. In this notice, unless the context otherwise requires:
- (a) words and phrases defined in the Act have the same meaning in this notice;
 - (b) words and phrases defined in the freight operator track access review notice have the same meaning in this notice; and
 - (c) the singular includes the plural and *vice versa*.

Carl Hetherington

CARL HETHERINGTON
For and on behalf of
THE OFFICE OF RAIL AND ROAD
11 March 2019



ANNEX 1: TRAIN OPERATORS AND RELEVANT TRACK ACCESS AGREEMENTS

Train Operator Name	Train Operator Company Number	Original Date of Track Access Agreement
Colas Rail Limited	02995525	11 December 2016
DB Cargo (UK) Limited	02938988	11 December 2016
Devon and Cornwall Railways Limited	04973992	28 July 2016
Direct Rail Services Limited	03020822	8 January 2010
Freightliner Limited	03118392	11 December 2016
Freightliner Heavy Haul Limited	03831229	11 December 2016
GB Railfreight Limited	03707899	11 December 2016
Harsco Rail Limited	00977100	17 April 2015 ¹
Loram UK Limited	06031483	12 January 2017
Rail Operations (UK) Limited	08556176	21 March 2015
Victa Railfreight Limited	03017321	17 April 2015
Vintage Trains Limited	10436785	5 September 2018
West Coast Railway Company Ltd	03066109	5 April 2016

¹ ORR holds a copy of a contract dated 17 April 2015. However, versions of this contract exist on line with different dates. Notwithstanding this ambiguity, it is ORR's intention that the track access agreement held by Harsco Rail Limited shall be amended pursuant to the direction in this Review Implementation Notice.

ANNEX 2: TEMPLATE SUPPLEMENTAL AGREEMENT
(ATTACHED)

[•]th SUPPLEMENTAL AGREEMENT

DATED

[insert date]

Between

NETWORK RAIL INFRASTRUCTURE LIMITED

-and-

[insert name of train operator]

**relating to the implementation of the
2018 periodic review (PR18)**

THIS [●]th SUPPLEMENTAL AGREEMENT is dated the [●] day of [●] 2019 and made

BETWEEN

- (1) Network Rail Infrastructure Limited, a company registered in England under number 2904587, having its registered office at 1 Eversholt Street, London NW1 2DN (“**Network Rail**”); and
- (2) [*insert name of train operator*], a company registered in [●] under number [●], having its registered office at [●] (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 notices given by the Office of Rail and Road on 11 March 2019 in connection with the implementation of both the freight operator periodic review and the Traction Electricity Rules periodic review.

IT IS AGREED AS FOLLOWS:

1. INTERPRETATION

In this Supplemental Agreement, unless the context otherwise requires:

- (a) “**freight operator periodic review**” and “**Traction Electricity Rules periodic review**” together mean the access charges review known as the 2018 periodic review, implementation of which was initiated by the Office of Rail and Road publishing and serving the freight operator track access review notice and the Traction Electricity Rules review notice;
- (b) “**freight operator track access review notice**” means the document entitled “Review Notice: Freight Operator Track Access Agreements” given by the Office of Rail and Road on 20 December 2018 in relation to the proposed relevant changes to be made to, among other things, the Agreement;
- (c) “**Traction Electricity Rules review notice**” means the document entitled “Review Notice: Traction Electricity Rules” given by the Office of Rail and Road on 20 December 2018 in relation to the proposed relevant changes to be made to the Traction Electricity Rules;
- (d) “**regulated amendments**” has the meaning ascribed to it in paragraph 3.2;
- (e) “**relevant changes**” means the amendments specified, to the extent applicable to the Agreement, in Annexes 2 and 3 of the freight operator track access review notice, and Annex 2 of the Traction Electricity Rules review notice;
- (f) “**relevant date and time**” means 1 April 2019 at 02:00 hours;

- (g) **“Traction Electricity Rules”** means the document known as the Traction Electricity Rules published by Network Rail on its website; and
- (h) words and phrases defined in, and rules of interpretation set out in, the Agreement and/or the Traction Electricity Rules 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 and the Traction Electricity Rules.

3.2 Regulated amendments

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 and Road under section 22 of the Act; or
- (b) directed by the Office of Rail and Road 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]