

Railways Act 1993

Supplemental Agreement (Interim Treatment of the 2013 Periodic Review) General Approval 2013

2013 No. 1

<i>Made</i>	<i>9 August 2013</i>
<i>Coming into force</i>	<i>10 August 2013</i>

The Office of Rail Regulation, in exercise of the powers conferred upon it by section 22(3) of the Railways Act 1993, gives the following general approval.

Citation, commencement and revocation

1. (1) This general approval may be cited as the Supplemental Agreement (Interim Treatment of the 2013 Periodic Review) General Approval 2013.
- (2) This general approval comes into force on 10 August 2013.

Interpretation

2. (1) In this general approval:

“access agreement” means an agreement entered into after 1 April 1994 under which Network Rail Infrastructure Limited grants a beneficiary permission to use its track for or in connection with the provision of services;

“beneficiary” includes an operator of trains; and

“services” means services for the carriage of passengers by railway.

- (2) In this general approval:

- (a) unless the context otherwise requires, terms and expressions defined in the Railways Act 1993 shall have the same meanings in this general approval;
- (b) the Interpretation Act 1978 applies to this general approval in the same way as it applies to an enactment; and
- (c) unless the context otherwise requires, any reference to a numbered paragraph is a reference to the paragraph in this general approval which bears that number.

Approval of amendments

3. The parties to an access agreement may enter into a supplemental agreement in the form attached at Schedule 1 to this approval.
4. Where the supplemental agreement attached at Schedule 1 contains square brackets, the parties to an access agreement may make such deletions or insertions as are appropriate in accordance with the instructions contained between the relevant square brackets.
5. The parties to an access agreement, which is governed by Scottish law, may delete or modify the terms of the supplemental agreement attached at Schedule 1 only to the extent necessary in order to comply with the laws of Scotland.



John Larkinson

Duly authorised by the Office of Rail Regulation

9 August 2013



Schedule 1

SUPPLEMENTAL AGREEMENT

between

NETWORK RAIL INFRASTRUCTURE LIMITED

and

[insert name of train operator]

**relating to amendments to a Track Access
Contract (*[Non-Franchised Passenger/Passenger – delete as appropriate]* Services)
dated *[insert date]* –
Interim treatment of the 2013 Periodic Review**

THIS SUPPLEMENTAL AGREEMENT is dated [insert date] 2013 and made between:

- (1) **NETWORK RAIL INFRASTRUCTURE LIMITED**, a company registered in England under company number 02904587, 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 England and Wales under company number [insert number], having its registered office at [insert address] (the "**Train Operator**").

Background:

- (A) The parties entered into a Track Access Contract ([*Non-Franchised Passenger/Passenger – delete as appropriate*] Services) dated [insert date] as amended by various supplemental agreements (which track access contract as subsequently amended is hereafter referred to as the "**Contract**").
- (B) The parties wish to amend the Contract to incorporate a mechanism which will provide for the treatment of revised track access charges and certain other matters forming the subject of the Office of Rail Regulation's 2013 periodic review pending the conclusion of the periodic review process. This Supplemental Agreement provides for the insertion of a new Clause [insert relevant clause number] in order to incorporate such a mechanism into the Contract.
- (C) This Supplemental Agreement is entered into pursuant to the Supplemental Agreement (Interim Treatment of the 2013 Periodic Review) General Approval 2013.

IT IS HEREBY AGREED as follows:

1. INTERPRETATION

In this Supplemental Agreement words and expressions defined in and rules of interpretation set out in the Contract shall have the same meaning and effect when used in this Supplemental Agreement except where the context requires otherwise.

2. EFFECTIVE DATE AND TERM

The amendments to the Contract made pursuant to this Supplemental Agreement shall have effect from the date of this Supplemental Agreement and shall cease to have effect at 23:59 hours on the Expiry Date or earlier termination of the Contract.

3. AMENDMENTS TO THE CONTRACT

[Delete Clause *[insert number]* "Interim Treatment of Access Charges Review" from the Contract.]¹ A new Clause *[insert number]* shall be inserted into the Contract as follows:

"*[insert number]* INTERIM TREATMENT OF 2013 PERIODIC REVIEW

***[insert number].1* Treatment prior to implementation**

If the terms of a Proposed Review Notice proposing amendments to the Contract are not implemented in accordance with paragraph 7 of Schedule 4A to the Act on 1 April 2014 for any reason, then, irrespective of such terms not having been so implemented, each proposed amendment to the Contract set out in the Proposed Review Notice shall have effect on that date or from any later date (or dates) specified in the Proposed Review Notice in respect of any individual amendment, in each case until such time as:

- (a) a Review Implementation Notice is served; or
- (b) following a reference to the Competition Commission in accordance with paragraph 9 of Schedule 4A to the Act, any amendments to the Contract, made in accordance with paragraphs 12(8), 12(9) or 14(3) of Schedule 4A to the Act, come into operation.

***[insert number].2* Definitions**

In this Clause *[insert number]*:

"Current Control Period" means the period of five years commencing at 0000 hours on 1 April 2009 and ending at 2359 hours on 31 March 2014;

"Proposed Review Notice" means as at the last day of the Current Control Period the most recently proposed Review Notice given by ORR in accordance with Schedule 4A of the Act;

"Review Implementation Notice" has the meaning given to "review implementation notice" in paragraph 7 of Schedule 4A to the Act; and

"Review Notice" has the meaning given to "review notice" in paragraph 4 of Schedule 4A of the Act.

4. EFFECT OF THIS SUPPLEMENTAL AGREEMENT ON THE CONTRACT

The parties agree that the Contract, as amended by this Supplemental Agreement, shall remain in full force and effect in accordance with its terms, and with effect from and including the date hereof and during the period in which the amendments made by this Supplemental Agreement are to have effect, all references in the Contract to the "Contract", "herein", "hereof", "hereunder" and other similar expressions shall, unless the context requires otherwise, be read

¹ Delete or use as appropriate according to whether the Contract contains a defunct provision relating to the previous access charges review.

and construed as a reference to the Contract as amended by this Supplemental Agreement.

5. LAW

This Supplemental Agreement shall be governed by, construed and given effect to in all respects in accordance with the laws of [England and Wales/Scotland – *delete as appropriate*].

6. THIRD PARTY RIGHTS

No person who is not a party to this Supplemental Agreement shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Supplemental Agreement.

7. COUNTERPARTS

This Supplemental Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original, but all the counterparts shall together constitute one and the same instrument.

IN WITNESS of which Network Rail and the Train Operator have, by their duly authorised representatives, respectively entered into this Supplemental Agreement on the date first above written.

SIGNED BY)
for and on behalf of)
NETWORK RAIL)
INFRASTRUCTURE LIMITED)

SIGNED BY)
for and on behalf of)
[Relevant Train Operator])
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