

## **PR13 IMPLEMENTATION: CONSEQUENTIAL CHANGES PROPOSED TO THE CONTRACTS**

Franchised passenger operators (with the exception of First Scotrail) and Freight Operators' contracts will be updated to reflect the changes set out in Parts A and B below. Train Operators who have switched to on-train metering of traction electricity will have CP4 versions of some of these provisions already. These will need to be updated to be consistent with the CP5 provisions set out below.

Open Access Operators' contracts will be amended to reflect the changes set out in Part B only.

First Scotrail's contract will receive a bespoke version of the changes in Parts A and B to reflect any relevant difference between Scots and English law.

### **Part A - Changes due to the incorporation of the Traction Electricity Rules**

1. In the definitions in Clause 1.1, insert references to the Traction Electricity Rules at the end of the definitions of "contract" and "Track Charges" and add a new definition for "Traction Electricity Rules" as "means the document known as the Traction Electricity Rules"

2. At the end of the interpretation section in Clause 1.2 add two new limbs to say:

"words and expressions defined in the Traction Electricity Rules shall have the same meanings in this contract; and

if there is any conflict of interpretation between this contract (not including the Traction Electricity Rules) and the Traction Electricity Rules, the following order of precedence shall apply: (1) the Traction Electricity Rules; and (2) this contract (not including the Traction Electricity Rules)."

3. Amend Clause 2.1 and 2.2 so that it reads:

#### **"2. NETWORK CODE AND TRACTION ELECTRICITY RULES**

##### ***2.1 Incorporation***

The Network Code and the Traction Electricity Rules are incorporated in and form part of this contract.

##### ***2.2 Modification to the Network Code or the Traction Electricity Rules***

If either the Network Code or the Traction Electricity Rules or both are modified at any time, Schedule 10 shall have effect"

4. We propose to update clauses 11.5(a), 14.6 and 17.2(b) to reflect references to the Traction Electricity Rules

5. Add a new 18.7.4

##### ***"Application of the Traction Electricity Rules to other train operators***

Any Metered Train Operator, Prospective Metered Train Operator or Modelled Train Operator (as defined in the Traction Electricity Rules) shall have the right under the

Contracts (Rights of Third Parties) Act 1999 directly to enforce such rights as have been granted to it under the Traction Electricity Rules”

6. Schedule 10 – in paragraph 2.1 we propose to make changes to reference the Traction Electricity Rules so that ORR can also give a modification notice regarding changes that should be made to the contract to give effect to changes to the Traction Electricity Rules. We also propose to reference the Traction Electricity Rules in paragraph 4.9(b) of the Schedule.

#### Part B – Change to Unpaid Sums clause

1. In the franchised and open access contracts replace clause 13.2 with the following text:

“If either party fails to pay:

- (a) any invoice issued to it under this contract in respect of Track Charges; or
- (b) any other sum which has fallen due in accordance with any provision of this contract, then:
  - (i) the amount invoiced or sum due, as referred to in Clause 13.2(a) or (b), shall immediately constitute a debt due and owing from the party who has failed to pay the invoice or sum due to the other party (and to any assignee of a party’s right to payment in respect of any invoice or other sum due);
  - (ii) such debt shall be recoverable by any means available under the laws of England and Wales; and
  - (iii) the dispute resolution procedures in Clauses 13.1 and 13.3 to 13.5 shall not apply to proceedings commenced under this Clause 13.2.”

2. In the freight contracts replace 13.2 with the following text:

“If either party fails to pay:

- (a) any invoice issued to it under this contract in respect of Track Charges; or
- (b) any other sum which has fallen due in accordance with any provision of this contract, then, subject to Clause 16.1.1:
  - (i) the amount invoiced or sum due, as referred to in Clause 13.2(a) or (b), shall immediately constitute a debt due and owing from the party who has failed to pay the invoice or sum due to the other party (and to any assignee of a party’s right to payment in respect of any invoice or other sum due);
  - (ii) such debt shall be recoverable by any means available under the laws of England and Wales; and
  - (iii) the dispute resolution procedures in Clauses 13.1 and 13.3 to 13.5 shall not apply to proceedings commenced under this Clause 13.2.”