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To those on the email distribution list

23 October 2008

Dear colleagues

## **Issue of the Supplemental Agreement (Interim Treatment of Access Charges Review) General Approval 2008**

1. In our letter to the industry dated 23 April 2008, we consulted you on our proposal to issue a general approval enabling you to make an amendment to your track access contract to facilitate the implementation of the periodic review 2008 (PR08). The amendment would allow the contents of any review notice served by us when implementing PR08 to take effect from the planned start on 1 April 2009, regardless of whether the implementation process is delayed, for example, as a result of Network Rail exercising its statutory right to object to the notice. Although our letter dated 23 April 2008 was aimed at franchised operators, we extended our support to freight and open access operators entering into similar arrangements in our letter dated 11 July 2008<sup>1</sup>.

2. In relation to franchised operators, DfT and Transport Scotland recognise and support the reasoning behind the proposed amendment. They have therefore agreed in principle that the changes implemented through a review notice that is then objected against should still be dealt with as regulatory changes for the purposes of Clause 18.1 or Schedule 9 as appropriate.

3. Having considered and taken into account the consultation responses, we have today issued the Supplemental Agreement (Interim Treatment of Access Charges Review) General Approval 2008.

### **Background**

4. The Access Charges Review in 2003 established Network Rail's outputs, revenue requirements and access charges for CP3 (1 April 2004 – 31 March 2009). Some of these arrangements, if not replaced, cease on 31 March 2009. If PR08 is not implemented by 1 April 2009, for example because Network Rail objects to our review notice, there will be a delay to the introduction of new charges and other arrangements into track access contracts. This interim period would leave a significant gap in Network Rail's funding.

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<sup>1</sup> "Periodic review 2008: Train operator compensation from possessions – consultation on changes to the compensation regime for freight operators, franchise passenger operators access charge supplements and part G of the network code".

### **Issue of general approval**

5. Having consulted, we have now decided to issue a general approval enabling the CP4 regime to be implemented on 1 April 2009 even if there is a delay in the PR08 implementation process.

6. The Supplemental Agreement (Interim Treatment of Access Charges Review) General Approval 2008 is available on our website at <http://www.rail-reg.gov.uk/server/show/nav.180>. We would encourage Network Rail and all train operators to enter into supplemental agreements inserting the provision into their track access contracts as soon as possible.

7. If you have any further questions in relation to these contingency arrangements or the terms of the general approval, in the first instance please contact Richard Gusanie at [richard.gusanie@orr.gsi.gov.uk](mailto:richard.gusanie@orr.gsi.gov.uk).

Yours faithfully

A handwritten signature in black ink, appearing to read 'B Kogan', written in a cursive style.

**Brian Kogan**