

# FOR FREIGHT CONTRACT COMMENCING NOW BUT GOING BEYOND 2013

## SCHEDULE 15

### 1. Introduction

- 1.1 In April/May 2012 ORR expects to publish its policy in relation to the structure and specification of access rights from Principal Change Date 2013 onwards.
- 1.2 Following publication of the policy, this Schedule sets out a modification process so that, where the parties cannot agree any necessary changes to Schedule 5 to implement ORR's policy, ORR can determine what changes to Schedule 5, if any, should take effect.

### 2. Definitions

- 2.1 The following definitions shall apply to this Schedule:

**"Access Rights Policy"** means ORR's policy in relation to the structure and specification of access rights which it expects to publish in April/May 2012, as part of the response to its consultation on reform of access contractual arrangements dated January 2012".

**"Backstop Date"** means the date which is 6 weeks after the Policy Publication Date;

**"Level One Right"** has the meaning shown in Schedule 5 of this contract;

**"Level Two Right"** has the meaning shown in Schedule 5 of this contract;

**"Modification Notice"** means a notice given by ORR to the parties which sets out:

- (a) the Schedule 5 Modifications; and
- (b) the date or dates from which the Schedule 5 Modifications are to have effect;

**"PCD"** means Principal Change Date which has the meaning set out in Part D of the Network Code;

**"Policy Publication Date"** means the date on which ORR publishes the Access Rights Policy;

**"Rights Subject to Review"** means those access rights which are expressed in the "Special Terms" column of the Rights Table annexed to Schedule 5 as being Level 1 Rights until PCD 2013 and then as Level 2 Rights from PCD 2013 until the expiration of this contract;

**"Schedule 5 Modifications"** means changes to the Rights Subject to Review, which following a Schedule 5 Modification Application, ORR determines should take effect in this contract; and

**"Schedule 5 Modification Application"** means where, following negotiation under paragraph 3 below, the parties are unable to agree changes to the Rights Subject to Review the Train Operator refers the matter to ORR for determination in accordance with paragraph 5.1 below.

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### **3. Negotiation of changes to Rights Subject to Review**

- 3.1 Within 14 days of the Policy Publication Date, the parties shall:
- (a) meet and negotiate and use all reasonable endeavours to agree any changes to the Rights Subject to Review which are necessary to implement the Access Rights Policy;
  - (b) conduct such negotiations in a timely, efficient and economical manner; and
  - (c) end the negotiations before the Backstop Date.

### **4. Agreed Changes**

- 4.1 If following the negotiations carried out pursuant to paragraph 3.1 above and by the Backstop Date, the parties are able to agree any necessary changes to the Rights Subject to Review then, within 14 days of their agreement, Network Rail shall make an application to ORR for ORR to approve the agreed changes under section 22 of the Railways Act 1993. In making the application, Network Rail shall follow the procedure for such applications set out in ORR's published Criteria and Procedures for the Approval of Track Access Contracts and the Industry Code of Practice for Track Access Applications.

### **5. Disagreement over changes**

- 5.1 If following the negotiations carried out pursuant to paragraph 3.1 above and by the Backstop Date, the parties are unable to agree the necessary changes to the Rights Subject to Review then, within 14 days of the Backstop Date, the Train Operator shall submit the matter to ORR for determination. When referring the matter to ORR, the Train Operator shall explain why the parties have been unable to agree.
- 5.2 If ORR receives notice from the Train Operator pursuant to paragraph 5.1, then it shall consult for a period of 28 days Network Rail, all relevant train operators and any other relevant persons it considers appropriate, in relation to the Schedule 5 Modification Application.
- 5.3 When consulting under paragraph 5.2 above, ORR shall give each consultee the opportunity to make representations in relation to the Schedule 5 Modification Application and shall take into account all such representations (other than those which are frivolous or trivial) in making its decision in relation to the application.
- 5.4 Following its own review of the application and consideration of any consultation responses, ORR shall either:
- (a) issue a Modification Notice setting out the Schedule 5 Modifications; or

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- (b) notify the parties that it considers that no changes to the Rights Subject to Review should be made.

5.5 Any decision taken by ORR under paragraph 5.4 shall be made by ORR in accordance with its duties under section 4 of the Railways Act 1993 and ORR shall provide its reasons for its decision.

### **Procedural matters**

6.1 If at any time ORR gives notice to either or both of the parties that it requires from either or both of them any information in relation to a Schedule 5 Modification Application, then:

- (a) the party of whom the request is made shall provide any reasonably requested information to ORR in accordance with any timescales specified by ORR in its notice and to the standard required by ORR; and
- (b) if that party fails to provide the requested information in accordance with paragraph 6.1(a) and fails to provide ORR with an explanation which is satisfactory to ORR for its failure to do so, ORR shall be entitled to proceed with its consideration of the matter in question and to reach a decision in relation to that matter without the information in question and the party in default shall have no grounds for complaint on the basis that ORR's decision did not take into account the information which was requested but not supplied.

### **7. Effect of the Schedule 5 Modifications**

7.1 This contract shall have effect with the Schedule 5 Modifications from the date which ORR specifies in the Modification Notice. The Schedule 5 Modifications shall not have retrospective effect.

### **8. Consolidated contract**

8.1 Not later than 28 days after ORR has issued a Modification Notice, Network Rail shall prepare and send to the Train Operator and ORR a copy of this contract as so modified.