

NINETEENTH SUPPLEMENTAL AGREEMENT

between

NETWORK RAIL INFRASTRUCTURE LIMITED
as Network Rail

and

HULL TRAINS COMPANY LIMITED
as Train Operator

relating to the Track Access Agreement dated 22
September 2000

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THIS NINETEENTH SUPPLEMENTAL AGREEMENT is dated 19 August 2008 and made

BETWEEN:

- (1) **NETWORK RAIL INFRASTRUCTURE LIMITED**, ("Network Rail"), a private company limited by shares registered in England under company number 2904587, having its registered office at 40 Melton Street, London NW1 2EE; and
- (2) **HULL TRAINS COMPANY LIMITED**, (the "Train Operator"), a private company limited by shares registered in England under company number 3715410, having its registered office at Premier House, Ferensway, Hull HU1 3UF.

WHEREAS:

- (A) The parties entered into a Track Access Agreement (Passenger Services) dated 22 September 2000 in a form approved pursuant to Section 18(7) of the Act, as amended by various supplemental agreements each in a form approved pursuant to Section 22 of the Act (which track access agreement as subsequently amended is hereafter referred to as the "Agreement").
- (B) The parties wish to amend the Agreement in the terms described below.

IT IS HEREBY AGREED as follows:

1. INTERPRETATION

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

2. EFFECTIVE DATE AND TERM

The amendments made to the Agreement as set out in this Supplemental Agreement shall have effect from the date upon which the Office of Rail Regulation issues its approval, pursuant to Section 22 of the Act, of the terms of this Supplemental Agreement and shall cease to have effect on the Expiry Date or earlier termination of the Agreement.

3. AMENDMENTS TO SCHEDULE 7 OF THE AGREEMENT

Schedule 7 of the Agreement shall be amended as set out in Annex A.

4. EFFECT OF THIS SUPPLEMENTAL AGREEMENT ON THE AGREEMENT

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

5. THIRD PARTY RIGHTS

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

6. **LAW**

This Supplemental Agreement shall be governed by, construed and given effect to in all respects in accordance with English law.

7. **COUNTERPARTS**

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

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

SIGNED by)
)
duly authorised for and on behalf of)
NETWORK RAIL)
INFRASTRUCTURE LIMITED)

SIGNED by)
)
duly authorised for and on behalf of)
HULL TRAINS COMPANY LIMITED)

ANNEX A

AMENDMENTS TO SCHEDULE 7

1. PART 1

- 1.1 The reference in the definition of “Capacity Charge” to “paragraph 4” shall be deleted and replaced with “paragraph 6.”
- 1.2 The following definition of “Traction Electricity Charge” shall be inserted after the definition of “Track Usage Price List”:

“Traction Electricity Charge” means a charge calculated in accordance with paragraph 4 of Part 2 of Schedule 7

- 1.3 The reference in the definition of “Signal Box Charge” to “paragraph 5” shall be deleted and replaced with “paragraph 7.”

2. PART 2

- 2.1 The formula contained in paragraph 1 of Part 2 of Schedule 7 shall be deleted and replaced with the following formula:

$$“T_t = V_t + K_t + C_t + L_t + E_t”$$

- 2.2 The words, “and, in respect of L_t ” in paragraph 1 of Part 2 of Schedule 7 shall be deleted and replaced with the words, “and, in respect of L_t and E_t ”.
- 2.3 The following shall be inserted at the end of paragraph 1 of Part 2 of Schedule 7 after the definition of “ L_t ”:

“ E_t means an amount in respect of the Traction Electricity Charge in Financial Year t and which is calculated in accordance with paragraph 4.”

- 2.4 The date “1 April 2001” referred to in the definition of V_{it} in paragraph 3.1 of Part 2 of Schedule 7 shall be deleted and replaced with the date “1 April 2004.”
- 2.5 Paragraph 4 of Part 2 of Schedule 7 shall be renumbered as paragraph 6.
- 2.6 Paragraph 5 of Part 2 of Schedule 7 shall be renumbered as paragraph 7.
- 2.7 Paragraph 6 of Part 2 of Schedule 7 shall be renumbered as paragraph 8.
- 2.8 In paragraph 6 of Part 2 of Schedule 7:
- (A) The references in paragraphs 6.2 and 6.3 to “paragraph 7” shall be deleted and replaced with “paragraph 9”;
- (B) The references in paragraphs 6.3(a) and (b) to “paragraph 6” shall be deleted and replaced with “paragraph 8”; and
- (C) The references in paragraph 6.3(b) to “paragraph 4” shall be deleted and replaced with “paragraph 6.”
- 2.9 Paragraph 7 of Part 2 of Schedule 7 shall be renumbered as paragraph 9.

2.10 In paragraph 7 of Part 2 of Schedule 7:

- (A) The references in paragraph 7.1 to “paragraph 7” shall be deleted and replaced with “paragraph 9”;
- (B) The reference in paragraph 7.3 to “paragraph 7.2” shall be deleted and replaced with “paragraph 9.2”;
- (C) The reference in paragraph 7.4 to “paragraph 7.3” shall be deleted and replaced with “paragraph 9.3”; and
- (D) The references in paragraphs 7.6, 7.8 and 7.9(b) to “paragraph 7.4” shall be deleted and replaced with “paragraph 9.4.”

2.11 The following paragraphs shall be inserted as new paragraphs 4 and 5:

“4. Traction Electricity Charge

4.1 For the purposes of paragraph 1, the term E_t means an amount in respect of the Traction Electricity Charge in Financial Year t which is calculated as follows.

Estimated Cost

4.2 As soon as reasonably practicable following receipt of written notification by the Train Operator that it intends to start using Class 86 and/or Class 87 electric locomotives listed in Table 5.1 of Schedule 5 and, thereafter, at least one month prior to the start of each Financial Year t , Network Rail shall provide to the Train Operator:

- (a) an estimate of the likely value of E_t for Financial Year t (or, in respect of the unelapsed time between the notification given as described above and the end of the Financial Year, an estimate of the likely value of E_t for Financial Year t for that unelapsed time); and
- (b) such background workings as may reasonably be required for a proper understanding of the calculation of the estimate, including an estimate of the likely level of consumption of electricity by the Train Operator during Financial Year t (or the unelapsed time in question) and the likely cost of such electricity.

4.3 Network Rail shall issue invoices and the Train Operator shall make payments in respect of E_t on a per-Period basis in accordance with paragraph 1.2 of Part 5 of this Schedule 7.

Annual Reconciliation

4.4 Within 90 days after the end of Financial Year t , Network Rail shall calculate a supplementary amount which shall be payable by or to the Train Operator as follows.

4.5 Network Rail shall, within 90 days after the end of Financial Year t , provide to the Train Operator:

- (a) a statement of the total actual consumption of electricity by the Train Operator in Financial Year t , the cost of such consumption and the difference between the actual cost and the cost previously estimated under paragraph 4.2 above; and
- (b) such background workings as may reasonably be required for a proper understanding of the calculation.

4.6 Within 30 days after the date upon which Network Rail shall have provided to the Train Operator the information referred to in paragraph 4.4, the amount shall be invoiced for payment. If the amount shall be positive, the invoice shall be issued by Network Rail and payable by the Train Operator. If the amount shall be negative, Network Rail will issue a credit note to the Train Operator.

5. Not used.”

3. PART 5

3.1 In paragraph 1.2 of Part 5 of Schedule 7, the words, “and Traction Electricity Charge” shall be added after the words, “the Fixed Track Charge”.

4. ANNEX 7A

4.1 The table contained in Annex 7A of Schedule 7 shall be deleted and replaced with the following table:

Track Usage Charge Price List – 1 April 2004

Vehicle Category	Charge (in pence) per Vehicle Mile
Class 170	14.19
Class 180	24.52
Class 86	56.44
Class 87	59.80
Mark 2 Coaches	10.74
Mark 3 Coaches	11.25
Mark 3 DVT (V)	15.95