

RAILWAYS ACT 1993
2018 PERIODIC REVIEW
REVIEW IMPLEMENTATION NOTICE:
OPEN ACCESS PASSENGER 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 2018, the Office of Rail and Road (“**ORR**”) gave a review notice entitled “Review Notice: Open Access Passenger Track Access Agreements” (the “**open access passenger 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 “**open access passenger periodic review**”).

Copies of the open access passenger 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: Open Access Passenger Track Access Agreements” (the “**notice of agreement**”) in respect of the open access passenger 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 open access passenger periodic review are to be implemented as proposed in the open access passenger 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 open access passenger 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 applicable to each Train Operator as 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 open access passenger 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. The following amendments will not be considered regulated amendments for the purpose of this notice:
 - (a) amendments made to any provision within Schedule 7, other than Appendix 7C, of a relevant track access agreement under the Passenger Access (Short Term Timetable

and Miscellaneous Changes) General Approval 2009 issued by ORR on 25 November 2009; and

(b) amendments made to any provision within Schedule 8 of a relevant track access agreement under the Passenger Access (Short Term Timetable and Miscellaneous Changes) General Approval 2009 issued by ORR on 25 November 2009.

10. 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 open access passenger track access review notice have the same meaning in this notice; and

(c) the singular includes the plural and *vice versa*.



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
East Coast Trains Limited	08765536	3 October 2016
Eurostar International Limited	02462001	31 October 2008
Grand Central Railway Company Limited	03979826	1 August 2014
Hull Trains Company Limited	03715410	17 March 2016
North Yorkshire Moors Railway Enterprises PLC	02490244	17 January 2007
South Yorkshire Supertram Limited	02634683	4 May 2018
West Coast Railway Company Ltd	03066109	11 May 2015

ANNEX 2: TEMPLATE SUPPLEMENTAL AGREEMENT

(ATTACHED)

(Part 1 for Train Operators whose Track Access Agreements do not incorporate the Traction Electricity Rules; Part 2 for Train Operators whose Track Access Agreements do (or, in the case of Grand Central Railway Company Limited, will) incorporate the Traction Electricity Rules)

PART 1: TEMPLATE SUPPLEMENTAL AGREEMENT FOR:

- (i) EUROSTAR INTERNATIONAL LIMITED**
- (ii) NORTH YORKSHIRE MOORS RAILWAY ENTERPRISES PLC**
- (iii) WEST COAST RAILWAY COMPANY LTD**

[•]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 notice given by the Office of Rail and Road on 11 March 2019 in connection with the implementation of the open access passenger periodic review.

IT IS AGREED AS FOLLOWS:

1. INTERPRETATION

In this Supplemental Agreement, unless the context otherwise requires:

- (a) “**open access passenger periodic review**” means 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 open access passenger track access review notice;
- (b) “**open access passenger track access review notice**” means the document entitled “Review Notice: Open Access Passenger 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) “**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 open access passenger track access review notice;
- (e) “**relevant date and time**” means 1 April 2019 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

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 The following amendments will not be considered regulated amendments for the purpose of this paragraph 3:

- (a) amendments made to any provision within Schedule 7, other than Appendix 7C, of the Agreement under the Passenger Access (Short Term Timetable and Miscellaneous Changes) General Approval 2009 issued by ORR on 25 November 2009; and
- (b) amendments made to any provision within Schedule 8 of the Agreement under the Passenger Access (Short Term Timetable and Miscellaneous Changes) General Approval 2009 issued by ORR on 25 November 2009.

3.4 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]

PART 2: TEMPLATE SUPPLEMENTAL AGREEMENT FOR:

- (i) EAST COAST TRAINS LIMITED**
- (ii) GRAND CENTRAL RAILWAY COMPANY LIMITED**
- (iii) HULL TRAINS COMPANY LIMITED**
- (iv) SOUTH YORKSHIRE SUPERTRAM LIMITED**

[•]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 open access passenger 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) “**open access passenger 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 open access passenger track access review notice and the Traction Electricity Rules review notice;
- (b) “**open access passenger track access review notice**” means the document entitled “Review Notice: Open Access Passenger 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 open access passenger 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 The following amendments will not be considered regulated amendments for the purpose of this paragraph 3:

- (a) amendments made to any provision within Schedule 7, other than Appendix 7C, of the Agreement under the Passenger Access (Short Term Timetable and

Miscellaneous Changes) General Approval 2009 issued by ORR on 25 November 2009; and

- (b) amendments made to any provision within Schedule 8 of the Agreement under the Passenger Access (Short Term Timetable and Miscellaneous Changes) General Approval 2009 issued by ORR on 25 November 2009.

3.4 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

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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]