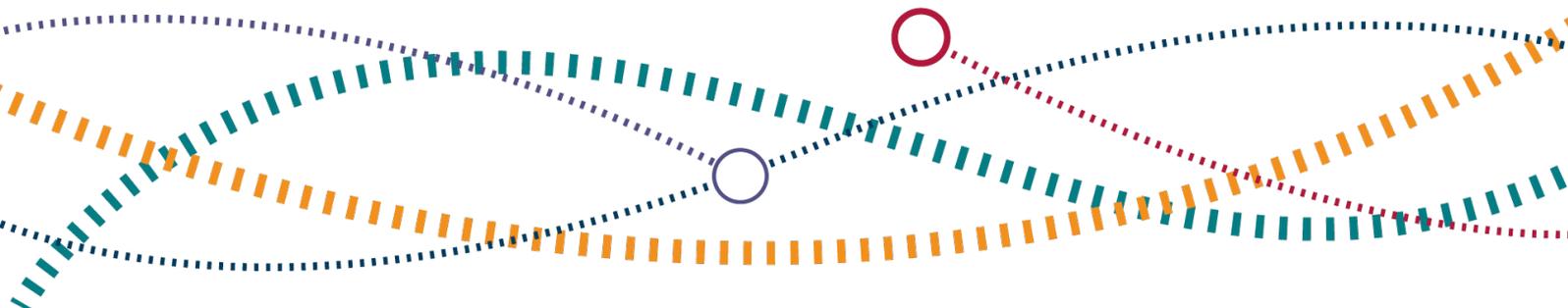




OFFICE OF   
RAIL AND ROAD

# Guidance on completing the model freight track access contract

11 April 2024



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# Introduction

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1. This module provides guidance on completing the model freight track access contract (the model freight contract). We encourage the use of the relevant model contracts by Network Rail and freight operators.
2. This guidance is not intended to replace any professional legal advice the parties may wish to take when producing a draft contract or amendment for approval, especially in exceptional circumstances where special arrangements may apply to an operator. It is important that those drafting a contract consider their specific contractual requirements and any bespoke arrangements that may be necessary.
3. We encourage early discussions with us, especially if a contract is not straightforward or departs from the terms of our model contract. Please contact us at any time if you would like to discuss any aspect of your case by emailing us at [track.access@orr.gov.uk](mailto:track.access@orr.gov.uk).

## The front end of the contract

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4. Each model contract contains a ‘front end’ which sets out the rights and obligations of the parties to the contract, as well as incorporating various schedules that detail the nature of those rights and obligations.
5. We recognise that in certain circumstances there may be grounds for the adoption of bespoke provisions. Any customisations that are made should not change the numbering of the subsequent template standard provisions. Where provisions are not required, the text should be deleted and replaced with “Not used”. Any inclusion or exclusion of provisions should be explained in the [Form E](#) for the application.

## The date of the contract

6. The very first line of the contract, just after the contents page, provides for the insertion of the date on which the contract is signed (and therefore made). The contract should be signed and dated only after ORR has directed Network Rail to enter into the track access contract with the freight operator. It is not sufficient merely to put the date on the front cover of the contract as this is not legally part of the contract.

## Parties to the contract

7. This section should contain the company name, address and company number, as registered with Companies House, of Network Rail and the beneficiary to the contract.

## Clause 1.1 Definitions

8. The key terms used in the contract are defined in clause 1.1. Some of these definitions require the parties to insert specific information, as set out below.
9. The following definitions require the insertion of the date the freight operator may first operate services under the track access contract (this date should normally be the same as the effective date in clause 3.1):
  - a) Contract Year.
  - b) Engineering Access Statement (EAS).

- c) Timetable Planning Rules (TPR).
10. The Expiry Date must be specified by the parties. This is the date on which the contract will expire as provided for by clause 3.1, unless the contract:
- a) lapses under clause 3.4 because of the non-fulfilment of the conditions precedent listed in clause 3.2; or
  - b) is terminated under Schedule 6 (because of an Event of Default).
11. When considering the duration of a contract the parties should have regard to our guidance module [Duration of track access \(framework\) agreements](#).
12. The Longstop Date must be specified by the parties. This is the date by which the contract will lapse under clause 3.4 if the conditions precedent have not been met.

## Clause 3.1 Effective date

13. This requires the insertion of the date on which the provisions of the contract (aside from clause 5) take effect. Clause 5 is the clause by which Network Rail grants the freight operator permission to use the network. Clause 5 will only take effect once:
- (a) the conditions precedent in clause 3.2 have been fully satisfied; and
  - (b) all other provisions in the contract have taken effect (as provided for by clause 3.1).
14. It is the effective date, and not the date of signature, which will normally bring the contract into force. It is therefore important to ensure that the effective date is a date which is earlier than all of the dates on which the operative clauses within the contract take effect. Normally, the date specified is the date the freight operator may first operate services under the track access contract.

## Clause 11.6.5 Indexation of Indemnity Incident Cap

15. This clause requires the insertion of the value of the Indemnity Incident Cap for the first Contract Year and for indexation in future years in line with the Consumer Price Index (CPI). This is set at a default level of £8.3 million in 2023/2024 prices, subject to indexation in line with CPI. Whilst this is the default

level of the cap, a different figure might be appropriate depending on the scale of the freight operator's business. For example, it may be appropriate for a larger freight operator to have a higher cap to reflect its volume of traffic on the network.

## **Clause 12 Governing law**

16. This clause provides for the contract to be subject to the laws of England and Wales. If both parties agree to the contract being subject to Scottish law, for example because the freight operator is based in Scotland, the provisions of the contract will need to be adjusted appropriately.

## **Clause 18.5 Counterparts**

17. This clause provides that the contract may be executed in counterparts. This enables each party to sign their own identical copy of the contract so that, when assembled together alongside the other party's signed copy, they will form one fully signed contract. The parties will need to ensure that they are both signing the same version of the contract.

## **Clause 18.7 Contracts (Rights of Third Parties) Act 1999**

18. This clause is designed to ensure that only the parties to the contract can enforce the terms of the contract. The only exception is ORR, which can enforce the rights given to it under the contract (including the Network Code). This clause should only be included in contracts governed by English and Welsh Law.

### **Clause 18.7.3 Contract amendments**

19. This clause requires the insertion of the date on which the freight operator may first operate services under the contract.

### **Clause 18.7.4 Application of Traction Electricity Rules to other train operators**

20. This clause applies to freight operators whose trains' traction electricity charge is based on metered consumption data. The clause allows freight operating companies to enforce their third-party rights granted under the Traction Electricity Rules. The freight operating companies subject to the Traction Electricity Rules can be operating trains, be operating in a geographical area

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where Network Rail is charging based on metered data, or be in the process of amending their track access contract in relation to having their trains' traction electricity charge based on metered consumption data.

# The schedules to the contract

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## Schedule 1 Contact particulars

21. This schedule should set out the addresses and contact details of the parties for the service of notices. The parties may, under clause 18.4.2, make changes to this schedule without ORR's approval. Any changes must be notified to the other party as soon as reasonably practicable and to ORR within 14 days of being made.

## Schedule 2 Information to assist submitting an Access Proposal or Train Operator Variation request

22. This schedule sets out the process by which a freight operator (or its timetable agent) can obtain information about the network from Network Rail that is not contained in certain rail industry documents in order for it to make an access proposal for a train slot. The schedule also sets out a process if the parties fail to agree on the nature of the information to be provided by Network Rail. No customisation is required for this schedule.

## Schedule 3 Collateral agreements

23. This schedule lists any collateral agreements which, under clause 3.2(c), must have been entered into (executed and delivered) before the freight operator's "permission to use" the network under clause 5 takes effect. Schedule 6 provides that the breach of a collateral agreement may amount to an Event of Default, which could lead to the suspension or termination of the contract.

## Schedule 4 Variations to services

24. This schedule sets out the process whereby a freight operator is compensated for planned restrictions of use of the network by Network Rail. Compensation is provided for:
  - (a) Late notice (less than 12 weeks' service variations); and
  - (b) Significant planned (more than 12 weeks' notice) disruption.

This is discussed in further detail in our [Possessions](#) module.

25. The monetary values for the freight Schedule 4 are for:
  - (a) Normal Planned Disruption (stated in Appendix 1 of Schedule 4);
  - (b) Enhanced Planned Disruption (stated in Appendix 1 of Schedule 4);
  - (c) Service Variation (stated in paragraph 1.1 of the model freight contract); and
  - (d) Late Notice Cancellation Sums (stated in Appendix 1 of Schedule 8).
26. In the model freight contract, these are in 2023-24 prices, as set in the 2023 periodic review (PR23). When producing a new contract, the price base of these values should be left in 2023-24 prices to ensure that the provisions for uplifting these values annually for inflation work correctly.

## **Schedule 5 Services**

27. Schedule 5 describes in detail the services the freight operator may run on the network (the number of trains) and the characteristics of those rights (for example, arrival and departure windows, route, and types of trains).
28. The model freight contract does not restrict access across Network Rail's network as it is recognised that freight operators need the greatest flexibility possible to meet their customer and commercial requirements. Permission to use the whole network does not mean that a freight operator has firm rights for all the services it wishes to run, but that it can make train operator variation requests for train paths on any part of the network. The terms of a freight operator's permission to use the network will always be subject to the Network Code and the Operating Constraints.
29. Operating Constraints are defined in the model freight contract as the EAS, TPR and the working timetable and all appendices to the working timetable including sectional appendices as defined in the working timetable and all supplements to the sectional appendices.
30. Paragraph 2.4 provides for the specification of arrangements for the treatment of Public Holidays. The parties will need to insert their desired provisions here.
31. Paragraph 4.3 allows the parties to add rows to the Rights Table, labelled "Non-contractual Comments" that are for information only and do not form part of the contract.

## Schedule 5 Rights Table

32. Annexed to Schedule 5 of the model freight contract is a Rights Table. It describes the details and the number of services a freight operator may operate (that is, the number of trains) and the characteristics of those rights (for example, Origin and Destination, Arrival and Departure Windows).
33. Schedule 5 has been designed so that the consistent description of access rights in the Rights Table matches the characteristics of train slots in the timetable that a freight operator needs to operate its services. The process by which access rights are used to develop the timetable is set out in Part D of the Network Code (Part D).
34. The Rights Table provides for freight operators to have two types of access right: firm rights and contingent rights. A firm right is a right to a train slot with specific arrival and departure windows on specified days of the week. These windows will be for one to 24 hours. A contingent right will have similar characteristics to a firm right. Contingent rights may not always be granted a train slot by Network Rail as it must first satisfy all other operators' firm rights.
35. Network Services, as defined in section 82(2) of the Act, should not be included in the Rights Table.

### Rights Table

36. The Rights Table is divided into seven groups of columns:

#### Columns A-C (For information)

37. These columns cover the Service Group Reference, Flow Number and Train Reporting Number. Completion of these columns is not mandatory. Whilst these columns do not form part of the access contract, entering appropriate details here helps to identify the characteristics of particular access rights against specific train services.
38. The Service Group Reference is intended to identify access rights relating to particular customers. They can also inform the process of transferring access rights (under the process in Part J of the Network Code) between freight operators where, for example, a customer freight haulage contract is re-tendered and won by another freight operator. The parties may, by mutual agreement, amend these three columns without our approval.

#### Columns 1-6 (Origin Data) and 7-11 (Destination Data)

39. These two groups of columns provide details of service origins and

destinations, including minimum turnaround times, departure and arrival windows, days of the week on which services may be operated, and unique stanox numbers to show the location where the train begins and ends its journey. We would not usually expect to see departure and arrival windows completed for contingent rights.

### **Columns 12-15 (Additional Data)**

40. These columns set out a number of other characteristics of the access rights including the routing of services, intermediate calling points and the minimum time that a train must spend at such points. They also identify any special terms relating to the train, such as train length exceeding the EAS. We would not usually expect to see routing and minimum dwell time at intermediate points completed for contingent rights.

### **Columns 16-19 (Equipment Characteristics)**

41. These columns provide for the expression of certain information to identify the characteristics of the service to be operated. In the interests of flexibility, we wish operators to be able to vary the rolling stock they operate on particular services or service groups. However, such flexibility cannot be open-ended because the right to run stock with different operational characteristics such as speed, acceleration and deceleration could have an adverse effect on the efficient use of capacity in restricting the compilation of the timetable. It could also constrain Network Rail's ability to model future timetables and thus impede its ability to be clear about the extent of capacity available.
42. Therefore, these columns will need to express a timing load. The Timing Load is used in creating the timetable and represents the type of locomotive, the trailing load and the maximum speed (or an equivalent locomotive type and associated trailing load which the actual locomotive and formation used will be able to maintain). The firm rights held on a route are only valid if an access proposal is made under Part D to operate the Standard Specified Equipment (Timing Load) – or to better it.
43. The Equipment Characteristics columns of the Rights Table also set out the maximum permissible length of the train and the loading gauge of the train. These are only to be populated where these characteristics exceed those normally permitted within the Operating Constraints.

### **Column 20 (Contract Miles)**

44. The parties negotiate and agree the miles to be travelled for each service. This figure is used to calculate the track access charges in Schedule 7. This also

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means that when a train is diverted over a longer route, for example, because of restrictions of use, the operator does not pay more while being disadvantaged.

### Non-contractual comments

45. The operator may present their preferred routings, paths or additional detail in its Rights Tables as 'non-contractual comments', as described in paragraph 4.3. These rows can inform and assist planners. However, they do not form part of the contract and are not binding on the parties.

### Completion of columns by access right type

46. The requirement for completion of individual columns by access right type (firm, contingent or ancillary) is discussed below.

### Firm Rights

47. The following specific information should be inserted into the Rights Table:

#### Origin data

- a) Minimum Turn Around Time at Origin (column 1) – the time needed in minutes to load the train.
- b) Days per Week (column 2) – the days of the week on which the service is to run. The abbreviations to be used are defined in paragraph 1 of Schedule 5.
- c) Departure Window (column 3-4) – the departure window in which the service leaves from its destination (for example between 1300 hours and 1400 hours or 1300 hours and 1700 hours).
- d) Origin (column 5) – the point where the service starts (for example, Hams Hall).
- e) Origin Stanox (column 6) – the numerical identifier of the point of origin (for example 66219 for Hams Hall), which Network Rail will supply.

#### Destination Data

- a) Destination (column 7) – the point where the service ends.
- b) Arrival Window (column 8-9) – the arrival window in which the service arrives at its destination (for example between 1800 hours and 1900 hours).
- c) Destination Stanox (column 10) – the numerical identifier of the

point of destination, which Network Rail will supply.

- d) Minimum Turn Around Time at Destination (column 11) – usually, the time required, in minutes, for unloading/loading/reloading before the train may be timetabled away from the destination.

### **Additional Data**

The inclusion of the following details in the Additional Data section of the Rights Table is not mandatory:

- (a) Routing (column 12) – details of the route over which the service will operate. This column should only be completed where there is an exceptional reason for a service to use a particular route, to allow Network Rail flexibility in timetabling.
- (b) Intermediate Points (column 13) – this column details where the service will stop for an intermediate point. We would expect to see intermediate points specified in exceptional circumstances, where traffic is to be attached or detached, connections made, or where it is necessary to exchange locomotives or crews, or for other operational reasons such as reversals but not, for example, stops for token collection or exchange.
- (c) Minimum Dwell Time at Intermediate Points (column 14) – gives the minimum time the service requires to stay at any intermediate point. This may be important to a freight operator who requires a minimum period of time to load/unload or attach/detach at a given point.
- (d) Special Terms (column 15) - this column should be completed when it is necessary to indicate any further characteristics which are specific to the service in question but which cannot be given in any other column. This might include details about connections to be made between two services for the transfer of vehicles, any Y Path for the service, path loading/unloading direct from the network or any other unusual characteristics of the service. This column could also be used where a service would require a brief stop to comply with drivers' hours requirements, to define the requirements for other Intermediate Points or to provide the justification for requested Routing in exceptional circumstances.

### **Service Planning Characteristics**

- (a) Timing Load (column 16) - this must be completed and will, typically, include the maximum speed of the train, any special indications about speed restrictions applying and/or whether the train conveys containers or heavy

axle load vehicles, the locomotive class number, whether the train is to be single or double headed (one or two locomotives) and a shorthand for the weight of the trailing load (e.g. 12 = 1,200 to 1,299 tonnes). Thus, a double headed class 86 hauled container train with a trailing load between 1,200 and 1,299 tonnes and a maximum speed of 75 mph would have a timing load of 75C86D12.

- (b) **Maximum Length of Train (column 17)** – this should only be completed where a train is likely to be longer than the normal maximum permitted for the normal planned route that a service would take. As a longer train length over a specific route may make it more difficult for Network Rail to recess the train in available loops, and thereby reduce its flexibility to make best use of capacity and its ability to timetable these and other services, we would expect the application to justify the proposed use of a longer train.
- (c) **Route Availability Code (RA) and Loading Gauge (columns 18 and 19)** – these two columns provide the opportunity for the parties to agree that a service will have specific characteristics of route availability and loading gauge, where these are pertinent to the rights being sought. They should only be completed where the relevant operating constraints are exceeded. A specific RA code and loading gauge may restrict Network Rail in the routes it has available, or specific speed restrictions may apply for heavier axle-load or larger containers, which would affect the timings that would have to be incorporated in the working timetable. Such a request would need to be justified by the freight operator.

### **Contract Miles**

- (a) **Contract Miles (column 20)** - to be used to express the distances in miles agreed with Network Rail.

### **Contingent Rights**

- 48. When completing the Rights Table for contingent rights, a number of the columns used in the expression of firm rights will be left blank or shaded grey because contingent rights relate to a quantum of train slots, usually with no specification as to their timing or routing.
- 49. Where the columns in the table are completed, we will expect the same level of detail as set out above in respect of firm rights to also be provided for contingent rights. The list below therefore only identifies where the expression of contingent rights in the Rights Table will differ from that of firm rights:

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- (a) Special Terms (column 15) – for contingent rights, the term “contingent right” will need to be included in this column.
  - (b) Departure Window (column 3 and 4), Arrival Window (column 8 and 9) and Additional Data (columns 12 to 15) will usually be left blank.
50. If the preferred timing and routing of certain services is known then consideration will need to be given by the parties to designating them as firm rights.

### Ancillary Moves

51. Under Schedule 5 a freight operator will have firm rights to Ancillary Movements to give full effect to its firm rights.

## Schedule 6 Events of Default, Suspension and Termination

52. This schedule sets out the Events of Default and provides for the suspension and termination of the contract where a party is in default.

## Schedule 7 Track charges and other payments

53. This schedule sets out the charges that the freight operator must pay to Network Rail in return for access to the network and for any electricity traction charges that are incurred.
54. The access charges and other figures referred to in Schedules 4, 7 and 8 are in 2023-24 prices. Paragraph 2.7 of Schedule 7 contains indexation provisions for these figures, providing for them to be adjusted each year from 1 April to reflect inflation. To cater for those contracts that were not in existence in prior years, the provisions provide for the adjustment to the figures to be calculated as if the contract had been in existence on and from 1 April 2024.
55. See our [Charging](#) module for more information on the track access charging framework.

### Appendix 3 to Schedule 7

56. Where the freight operator is to be billed for traction electricity using on-train meters (rather than modelled consumption rates), the details of the metered trains need to be included in Appendix 3. Where an entire fleet of a class of rolling stock operated by the train operator is metered, the ‘Train ID’ can be

listed as “All”. Alternatively, if a number of individual units are metered, then these should be listed, using the full train ID (e.g. “90001”, rather than just “001”).

## **Schedule 8 Performance**

57. Schedule 8 contains the performance regime. This provides a compensation mechanism for poor operational performance and incentivises Network Rail and the freight operator to improve operational performance. It also helps drive decision making by Network Rail and the freight operators in relation to performance management. Further details are available in our [Performance](#) module.
58. The expectations outlined in our performance regime module will apply whether using the model freight contract provisions or where bespoke arrangements are proposed, although we consider that bespoke arrangements will be the exception rather than the rule.
59. The main body of Schedule 8 sets out the framework of the regime. Paragraph 11.2 contains a list of incident caps and associated access charge supplements per mile (in 2023-24 prices). These prices are the same for all freight operators.

## **European Train Control System**

60. The model contract acknowledges the gradual introduction of the European Train Control System (ETCS) onto the network. ETCS is an on-board signalling and control system designed to be compatible across the European rail network and will replace the traditional system as Network Rail renews its expired network. Paragraph 12 allows Network Rail or the freight operator to propose amendments to Schedule 8 to cater for the installation of ETCS on any part of the network that they operate on.
61. Any proposed amendments to Schedule 8 for ETCS must be submitted to ORR for our approval.

## **Appendix 1 to Schedule 8 – Performance**

62. Appendix 1 contains most of the metrics for Schedule 8, such as the payment rates and benchmarks.
63. Due to the fact that the freight Schedule 8 is standardised, most of the numbers in Appendix 1 are the same for all freight operators. The only exceptions to this are the Train Operator Cap and Network Rail Cap, which

differ between freight operators depending on the scale of their operations:

- a) for small freight operators with a market share of less than five percent of total freight train miles in a given year, the default reciprocal annual cap of £839,521 (2023-24 prices) should be used; and
- b) for freight operators with a market share of total freight train miles of five percent or more, reciprocal annual caps are specific to each freight operator, as the appropriate level depends on the scale of operations. These caps are subject to our approval and should be set at a level where there is a low likelihood that they will be reached.

64. The monetary values throughout Schedule 8 and Appendix 1 are all written in 2023-24 prices, and the contract provides for these to be uplifted to current prices through paragraph 2.7 of Schedule 7. Any new or revised monetary values inserted into Schedule 8 as part of a new or revised contract (such as the Train Operator Cap and Network Rail Cap) must therefore be written in 2023-24 prices regardless of the year of CP7 in which the contract will start.
65. The values for the Network Rail Benchmark and the Train Operator Benchmark are common to all freight operators with the standard freight Schedule 8 regime. These values were set during PR23 and Appendix 1 to Schedule 8 includes these values.

### **Appendix 2 to Schedule 8 – Calculation of Minutes Delay**

66. Appendix 2 provides information on how minutes delay is calculated.

### **Appendix 3 to Schedule 8 – Performance Statements**

67. Appendix 3 provides for the service and receipt of interim statements by Network Rail and the freight operator in which performance related incidents and their associated costs are itemised. It also includes a dispute and statement adjustment mechanism.

## **Schedule 9 Limitation on liability**

68. This schedule sets out the limitations on the liability of each party. The parties will need to specify the liability cap in paragraphs 1(a) and 1(b) (i), having regard to our policy on the liability framework.

## **Schedule 10 Network Code modifications and traction electricity rules modifications**

69. This schedule sets out the mechanism by which consequential modifications

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may be made to the model freight contract as a result of changes to the Network Code and the traction electricity rules. When changes are made to the Network Code, under the procedure in Part C of the Network Code, these are incorporated by reference into track access contracts and take effect even if the contract does not make specific reference to the changes. Consequential modifications to track access contracts may be needed, to provide clarity and to avoid ambiguities developing between provisions in a consolidated track access contract and in the Network Code (for example, a defined term in the Network Code could be replaced or modified and consequential changes to track access contracts would bring them into line to avoid ambiguity).

70. The traction electricity rules are a common set of regulations that apply to all operators who have elected to have their electrically powered services subject to on train metering so that their traction electricity consumption is charged according to their actual metered usage rather than by a modelled calculation. If applicable, the rules form part of the model freight track access contract. Modifications made to the traction electricity rules are incorporated into the track access contract with automatic effect when specified by ORR through a modification notice. Any operators wishing to transfer from modelled traction electricity charges to on-train metering must have their track access contract amended with ORR's approval under section 22 of the Act.
71. This schedule does not require the parties to specify any particular information within it.



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