



OFFICE OF RAIL REGULATION

Review of the General Approval (Stations) 2010 & General Approval (Depots) 2010 – final conclusions

Consultation conclusions
December 2013

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1. Executive summary

1.1 In this document we set out our final conclusions following our earlier consultation on a review of the General Approval (Stations) 2010 and the General Approval (Depots) 2010 (“the General Approvals”). We also consulted on some changes that we proposed to make to our template Station Access Agreements.

Context

1.2 The Railways Act 1993 (“the Act”) allows ORR to give its prior approval to the entering into of new, and amendments to existing, access agreements. This mechanism is known as a General Approval.

1.3 In 2010, following a consultation, we introduced the General Approval (Stations) 2010 and the General Approval (Depots) 2010. At the same time we revoked the various General Approvals which were then in force. Together, the General Approvals were designed to be wide-ranging and for the first time included provision for parties to enter into new access agreements under a General Approval.

1.4 At the time of introducing the General Approvals we undertook to review their operation periodically and in February 2013 we undertook such a review.

Purpose

1.5 This document:

- (a) provides a summary of the responses we received to our consultation on a review of the General Approvals and our template agreements;
- (b) sets out our final conclusions following our consideration of consultation responses; and
- (c) provides revised General Approvals that will replace the current General Approvals 2010.

Additional amendments to the General Approval (Stations) as a result of PR13 implementation

1.6 Further to the initial scope of the consultation, we have taken the decision to temporarily suspend some elements of the General Approval (Stations) ahead of the implementation of the 2013 Periodic Review (“PR13”).

1.7 This means we have introduced the following defined terms into the General Approval (Stations);

(a) “PR13” means the access charges review known as the 2013 periodic review carried out by ORR.

(b) “PR13 Implementation Date” means:

(i) The date on which the proposed relevant changes contained in a Review Notice come into effect;
or

(ii) In the event that a reference to the Competition Commission is made under paragraph 9 of Schedule 4A to the Act in respect of a Review Notice, the date on which any relevant changes relating to stations made under either paragraphs 12 or 14 of Schedule 4A of the Act come into effect.

(c) “Review Notice” means a review notice relating to stations and issued by ORR in respect of PR13, pursuant to paragraph 4(1) of Schedule 4A to the Act.

1.8 So that the access charges review may be implemented, we have taken the decision to temporarily suspend ability to use the General Approval (Stations) to;

(a) enter into new Station Access Agreements (4.1)

(b) alter the Long Term Charge (6.6). And;

(c) add new stations to a Station Access Agreement.

1.9 These clauses will be suspended from the date upon which the General Approval (Stations) 2013 is introduced, until the day after the PR13 Implementation date. The PR13 Implementation Date is scheduled to be 1 April 2014, subject to Network Rail not issuing an objection by 7 February 2014.

1.10 Should industry parties need to enter into a new Station Access Agreement, alter the Long Term Charge or add new stations to a Station Access Agreement before the PR13 Implementation Date, they should seek our Specific Approval.

Next steps

1.11 We set out our next steps in Chapter 7.

2. Introduction and background

2.1 In February 2013 we published our review of the General Approval (Stations) 2010 & General Approval (Depots) 2010 (“the General Approvals”). We focused our consultation to railway parties with an interest in stations and depots access who submit station and depot change proposals using the General Approvals. We are now reporting on the responses we received, and setting out our conclusions. The overall aim of the consultation was to review how the General Approvals are operating, following their introduction in June 2010. We proposed to undertake a formal review of the General Approvals in late 2010, but decided to delay our review because we wanted to allow more time for everyone to become used to operating under the General Approvals and to have an opportunity to identify any areas for revision.

2.2 Our proposals identified a few areas where we considered the General Approvals could be changed and improved. The proposals were borne out of our experience of operating the General Approvals and identified non-contentious changes. We also took the opportunity to suggest amendments to the template access agreements that would be affected by any change to the General Approvals. These amendments are also of a non-contentious nature and seek to correct inaccuracies and refresh numbering and particulars.

2.3 In general terms, we note the reaction to the General Approvals has been positive. We received no comments to indicate the General Approvals are not working for the industry; rather, we have taken the comments received from our respondents to indicate that the industry is supportive of our aim of identifying ways to improve and further streamline the General Approvals.

Overview of consultation responses

2.4 Respondents to the consultation were broadly supportive of the changes we suggested and some respondents made their own suggestions for changes to the General Approvals, which we have considered. Our consideration of these suggestions is dealt with later in this document.

2.5 In response to the consultation, some reservation was expressed about our proposal to allow amendments to the number of station car parking permits available at a station using the General Approval. Our consideration of the comments expressed is explained in Chapter 3.

2.6 We received 10 responses to our consultation, directly representing 15 organisations. The following organisations responded:

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- Arriva Trains Wales (on behalf of Arriva UK Trains Limited, Chiltern Railways, London Overground and DB Schenker)
 - c2c Rail Limited
 - East Coast Main Line Company Limited
 - East Midlands Trains Limited/Stagecoach South Western Trains Limited
 - Network Rail Infrastructure Limited
 - Northern Rail Limited
 - Stobart Rail
 - Transport for London
 - Transport Scotland
 - XC Trains Limited

2.7 We are very grateful for the comments in response to our proposals. No respondents asked for their response to be received in confidence so all responses to the consultation can be found on our website at <http://www.rail-reg.gov.uk/server/show/ConWebDoc.11120>.

Structure of this document

2.1 For ease of reference we have set out our proposals with the consultation questions in the order that they were set out in our consultation document. We then summarise the responses received and finally we set out ORR's comments and final conclusions.

2.2 We deal first with the General Approval (Stations) 2010 (Chapter 3) and then with the General Approval (Depots) 2010 (Chapter 4). Finally we deal with the changes we proposed to our template agreements (Chapter 5). We summarise our final conclusions in Chapter 6 and set out our next steps in Chapter 7.

3. General Approval (Stations) 2010 – proposed changes

Station name changes

3.1 We proposed that a change to a station name should be included in the General Approval (Stations) as a “permitted modification”. We consider station name changes to be non-contentious given the Station Change consultation process the industry must undertake in accordance with the Station Access Conditions (“SACs”) before any consequential changes to station access contracts are put to ORR for approval. It should be noted that we expect franchise/concession awarding authorities will be consulted in such station name changes in accordance with the process set out in the SACs.

Car park permits

3.2 Paragraph 23 in Annex 9 (Miscellaneous Provisions) to the National Station Access Conditions relates to the number of car parking permits available for Network Rail to park at a station. We proposed that a change to the number of car parking permits should be included in the General Approval (Stations) as a “permitted modification”.

Introduction of bespoke/alternative template Station Access Conditions

3.3 In the last couple of years we have worked with DfT, Network Rail and ATOC to facilitate arrangements in relation to DfT’s proposal that a franchised train operator should have full responsibility for the management and operation of its stations under a full repairing and insuring lease. This resulted in a second set of template SACs being developed to support these new leasing arrangements - the National Station Access Conditions 2011 (FRI Leases). However, approval of any access agreements incorporating these new FRI SACs is not permitted under the General Approval, because the definition of “Station Access Conditions” in the General Approval only makes reference to the National Station Access Conditions (England & Wales) or (Scotland) 1996 and the Independent Station Access Conditions (1996 edition, incorporating amendments with effect from 4 February 2009). For the same reasons, the General Approval may not be used to approve agreements or amendments, which incorporate other bespoke SACs.

3.4 The current version of the National Station Access Conditions 2011 (FRI Leases) already requires some revision. However, our approval early last year of Agreements incorporating them highlighted the limitation created by the current definition of “Stations Access Conditions” in the General Approval (Stations).

3.5 We undertook to consider whether it is possible to amend the definition of “Station Access Conditions” in the General Approval (Stations) so that incorporation into a Station Access Agreement of new or revised template Access Conditions that have been endorsed by ORR would be permissible under the terms of the General Approval.

Expiry date of agreements

3.6 We proposed that changes to the expiry date of Station Access Agreements should be included in the General Approval as a “permitted modification”. When entering into a new Station Access Agreement, parties are able to insert the expiry date into the template Agreement as this is one of the “permitted departures” allowed by the General Approval. If parties wish subsequently to alter the expiry date of their Agreement, ORR’s specific approval must be sought. We can see no reason why this should be the case and our proposed change to the General Approval (Stations) seeks to address this.

Revision of paragraph 6.5.1(b) of the General Approval (Stations) 2010

3.7 It has been brought to our attention that the cross-reference in paragraph 6.5.1(b) of the General Approval (Stations) 2010 to Clause 6.1.2 of the Station Access Agreement (dealing with Access Charging) is incorrect. The correct cross-reference should be to Clause 6.1 of the Station Access Agreement.

3.8 We proposed the following revised wording for paragraph 6.5.1(b) of the General Approval (Stations):

“(b) the Percentage of Common Charges payable pursuant to Clause 6.1 set out in paragraph 9 of Schedule 1 or of Schedule Part 1, as applicable, in conjunction with the deletion of the words “as at the Commencement Date” at the end of Clause 6.1; or”.

3.9 In addition, a consequential change to the Station Access Agreement (single station) and (multiple stations) is also required – see Annex C.

Consultation questions

We asked the following questions:

1. Do you agree with the changes we have proposed?
2. If you disagree with any of proposed changes, please explain why.
3. Addressing our proposed changes in the order we have set them out above, do you have any comments?

4. Do you have any suggestions for additional changes to the General Approval (Stations) 2010 that you wish us to consider?
5. Are there any other comments you wish to make in relation to the General Approval (Stations) 2010?

Summary of responses to the consultation questions

3.10 All respondents were supportive of our proposals, with the exception of one respondent who raised a concern regarding car park permits (see paragraph 3.13 below). Some respondents made suggestions for additional changes, which we have considered – see paragraph 3.11.

- One respondent disagreed with the changes suggested by ORR to include ‘car park permits’ (Paragraph 23, Annex 9 of NSAC 1996) as a permitted modification to the template station access agreement that can be amended via the General Approval. In its response, the respondent considered that the local Station Facility Owner (“SFO”) should retain responsibility for the allocation of car parking permits at its station(s). This is because car parking spaces are at a premium and the SFO is best placed to make such decisions to accommodate all interested parties at its stations. One respondent, responding on behalf of other train operating companies, did not disagree with our proposals and, in addition, made a number of specific observations and comments for which we are grateful.
- One respondent agreed that a change to a station name should be included in the general Approval as a permitted modification but did not support inclusion of station name changes each time a franchise is awarded or for what it described as ‘frivolous’ changes or station name changes for advertising purposes.

3.11 Respondents provided a number of suggestions for additional changes to the General Approval (Stations) 2010 for us to consider. These include:

(a) a permitted modification to include approval of “facility charges” to Annex 9 (Miscellaneous Provisions) with a cap of £50,000 per annum.

(b) a permitted departure to the template station access agreement to include the ability to make changes to the named parties in a Station Access Agreement. The respondent said it felt it would be useful in instances such as:

- (i) refranchising;
- (ii) transfer of a franchise to public ownership;

(iii) transfer of a franchise to a temporary 'management agreement' in times of ad hoc extensions for a TOC to run services for DfT;

(iv) renaming of the company that holds the station access agreement; and/or

(v) transfer of obligations from Railtrack plc to Network Rail Infrastructure Limited.

3.12 Other respondents offered their general support to the proposals without specific suggestions.

ORR's comments and final conclusions

3.13 We have considered the points raised by the respondents and in response, provide the following comments:

Station car park permits

3.14 We have carefully considered the points raised by all respondents, in particular where one respondent did not agree with our proposal to include the ability to amend in the Station Specific Annexes, the number of station car park permits by including it as a permitted modification in the General Approval (Stations).

3.15 We have decided not to include changes to the number of station car park permits as a permitted modification within the General Approval at this time. We have taken into account the views expressed by one respondent that due to the scarcity of car parking spaces at stations, there are usually insufficient spaces to accommodate the requirements of all interested parties at stations. It is therefore preferable for the SFO to retain oversight of this matter and for ORR's specific approval to be required for any changes. We accept this response and, given that we receive few such requests for amendments to the number of car parking permits, it will not create any additional burden on the industry or for ORR in terms of applying scrutiny to such contractual changes if they remain amendments that may only be approved by ORR's specific approval.

Station name changes

3.16 We have carefully considered the representations received with regard to the inclusion of station name changes as a permitted modification in the General Approval. Station name changes are not a regular occurrence – our records indicate we have approved three station name changes since 2011. On each occasion the change of name has been un-contentious and so we consider that it is an amendment that should be available under General Approval. We have noted the comments received on this issue regarding the possibility of what the respondent has termed 'frivolous' station name changes. However, our proposal to include station name changes as a permitted modification in the General Approval does not remove the necessity to follow the Station Change process as set out within

the SACs, which affords station Users the opportunity to object to proposed station changes as part of the Station Change consultation. We will, of course monitor any cases that appear contentious.

Facility charges

3.17 We have considered the suggestion made by one respondent that facility charge arrangements of less than £50,000 should be capable of approval in accordance with the General Approval. It is our experience through our scrutiny of many facility charge cases that there is room for error in the calculations related to the repayment amounts, which in turn can significantly affect the over/under-recovery of funds. On this basis, it is not appropriate to include facility charges as a permitted modification as a part of the General Approval.

Altering the names of parties to a Station Access Agreement

3.18 We have considered the suggestion made that changes to named parties in an access agreement should be allowed via the General Approval. It is our view that the General Approval already provides for parties to enter into a new agreement (subject to using our template contracts and ensuring that any changes to the template are a “permitted departure”); this would apply at the time of re-franchising. In circumstances where a franchise is taken into public ownership, we consider that the Act provides sufficiently for this scenario. On balance, we are not persuaded to include in the General Approval the alteration of named parties to access agreements as a permitted departure.

Introduction of bespoke/alternative template Station Access Conditions

3.19 We explained in our consultation document that the definition of “Station Access Conditions” in the General Approval (Stations) restricts its use to the approval of agreements and amendments only to those contracts that incorporate the defined SACs, including the year those conditions were published.

3.20 We undertook to consider whether we could define “Station Access Conditions” in such a way that the General Approval (Stations) could be used to approve agreements and amendments to contracts that incorporate alternative and/or bespoke SACs.

3.21 Having carefully considered this matter, we have decided not to alter the definition of “Station Access Conditions”. This is because we are concerned that defining it too widely runs the risk in future of compromising the effectiveness of the General Approval by causing confusion over which conditions are applicable. In addition, the existence of alternative or bespoke SACs is not a frequent occurrence and we consider that it is sensible and proportionate to retain ORR’s regulatory scrutiny (via our specific approval) to agreements and amendments that incorporate non-standard SACs.

4. General Approval (Depots) 2010 - proposed changes

Change of depot name

4.1 In line with the suggestion that we have made that a change to a station name should be included in the General Approval (Stations) (see paragraph 3.18) we propose that changes to a depot name should be included in the General Approval (Depots) as a “permitted modification”. This will ensure consistency between the two General Approvals for a modification that we do not consider is contentious.

Consultation questions

4.2 We asked the following questions:

1. Do you agree with the change we have proposed? If you disagree with the proposed change, please explain why. In addition, please provide any comments you have on our proposed change.
2. Do you have any suggestions for additional changes to the General Approval (Depots) that you wish us to consider?
3. Are there any other comments you wish to make in relation to the General Approval (Depots) 2010?

Summary of responses to the consultation questions

4.3 Acceptance and agreement was received from respondents to these questions.

4.4 One respondent proposed including in the General Approval (Depots) a “permitted modification” for the approval of ‘facility charges’ with a cap of £50,000 per annum.

4.5 No other specific comments were received from respondents to the consultation in relation to the General Approval (Depots) 2010.

ORR’s comments and final conclusions

Facility Charges

4.6 For the reasons we have set out in paragraph 3.17, where a respondent made a similar proposal in relation to the General Approval (Stations), it is appropriate to include facility charges as a permitted modification as a part of the General Approval (Depots).

5. Proposed amendments to our template agreements

Clause 5.2.1(d) of the Station Access Agreement (multiple stations)

5.1 It has been brought to our attention that the wording relating to “loss of licence” in this template agreement is incorrect. We will correct the drafting as follows:

“(d) Loss of Licence: The Beneficiary ceases to be authorised to be the operator of trains by a licence granted under section 8 of the Act or by a licence or SNRP granted or recognised under the Railway (Licensing of Railway Undertakings) Regulations 2005 (whether by revocation or otherwise) unless it is exempt from the requirement so to be authorised;”.

Schedule 1: Address of Secretary of State

5.2 We have noted that the address of the Secretary of State is out of date. We will update it to:

The Secretary of State
Department for Transport
33 Horseferry Road
London
SW1P 4DR

Schedule 1, paragraph 9 of the Station Access Agreement (single station) and (multiple station)

5.3 This schedule deals with the Percentage of Common Charges payable. It has been brought to our attention that this paragraph contains an incorrect reference to Clause 6.1.2 of the Station Access Agreement. The reference should be to Clause 6.1. We will amend the Station Access Agreement (single station) and (multiple stations) to include the correct reference.

Consultation questions

We asked the following questions:

1. Do you agree with the changes we have proposed?
2. If you disagree with any of the proposed changes, please explain why.

3. Addressing our proposed changes in the order we have set them out in, do you have any comments?
4. Do you have any suggestions for additional changes to our template documents that you wish us to consider?
5. Are there any other comments you wish to make in relation to our template documents?

Summary of responses to the consultation questions

5.4 We received support from respondents for the changes we proposed to the template agreements (see Annex B). On that basis we will make the changes which we proposed.

ORR's comments and final conclusions

5.5 One respondent requested that we make available on the ORR website a copy of the National Station Access Conditions 2011 (FRI Leases). We will make arrangements for these to be provided.

Additional changes to our template agreements

5.6 While outside of the scope of our consultation on the review of the General Approvals and our template agreements, we have decided to make some additional changes to our template agreements to reflect changes as a result of the introduction of the Access Dispute Resolution Rules and following the revision of the SACs that has resulted in the publication of the National Station Access Conditions 2013 and the Independent Station Access Conditions 2013.

5.7 The additional changes to our template agreements may be found at Annex C of this document.

6. Final conclusions - summary

6.1 In this chapter, for ease of reference, we summarise our conclusions in relation to the General Approvals and to our template Access Agreements.

General Approval (Stations) 2010

6.2 Changes of station names will now be added as a permitted modification to the Station Access Agreement.

6.3 As a result of the consultation responses received, we will not include in the General Approval provision to make an amendment to the number of station car parking permits as a permitted modification.

6.4 We have amended the General Approval by updating the definition of “Station Access Conditions” to reflect the “National Station Access Conditions 2013 (England and Wales), the National Station Access Conditions 2013 (Scotland), the Independent Station Access Conditions (England and Wales) and the Independent Station Access Conditions (Scotland)”. Copies of the 2013 Station Access Conditions may be found on our website at <http://www.rail-reg.gov.uk/server/show/nav.2516> .

6.5 The ability to amend the expiry dates of Station Access Agreements will now be included as a permitted modification.

General Approval (Depots) 2010

6.6 Changes of Light Maintenance Depot facility names will now be included as a permitted modification to the Depot Access Agreement.

Proposed amendments to template agreements

6.7 We will make the amendment to Clause 5.2.1(d) “Loss of Licence” as proposed.

6.8 We will amend the address of the Secretary of State as set out in Schedule 1 of the Access Agreements as proposed.

6.9 We will correct the reference in Schedule 1, paragraph 9 of the Station Access Agreement that currently reads Clause 6.1.2. It shall now read “Clause 6.1”.

Additional amendments to our template agreements

6.10 As discussed in paragraph 5.6, we have made some additional amendments to our template agreements as a result of the introduction of the Access Dispute Resolution Rules. And as a result of the revision of the SACs that has resulted in the publication of the National Station Access Conditions 2013 and the Independent Station Access Conditions 2013. These additional amendments are set out in Annex C.

7. Next steps

7.1 We will continue to review and revise our processes to ensure that they remain up to date and fit for purpose. A separate review of the SACs was concluded in November 2013, and so it is envisaged that this, together with the implementation of the Review of the General Approval will require extensive revision of our guidance and standard documents. We will undertake this work in the coming months.

7.2 The General Approval (Stations) 2010 and the General Approval (Depots) 2010 will be revoked on the same day as the introduction of the 2013 editions of the two General Approvals. Copies of the 2013 editions can be found in Annex B of this document.

Annex A – circulation list

Abellio Greater Anglia	Freightliner Heavy Haul Limited
Access Disputes Committee	Freightliner Limited
Alliance Rail Holdings Limited	GB Railfreight Limited
Arriva Trains Wales/Trenau Arriva Cymru Limited	Glasgow Prestwick International Airport Limited
Association of Train Operating Companies	Grand Central Railway Company Limited
Bombardier Transportation UK Limited	Heathrow Express Operating Company Limited
c2c Rail Limited	High Speed One (HS1) Limited
Centro	Hitachi Europe Limited
Crossrail Limited	Hull Trains Company Limited
DB Regio Tyne & Wear Limited	London & Birmingham Railway Company Limited
DB Schenker Rail (UK) Limited	London & Continental Railways Limited
Department for Transport	London & North Western Railway Company Limited
Devon & Cornwall Railways	London & South Eastern Railway Company Limited
Direct Rail Services Limited	London Overground Rail Operations Limited
East Coast Mainline Company Limited	London Underground Limited
East Midlands Trains Limited	Merseyrail Electrics 2002 Limited
Eurostar International Limited	Merseytravel
First Capital Connect Limited	Metro (West Yorkshire Passenger Transport Executive)
First Greater Western Limited	Network Rail Infrastructure Limited
First ScotRail Limited	
First/Keolis Transpennine Limited	

North Yorkshire Moors Railway Enterprises plc

Northern Rail Limited

Passenger Transport Executive Group

Rail Express Systems Limited

Rail Freight Group

South Yorkshire Passenger Transport Executive

Southern Railway Limited

Stagecoach South Western Trains Limited

Stobart Rail Limited

Strathclyde Partnership for Transport

The Chiltern Railway Company Limited

Transport for Greater Manchester

Transport for London

Transport Scotland

Venice Simplon-Orient Express Limited

Welsh Assembly Government

West Coast Railway Company Limited

West Coast Trains Limited

XC Trains Limited

Annex B – General Approval (Stations) 2013 & General Approval (Depots) 2013

Railways Act 1993

General Approval (Stations) 2013

Made 13 December 2013

Coming into force 13 December 2013

The Office of Rail Regulation (ORR), in exercise of the powers conferred upon it by sections 18(1)(c) and 22(3) of the Railways Act 1993, gives the following general approval.

1. Citation, commencement and revocation

- 1.1 This general approval may be cited as the General Approval (Stations) 2013.
- 1.2 This general approval comes into force on 13 December 2013, except paragraphs 4.1, 6.6 and 6.7.
- 1.3 Paragraphs 4.1, 6.6 and 6.7 come into force on the day after the PR13 Implementation Date.
- 1.3 The General Approval (Stations) 2010 is hereby revoked from 13 December 2013.

2. Interpretation

- 2.1 In this general approval:
 - “the Act” means the Railways Act 1993;
 - “Beneficiary” has the meaning given to it in a Station Access Agreement;
 - “Charter Station Access Agreement” means a Franchised Station Access Agreement entered into by a Station Facility Owner and a Beneficiary operating passenger train services that do not follow a regular scheduled pattern;
 - “Diversionary Station Access Agreement” means a Franchised Station Access Agreement entered into by a Station Facility Owner and a Beneficiary when engineering works prevent access to the station which the Beneficiary would otherwise be using under its existing Station Access Agreement;

“Excluded Party” means any Station Facility Owner or Beneficiary listed as an excluded party on the ORR website, for such period as they remain so listed;

“franchised station” means any station in England & Wales or Scotland which is not an independent station;

“Franchised Station Access Agreement” means, in relation to a franchised station, an agreement entered into after 1 April 1994 (and whether entered into before or after this general approval comes into force) under which the Station Facility Owner grants a Beneficiary permission to use that station;

“Freight Station Access Agreement” means a Franchised Station Access Agreement entered into by a Station Facility Owner and a Beneficiary operating freight services;

“independent station” means any station in England & Wales or Scotland where the station is managed by Network Rail Infrastructure Limited;

“Independent Charter Station Access Agreement” means an Independent Station Access Agreement entered into by a Station Facility Owner and a Beneficiary operating passenger train services that do not follow a regular scheduled pattern;

“Independent Diversionary Station Access Agreement” means an Independent Station Access Agreement entered into by a Station Facility Owner and a Beneficiary when engineering works prevent access to the station which the Beneficiary would otherwise be using under its existing Independent Station Access Agreement;

“Independent Freight Station Access Agreement” means an Independent Station Access Agreement entered into by a Station Facility Owner and a Beneficiary operating freight services;

“Independent Passenger Station Access Agreement means an Independent Station Access Agreement entered into by a Station Facility Owner and a Beneficiary operating regular scheduled passenger train services;

“Independent Station Access Agreement” means, in relation to an independent station, an agreement entered into after 1 April 1994 (and whether entered into before or after this general approval comes into force) under which the Station Facility Owner grants a Beneficiary permission to use that station;

“Passenger Station Access Agreement (single station)” or “Passenger Station Access Agreement (multiple station)” means a Franchised Station Access Agreement entered into in relation to a station or (as the case may be) more than one station by a Station Facility Owner and a Beneficiary operating regular scheduled passenger train services;

“permitted departures” means any of the following departures from a Template Station Access Agreement:

(i) the completion of areas marked by square brackets (or otherwise left blank for the purposes of completion), such areas being completed as appropriate by the parties;

(ii) the completion of tables, such tables being completed as appropriate by the parties, including substituting pre-printed table entries with equivalent entries where permitted; and

(iii) the parties choosing one from various suggested alternative words or phrases,

except where such departure alters the meaning of any other provision in the agreement, inserts a formula for calculating a figure or inserts a reference to an external price list for calculating a cost of providing goods or services;

“permitted modifications” means any modifications to a Station Access Agreement specified in paragraph 6 of this general approval, subject to any restrictions specified therein and to the restrictions specified in paragraph 7 of this general approval;

“Station Access Agreement” means in relation to:

(i) a franchised station, a Franchised Station Access Agreement; and

(ii) an independent station, an Independent Station Access Agreement,

and, in all cases, those documents incorporated by reference into that agreement, including the Station Access Conditions and any schedules and annexes;

“PR13” means the access charges review known as the 2013 periodic review carried out by ORR.

“PR13 Implementation Date” means:

- (i) The date on which the proposed relevant changes contained in a Review Notice come into effect; or
- (ii) In the event that a reference to the Competition Commission is made under paragraph 9 of Schedule 4A to the Act in respect of a Review Notice, the date on which any relevant changes relating to stations made under either paragraphs 12 or 14 of Schedule 4A of the Act come into effect.

“Review Notice” means a review notice relating to stations and issued by ORR in respect of PR13, pursuant to paragraph 4(1) of Schedule 4A to the Act.

“Station Access Conditions” means in relation to:

- (i) a franchised station, the National Station Access Conditions 2013 (England and Wales) or the National Station Access Conditions 2013 (Scotland), as applicable; and

(ii) an independent station, the Independent Station Access Conditions 2013 (England and Wales) or the Independent Station Access Conditions 2013 (Scotland)

and the annexes relating to that station as each has been or is modified in respect of that station from time to time with the approval of the ORR and as each is incorporated in the Station Access Agreement relating to that station;

“Station Facility Owner” has the meaning given to it in a Station Access Agreement;

“Station Supplement” has the meaning given to it in a Freight Station Access Agreement; and

“Template Station Access Agreement” means any of the following standard template Station Access Agreements:

- (i) Charter Station Access Agreement;
- (ii) Diversionary Station Access Agreement;
- (iii) Freight Station Access Agreement;
- (iv) Independent Charter Station Access Agreement;
- (v) Independent Diversionary Station Access Agreement;
- (vi) Independent Freight Station Access Agreement;
- (vii) Independent Passenger Station Access Agreement;
- (viii) Passenger Station Access Agreement (single station); or
- (ix) Passenger Station Access Agreement (multiple station);

as applicable, as published by the ORR on 1 June 2010 and as may be amended and re-issued by the ORR from time to time.

2.2 In this general approval:

- (a) unless the context otherwise requires, terms and expressions defined in the Act 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.

3. Scope of application of this general approval

3.1 Subject to paragraph 3.2 below, the ORR gives its approval to the matters set out in paragraphs 4 to 6 below, subject to any restrictions stated in those paragraphs or specified in paragraph 7 below.

3.2 This general approval shall not apply to the making of any new Station Access Agreement or to the making of any modifications to any Station

Access Agreement where any party to the agreement is an Excluded Party.

4. Approval of new Station Access Agreements

- 4.1 A Station Facility Owner and a Beneficiary may enter into a new Station Access Agreement provided it is entered into on the same terms as a Template Station Access Agreement, subject to any permitted departures.

5. Approval of modifications to Station Access Agreements

- 5.1 The parties to a Station Access Agreement, whether a new Station Access Agreement entered into pursuant to paragraph 4 of this general approval or a Station Access Agreement in place at the time of this general approval coming into force, may make any permitted modifications to that agreement.

6. Permitted modifications to Station Access Agreements

6.1 Alterations to Exclusive Station Services

- 6.1.1 The parties to a Station Access Agreement may alter the Exclusive Station Services set out in Schedule 2 or in Schedule Part 2 of that agreement, as applicable.

6.2 Alterations to Freight Station Access Agreements and Independent Freight Station Access Agreements

- 6.2.1 The parties to a Freight Station Access Agreement [*or an Independent Freight Station Access Agreement*] may alter the following provisions of that agreement (including, where applicable, any Station Supplement completed pursuant to that agreement):

- (a) the Core Use set out in paragraph 4 of Schedule 1 (Station Supplement) or in paragraph 4 of Schedule Part 1 (Station Supplement), as applicable;
- (b) the User's Common Charges, the Exclusive Station Services, the Exclusive Charges or the Additional Charges set out in Appendix 1 of Schedule 1 (Station Supplement) or in Appendix Part 1 of the Appendix to Schedule Part 1 (Station Supplement), as applicable;
- (c) the Exclusive Station Services or the specifications for Exclusive Station Services set out in Appendices 2 and 3 of Schedule 1 (Station Supplement) or in Appendix Parts 2 and 3 of the Appendix to Schedule Part 1 (Station Supplement), as applicable; or
- (d) the addresses for service set out in Schedule 2 or in Schedule Part 2, as applicable.

6.3 *Alterations to Common Station Amenities and Services*

6.3.1 Subject to paragraphs 6.3.2 to 6.3.4 below, the parties to a Station Access Agreement may alter the following provisions of that agreement:

- (a) the following matters set out in Annex 1 of the Station Access Conditions or in Annex Part 1 of the Annex to the Supplementary Station Access Conditions, as applicable:
 - (i) the Common Station Amenities for all Users set out in paragraph 1;
 - (ii) the Common Station Amenities for Passenger Operators set out in paragraph 2;
 - (iii) the Common Station Services for all Users set out in paragraph 3;
 - (iv) the Common Station Services for Passenger Operators set out in paragraph 4;
 - (v) the hours set out in paragraph 5;
 - (vi) the name set out in paragraph 6;
 - (vii) the entry in column 2 (“Included on Plan”) as set out in paragraph 6;
 - (viii) the default interest rate set out in paragraph 7;
 - (ix) the Core Facilities set out in paragraph 8;
 - (x) the location of the station register as set out in paragraph 9;
 - (xi) the Station Facilities set out in paragraph 10;
 - (xii) the specification for Common Services set out in Appendix 1;
 - (xiii) the Plan set out in Appendix 2;
 - (xiv) the statement of Condition set out in Appendix 3;
 - (xv) the description, presence at station, quantity, responsibility for maintenance or responsibility for repair of station equipment as set out in Appendix 4;
 - (xvi) the description, responsibility for maintenance or responsibility for repair of station elements as set out in Appendix 5;

- (xvii) the Excluded Equipment set out in Appendix 6;
 - (b) the Common Station Amenities and Common Station Services which may be changed only by unanimous agreement of all Users as set out in Annex 3 of the Station Access Conditions or in Annex Part 3 of the Annex to the Supplementary Station Access Conditions, as applicable; or
 - (c) the amenity/service, period or percentage set out in Annex 6 of the Station Access Conditions or in Annex Part 6 of the Annex to the Supplementary Station Access Conditions, as applicable.
- 6.3.2 An alteration of the kind specified in paragraphs 6.3.1(a)(i), (ii), (iii), (iv), (viii), (x) or 6.3.1(b), an alteration of the description as specified in paragraphs 6.3.1(a)(xiv) or (xv), or an alteration of the amenity/service as specified in paragraph 6.3.1(c) shall only be permitted in accordance with this general approval if the alteration is the inclusion in those lists of an additional facility, service, amenity or item of equipment.
- 6.3.3 An alteration of the presence at station or an alteration of the quantity specified in paragraphs 6.3.1(a)(xiv) above shall only be permitted in accordance with this general approval if the alteration of the presence at station is from “No” to “Yes” or the alteration of the quantity is an increase.
- 6.3.4 An alteration of the period or percentage as specified in paragraph 6.3.1(c) shall only be permitted in accordance with this general approval if the alteration is a reduction in the period, an increase in the percentage, or, where an amenity/service is added, the inclusion of a corresponding period or percentage.6.4

6.4 Alterations to Agreements and Specifications

- 6.4.1 The parties to a Station Access Agreement may alter the following provisions of that agreement:
- (a) the Existing Agreements in Annex 5 or Annex Part 5, as applicable;
 - (b) the Contract Particulars or the Addresses for Service set out in Schedules 1 and 2 to Annex 8 (Collateral Agreement) or in Schedule Parts 1 and 2 to Annex Part 8 (Collateral Agreement), as applicable;
 - (c) the disrepairs to be remedied set out in Annex 10 or in Annex Part 10, as applicable;
 - (d) the obligations of the Station Facility Owner set out in paragraph 1, and the times and obligations set out in paragraph 2, of Annex 11 or of Annex Part 11, as applicable; or

- (e) the Repair and Maintenance Specifications set out in Annex 12 or in Annex Part 12, as applicable.

6.5 *Alterations to Contract Particulars*

6.5.1 The parties to a Station Access Agreement may alter the following Contract Particulars of that agreement:

- (a) the name or registered office of the Station Facility Owner or the Beneficiary set out in paragraph 1 or 2 of Schedule 1 or of Schedule Part 1, as applicable;
- (b) the expiry date set out in paragraph 4 of Schedule 1, as applicable;
- (c) the name of the station set out in paragraph 5 of Schedule 1, as applicable;
- (d) the Percentage of Common Charges payable pursuant to Clause 6.1.2 set out in paragraph 9 of Schedule 1 or of Schedule Part 1, as applicable, in conjunction with the deletion of the words “as at the Commencement Date” at the end of Clause 6.1; or
- (e) the addresses for service on the Station Facility Owner or the Beneficiary set out in paragraph 1 or 2 of Schedule 3 or of Schedule Part 3, as applicable;

6.6 *Alterations to the Long Term Charge*

6.6.1 Subject to paragraph 6.6.2 below, the parties to a Franchised Station Access Agreement may alter the amount referred to in the definition of “Long Term Charge” as set out in paragraph 3 of Annex 9 of the agreement and as calculated according to the provisions of Condition F11 of the Station Access Conditions.

6.6.2 An alteration of the kind specified in paragraph 6.6.1 shall only be permitted in accordance with this general approval if:(a) the alteration to the amount of the Long Term Charge results in a new amount which is not greater than the old amount by more than £50,000; and

- (b) the alteration is due to an enhancement to station amenities or facilities; and
 - (i) Network Rail has funded, or has agreed to fund, all or part of the capital costs of the enhancement to the station amenities or facilities; or
 - (ii) Network Rail has agreed to be responsible for all or part of the maintenance and repair of, or any other operating costs associated with, the enhancement of the station amenities or facilities.

6.7 *Addition of new stations to a Station Access Agreement*

6.7.1 The parties to a Station Access Agreement may add one or more new stations to that agreement by identifying that station in Schedule 1 of the agreement or, where applicable, in paragraph 2 of the relevant Station Supplement.

6.8 *Alterations to Station Access Agreements governed by the law of Scotland*

6.8.1 The parties to a Station Access Agreement may make any alterations to that agreement to render it compliant with the law of Scotland including:

(a) deleting any governing law clause and replacing it with:

“This Agreement shall be governed by and construed in accordance with the law of Scotland”;

(b) deleting any jurisdiction clause and replacing it with:

“Subject to the Station Access Conditions, the parties irrevocably agree that the courts of Scotland are to have exclusive jurisdiction to settle any dispute which may arise out of, or in connection with, this Agreement”; and

(c) altering the form in which that agreement is to be executed.

6.9 *Alterations to Station Access Agreements where a party to the agreement is also party to a concession agreement*

6.9.1 The parties to a Station Access Agreement may make any of the following alterations as are applicable to that agreement to give effect to a concession agreement:(a) insert any new definitions or alter any existing definitions which define the concession agreement and the parties to the same or define a concession awarding body;

(b) insert a new provision or alter any existing provision dealing with events of default to provide that an event of default shall arise under the Station Access Agreement in connection with termination of the concession agreement;

(c) insert a new provision or alter any existing provision dealing with termination notices to provide that a party to the concession agreement shall receive any termination notice relating to termination of the Station Access Agreement;

(d) insert a new provision or alter any existing provision dealing with novation to provide that the Station Access Agreement shall be novated to a third party where such third party is a party to the concession agreement or is nominated by a party to the

concession agreement but only where such novation and the terms of the same shall have been approved by the ORR pursuant to the Act;

- (e) alter any rights of third parties clause in a Station Access Agreement by naming a party to the concession agreement as a third party directly able to enforce such rights as have been granted to it under such Station Access Agreement;
- (f) insert a new provision or alter any existing provision dealing with references in the Station Access Conditions to allow for a party to the concession agreement to be named alongside the Franchising Director and the Strategic Rail Authority, (in each case interpreted as a reference to the Secretary of State) where applicable; and
- (g) insert or alter the name and address of a party to the concession agreement in any schedule dealing with contract particulars or addresses for service.

7. Restrictions on modifications to Station Access Agreements

7.1 Any alteration to a Station Access Agreement made pursuant to paragraph 6 shall be prohibited where it has the effect of:

- (a) overriding or redefining the meaning of any term of the agreement, unless it has been specifically approved by the ORR;
- (b) creating a new substantive clause or provision in the agreement, unless this alteration is permitted explicitly in paragraph 6 or has been specifically approved by the ORR; or
- (c) deleting a substantive clause or provision in the agreement, unless this alteration is permitted explicitly in paragraph 6 or such deletion has been specifically approved by the ORR.

BRIAN KOGAN

Duly authorised by the Office of Rail Regulation

13 December 2013

EXPLANATORY NOTE (this does not form part of the general approval)

Sections 18(1)(c) and 22(3) of the Act enable the ORR to give its prior approval to the entering into of new, and amendment of existing, access agreements. If the entering into a new access agreement or an amendment to such an agreement falls wholly within the terms and conditions of a general approval, the parties to the access agreement in question may enter into or amend it without seeking the approval of ORR.

If a new or amended access agreement does not fall within the scope of the general approval, a specific approval under section 22, or directions under section 18 of the Act, must be obtained. New station access agreements or amendments to station access agreements which have not been approved by ORR – either under a general approval, a specific approval or pursuant to directions, are void.

Whilst not expressly stated in this general approval, beneficiaries seeking access to stations will still be able to make station access applications to ORR under sections 17 or 22A of the Act, should they fail to reach agreement on the terms of access to a station with the Station Facility Owner.

Paragraph 3.2 provides that this general approval cannot be used to gain approval for the making of or for the making of amendments to, a Station Access Agreement where any party to that agreement is then an excluded party. An excluded party is any Station Facility Owner or beneficiary listed as an excluded party on the ORR website for the period they are so listed.

Paragraph 4.1 permits a Station Facility Owner and a beneficiary to enter into a station access agreement provided this would be on the same terms as any Template Station Access Agreement issued by ORR subject to any permitted departures and to any permitted modifications. Paragraph 4.2 makes it clear that such approval is for the purposes only of new Station Access Agreements and is not approval for any other purpose.

Paragraph 5.1 permits the parties to an existing Station Access Agreement to make any permitted modifications. Paragraph 5.2 makes it clear that such approval is for the purposes only of amendments to access agreements and is not approval for any other purpose.

Paragraph 6 lists the permitted modifications which may be made by parties to a new or existing Station Access Agreement under the terms of this general approval.

Sub-paragraph 6.1 permits alterations to the Exclusive Station Services in Schedule 2 or in Schedule Part 2 of that agreement, as applicable.

Sub-paragraph 6.2 permits parties to a Freight Station Access Agreement to alter certain provisions of that agreement.

Sub-paragraph 6.3 permits parties to a Station Access Agreement to alter provisions of that agreement relating to common station amenities and services.

Sub-paragraph 6.4 permits parties to a Station Access Agreement to alter provisions of that agreement relating to agreements and specifications.

Sub-paragraph 6.5 permits parties to a Station Access Agreement to alter provisions of that agreement relating to contract particulars.

Sub-paragraph 6.6 permits parties to a Station Access Agreement where such agreement contains long term charges (i.e. is a franchised station access agreement) to alter such long term charges.

Sub-paragraph 6.7 permits parties to a Station Access Agreement to add a new station to that agreement.

Sub-paragraph 6.8 permits parties to a Station Access Agreement which is to be governed by and construed in accordance with the law of Scotland to make changes to that agreement to that effect and to render certain provisions of the agreement compliant with such law.

Sub-paragraph 6.9 permits alterations to a Station Access Agreement where a party to that agreement is also party to a concession agreement to give effect to the concession agreement.

Paragraph 7 sets out restrictions on the ability of the parties to make the permitted modifications specified in paragraph 6.

Under section 72(5) of the Act a copy of all access agreements and amendments of access agreements, including those made under this general approval, must be sent to ORR within 14 days of being made. Subject to the requirement in section 72(3) of the Act for ORR to have regard to the need for excluding certain information, such copies will be entered into the public register.

Railways Act 1993

General Approval (Depots) 2013

Made 13 December 2013

Coming into force 13 December 2013

The Office of Rail Regulation (ORR), in exercise of the powers conferred upon it by sections 18(1)(c) and 22(3) of the Railways Act 1993, gives the following general approval.

1. Citation, commencement and revocation

- 1.1 This general approval may be cited as the General Approval (Depots) 2013.
- 1.2 This general approval comes into force on 13 December 2013.
- 1.3 The General Approval (Depots) 2010 is hereby revoked from 13 December 2013.

2. Interpretation

- 2.1 In this general approval:

“the Act” means the Railways Act 1993;

“Beneficiary” has the meaning given to it in a Depot Access Agreement;

“Depot Access Agreement” means an access agreement as defined in the Act which relates to access to a depot and those documents incorporated by reference into that agreement, including the Depot Access Conditions and any schedules and annexes;

“Depot Access Conditions” means the depot access conditions incorporated into and forming part of any Depot Access Agreement;

“Depot Facility Owner” has the meaning given to it in a Depot Access Agreement;

“Excluded Party” means any Depot Facility Owner or Beneficiary listed as an excluded party on the ORR website, for such period as they remain so listed;

“permitted departures” means any of the following departures from the Template Depot Access Agreement:

(i) the completion of areas marked by square brackets (or otherwise left blank for the purposes of completion), such areas being completed as appropriate by the parties;

(ii) the completion of tables, such tables being completed as appropriate by the parties, including substituting pre-printed table entries with equivalent entries where permitted; and

(iii) the parties choosing one from various suggested alternative words or phrases,

except where such departure alters the meaning of any other provision in the agreement, inserts a formula for calculating a figure or inserts a reference to an external price list for calculating a cost of providing goods or services;

“permitted modifications” means any modifications to a Depot Access Agreement specified in paragraph 6 of this general approval, subject to any restrictions stated therein and to the restrictions specified in paragraph 7 of this general approval; and

“Template Depot Access Agreement” means any Depot Access Agreement as published by the ORR on 1 June 2010 and as may be amended and re-issued by the ORR from time to time.

2.2 In this general approval:

- (a) unless the context otherwise requires, terms and expressions defined in the Act 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.

3. Scope of application of this general approval

3.1 Subject to paragraph 3.2 below, the Office of Rail Regulation gives its approval to the matters set out in paragraphs 4 to 6 below subject to any restrictions stated in those paragraphs or specified in paragraph 7 below.

3.2 This general approval shall not apply to the making of any new Depot Access Agreement or to the making of any modifications to any Depot Access Agreement where any party to the agreement is an Excluded Party.

4. Approval of new Depot Access Agreements

- 4.1 A Depot Facility Owner and a Beneficiary may enter into a new Depot Access Agreement provided it is entered into on the same terms as a Template Depot Access Agreement, subject to any permitted departures.

5 Approval of modifications to Depot Access Agreements

- 5.1 The parties to a Depot Access Agreement, whether a new Depot Access Agreement entered into pursuant to paragraph 4 of this general approval or a Depot Access Agreement in place at the time of this general approval coming into force, may make any permitted modifications to that agreement.

6 Permitted modifications to Depot Access Agreements

6.1. Factual modifications to Depot Access Agreements

- 6.1.1 The parties to a Depot Access Agreement may make the following factual modifications to that agreement:
- (a) change information entered into tables;
 - (b) insert or alter numbers or monetary figures;
 - (c) alter the responsibility for maintenance or repair;
 - (d) insert or alter facts, dates, diagrams, plans, maps, routes, performance criteria, descriptions of a service level or specification, charges or amounts to be paid;
 - (e) describe a relevant “notifiable condition” in Schedule 18 of the Depot Access Agreement;
 - (f) provide registered company names or addresses and related information;
 - (g) provide names and addresses for service and related information ;
 - (h) signify the parties’ acceptance of the terms of the contract, such as inserting signatures;
 - (i) insert the words “not used” where appropriate to indicate that a schedule or appendix has not been used;
 - (j) insert, substitute or delete a word or words where a choice of alternative words has been provided, provided at least one of the original alternative words remains;

- (k) change the name of the light maintenance depot facility set out at paragraph 4 of Schedule 1; or
- (l) change the name of the light maintenance depot facility in Annex 1 of the Depot Access Conditions. 6.2

6.2 *Alterations to Depot Access Agreements governed by the law of Scotland*

6.2.1 The parties to a Depot Access Agreement may make any alterations to that agreement to render it compliant with the law of Scotland including:

- (a) deleting any governing law clause and replacing it with:
“This Agreement shall be governed by and construed in accordance with the law of Scotland”;
- (b) deleting any jurisdiction clause and replacing it with:
“Subject to the Depot Access Conditions, the parties irrevocably agree that the courts of Scotland are to have exclusive jurisdiction to settle any dispute which may arise out of, or in connection with, this Agreement”; and
- (c) altering the form in which that agreement is to be executed.

6.3 *Alterations to Depot Access Agreements where a party to the agreement is also party to a concession agreement*

6.3.1 The parties to a Depot Access Agreement may make any of the following alterations as are applicable to that agreement to give effect to a concession agreement:

- (a) insert any new definitions or alter any existing definitions which define the concession agreement and the parties to the same or define a concession awarding body;
- (b) insert a new provision or alter any existing provision dealing with events of default to provide that an event of default shall arise under the Depot Access Agreement in connection with termination of the concession agreement;
- (c) insert a new provision or alter any existing provision dealing with termination notices to provide that a party to the concession agreement shall receive any termination notice relating to termination of the Depot Access Agreement;
- (d) insert a new provision or alter any existing provision dealing with novation to provide that the Depot Access Agreement shall be novated to a third party where such third party is a party to the concession agreement or is nominated by a party to the concession agreement but only where such novation and the

terms of the same shall have been approved by the ORR pursuant to the Act;

- (e) alter any rights of third parties clause in a Depot Access Agreement by naming a party to the concession agreement as a third party directly able to enforce such rights as have been granted to it under such Depot Access Agreement;
- (f) insert a new provision or alter any existing provision dealing with references in the Depot Access Conditions to allow for a party to the concession agreement to be named alongside the Franchising Director and the Strategic Rail Authority, (in each case interpreted as a reference to the Secretary of State) where applicable; and
- (g) insert or alter the name and address of a party to the concession agreement in any schedule dealing with contract particulars or addresses for service.

7 Restrictions on modifying Depot Access Agreements

7.1 Any alteration to a Depot Access Agreement made pursuant to paragraph 6 shall be prohibited where it has the effect of:

- (a) overriding or redefining the meaning of any term of the Depot Access Agreement, unless it been specifically approved by the ORR;
- (b) creating a new substantive clause or provision in a Depot Access Agreement, unless this alteration is permitted explicitly in paragraph 6 or has been specifically approved by the ORR;
or
- (c) deleting a substantive clause or provision in a Depot Access Agreement, unless this alteration is permitted explicitly in paragraph 6 or such deletion has been specifically approved by the ORR.

BRIAN KOGAN

Duly authorised by the Office of Rail Regulation

13 December 2013

EXPLANATORY NOTE (this does not form part of the general approval)

Sections 18(1)(c) and 22(3) of the Act enable the ORR to give its prior approval to the entering into of new, and amendment of existing, access agreements. If the entering into a new access agreement or an amendment to such an agreement falls wholly within the terms and conditions of a general approval, the parties to the access agreement in question may enter into or amend it without seeking the approval of ORR.

If a new or amended access agreement does not fall within the scope of the general approval, a specific approval under section 22, or directions under section 18 of the Act, must be obtained. New depot access agreements or amendments to such agreements which have not been approved by ORR – either under a general approval, a specific approval or pursuant to directions, are void.

Whilst not expressly stated in this general approval, beneficiaries seeking access to depots will still be able to make depot access applications to ORR under sections 17 or 22A of the Act, should they fail to reach agreement on the terms of access to a depot with the Depot Facility Owner.

Paragraph 3.2 provides that this general approval cannot be used to gain approval for the making of or for the making of amendments to, a Depot Access Agreement where any party to that agreement is then an excluded party. An excluded party is any Depot Facility Owner or beneficiary listed as an excluded party on the ORR website for the period they are so listed.

Paragraph 4.1 permits a Depot Facility Owner and a beneficiary to enter into a depot access agreement provided this would be on the same terms as any Template Depot Access Agreement issued by ORR subject to any permitted departures and to any permitted modifications. Paragraph 4.2 makes it clear that such approval is for the purposes only of new Depot Access Agreements and is not approval for any other purpose.

Paragraph 5.1 permits the parties to an existing Depot Access Agreement to make any permitted modifications. Paragraph 5.2 makes it clear that such approval is for the purposes only of amendments to access agreements and is not approval for any other purpose.

Paragraph 6 lists the permitted modifications which may be made by parties to a new or existing Depot Access Agreement under the terms of this general approval.

Sub-paragraph 6.1 permits the parties to a Depot Access Agreement to make factual modifications to that agreement.

Sub-paragraph 6.2 permits parties to a Depot Access Agreement which is to be governed by and construed in accordance with the law of Scotland to make changes to that agreement to that effect and to render certain provisions of the agreement compliant with such law.

Sub-paragraph 6.3 permits alterations to a Station Access Agreement where a party to that agreement is also party to a concession agreement to give effect to the concession agreement.

Paragraph 7 sets out restrictions on the ability of the parties to make the permitted modifications specified in paragraph 6.

Under section 72(5) of the Act a copy of all access agreements and amendments of access agreements, including those made under this general approval, must be sent to ORR within 14 days of being made. Subject to the requirement in section 72(3) of the Act for ORR to have regard to the need for excluding certain information, such copies will be entered into the public register.

Annex C – changes to our template contracts as a result of the introduction of the Access Dispute Resolution Rules

Condition/Agreement clause no.	Current wording	Change
<p> Station access agreement (single station) Station access agreement (multiple stations) Station access agreement (freight operators) Station access agreement (charter operators) Station access agreement (diversionary) Independent station access agreement (single station or multiple stations) Independent station access agreement (freight operators) Independent station access agreement (charter operators) Independent station access agreement (diversionary) </p> <p>1.1 Definitions</p>	<p>Currently no definition of “Access Dispute Resolution Rules” and “Notice of Dispute” as defined terms</p>	<p>“Access Dispute Resolution Rules” means the set of rules regulating the resolution of disputes, entitled “Access Dispute Resolution Rules”, annexed to the Network Code;</p> <p>“Notice of Dispute” means, a notice issued by a Resolution Service Party wishing to refer a dispute to resolution in accordance with the Access Dispute Resolution Rules;</p>

<p>Station access agreement (single station) Station access agreement (multiple stations) Station access agreement (diversionary) Independent station access agreement (single station or multiple stations) Independent station access agreement (diversionary)</p> <p>7.5.2 – Novation</p>	<p>...the consequences of any breach of this Agreement which is the subject of arbitration or litigation between the parties...</p>	<p>...which is the subject of dispute resolution under the Access Dispute Resolution Rules or litigation...</p>
<p>Station access agreement (freight operators) Independent station access agreement (freight operators)</p>		
<p>6.6</p>	<p>...if agreement has not been reached within 30 days after notice has been received under Clause 6.3, either party may refer the matter for final and binding determination by an arbitrator acting in accordance with the relevant provisions of the Access Dispute Resolution Rules. The arbitrator appointed in accordance with this Clause 6.6 shall determine the Access Charge for the Accounting Year on a fair and equitable basis having regard primarily to the matters as respects which duties are imposed on the Office of Rail Regulation by section 4 of the Act but also to:</p> <p>(a) the current Access Charge and</p>	<p>...either party may serve a Notice of Dispute in accordance with the Access Dispute Resolution Rules.</p>

the current Core Use;

(b) the actual number of occasions upon which the permission to use has been exercised since the commencement of the Accounting Year preceding the Accounting Year referred to in Clause 6.2;

(c) the Beneficiary's estimate of the number of occasions upon which it reasonably expects to exercise the permission to use during the Accounting Year referred to in Clause 6.2;

(d) the total costs which would in the opinion of the arbitrator have been reasonably incurred by the Station Facility Owner during the Accounting Year preceding the Accounting Year referred to in Clause 6.2 in order to provide the amenities and the level of services to which the User's Common Charges, Exclusive Charges and Additional Charge are to relate together with the Station Facility Owner's reasonable estimate of the same for the Accounting Year referred to in Clause 6.2; and

(e) the current official forecasts of the changes in prices

	<p>in the national economy during the Accounting Year referred to in Clause 6.2 as represented by the Retail Prices Index.</p>	
<p>6.7</p> <p>7.6.2 – Novation</p>	<p>...shall notify the Office of Rail Regulation as soon as any amendments to the Access Charge have been agreed by them or determined by an arbitrator...</p> <p>...which is the subject of arbitration or litigation...</p>	<p>Delete “by an arbitrator”</p> <p>...which is the subject of dispute resolution under the Access Dispute Resolution Rules or litigation...</p>
<p>Station access agreement (charter operators)</p> <p>Independent station access agreement (charter operators)</p>		
<p>7.6</p>	<p>...either party may serve a Notice of Dispute in accordance with the Access Dispute Resolution Rules. The arbitrator appointed in accordance with this Clause 7.6 shall determine the Access Charge for the Accounting Year on a fair and equitable basis having regard primarily to the matters as respects which duties are imposed on the Office of Rail Regulation by section 4 of the Act and subject to any advice the Office of Rail Regulation may from time to time give to the arbitrator.</p>	<p>...either party may serve a Notice of Dispute in accordance with the Access Dispute Resolution Rules.</p>

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OGL