

**Great North Western Railway  
TRACK ACCESS CONTRACT  
(NON-FRANCHISED PASSENGER SERVICES)**

**Dated**

**[ ]**

**Between**

**NETWORK RAIL INFRASTRUCTURE LIMITED**

**and**

**Alliance Rail Holdings Ltd**

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## **5 Definitions**

THIS CONTRACT is made the [ ] day of [ ] 2011

BETWEEN:

- (1) Network Rail Infrastructure Limited, a company registered in England under number 2904587 having its registered office at Kings Place, 90 York Way, London, N1 9AG (“Network Rail”); and
- (2) Alliance Rail Holdings a company registered in England under number 07026295 having its registered office at Admiral Way, Doxford International Business Park, Sunderland, SR3 3XP (the “Train Operator”).

WHEREAS:

- (A) Network Rail is the owner of the Network; and
- (B) Network Rail has been directed by ORR to grant to the Train Operator permission to use certain track comprised in the Network on the terms and conditions of this contract.

IT IS AGREED AS FOLLOWS:

## **1 INTERPRETATION**

### **1.1 Definitions**

In this contract unless the context otherwise requires:

“**Access Agreement**” has the meaning ascribed to it in Part A of the Network Code;

“**access charges review**” has the meaning ascribed to it in paragraph 1(1) of Schedule 4A to the Act;

“**Access Dispute Resolution Rules**” and “**ADRR**” have the meaning ascribed to them in Part A of the Network Code;

“**Access Proposal**” has the meaning ascribed to it in Part D of the Network Code;

“**Act**” means the Railways Act 1993;

“**Affected Party**” has the meaning ascribed to it in Clause 17.1;

“**Affiliate**” means, in relation to any company:

- (a) a company which is either a holding company or a subsidiary of such company; or
- (b) a company which is a subsidiary of a holding company of which such company is also a subsidiary,

and for these purposes “holding company” and “subsidiary” have the meanings ascribed to them in section 736 of the Companies Act 1985;

“**Ancillary Movements**” has the meaning ascribed to it in Part D of the Network Code;

**“Applicable Engineering Access Statement”** means the Engineering Access Statement in force in respect of the Routes on the Principal Change Date 2008, as from time to time amended or replaced under Part D of the Network Code;

**“Applicable Timetable Planning Rules”** means the Timetable Planning Rules in force in respect of the Routes on the Principal Change Date 2008, as from time to time amended or replaced under Part D of the Network Code;

**“Applicable Timetable”** has the meaning ascribed to it in Schedule 8;

**“associate”** has the meaning ascribed to it in section 17 of the Act;

**“Claims Allocation and Handling Agreement”** means the agreement of that name approved by ORR;

**“Collateral Agreements”** means the agreements and arrangements listed in Schedule 3;

**“Confidential Information”** means information relating to the affairs of one party to this contract or any of its Affiliates which has been provided by any such person to the other party under or for the purposes of this contract, or any matter or thing contemplated by this contract or to which this contract relates, the disclosure of which is likely materially to compromise or otherwise prejudice the commercial interests of any such person;

**“contract”** means this document including all schedules and appendices to it and the Network Code;

**“Contract Year”** means each yearly period commencing on insert the date on which Services may first be operated by the Train Operator under this contract and subsequently on each anniversary of such date;

**“D-X”** has the meaning ascribed to it in Part D of the Network Code;

**“Default Interest Rate”** is two percent above the base lending rate of Barclays Bank PLC as varied from time to time;

**“Environmental Condition”** has the meaning ascribed to it in Part E of the Network Code;

**“Environmental Damage”** has the meaning ascribed to it in Part E of the Network Code;

**“Event of Default”** means a Train Operator Event of Default or a Network Rail Event of Default;

**“Expiry Date”** means the Principal Change Date in 2019;

**“Force Majeure Event”** has the meaning ascribed to it in Clause 17.1;

**“Force Majeure Notice”** has the meaning ascribed to it in Clause 17.1;

**“Force Majeure Report”** has the meaning ascribed to it in Clause 17.1;

**“Innocent Party”** means, in relation to a breach of an obligation under this contract, the party who is not in breach of that obligation;

**“Insolvency Event”**, in relation to either of the parties, has occurred where:

- (a) any step which has a reasonable prospect of success is taken by any person with a view to its administration under Part II of the Insolvency Act 1986;
- (b) it stops or suspends or threatens to stop or suspend payment of all or a material part of its debts, or is unable to pay its debts, or is deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986, except that in the interpretation of this paragraph:
  - (i) section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for “£750” there were substituted “£100,000” or such higher figure as the parties may agree in writing from time to time; and
  - (ii) it shall not be deemed to be unable to pay its debts for the purposes of this paragraph if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is satisfied before the expiry of 21 days from such demand;
- (c) its directors make any proposal under section 1 of the Insolvency Act 1986, or it makes any agreement for the deferral, rescheduling or other readjustment (or makes a general assignment or an arrangement or composition with or for the benefit of the relevant creditors) of all or a material part of its debts, or a moratorium is agreed or declared in respect of or affecting all or a material part of its debts;
- (d) any step is taken to enforce security over or a distress, execution or other similar process is levied or sued out against the whole or a substantial part of its assets or undertaking, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
- (e) any step is taken by any person with a view to its winding up or any person presents a winding-up petition which is not dismissed within 14 days, or it ceases or threatens to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the other party before that step is taken (which approval shall not be unreasonably withheld or delayed); or
- (f) any event occurs which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above,

unless:

- (i) in any case, a railway administration order (or application for such order) has been made or such order (or application) is made within 14 days after the occurrence of such step, event, proposal or action (as the case may be) in relation to the party in question under section 60, 61 or 62 of the Act and for so long as any such order (or application) remains in force or pending; or
- (ii) in the case of paragraphs (a), (d) and (e), the relevant petition, proceeding or other step is being actively contested in good faith by

that party with timely recourse to all appropriate measures and procedures;

“**Liability Cap**” has the meaning ascribed to it in paragraph 1 of Schedule 9;

“**Longstop Date**” means three months from the date of direction by the Office of Rail Regulation that this contract be entered into;

“**Network**” has the meaning ascribed to it in Part A of the Network Code;

“**Network Code**” means the document now known as the Network Code and formerly known as the Railtrack Track Access Conditions 1995;

“**Network Rail Event of Default**” has the meaning ascribed to it in paragraph 1.3 of Schedule 6;

“**New Working Timetable**” means, in respect of any day, the version of the Working Timetable for that day provided by Network Rail in accordance with Condition D2.7.1, as amended pursuant to Condition D2.7.4;

“**Office of Rail Regulation**” has the meaning ascribed to it under section 15 of the Railways and Transport Safety Act 2003, and references to "ORR" shall be construed as references to the Office of Rail Regulation;

“**Performance Order**” has the meaning ascribed to it in Clause 13.4.2;

“**Railway Code Systems**” means necessary systems within the meaning of the Systems Code;

“**railway facility**” has the meaning ascribed to it in section 83 of the Act;

“**relevant ADRR Panel**” has the meaning ascribed to it in Part A of the Network Code;

“**Relevant Dispute**” means any difference between the parties arising out of or in connection with this contract;

“**Relevant Force Majeure Event**” has the meaning ascribed to it in Clause 17.1;

“**Relevant Losses**” means, in relation to:

(a) a breach of this contract; or

(b) in the case of Clause 10, any of the matters specified in Clause 10.1(a), (b) or (c) or Clause 10.2(a), (b) or (c) (each a “breach” for the purpose of this definition);

all costs, losses (including loss of profit and loss of revenue), expenses, payments, damages, liabilities, interest and the amounts by which rights or entitlements to amounts have been reduced, in each case incurred or occasioned as a result of or by such breach;

“**Relevant Obligation**” has the meaning ascribed to it in Clause 17;

“**Routes**” means that part of the Network specified in Schedule 2;

“**Rolled Over Access Proposal**” has the meaning ascribed to it in Part D of the Network Code;

“**Safety Case**” has the meaning ascribed to it in the Railways (Safety Case) Regulations 2000;

“**Safety Obligations**” means all applicable obligations concerning health and safety (including any duty of care arising at common law, and any obligation arising under statute, statutory instrument or mandatory code of practice) in Great Britain;

“**Services**” means the railway passenger services specified in Schedule 5;

“**Specified Equipment**” means, in relation to each of the Routes, the railway vehicles which the Train Operator is entitled to use in the provision of Services on that Route as specified in Schedule 5;

“**SPP Threshold**” has the meaning ascribed to it in paragraph 18 of Schedule 8

“**Stabling**” means the parking or laying up of the Specified Equipment or such other railway vehicles as the Train Operator is permitted by this contract to use on the Network, such parking or laying up being necessary or reasonably required for giving full effect to the movements of Specified Equipment required for the provision of the Services;

“**Suspension Notice**” means a notice in writing served by the relevant party on the other party under paragraph 2 of Schedule 6;

“**Systems Code**” means the Code of Practice relating to the Management and Development of Railway Information Systems as from time to time approved by ORR under Network Rail’s network licence;

“**Termination Notice**” means a notice in writing served by the relevant party on the other party under paragraph 3 of Schedule 6;

“**the Regulator**” means the officer who was appointed by the Secretary of State under section 1 of the Act for the purpose of carrying out the functions assigned or transferred to him by or under the Act, which functions were subsequently transferred to the Office of Rail Regulation by virtue of section 16(1) of the Railways and Transport Safety Act 2003;

“**Timetable Participant**” shall have the meaning ascribed to it in Part D of the Network Code

“**Track Charges**” means the charges payable by or on behalf of the Train Operator to Network Rail, as set out in or calculated under Part 2 of Schedule 7;

“**Train Consist Data**” means information as to the number(s) and type(s) of railway vehicle comprised in a train movement;

“**Train Operator Event of Default**” has the meaning ascribed to it in paragraph 1.1 of Schedule 6;

“**Train Slot**” has the meaning ascribed to it in Part D of the Network Code;

“**TW-X**” has the meaning ascribed to it in Part D of the Network Code;

**“Value Added Tax”** means value added tax as provided for in the Value Added Tax Act 1994, and any tax similar or equivalent to value added tax or any turnover tax replacing or introduced in addition to them, and “VAT” shall be construed accordingly;

**“Working Day”** has the meaning ascribed to it in Part A of the Network Code; and

**“Working Timetable”** has the meaning ascribed to it in Part A of the Network Code.

## **1.2 Interpretation**

In this contract, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) any one gender includes the other;
- (c) all headings are for convenience of reference only and shall not be used in the construction of this contract;
- (d) reference to an item of primary or secondary legislation is to that item as amended or replaced from time to time;
- (e) reference to a contract, instrument or other document is to that contract, instrument or other document as amended, novated, supplemented or replaced from time to time;
- (f) reference to a party is to a party to this contract, its successors and permitted assigns;
- (g) reference to a recital, Clause or Schedule is to a recital, clause or schedule of or to this contract; reference in a schedule to a Part of or an Appendix to a schedule is to a part of or an appendix to the schedule in which the reference appears; reference in a Part of a Schedule to a paragraph is to a paragraph of that part; reference to a Part of an appendix is to a part of the appendix in which the reference appears; and reference in a schedule to a Table is a reference to the table included in or annexed to that schedule;
- (h) where a word or expression is defined, cognate words and expressions shall be construed accordingly;
- (i) references to the word “person” or “persons” or to words importing persons include individuals, firms, corporations, government agencies, committees, departments, authorities and other bodies incorporated or unincorporated, whether having separate legal personality or not;
- (j) “otherwise” and words following “other” shall not be limited by any foregoing words where a wider construction is possible;
- (k) the words “including” and “in particular” shall be construed as being by way of illustration or emphasis and shall not limit or prejudice the generality of any foregoing words;

- (l) words and expressions defined in the Railways Act 1993, the Railways (Safety Case) Regulations 2000, the Railways and Other Guided Transport Systems (Safety) Regulations 2006 and Network Rail's network licence shall, unless otherwise defined in this contract, have the same meanings in this contract;
- (m) any reference to the term "possession", either by itself or as part of any composite definition, shall be construed as a reference to a Restriction of Use as defined in Schedule 4;
- (n) words and expressions defined in the Network Code shall have the same meanings in this contract;
- (o) if there is any conflict of interpretation between this contract and the Network Code, the Network Code shall prevail; and
- (p) references to the Office of Rail Regulation or ORR shall be construed as references to the "Regulator".

### **1.3 Indemnities**

Indemnities provided for in this contract are continuing indemnities in respect of the Relevant Losses to which they apply, and hold the indemnified party harmless on an after tax basis.

## **2 NETWORK CODE**

### **2.1 Incorporation**

The Network Code is incorporated in and forms part of this contract.

### **2.2 Modifications to the Network Code**

If the Network Code is modified at any time, Schedule 10 shall have effect.

### **2.3 Compliance by other operators**

Except where ORR has directed otherwise in the exercise of its powers under the Act or the Network Code, and except in relation to London Underground Limited and Heathrow Express Operating Company Limited to the extent that such persons are not party to the Network Code, Network Rail shall ensure that all operators of trains having permission to use any track comprised in the Network agree to comply with the Network Code.

## **3 CONDITIONS PRECEDENT AND DURATION**

### **3.1 Effective date**

The provisions of this contract, other than Clause 5, take effect from the later of the signature of this contract and (Date to be determined)

### **3.2 Conditions precedent to Clause 5**

Clause 5 shall take effect when the following conditions precedent have been satisfied in full:

- (a) the Train Operator is authorised by a licence granted under section 8 of the Act to be the operator of trains for the provision of the Services or is exempt from the requirement to be so authorised under section 7 of the Act;
- (b) Network Rail is authorised by a licence granted under section 8 of the Act to be the operator of that part of the Network comprising the Routes or is exempt from the requirement to be so authorised under section 7 of the Act;
- (c) each of the Collateral Agreements is executed and delivered by all the parties to each such agreement and is unconditional in all respects (save only for the fulfilment of any condition relating to this contract becoming unconditional);
- (d) the Safety Case of each of the parties is accepted under the Railways (Safety Case) Regulations 2000, or a safety certificate, deemed safety certificate, safety authorisation or deemed safety authorisation is issued under the Railways and Other Guided Transport Systems (Safety) Regulations 2006; and
- (e) the provisions of this contract, other than Clause 5, have taken effect in accordance with Clause 3.1.

### **3.3 Obligations to satisfy conditions precedent to Clause 5**

Each party shall use all reasonable endeavours to secure that the following conditions precedent are satisfied as soon as practicable, and in any event not later than the Longstop Date:

- (a) in the case of Network Rail, the conditions precedent contained in Clause 3.2(b) and, insofar as within its control, Clauses 3.2(c) and 3.2(d); and
- (b) in the case of the Train Operator, the conditions precedent contained in Clause 3.2(a) and, insofar as within its control, Clauses 3.2(c) and 3.2(d).

### **3.4 Consequences of non-fulfilment of conditions precedent to Clause 5**

If the conditions precedent set out in Clause 3.2 have not been satisfied in full on or before the Longstop Date:

- (a) this contract shall lapse save for the obligations of confidence contained in Clause 14 which shall continue in force; and
- (b) neither party shall have any liability to the other except in respect of any breach of its obligations under this contract.

### **3.5 Expiry**

This contract shall continue in force until the earliest of:

- (a) lapse under Clause 3.4;
- (b) termination under Schedule 6; and

(c) 0159 hours on the Expiry Date.

### **3.6 Suspension and termination**

Schedule 6 shall have effect.

## **4 STANDARD OF PERFORMANCE**

### **4.1 General standard**

Without prejudice to all other obligations of the parties under this contract, each party shall, in its dealings with the other for the purpose of, and in the course of performance of its obligations under, this contract, act with due efficiency and economy and in a timely manner with that degree of skill, diligence, prudence and foresight which should be exercised by a skilled and experienced:

- (a) network owner and operator (in the case of Network Rail); and
- (b) train operator (in the case of the Train Operator).

### **4.2 Good faith**

The parties to this contract shall, in exercising their respective rights and complying with their respective obligations under this contract (including when conducting any discussions or negotiations arising out of the application of any provisions of this contract or exercising any discretion under them), at all times act in good faith.

## **5 PERMISSION TO USE**

### **5.1 Permission to use the Routes**

Network Rail grants the Train Operator permission to use the Routes.

### **5.2 Meaning**

References in this contract to permission to use the Routes shall, except where the context otherwise requires, be construed to mean permission:

- (a) to use the track comprised in the Routes for the provision of the Services using the Specified Equipment;
- (b) to use the track comprised in the Network in order to implement any plan established under Part H of the Network Code;
- (c) to make Ancillary Movements;
- (d) to Stable, which shall be treated, for the purposes of Part D of the Network Code, as the use of a Train Slot;
- (e) for the Train Operator and its associates to enter upon that part of the Network comprising the Routes, with or without vehicles; and
- (f) for the Train Operator and its associates to bring things onto that part of the Network comprising the Routes and keep them there,

and such permission is subject, in each case and in all respects to:

- (i) the Network Code;
- (ii) the Applicable Engineering Access Statement; and
- (iii) the Applicable Timetable Planning Rules.

### **5.3 Permission under Clauses 5.2(e) and 5.2(f)**

In relation to the permissions specified in Clauses 5.2(e) and 5.2(f):

- (a) the Train Operator shall, and shall procure that its associates shall, wherever reasonably practicable, first obtain the consent of Network Rail, which consent shall not be unreasonably withheld or delayed;
- (b) the Train Operator shall remove any vehicle or other thing so brought onto any part of the Network when reasonably directed to do so by Network Rail; and
- (c) whilst exercising any rights conferred by Clauses 5.2(e) and 5.2(f), the Train Operator shall, and shall procure that its associates shall, comply with such reasonable restrictions or instructions as Network Rail shall specify.

### **5.4 Changes to Applicable Engineering Access Statement and Applicable Timetable Planning Rules**

Changes to the Applicable Engineering Access Statement and the Applicable Timetable Planning Rules are subject to regulatory protection (including appeals) in accordance with Part D of the Network Code.

### **5.5 Engineering Access Statement, Timetable Planning Rules and Restrictions of Use**

Schedule 4 shall have effect.

### **5.6 The Services and the Specified Equipment**

Schedule 5 shall have effect.

### **5.7 Performance**

Schedule 8 shall have effect.

### **5.8 Stabling**

Without prejudice to Network Rail's obligations, if any, under Schedule 5 to provide Stabling, Network Rail shall use all reasonable endeavours to provide such Stabling facilities as are necessary or expedient for or in connection with the provision of the Services in accordance with the Working Timetable.

## **6 OPERATION AND MAINTENANCE OF TRAINS AND NETWORK**

### **6.1 General**

Without prejudice to the other provisions of this contract:

- (a) the Train Operator shall maintain and operate the Specified Equipment used on the Network in accordance with Clause 4.1 with a view to

permitting the provision of the Services on the Routes in accordance with the Working Timetable and the making of Ancillary Movements; and

- (b) Network Rail shall maintain and operate the Network in accordance with Clause 4.1 with a view to permitting the provision of the Services on the Routes using the Specified Equipment in accordance with the Working Timetable and the making of Ancillary Movements.

## **6.2 Trespass, vandalism and animals**

Without prejudice to the other provisions of this contract, each of the parties shall use all reasonable endeavours (including participating in such consultation and joint action as is reasonable in all the circumstances) to reduce:

- (a) trespass;
- (b) vandalism; and
- (c) intrusions on to the Network by animals,

in each case as may affect either the provision of the Services or the Routes.

## **6.3 Safety**

In relation to Safety Obligations:

- (a) the Train Operator shall comply with any reasonable request by Network Rail in relation to any aspect of the Train Operator's operations which affects or is likely to affect the performance of Network Rail's Safety Obligations; and
- (b) Network Rail shall comply with any reasonable request by the Train Operator in relation to any aspect of Network Rail's operations which affects or is likely to affect the performance of the Train Operator's Safety Obligations.

## **6.4 Use of Railway Code Systems**

### *6.4.1 General*

The parties shall:

- (a) use the Railway Code Systems in their dealings with each other in connection with matters provided for in this contract; and
- (b) comply with the Systems Code.

### *6.4.2 Provision of Train Consist Data*

Without prejudice to Clause 6.4.1, the Train Operator shall:

- (a) provide to Network Rail such Train Consist Data as shall be necessary to enable Network Rail to calculate the amount of Track Charges; and
- (b) procure that such data is true and accurate in all respects.

## **7 TRACK CHARGES**

Schedule 7 shall have effect.

## **8 LIABILITY**

### **8.1 Performance Orders in relation to breach**

In relation to any breach of this contract:

- (a) the Innocent Party shall be entitled to apply under Clause 13 for a Performance Order against the party in breach; and
- (b) if a Performance Order is made, the party against whom it has been made shall comply with it.

### **8.2 Compensation in relation to breach**

In relation to any breach of this contract, the party in breach shall indemnify the Innocent Party against all Relevant Losses.

## **9 NOT USED**

## **10 LIABILITY - OTHER MATTERS**

### **10.1 Train Operator indemnity**

The Train Operator shall indemnify Network Rail against all Relevant Losses resulting from:

- (a) a failure by the Train Operator to comply with its Safety Obligations;
- (b) any Environmental Damage arising directly from the acts or omissions of the Train Operator or the proper taking by Network Rail under Condition E2 of the Network Code of any steps to prevent, mitigate or remedy an Environmental Condition which exists as a direct result of the acts or omissions of the Train Operator; and
- (c) any damage to the Network arising directly from the Train Operator's negligence.

### **10.2 Network Rail indemnity**

Network Rail shall indemnify the Train Operator against all Relevant Losses resulting from:

- (a) a failure by Network Rail to comply with its Safety Obligations;
- (b) any Environmental Damage to the Network arising directly from any acts or omissions of the British Railways Board prior to 1 April 1994 and any Environmental Damage arising directly from the acts or omissions of Network Rail; and
- (c) any damage to the Specified Equipment or other vehicles or things brought onto the Network in accordance with the permission to use granted by this contract arising directly from Network Rail's negligence.

## **11 RESTRICTIONS ON CLAIMS**

### **11.1 Notification and mitigation**

A party wishing to claim under any indemnity provided for in this contract:

- (a) shall notify the other party of the relevant circumstances giving rise to that claim as soon as reasonably practicable after first becoming aware of those circumstances (and in any event within 365 days of first becoming so aware); and
- (b) subject to Clause 11.1(c), shall take all reasonable steps to prevent, mitigate and restrict the circumstances giving rise to that claim and any Relevant Losses connected with that claim; but
- (c) shall not be required to exercise any specific remedy available to it under this contract.

### **11.2 Restrictions on claims by Network Rail**

Any claim by Network Rail against the Train Operator for indemnity for Relevant Losses:

- (a) shall exclude payments to any person under or in accordance with the provisions of any Access Agreement other than any such payments which are for obligations to compensate for damage to property, and so that any claim for indemnity under this contract for such payments for damage to property, in relation to any incident, shall be limited to:
  - (i) the maximum amount for which the Train Operator would be liable for such damage in accordance with the Claims Allocation and Handling Agreement; less
  - (ii) any other compensation which the Train Operator has an obligation to pay for such damage;
- (b) shall exclude loss of revenue in respect of permission to use any part of the Network under or in accordance with any Access Agreement with any person; and
- (c) shall:
  - (i) include Relevant Losses only to the extent that these constitute amounts which Network Rail would not have incurred as network owner and operator but for the relevant breach; and
  - (ii) give credit for any savings to Network Rail which result or are likely to result from the incurring of such amounts.

### **11.3 Restrictions on claims by Train Operator**

Any claim by the Train Operator against Network Rail for indemnity for Relevant Losses:

- (a) shall exclude any Relevant Losses to the extent that they result from delays to or cancellations of trains (other than delays or cancellations in

circumstances where the SPP Threshold has been exceeded as provided for in paragraph 18 of Schedule 8); and

- (b) shall:
  - (i) include Relevant Losses only to the extent that these constitute amounts which the Train Operator would not have incurred as train operator but for the relevant breach; and
  - (ii) give credit for any savings to the Train Operator which result or are likely to result from the incurring of such amounts.

#### **11.4 Restriction on claims by both parties**

Any claim for indemnity for Relevant Losses shall exclude Relevant Losses which:

- (a) do not arise naturally from the breach; and
- (b) were not, or may not reasonably be supposed to have been, within the contemplation of the parties:
  - (i) at the time of the making of this contract; or
  - (ii) where the breach relates to a modification or amendment to this contract, at the time of the making of such modification or amendment,

as the probable result of the breach.

#### **11.5 Limitation on liability**

Schedule 9 shall have effect so as to limit the liability of the parties to one another under the indemnities in Clauses 8.2 and 10, but:

- (a) does not limit any liability arising under Schedules 4, 5, 7 or 8 (other than under paragraph 18 of Schedule 8);
- (b) in relation to a failure to perform an obligation under the Network Code, only to the extent (including as to time and conditions) that the Network Code so provides; and
- (c) subject to Clause 18.3.3.

#### **11.6 Claims Allocation and Handling Agreement**

##### *11.6.1 General*

Clauses 16 and 17 of the Claims Allocation and Handling Agreement provide that claims between parties to it are limited to specified amounts unless the parties expressly contract otherwise.

##### *11.6.2 Restriction of application*

Except as otherwise expressly provided in this contract, Clauses 16 and 17 of the Claims Allocation and Handling Agreement shall not apply as between the parties to this contract if and to the extent that the giving of any right or

remedy as provided for under this contract would be prevented or restricted by Clauses 16 and 17 of the Claims Allocation and Handling Agreement.

### *11.6.3 Liability for small claims*

Nothing in this contract shall affect the application as between the parties of the provisions of the Claims Allocation and Handling Agreement which relate to liability for small claims equal to or below the Threshold (as defined in that agreement).

## **12 GOVERNING LAW**

This contract shall be governed by and construed in accordance with the laws of England and Wales.

## **13 DISPUTE RESOLUTION**

### **13.1 Arbitration**

A Relevant Dispute shall be referred to arbitration in England in accordance with the Access Dispute Resolution Rules in force at the time of the reference (the "ADRR"), as modified by this Clause 13, unless:

- (a) any Part of the Network Code provides for an alternative dispute resolution procedure for the Relevant Dispute, in which case such alternative procedure shall apply;
- (b) any Part of Schedules 4, 5, 7 or 8 provides for an alternative dispute resolution procedure for the Relevant Dispute, in which case such alternative procedure shall apply;
- (c) Clause 13.2 applies;
- (d) the Relevant Dispute is referred to the relevant ADRR Panel or the High Court of England and Wales under Clause 13.3;
- (e) the parties otherwise agree in writing including an agreement to refer the Relevant Dispute for expert determination under Part D of the ADRR; or
- (f) the parties agree in writing to refer the Relevant Dispute for mediation under Part B of the ADRR and the Relevant Dispute is finally settled by such mediation.

### **13.2 Unpaid sums**

If either party fails to pay:

- (a) any invoice issued to it under this contract in respect of Track Charges in accordance with the provisions of Schedule 7; or
- (b) any sum which has fallen due in accordance with the provisions of Schedules 4, 5 or 8 or the Network Code,  
then:
  - (i) the amount invoiced or sum due, as referred to in Clause 13.2(a) or (b), shall immediately constitute a debt due and owing from the

party who has failed to pay the invoice or sum due to the other party (and to any assignee of a party's right to payment in respect of any Track Charges or other sum due);

- (ii) such debt shall be recoverable by any means available under the laws of England and Wales; and
- (iii) the dispute resolution procedures in Clauses 13.1 and 13.3 to 13.7 shall not apply to proceedings commenced under this Clause 13.2.

### **13.3 Request to Change Forum**

#### *13.3.1 Request to Change Forum*

Within 5 days of service of the notice of arbitration, either party:

- (a) may notify the other party and ORR in writing that it wishes to refer the Relevant Dispute to the relevant ADRR Panel or to the High Court of England and Wales instead of arbitration, as the case may be (a "Request to Change Forum"); and
- (b) shall, in such Request to Change Forum, specify its preferred forum and the reasons for that preference.

#### *13.3.2 Response to Request to Change Forum*

Within 7 days of receipt of a notice under Clause 13.3.1, the receiving party shall notify the other party and ORR in writing that:

- (a) it agrees to the specified reference, in which case the Relevant Dispute shall be referred to the specified forum; or
- (b) it objects to the specified reference and wishes the Relevant Dispute to be dealt with by arbitration, by the relevant ADRR Panel or by the High Court of England and Wales, as the case may be,

and every response under Clause 13.3.2(b) shall specify the preferred forum and the reasons for that preference.

#### *13.3.3 Decision by the Office of Rail Regulation*

If a Request to Change Forum is not agreed between the parties or the other party fails timeously to give a valid notice of objection under Clause 13.3.2(b), the Relevant Dispute shall be referred, following such consultation with the parties as ORR may determine is appropriate, in accordance with the final decision of ORR in its absolute discretion, namely whether the Relevant Dispute:

- (a) is still to be referred to arbitration;
- (b) is to be referred instead to the relevant ADRR Panel, and the arbitration reference and any pending arbitration proceedings accordingly terminated or suspended; or

- (c) is to be referred instead to the High Court of England and Wales, and the arbitration reference and any pending arbitration proceedings accordingly terminated.

## **13.4 Performance Orders**

### *13.4.1 Power to order provisional relief*

For the purposes of section 39 of the Arbitration Act 1996, the arbitral tribunal shall have power to order on a provisional basis any relief which it would have power to grant in a final award including Performance Orders.

### *13.4.2 Performance Orders*

A Performance Order:

- (a) is an order made under Clause 13.4.3(b), relating to a Relevant Dispute, whether by way of interim or final relief; and
- (b) may be applied for by Network Rail or the Train Operator in the circumstances set out in Clause 8.1, subject to the qualifications in Clause 17.8,

and an application for a Performance Order shall be without prejudice to any other remedy available to the claimant under this contract (whether final or interim and whether by way of appeal under the Network Code or otherwise).

### *13.4.3 Duties of arbitral tribunal in relation to Performance Orders*

Without prejudice to any additional remedies that may be ordered by the arbitral tribunal under Clause 13.5, where a party has applied for a Performance Order:

- (a) the arbitral tribunal shall decide as soon as possible whether the application is well founded or not; and
- (b) if the arbitral tribunal decides that the application is well founded, it shall be required to make an interim or final declaration to that effect and, in that event, the arbitral tribunal may also make any interim or final order directing any party to do or to refrain from doing anything arising from such declaration which it considers just and reasonable in all the circumstances.

## **13.5 Remedies**

The powers exercisable by the arbitral tribunal as regards remedies shall include:

- (a) the powers specified in sections 48(3) to (5) of the Arbitration Act 1996;
- (b) the powers specified in the ADRR;
- (c) the power to make Performance Orders; and

- (d) the power to order within the same reference to arbitration any relief specified in Clause 13.5 (a), (b) and (c) consequent upon, or for the breach of, any interim or final Performance Order previously made.

### **13.6 Exclusion of applications on preliminary points of law**

Any recourse to any Court for the determination of a preliminary point of law arising in the course of the arbitration proceedings is excluded.

### **13.7 Relevant ADRR Panel**

#### *13.7.1 Referrals to the relevant ADRR Panel*

Any referral of a Relevant Dispute to, and determination of a Relevant Dispute by, the relevant ADRR Panel shall be conducted in accordance with Part A of the ADRR.

#### *13.7.2 Appeal to arbitration*

If either party is aggrieved with any determination of the relevant ADRR Panel in relation to a Relevant Dispute referred to it under this Clause 13, such party may refer the Relevant Dispute for resolution by arbitration in accordance with this Clause 13 (excluding Clause 13.3), and shall notify in writing the other party of its intention. Upon such reference the arbitral tribunal is not bound by the findings of the relevant ADRR Panel.

## **14 CONFIDENTIALITY**

### **14.1 Confidential Information**

#### *14.1.1 General obligation*

Except as permitted by Clause 14.2, all Confidential Information shall be held confidential during and after the continuance of this contract and shall not be divulged in any way to any third party without the prior written approval of the other party.

#### *14.1.2 Network Rail - Affiliates*

Except as permitted by Clause 14.2, Network Rail shall procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information.

#### *14.1.3 Train Operator - Affiliates*

Except as permitted by Clause 14.2, the Train Operator shall procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information.

### **14.2 Entitlement to divulge**

Either party, and its Affiliates, and its and their respective officers, employees and agents, shall be entitled in good faith to divulge any Confidential

Information without the approval of the other party in the following circumstances:

- (a) to ORR;
- (b) Not Used;
- (c) to any Affiliate of either party;
- (d) to any officer or employee of the party in question or any person engaged in the provision of goods or services to or for him if disclosure is necessary or reasonably required to enable the party in question to perform its obligations under this contract, upon obtaining an undertaking of strict confidentiality from such officer, employee or person;
- (e) to any professional advisers or consultants of such party engaged by or on behalf of such party and acting in that capacity, upon obtaining an undertaking of strict confidentiality from such advisers or consultants;
- (f) to any insurer or insurance broker from whom such party is seeking insurance or in connection with the making of any claim under any policy of insurance upon obtaining an undertaking of strict confidentiality from the insurer or insurance broker;
- (g) to any lender, security trustee, bank or other institution from whom such party is seeking or obtaining finance or credit support for such finance, or any advisers to any such entity, or any rating agency from whom such party is seeking a rating in connection with such finance or credit support, upon obtaining an undertaking of strict confidentiality from the entity, advisers or rating agency in question;
- (h) to the extent required by the Act, any licence under section 8 of the Act held by the party in question, any other applicable law, the rules of any recognised stock exchange or regulatory body or any written request of any taxation authority;
- (i) to the extent that it has become available to the public other than as a result of a breach of confidence; and
- (j) under the order of any court or tribunal of competent jurisdiction (including the relevant ADRR Panel or any sub-committee of the relevant ADRR Panel).

### **14.3 Return of Confidential Information**

Each of Network Rail and the Train Operator shall promptly return to the other party any Confidential Information requested by the other party if such request:

- (a) is made on or within two months after the Expiry Date or, if this contract lapses or is terminated earlier, is made within two months after the date on which this contract lapses or is terminated;

- (b) is reasonable; and
- (c) contains a sufficient description of the relevant Confidential Information to enable such information to be readily identified and located.

#### **14.4 Retention or destruction of Confidential Information**

If Network Rail or the Train Operator, as the case may be, has not received a request to return any Confidential Information to the other party under and within the time limits specified in Clause 14.3, it may destroy or retain such Confidential Information.

#### **14.5 Ownership of Confidential Information**

All Confidential Information shall be and shall remain the property of the party which supplied it to the other party.

#### **14.6 Network Code and Schedule 7**

Nothing in this Clause 14 restricts the right of Network Rail to disclose information to which this Clause 14 applies to the extent that it is permitted or required so to do under the Network Code or Schedule 7.

### **15 ASSIGNMENT AND NOVATION**

#### **15.1 Assignment**

Neither party may assign, transfer, novate (including a novation under Clause 15.2) or create any encumbrance or other security interest over the whole or any part of its rights and obligations under this contract except to the extent approved by ORR following consultation with the other party, and subject to the conditions (if any) of ORR's approval.

#### **15.2 Not Used**

#### **15.3 Not Used**

### **16 PAYMENTS, INTEREST AND VAT**

#### **16.1 Payment**

##### *16.1.1 No deduction*

All sums due or payable by either party under this contract shall be paid free and clear of any deduction, withholding or set off except only as may be required by law or as expressly provided in any Schedule to this contract or in the Network Code.

##### *16.1.2 Delivery of invoices*

All invoices issued under Schedule 7, or statements of amounts payable under Schedules 4, 5 or 8 or the Network Code, shall be delivered by hand at, or sent by prepaid first class post or by facsimile transmission (with confirmation copy by prepaid first class post) to, the address for service for the recipient specified in Schedule 1 and shall be deemed to have been received by the addressee in accordance with Clause 18.4.3.

### *16.1.3 Content of invoices and other statements of amounts payable*

Each invoice and statement of amounts payable shall contain such detail as to the constituent elements of the amounts stated to be payable as shall be necessary or expedient so as to enable the person to whom it is given to understand and check it.

### *16.1.4 Method of payment*

All payments shall be made by direct debit mandate or standing order mandate, CHAPS transfer, BACS transfer or other electronic or telegraphic transfer to a London clearing bank or such other financial institution as may be approved by the party entitled to the payment, such approval not to be unreasonably withheld or delayed.

## **16.2 Interest**

Without prejudice to any other rights or remedies which one party may have in respect of the failure of the other party to pay any amount on the due date, amounts payable under this contract and not paid by the due date shall carry interest (to accrue daily and to be compounded monthly) at the Default Interest Rate from the due date until the date of actual payment (as well after judgment as before), except to the extent that late payment arises from any failure by the invoicing party to comply with Clause 16.1.2 or Clause 16.1.3.

## **16.3 VAT**

### *16.3.1 Payment of VAT*

Where any taxable supply for VAT purposes is made under or in connection with this contract by one party to the other the payer shall, in addition to any payment required for that supply, pay such VAT as is chargeable in respect of it.

### *16.3.2 Reimbursement of VAT*

Where under this contract one party is to reimburse or indemnify the other in respect of any payment made or cost incurred by the other, the first party shall also reimburse any VAT paid by the other which forms part of its payment made or cost incurred to the extent such VAT is not available for credit for the other party (or for any person with whom the indemnified party is treated as a member of a group for VAT purposes) under sections 25 and 26 of the Value Added Tax Act 1994.

### *16.3.3 VAT credit note to be issued on repayment*

Where under this contract any rebate or repayment of any amount is payable by one party to the other, and the first party is entitled as a matter of law or of HM Revenue and Customs practice to issue a valid VAT credit note, such rebate or repayment shall be paid together with an amount representing the VAT paid on that part of the consideration in respect of which the rebate or repayment is made, and the first party shall issue an appropriate VAT credit note to the other party.

## **17 FORCE MAJEURE EVENTS**

### **17.1 Meaning of Force Majeure Event**

In this Clause 17:

**“Affected Party”** means, in relation to a Force Majeure Event, the party claiming relief under this Clause 17 by virtue of that Force Majeure Event, and **“Non-affected Party”** shall be construed accordingly;

**“Force Majeure Event”** means any of the following events (and any circumstance arising as a direct consequence of any of the following events):

- (a) an act of the public enemy or terrorists or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;
- (b) acts of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;
- (c) natural disasters or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);
- (d) nuclear, chemical or biological contamination;
- (e) pressure waves caused by devices travelling at supersonic speeds;
- (f) discovery of fossils, antiquities or unexploded bombs; and
- (g) strike or other industrial action which is a single circumstance and which also is a strike or industrial action in sectors of the economy other than the railway industry;

**“Force Majeure Notice”** means a notice to be given by the Affected Party to the other party stating that a Force Majeure Event has occurred;

**“Force Majeure Report”** means a report to be given by the Affected Party to the other party following the giving of a Force Majeure Notice;

**“Relevant Force Majeure Event”** means a Force Majeure Event in relation to which an Affected Party is claiming relief under this Clause 17; and

**“Relevant Obligation”** means an obligation under this contract in respect of which a Force Majeure Event has occurred and the Affected Party has claimed relief under this Clause 17.

### **17.2 Nature and extent of relief for Force Majeure**

Force Majeure relief under this Clause 17:

- (a) extinguishes the obligation of the Affected Party to indemnify the other party under Clause 8.2 in respect of Relevant Losses sustained as a result of the failure of the Affected Party to perform a Relevant Obligation; but
- (b) is not available in respect of:
  - (i) any obligation to pay money under Schedules 4, 5, 7 and 8; or

- (ii) any other obligation to do or refrain from doing any other thing provided for in this contract; and
- (c) is only available in relation to a failure to perform an obligation under the Network Code to the extent (including as to time and conditions) that the Network Code so provides.

### **17.3 Entitlement to Force Majeure relief**

An Affected Party is entitled to Force Majeure relief if and to the extent that:

- (a) performance of the Relevant Obligation has been prevented or materially impeded by reason of a Force Majeure Event;
- (b) it has taken all reasonable steps, taking account of all relevant circumstances (including as to whether the event in question could reasonably have been anticipated):
  - (i) to avoid the occurrence of the Force Majeure Event; and
  - (ii) to minimise, and where practicable avoid, the effects of the Force Majeure Event on its ability to perform the Relevant Obligation; and
- (c) except in the case of Clause 17.1(f), none of the Affected Party, its officers, employees or agents caused the Force Majeure Event.

### **17.4 Procedure for claiming relief**

Without prejudice to Clause 17.3, an Affected Party is only entitled to claim Force Majeure relief under this Clause 17 if it complies with the obligations to give Force Majeure Notices, Force Majeure Reports and provide other information under Clause 17.5 and to perform its obligations under Clause 17.6.

### **17.5 Force Majeure Notices and Reports**

#### *17.5.1 Force Majeure Notice*

In relation to any Relevant Force Majeure Event:

- (a) as soon as reasonably practicable after the Affected Party becomes aware, or ought reasonably to have become aware, that such Force Majeure Event qualifies for relief under this Clause 17 (and, in any event, within 72 hours of becoming aware of such circumstances), the Affected Party shall give a Force Majeure Notice; and
- (b) the Force Majeure Notice shall include detailed particulars (to the extent available) of the Relevant Force Majeure Event and its consequences, its effects on the Affected Party, the Relevant Obligations, the likely duration of such consequences and effects and the remedial measures proposed by the Affected Party to avoid or remove the Relevant Force Majeure Event or to mitigate its consequences and effects.

#### *17.5.2 Force Majeure Report*

Following the giving of a Force Majeure Notice:

- (a) the Affected Party shall give a Force Majeure Report as soon as practicable, and in any event within 7 days of service of the Force Majeure Notice; and
- (b) the Force Majeure Report shall constitute a full report on the Relevant Force Majeure Event, amplifying the information provided in the Force Majeure Notice and containing such information as may reasonably be required by the Non-affected Party, including the effect which the Relevant Force Majeure Event is estimated to have on the Affected Party's performance of the Relevant Obligations.

#### *17.5.3 Other information*

The Affected Party shall promptly give the Non-affected Party all other information concerning the Relevant Force Majeure Event and the steps which could reasonably be taken, and which the Affected Party proposes to take, to avoid or remove the Relevant Force Majeure Event or to mitigate its consequences and effects as may reasonably be requested by the Non-affected Party from time to time.

#### **17.6 Mitigation**

The Affected Party shall, promptly upon becoming aware of the occurrence of a Force Majeure Event in respect of which it intends to claim relief, use all reasonable endeavours to:

- (a) minimise the effects of such Force Majeure Event on the performance of the Relevant Obligations; and
- (b) minimise the duration of such Force Majeure Event,

and shall keep the Non-affected Party fully informed of the actions which it has taken or proposes to take under this Clause 17.6.

#### **17.7 Duration of relief for force majeure**

The right of an Affected Party to relief under Clause 17.2 shall cease on the earlier of:

- (a) the date on which its performance of the Relevant Obligations is no longer prevented or materially impeded by the Relevant Force Majeure Event; and
- (b) the date on which such performance would no longer have been prevented or materially impeded if the Affected Party had complied with its obligations under Clause 17.6.

#### **17.8 Availability of Performance Order**

If and to the extent that a breach of this contract has been caused by a Relevant Force Majeure Event, the Non-affected Party shall not be entitled to a Performance Order except to secure performance by the Affected Party of its obligations under this Clause 17.

## **18 MISCELLANEOUS**

### **18.1 Non waiver**

#### *18.1.1 No waiver*

No waiver by either party of any failure by the other to perform any obligation under this contract shall operate or be construed as a waiver of any other or further default, whether of a like or different character.

#### *18.1.2 Failure or delay in exercising a right or remedy*

The failure to exercise or delay in exercising a right or remedy under this contract shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies, and no single or partial exercise of any right or remedy under this contract shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

### **18.2 Variations**

#### *18.2.1 Amendments to be in writing and to be approved*

No amendment of any provision of this contract shall be effective unless:

- (a) such amendment is in writing and signed by, or on behalf of, the parties; and
- (b) if it is an amendment which requires ORR's approval under section 22 of the Act, the amendment has been approved by ORR.

#### *18.2.2 Exceptions*

Clause 18.2.1(b) does not apply to amendments of the following kinds:

- (a) an amendment made by virtue of a general approval issued by ORR under section 22 of the Act; and
- (b) a modification made by virtue of Clause 18.4.2.

#### *18.2.3 No Office of Rail Regulation approval needed*

Modifications of the following kinds do not require ORR's approval under section 22 of the Act and so are not subject to Clause 18.2.1(b):

- (a) modifications effected by virtue of any of the Schedules to this contract; and
- (b) modifications effected by virtue of the Network Code, unless the relevant provision expressly states that it requires the approval of ORR.

#### *18.2.4 Conformed copy of contract*

Network Rail shall produce and send to the Train Operator and to ORR a conformed copy of this contract within 28 days of the making of any

amendment or modification to it (including any modification made by virtue of Schedule 10).

### **18.3 Entire contract and exclusive remedies**

#### *18.3.1 Entire contract*

Subject to Clause 18.3.3:

- (a) this contract contains the entire agreement between the parties in relation to the subject matter of this contract;
- (b) each party acknowledges that it has not been induced to enter into this contract in reliance upon, nor has it been given, any warranty, representation, statement, agreement or undertaking of any nature whatsoever other than as expressly set out in this contract and, to the extent that this is not the case, the relevant party unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to any such matter; and
- (c) neither party shall have any right to rescind or terminate this contract either for breach of contract or for misrepresentation or otherwise, except as expressly provided for in this contract.

#### *18.3.2 Exclusive remedies*

Subject to Clause 18.3.3 and except as expressly provided in this contract:

- (a) neither party shall have any liability (including liability arising as a result of any negligence, breach of contract or breach of statutory obligation) to the other in connection with the subject matter of this contract; and
- (b) the remedies provided for in this contract shall be the sole remedies available to the parties in respect of any matters for which such remedies are available.

#### *18.3.3 Fraud, death and personal injury*

Without prejudice to the generality of this Clause 18.3, nothing in this contract shall exclude, restrict or limit, or purport to exclude, restrict or limit:

- (a) any liability which either party would otherwise have to the other party, or any right which either party may have to rescind this contract, in respect of any statement made fraudulently by the other party before the execution of this contract;
- (b) any right which either party may have in respect of fraudulent concealment by the other party;
- (c) any right which either party may have in respect of a statement of the kind referred to in section 146 of the Act, whether or not proceedings have been instituted in that respect; or

- (d) any liability which either party may have towards the other party for death or personal injury resulting from its negligence or the negligence of any of its officers, employees or agents.

## **18.4 Notices**

### *18.4.1 Giving of notices*

Any notice to be given under this contract:

- (a) shall be in writing; and
- (b) shall be duly given if signed by or on behalf of a person duly authorised to do so by the party giving the notice and delivered by hand at, or by sending it by prepaid first class post, recorded delivery or by facsimile transmission (with confirmation copy by prepaid first class post) to, the relevant address or facsimile number set out in Schedule 1.

For the purposes of this Clause 18.4 and Clause 16.1.2, delivery by hand shall include delivery by a reputable firm of couriers.

### *18.4.2 Right to modify communication details*

A party shall be entitled to modify in any respect the communication particulars which relate to it and which are set out in Schedule 1 by giving notice of such modification:

- (a) to the other party as soon as reasonably practicable; and
- (b) to ORR within 14 days of such modification.

### *18.4.3 Deemed receipt*

A notice shall be deemed to have been given and received:

- (a) if sent by hand or recorded delivery, at the time of delivery;
- (b) if sent by prepaid first class post from and to any place within the United Kingdom, three Working Days after posting unless otherwise proven; and
- (c) if sent by facsimile (subject to confirmation of uninterrupted transmission by a transmission report) before 1700 hours on a Working Day, on the day of transmission and, in any other case, at 0900 hours on the next following Working Day.

### *18.4.4 Copyees*

If Schedule 1 specifies any person to whom copies of notices shall also be sent:

- (a) the party giving a notice in the manner required by this Clause 18.4 shall send a copy of the notice to such person at the address for sending copies as specified in Schedule 1, or to such other person or address as may, from time to time, have been notified by the party to be notified to the notifying party under this Clause 18.4; and

(b) such copy notice shall be sent immediately after the original notice.

## **18.5 Counterparts**

This contract may be executed in two counterparts which, taken together, shall constitute one and the same document. Either party may enter into this contract by signing either of such counterparts.

## **18.6 Survival**

Those provisions of this contract which by their nature or implication are required to survive expiry or termination of this contract (including the provisions of Clauses 8 (Liability), 10 (Liability - Other Matters), 11 (Restrictions on Claims); 12 (Governing Law), 13.2 (Unpaid Sums), 14 (Confidentiality), 16 (Payments, Interest and VAT), 17 (Force Majeure Events), paragraph 4 of Schedule 6 (Consequence of Termination) and Schedule 9 (Limitation on liability)), shall so survive and continue in full force and effect, together with any other provisions of this contract necessary to give effect to such provisions.

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

### *18.7.1 Application to third parties*

Save as provided in this Clause 18.7 or as expressly provided elsewhere in this contract, no person who is not a party to this contract shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract.

### *18.7.2 Application to the Office of Rail Regulation*

ORR shall have the right under the Contracts (Rights of Third Parties) Act 1999 to enforce directly such rights as have been granted to it under this contract.

### *18.7.3 Application to the Secretary of State*

Not Used.

## **19 NOT USED**

19.1 Not Used

## **SCHEDULE 1: CONTACT PARTICULARS**

1. Network Rail's address for service of notices is:

Network Rail Infrastructure Limited

Kings Place

90 York Way

London

N1 9AG

Tel: 020 3356 9595

Fax: 020 3356 9300

All written notices to be marked:

"URGENT: ATTENTION THE COMPANY SECRETARY AND SOLICITOR"

2. The Train Operator's address for the service of notices is:

Alliance Rail Holdings

88 The Mount

YORK

YO24 1AR

Tel: 01904 628904

Fax: N/A

All written notices to be marked:

"URGENT: ATTENTION MANAGING DIRECTOR"

## **SCHEDULE 2: THE ROUTES**

- London Euston to Leeds via Nuneaton – Stockport – Stalybridge – Huddersfield
- London Euston to Bradford Interchange via Crewe –Earlestown – Manchester Victoria – Rochdale
- London Euston to Blackpool North via Crewe – Warrington Bank Quay - Preston
- London Euston to Carlisle via Crewe – Warrington Bank Quay - Preston – Carnforth – Ulverston – Sellafield - Whitehaven
- Crewe to Leeds via Earlestown – Manchester Victoria – Stalybridge – Huddersfield
- Crewe to Crewe LNWR Depot

### **SCHEDULE 3: COLLATERAL AGREEMENTS**

1. An access agreement between (1) the Train Operator and (2) Network Rail granting the Train Operator permission to use the following stations in respect of which Network Rail is the facility owner.  
London Euston  
Leeds
2. An agreement under which the Train Operator agrees to become a party to the Claims Allocation and Handling Agreement and, for the purpose of Schedule 6, the Claims Allocation and Handling Agreement.
3. Not used
4. An accession agreement to the document entitled Emergency Access Code as approved or directed by ORR and, for the purpose of Schedule 6, the Emergency Access Code.

## SCHEDULE 4: ENGINEERING ACCESS STATEMENT, TIMETABLE PLANNING RULES AND RESTRICTIONS OF USE

PART 1  
NOT USED

PART 2  
NOT USED

### PART 3: COMPENSATION FOR RESTRICTIONS OF USE

#### 1 Definitions

##### 1.1 *Defined terms*

In this Part 3 and its Appendices, unless the context otherwise requires:

- “Applicable Timetable”** means, in respect of any day, that part of the Working Timetable in respect of that day which is required to be drawn up in accordance with Condition D2.1.1 as at 22:00 hours on the day prior to that day;
- “Bi-annual Timetable”** means either of the following:
- (a) the Corresponding Day Timetable for all days in the period from and including the Principal Change Date up to but excluding the immediately following Subsidiary Change Date; or
  - (b) the Corresponding Day Timetable for all days from and including the Subsidiary Change Date up to but excluding the immediately following Subsidiary Change Date or Principal Change Date, as the case may be;
- “Cancellation Minutes”** shall have the meaning ascribed to it in Schedule 8;
- “Cap”** shall have the meaning ascribed to it in Schedule 8;
- “Corresponding Day”** means, in respect of any day (the **“first day”**):
- (a) a day which is contained in the same Timetable Period as the first day and on which the Services scheduled in the New Working Timetable are the same as would have been scheduled on the first day but for Restrictions of Use reflected in the New Working Timetable for the first day; or
  - (b) if no day is found under paragraph (a) above, then a

day which is contained in the equivalent Timetable Period for the time of year, in the year immediately preceding the Timetable Period which includes the first day and on which the Services scheduled in the New Working Timetable are the same as would have been scheduled on the first day but for Restrictions of Use reflected in the New Working Timetable for the first day; or

- (c) if no day is found under paragraph (a) or (b) above, such other day as the parties may agree or as may be determined in accordance with paragraph 12.2;

**“Corresponding Day Timetable”**

means, in relation to a Corresponding Day, the New Working Timetable or such other timetable as may be agreed between the parties or otherwise determined in accordance with paragraph 12.2;

**“Day 42 Statement”**

shall have the meaning ascribed to it in paragraph 13.1(a);

**“Disrupted”**

means:

- (a) cancelled;
- (b) diverted off the Route over which it was scheduled to run in the Corresponding Day Timetable; and/or
- (c) starting or finishing short in comparison with the Service as timetabled in the Corresponding Day Timetable;

**“First Restriction”**

shall have the meaning ascribed to it in paragraph 2.12(a)(i);

**“First Restriction Period”**

shall have the meaning ascribed to it in paragraph 2.12(a)(ii);

**“Further Restriction”**

shall have the meaning ascribed to it in paragraph 2.12(a)(ii)(B);

**“High Speed Diversion”**

means a situation in which a Train is diverted between successive Monitoring Points such that it travels a longer distance at a higher average speed than that normally scheduled and arrives at its destination at a time later than that specified in the New Working Timetable;

**“Monitoring Point”**

shall have the meaning ascribed to it in Schedule 8;

**“Network Rail Restriction of Use”**

means any Restriction of Use other than an Operator Restriction of Use, or, if applicable, a Thameslink Possession;

**“Notification Factor” or “NF”**

shall have the meaning ascribed to it in paragraph 9;

<b>“Operator Restriction of Use”</b>	means a Restriction of Use of the type referred to in paragraph 2.3;
<b>“Over-run”</b>	shall have the meaning ascribed to it in paragraph 2.12(a);
<b>“Period”</b>	means each consecutive period of 28 days during the term of this contract commencing at 00:00 hours on 1 April in each year, provided that the length of the first and last such Period in any year may be varied by up to 7 days on reasonable prior notice from Network Rail to the Train Operator;
<b>“Public Holiday”</b>	means any day other than Saturday or Sunday on which the banks in the City of London are not open for business;
<b>“Recovery Allowance”</b>	means an allowance for additional time incorporated in the New Working Timetable or (where the Train Operator requests that the allowance is not incorporated in the New Working Timetable and Network Rail complies with that request) the Applicable Timetable to allow a Train to regain time lost during an earlier part of its journey;
<b>“Restriction of Use”</b>	<p>means, in respect of any day, any restriction of use of all or any part of the Routes (other than one caused by a Recovery Allowance which was contained in the Applicable Timetable Planning Rules relevant to that day notified to each Timetable Participant on or before D-26 which results in:</p> <ul style="list-style-type: none"> <li>(a) a difference between the Applicable Timetable on that day as compared with the New Working Timetable in respect of that day; and/or</li> <li>(b) a difference between the New Working Timetable on that day as compared with the Corresponding Day Timetable in respect of the Corresponding Day;</li> </ul>
<b>“Restriction of Use Day”</b>	means a day on which a Network Rail Restriction of Use is taken or deemed to be taken;
<b>“RoU Claim Notice”</b>	means a notice issued by either party pursuant to paragraph 2.8;
<b>“RoU Liability”</b>	means any costs, direct losses and expenses (including any loss of revenue) reasonably incurred or reasonably expected to be incurred by the Train Operator (including any increase in RoU Variable Costs but net of any benefit arising from the taking of a Restriction of Use including any decrease in RoU Variable Costs) as a consequence of a Type 3 Restriction of Use or any Restriction(s) of Use covered by an SPD Claim;
<b>“RoU Variable Costs”</b>	means any Train Operator costs which vary as a result of a Restriction of Use or where applicable an Over-run arising directly from changes in train mileage including maintenance,

	fuel or the Traction Electricity Charge, the Variable Track Usage Charge and the Capacity Charge;
<b>“SPD Claim”</b>	has the meaning specified in paragraph 2.10(c);
<b>“SPD Notice”</b>	means a notice issued by either party pursuant to paragraph 2.10(a);
<b>“SPD Period”</b>	means the period of any 3 or 7 (as the case may be) consecutive Periods in which it is agreed or determined that Sustained Planned Disruption has occurred in respect of the Train Operator, together with any subsequent consecutive Period up to but excluding the first Period to occur in respect of which it is agreed or determined that the test for Sustained Planned Disruption is not satisfied in respect of the Train Operator;
<b>“SPD Cost Threshold No.1”</b>	means£250,000
<b>“SPD Cost Threshold No.2”</b>	means£500,000;TBA
<b>“SPD Revenue Threshold No.1”</b>	means [●]; <sup>1</sup> TBA
<b>“SPD Revenue Threshold No.2”</b>	means [●]; <sup>2</sup> TBA
<b>“SPD Termination Notice”</b>	has the meaning specified in paragraph 2.10(c)
<b>“Sustained Planned Disruption”</b>	or means a circumstance where:
<b>“SPD”</b>	<p>(a) the aggregate of all of the Train Operator’s notional revenue losses calculated in accordance with paragraph 3 for any Restriction of Use during:</p> <ul style="list-style-type: none"> <li>(i) 3 consecutive Periods is equal to or exceeds SPD Revenue Threshold No.1; or</li> <li>(ii) 7 consecutive Periods is equal to or exceeds SPD Revenue Threshold No.2,</li> </ul> <p>and that the difference between the RoU Liability calculated in accordance with paragraph 8 and the Train Opertaor’s notional revenue losses calculated in accordance with paragraph 3 and paragraph 4 for such Restrictions of Use during that period would be more than £10,000; or</p> <p>(b) in respect of any Restriction of Use during :</p> <ul style="list-style-type: none"> <li>(i) 3 consecutive Periods the difference between the Train Operator’s RoU Liability (excluding any loss of revenue) calculated in</li> </ul>

accordance with paragraph 8 and the Train Operator's notional costs calculated under paragraph 4 would be more than SPD Cost Threshold No. 1; or

- (ii) 7 consecutive Periods the difference between the Train Operator's RoU Liability (excluding any loss of revenue) calculated in accordance with paragraph 8 and the Train Operator's notional costs calculated under paragraph 4 would be more than SPD Cost Threshold No. 2;

**“Service Code”** shall have the meaning ascribed to it in Schedule 8;

**“Service Group”** shall have the meaning ascribed to it in Schedule 8;

**“Train”** shall have the meaning ascribed to it in Schedule 8;

**“Train–Bus–Train Pattern”** means a situation where:

- (a) a Restriction of Use occurs on any section of track between:
  - (i) successive Monitoring Points; or
  - (ii) the station of origin and the next Monitoring Point; and
- (b) the Train Operator uses a substitute bus or other alternative road service between any pair of stations situated:
  - (iii) between or including such successive Monitoring Points; or
  - (iv) at or between the station of origin and the next Monitoring Point;

**“Type 3 Restriction of Use”** • means a single Restriction of Use (including any Over-run) of more than 120 consecutive hours (including any part of that Restriction of Use which occurs during a Public Holiday);

**“Unplanned Over-run Period”** • shall have the meaning ascribed to it in paragraph 2.12(a)(ii)(A);

**“Viable Transfer Point”** • a station normally served by the services operated by the Train Operator, and equipped to enable the efficient and safe transfer of trainloads of passengers to and from

alternative modes of transport, and/or services operated by other Train Operators, and which the parties have agreed, and set out in Annex B, shall be used for the purpose of providing Replacement Bus Services, and for calculating Equivalent Bus Miles Compensation in accordance with the provisions of paragraph “4 Cost Compensation for Network Rail Restrictions of Use”;

**“Week”**

- means a period commencing at 00:00:00 hours on any Saturday and ending at 23:59:59 hours on the next following Friday; and

**“White Period”**

- means any period during which the taking of a Restriction of Use would not result in any notional revenue loss being calculated in accordance with paragraph 3.

**1.2** *Suspension Notices*

Wherever a Suspension Notice is in force, the effects of that Suspension Notice shall be the subject of Clause 3.6 and not of this Schedule 4. A Restriction of Use shall only be treated as a Restriction of Use to the extent that it involves a Restriction of Use of all or any part of the Routes which is not covered by the restriction under that Suspension Notice.

**1.3** *Possession*

Any reference in this contract to the term “possession”, whether on its own or in composite, should be construed as “Restriction of Use” as defined in this Part 3.

**1.4** *White Period*

In respect of any Type 3 Restriction of Use, where a Restriction of Use starts before and/or ends after a White Period, the entire length of the Restriction of Use shall be taken into account when counting the cumulative total hours.

**2** **Application of this Part**

**2.1** *Entry into effect*

This Part 3 shall apply in respect of Restrictions of Use.

**2.2** *Applicable Engineering Access Statement and the Network Code*

The provisions of this Part 3 shall be without prejudice to:

- (a) Network Rail's right to take Restrictions of Use under or pursuant to the Applicable Engineering Access Statement;
- (b) the establishment of any amended Working Timetable under Part H of the Network Code; and

- (c) any rights pursuant to the Network Code that the Train Operator may have to challenge any decision of Network Rail.

### 2.3 *Operator Restriction of Use*

Network Rail shall not be obliged to make any payments to the Train Operator for any one or more Restrictions of Use to the extent:

- (a) required as a result of any damage to the Network or Environmental Damage which in each case:
  - (i) arises wholly or mainly from the operations of the Train Operator or its failure to comply with its obligations under this contract; and
  - (ii) Network Rail demonstrates is in excess of fair wear and tear arising from use of the Network by the Train Operator;
- (b) requested by the Train Operator (other than for the purposes of inspection, maintenance, renewal or repair of the Network); or
- (c) required in connection with a Network Change proposed by the Train Operator under Condition G3.

### 2.4 *Network Rail payments*

Subject to paragraph 2.3, Network Rail shall make payments to the Train Operator (in accordance with the procedure in paragraph 13) in respect of Restrictions of Use calculated on the following basis:

- (a) for each Network Rail Restriction of Use, in accordance with paragraph 2.7 and 2.10 where applicable; and
- (b) for each Thameslink Possession, in accordance with Part 4.

### 2.5 NOT USED

### 2.6 NOT USED

### 2.7 *Type 3 Restriction of Use*

Where a Train Operator's RoU Liability exceeds £10,000 in respect of any Type 3 Restriction of Use Network Rail shall make payments to the Train Operator (in accordance with the procedure in paragraph 13) calculated in accordance with paragraph 7.

### 2.8 RoU Claim Notice

- (a) A Train Operator wishing to make a request pursuant to Clause 2.7 must notify Network Rail that a Restriction of Use is a Type 3 Restriction of Use and that the circumstances in paragraph 2.7 apply within 56 days of the date of the end of such Type 3 Restriction of Use.

- (b) The notice referred to in paragraph 2.8(a) must include details of the estimate of the RoU Liability which the Train Operator has incurred in respect of the relevant Restriction of Use.

## 2.9 *Changes to Restrictions of Use*

- (a) Where a single Restriction of Use falls within the definition of a Type 3 Restriction of Use and there is a change which means that no Restriction of Use occurs or that the Restriction of Use no longer falls within the definition of a Type 3 Restriction of Use, then that Restriction of Use shall be treated, for the purposes of the calculation and payment of compensation, as if it had never been a Type 3 Restriction of Use (or, where applicable, as if it had not been a Restriction of Use).
- (b) Where a single Restriction of Use does not fall within the definition of a Type 3 Restriction of Use and there is a change which means that the Restriction of Use then falls within the definition of a Type 3 Restriction of Use, then that Restriction of Use shall be treated, for the purposes of the calculation and payment of compensation, as if it had always been a Type 3 Restriction of Use.
- (c) For the purposes of paragraph 2.9(d), a Restriction of Use shall be deemed to be taken if and to the extent that it results in any difference between timetables of the type referred to in the definition of “Restriction of Use” when notified, whether or not the restriction giving rise to that Restriction of Use was subsequently cancelled in whole or in part.
- (d) Where a change to a Type 3 Restriction of Use reduces the impact of that Restriction of Use and accordingly changes it so that it no longer falls within the definition of a Type 3 Restriction of Use or means that there is no Restriction of Use in accordance with paragraph 2.9(a), the Train Operator may, within 28 days of the date on which the change to the Type 3 Restriction of Use was notified to the Train Operator by Network Rail, serve a notice on Network Rail which sets out any costs to which the Train Operator is already committed or has already incurred and any costs associated with responding to the Type 3 Restriction of Use (both before and after the change). The Train Operator shall be entitled to recover such costs provided that such costs are reasonable and were properly committed or incurred in the circumstances.

## 2.10 *Sustained Planned Disruption*

- (a) If either party reasonably believes that a Sustained Planned Disruption has occurred then that party will be entitled to require that the costs and losses for the Restrictions of Use for the relevant services during the relevant SPD Period be calculated in accordance with paragraph 8 by serving a notice on the other (an “SPD Notice”) in accordance with paragraph 2.10(b).
- (b) Unless otherwise agreed in writing, an SPD Notice must be served no later than the day falling 56 days after the issue of the Day 42 Statement which followed the end of the relevant SPD Period and must include a short explanation of why it reasonably believes a Sustained Planned Disruption has occurred and a statement of when the SPD Period commenced.

- (c) Following the issue of an SPD Notice, either party may serve a notice (“an SPD Termination Notice” ) stating that it reasonably believes that the relevant Sustained Planned Disruption is no longer occurring, such notice to include a short explanation of why the party serving it reasonably believes that the Sustained Planned Disruption has ceased and stating the Period in which such cessation has occurred. A party receiving an SPD Termination Notice shall within 30 days of its receipt by notice to the serving party either accept or reject the SPD Termination Notice and where it rejects the notice it shall include with its rejection notice a short explanation of why it reasonably believes the Sustained Planned Disruption is continuing. If the parties fail to reach agreement within 30 days after service of a rejection notice, or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, either party may notify the other that the dispute resolution procedure set out in paragraph 13.3 is to apply (save the references to paragraph 13.2 shall be construed as references to this paragraph).
- (d) Following the issue of an SPD Notice the party that issued that notice must serve a claim (an “SPD Claim”):
- (i) no later than the day falling 112 days after the issue of the Day 42 Statement for the last Period in the relevant SPD Period; or
  - (ii) where an SPD Period has exceeded 13 consecutive Periods in length or upon the termination or expiry of this Access Agreement, whichever comes first, unless otherwise agreed in writing, no later than the day falling 112 days after the issue of the Day 42 Statement which followed the 13<sup>th</sup> consecutive Period or the termination or expiry of this Access Agreement (as applicable),
- whichever is the earlier.
- (e) Provided a party has issued an SPD Notice in accordance with paragraph 2.10(b), nothing in paragraph 2.10(d) shall prevent that party from issuing more than one SPD Claim in respect of the same Sustained Planned Disruption, provided that:
- (i) each such SPD Claim relates to a different period within the said SPD Period (so there is no double-counting); and
  - (ii) no SPD Claim can be issued after the last day for serving notice specified under paragraph 2.10(d).
- (f) An SPD Claim must include details of when and why that party reasonably believes that a Sustained Planned Disruption has occurred and in particular:
- (i) if the claim is made by the Train Operator, such details as may reasonably be available of the RoU Liability which the Train Operator has incurred or reasonably expects to incur in respect of the relevant Restrictions of Use during the SPD Period; or
  - (ii) if the claim is made by Network Rail, the reasons why Network Rail reasonably believes that the Train Operator has been overcompensated or may be overcompensated by more than the relevant amount.
- (g) Following the service of an SPD Claim, if and to the extent it is agreed or determined that a Sustained Planned Disruption has occurred in the period covered by the claim

then the relevant party shall make payments to the other (in accordance with the procedure in paragraph 13) calculated in accordance with paragraph 8 in respect of the SPD Period (or where applicable the part of the SPD Period) covered by the SPD Claim.

### 2.11 *Early notice of RoU Liability*

The parties may at any time engage in discussions on any matter likely to result in payments in respect of any RoU Liability and shall use reasonable endeavours to agree whether such RoU Liability calculated in accordance with paragraph 6, 7 or 8 are likely to arise and/or what mitigating actions should be contemplated to reduce or avoid such RoU Liability. The party initiating such discussions shall provide to the other reasonable evidence in writing of why it thinks such RoU Liability will arise or mitigating actions should be contemplated. Following any agreement or determination that such RoU Liability are likely to arise in connection with one or more future Restrictions of Use or that mitigating actions should be contemplated, the parties shall where reasonably practicable engage in discussions on any options for mitigating costs, revenue loss and/or disruption including any advance compensation for such Restriction(s) of Use to the extent such advance compensation would or would reasonably be expected to facilitate the mitigation of the contemplated disruption. Nothing in this Agreement shall prevent Network Rail and the Train Operator agreeing any options for mitigating costs and disruption in respect of any Restriction(s) of Use. Unless otherwise agreed, the timescales for claiming RoU Liability shall still apply.

### 2.12 Over-runs

- (a) An over-run ("Over-run") occurs where:
  - (i) there is a Restriction of Use which is not an Operator Restriction of Use (the "First Restriction"); and
  - (ii) following the end of the relevant period of difference between timetables referred to in sub-paragraphs (a) and (b) of the definition of Restriction of Use which served to establish the existence of that Restriction of Use (the "First Restriction Period"), there is either:
    - (A) a further period of at least one hour during which Services are Disrupted due to (1) any incident attributed under Schedule 8 to circumstances arising from any restriction of operation of the Network which are a consequence of the First Restriction or (2) any act or omission in connection with any activities planned or undertaken which are directly attributable to the First Restriction (including any failure to remove the First Restriction by the time scheduled for its removal in the Applicable Engineering Access Statement) but excluding any act or omission by the Train Operator for which it would be allocated responsibility under this Contract (the "Unplanned Over-run Period"); and/or
    - (B) a further Restriction of Use is taken which is at the same location as all or part of the First Restriction and directly connected with or attributable to any activities undertaken or planned to be undertaken under the First Restriction (a "Further Restriction"),

in each case without there being any intervening period between the First Restriction and the relevant Unplanned Over-run Period or Further Restriction, which is not either a White Period, Unplanned Over-run Period or a Further Restriction.

- (b) Where a Restriction of Use is subject to one or more Over-runs, then the entire duration from the start of the First Restriction to the end of the last Over-run in respect of the Restriction of Use shall be treated as making up a single Restriction of Use.
- (c) This paragraph 2.12 shall not result in any Unplanned Over-run Period being subject to either revenue loss compensation for Network Rail Restrictions of Use under paragraph 3 or costs compensation for Network Rail Restrictions of Use under paragraph 4.

### **3 Notional revenue loss for Network Rail Restrictions of Use**

#### **3.1 *Basis for calculations***

For each Period and for each Service Group, Network Rail shall calculate the notional revenue loss in respect of all Network Rail Restrictions of Use on each Restriction of Use Day in that Period by applying, in accordance with paragraphs 3.2 and 3.3, the formulae in paragraphs 3.4, 3.5 and 3.6. For the purposes of determining for this paragraph 3 to which Service Group a particular Train is allocated, a Train (or portion of a Train) shall be treated as allocated to a particular Service Group by reference to its Service Code, provided that where a particular Train (or portion of a Train) is given a different Service Code in the New Working Timetable from the Service Code given to it in the Applicable Timetable or a different Service Code in the Corresponding Day Timetable from the Service Code given to it in the New Working Timetable it shall be treated as part of the Service Group in relation to whichever of those Service Codes most correctly applies to that Train or, where both Service Codes could equally apply to that Train, to the Service Code applied to that Train in the New Working Timetable.

#### **3.2 *Separate calculations***

In applying the formula in paragraph 3.4, Network Rail shall calculate the notional revenue loss separately in respect of all:

- (a) Network Rail Restrictions of Use which are taken into account in the New Working Timetable; and
- (b) Network Rail Restrictions of Use which are not so taken into account but are taken into account in the Applicable Timetable.

#### **3.3 *Meaning of T1 and T2***

In paragraph 3.4:

- (a) where Network Rail is making the calculation for the purpose of paragraph 3.2(a), T1 shall mean the Corresponding Day Timetable and T2 shall mean the New Working Timetable for the Restriction of Use Day; and

- (b) where Network Rail is making the calculation for the purpose of paragraph 3.2(b), T1 shall mean the New Working Timetable for the Restriction of Use Day and T2 shall mean the Applicable Timetable for the Restriction of Use Day.

### 3.4 Formula

The formula referred to in paragraph 3.1 is as follows:

$$RP = \Sigma((WACM + NREJT) \bullet BF \bullet MRE \bullet NF)$$

where:

- (a)  $\Sigma$  is the sum across all Network Rail Restrictions of Use and all Restriction of Use Days in the Period;
- (b) WACM is the weighted average of Cancellation Minutes for the Service(s) (or part(s) thereof) in that Service Group as a result of a Network Rail Restriction of Use, calculated according to the following formula:

$$WACM = (CM - NRPP) \bullet \Sigma \frac{(MPW \bullet CS)}{SS}$$

where:

CM is the Cancellation Minutes for the Service Group in question specified in column J of Appendix 1 to Schedule 8;

NRPP is the Network Rail performance point for the Service Group in question specified in column B of Appendix 1 to Schedule 8;

$\Sigma$  is the sum across all Monitoring Points in the Service Group;

MPW is the weighting attributable to the Monitoring Point, as specified in column O of Appendix 1 to Schedule 8;

CS is the number by which the number of stops at that Monitoring Point scheduled for that day in T2 is less than SS as a result of the Network Rail Restriction of Use; and

SS is the number of stops at the Monitoring Point scheduled for that day in T1;

- (c) NREJT is the extended Journey Time as a result of a Network Rail Restriction of Use in respect of Services in that Service Group, for the Restriction of Use Day, being Services which are not cancelled, calculated according to the following formula:

$$NREJT = EJT \bullet (1 - \Sigma \frac{(MPW \bullet CS)}{SS})$$

where:

$\Sigma$ , MPW, CS and SS have the meanings ascribed to them in paragraph 3.4(b) above; and

EJT is the extended Journey Time as a result of a Network Rail Restriction of Use in respect of Services in that Service Group calculated according to the following formula:

if no Train in that Service Group is scheduled in T2 for that day, then EJT shall equal 0;

if otherwise,

EJT is the lesser of:

(i) the number of minutes specified as the Cap for the Service Group in column K of Appendix 1 to Schedule 8; and

(ii)  $AJT \bullet ((u-v)/v)$ ,

provided always that if v equals or is greater than u, EJT shall equal 0;

where:

AJT is the average Journey Time for Trains in the Service Group scheduled for that day in T1, and shall be equal to the aggregate of the Journey Times scheduled in T1 in respect of such Trains divided by the aggregate number of Journeys scheduled in T1 in respect of such Trains;

u is the average speed of Trains in the Service Group scheduled for that day in T1, and shall be equal to the aggregate of the number of miles scheduled to be run in T1 by such Trains divided by the aggregate of the Journey Times scheduled in T1 in respect of such Trains; and

v is the speed to which the average speed of Trains in the Service Group scheduled for that day in T2 is reduced as a result of the Network Rail Restrictions of Use (calculated by reference to the aggregate of the number of miles which such Trains are scheduled to run in T2 divided by the aggregate of the end to end Journey Times scheduled in T2 in respect of such Trains),

and for the purposes of this paragraph 3.4:

“Journey”

means the journey of the Train scheduled in the relevant timetable from its station of origin to its destination station; provided that if a Train crosses a Service Group boundary then in respect of each Service Group the Train’s station of origin and destination station shall respectively mean the station at which the Train commences that part of its journey in that Service Group and the station at which it ends that part of its journey in that Service Group; and that where any Train splits to become more than one Train then that part of the Train’s journey up to the station where it splits shall be treated as one journey and each Train into which the Train splits shall be treated as making a separate journey; and

“Journey Time”

shall be calculated in respect of each journey by reference to the difference in minutes between the time of departure from the station of origin and the time of arrival at the destination station;

- (d) BF is the busyness factor, as calculated for each Service Group according to the following formula:

$$BF = \frac{\sum (MPW \bullet SS)}{AS}$$

where:

AS is the average number of stops at the Monitoring Point (being the Monitoring Point referred to in the definition of MPW) per day scheduled in the Tri-annual Timetable; and

MPW and SS have the meanings ascribed to them in paragraph 3.4(b); and

- (e) MRE is the marginal revenue effect specified in column C of Appendix 1 to Schedule 8, as indexed according to the relevant provisions of Schedule 8.

### 3.5 *High Speed Diversions*

Where there is a High Speed Diversion and WACM, as defined in paragraph 3.4(b), has a value equal to or less than zero then the following formula shall apply:

$$ANRP = \frac{TDR_{SG}}{TDT_{SG}} \bullet (CM - NRPP) \bullet MRE \bullet BF \bullet NF$$

where:

ANRP is the additional Network Rail payment;

TDR<sub>SG</sub> is, in respect of each Service Group and each Restriction of Use Day on which a High Speed Diversion applies, the number of Trains in the Service Group scheduled in T2 to be subject to the High Speed Diversion;

TDT<sub>SG</sub> is the total number of Trains scheduled to be run in the Service Group in T1;

T1 and T2 shall have the meanings ascribed to them in paragraph 3.3; and

CM, NRPP, MRE and BF shall have the meanings ascribed to them in paragraph 3.4.

In such a situation, the Train Operator shall provide Network Rail with evidence, either that the High Speed Diversion has been common for the Services in question in the past or that the High Speed Diversion would arise as a result of a change in circumstances.

In default of agreement, in relation to the adequacy of such evidence, between the Train Operator and Network Rail within 28 days after the New Working Timetable is issued reflecting the relevant Network Rail Restriction of Use, the mechanism and procedure for dispute resolution set out in paragraphs 13.2, 13.3 and 13.4 shall apply.

### 3.6 *Train-Bus-Train Patterns*

If any Service Group on any day is subject to a Train-Bus-Train Pattern on account of a Network Rail Restriction of Use, and where WACM, as defined in paragraph 3.4(b), has a

value equal to or less than zero, then Network Rail shall pay to the Train Operator an additional payment calculated as follows:

$$\text{ANRP} = \frac{\text{TTS}_{\text{SG}}}{\text{TTR}_{\text{SG}}} \bullet (\text{CM} - \text{NRPP}) \bullet \text{DV} \bullet \text{MRE} \bullet \text{BF} \bullet \text{NF}$$

where:

ANRP is the additional Network Rail payment;

TTSSG is the total number of Trains scheduled in T2 to be run in the Service Group for that Restriction of Use Day to terminate at a destination other than that shown for those Trains due to a Train-Bus-Train Pattern in T1;

TTR<sub>SG</sub> is the total number of Trains scheduled to be run in the Service Group in T1;

T1 and T2 shall have the meanings ascribed to them in paragraph 3.3;

CM, NRPP, MRE and BF shall have the meanings ascribed to them in paragraph 3.4; and

DV shall have the value of 0.125,

provided that if:

TTR<sub>SG</sub> is less than TTS<sub>SG</sub> then  $\frac{\text{TTS}_{\text{SG}}}{\text{TTR}_{\text{SG}}}$  shall be deemed to have the value of one.

In such a situation the Train Operator shall provide Network Rail with evidence, either that the Train-Bus-Train Pattern resulting from the Network Rail Restriction of Use is an arrangement that has been commonly used in the past by that Train Operator on the Services in question, or that it has arisen due to a change in circumstances.

In default of agreement, in relation to the adequacy of such evidence, between the Train Operator and Network Rail within 28 days after the New Working Timetable is issued reflecting the relevant Network Rail Restriction of Use, the mechanism and procedure for dispute resolution set out in paragraphs 13.2, 13.3 and 13.4 shall apply.

## **4 Notional costs consequent on Network Rail Restrictions of Use**

### **4.1 Basis for calculations**

For each Period and for each Service Group, Network Rail shall calculate the notional costs of all Network Rail Restrictions of Use on each Restriction of Use Day in that Period by applying the formulae in paragraph 4.2. For the purposes of determining for this paragraph 4 to which Service Group a particular Train is allocated, a Train (or portion of a Train) shall be treated as allocated to a particular Service Group by reference to its Service Code<sup>3</sup>, provided that where a particular Train (or portion of a Train) is given a different Service Code in the New Working Timetable from the Service Code given to it in the Applicable Timetable or a different Service Code in the Corresponding Day Timetable from the Service Code given to it in the New Working Timetable it shall be treated as part of the Service Group in relation to whichever of

those Service Codes most correctly applies to that Train or, where both Service Codes could equally apply to that Train, to the Service Code applied to that Train in the New Working Timetable.

#### 4.2 *Notional cost calculation formula*

The formula referred to in paragraph 4.1 is as follows:

$$\text{Notional cost} = \sum (\text{RRBC} + \text{TMC})$$

where:

where:

- (a)  $\sum$  is the sum across all applicable Network Rail Restrictions of Use and all Restriction of Use Days in the Period;
- (b) RRBC is the rail replacement bus cost, for the Service(s) (or part(s) thereof) in that Service Group as a result of a Network Rail Restriction of Use, calculated according to the following formula:

$$\text{RRBC} = \text{EBM} \times \text{EBMPR}$$

EBM is the number of estimated bus miles for the Operator; and

EBMPR is the payment rate per EBM, which is £[●].

If there is full bus replacement

$$\text{EBM} = \text{EBMW} \times \text{FBRmiles}$$

If there is partial bus replacement

$$\text{EBM} = \text{EBMW} \times 0.5 \text{ miles} \times \text{PBRmiles} \times \text{ITS}$$

where:

EBMW is the weighting applicable to the affected section of route, as set out in Annex B to this Part 3 of Schedule 4;

FBRmiles is the length of route, in miles, between the applicable pair of Viable Transfer Points over which train services are affected and for which full bus replacement is required as set out in Annex B to this Part 3 of Schedule 4;

PBRmiles is the length of route, in miles, between the applicable pair of Viable Transfer Points over which train services are affected and for which partial bus replacement is required as set out in Annex B to this Part 3 of Schedule 4;

ITS is 1 or the percentage of trains stopping at intermediate stations for those cases where EBMW = 50%.  
and

- (c) TMC is the cost or saving resulting from train mileage change, for the Service(s) (or part(s) thereof) in that Service Group as a result of a Network Rail Restriction of Use, calculated according to the following formula:

$$\text{TMC} = \text{TM} \times \text{TMPR}$$

where:

TM is the change in train mileage; and

TMPR is the payment rate per train mile, as stipulated in Annex C to this Part 3 of Schedule 4.

## **5 Estimated Bus Miles change mechanism<sup>4</sup>**

### **5.1 *Circumstances in which parties agree to amend Annex B***

Either party may by notice to the other propose that Annex B be amended in accordance with this paragraph 5.

### **5.2 *Procedure for amendments to Annex B***

- (a) The party who wishes to amend Annex B shall notify the other party of any such proposed change and the date from which it proposes that such change will have effect:
- (i) where such change relates to a forthcoming timetable change, on or before the first day of the month which falls 6 months before the relevant Principal Change Date or Subsidiary Change Date on which that timetable change is due to occur; and

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<sup>4</sup> In due course ORR expects to include some guidance in its Criteria and Procedures on the circumstances when it would usually expect to approve changes under this paragraph

- (ii) in any other case prior to the date from which it proposes such change shall have effect.
- (b) Any notice under sub-paragraph 5.2(a) shall specify as far as possible that party's proposed amendments to Annex B. Promptly following the service of any such notice the parties shall endeavour to agree whether Annex B should be amended in accordance with this paragraph 5 and if so the amendments.
- (c) If the parties fail to reach agreement within 90 days after service of the relevant notice, or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, the matter shall be referred for expert determination in accordance with Part D of the Access Dispute Resolution Rules save that:
  - (i) the parties shall each request that the expert's determination in writing is delivered to the parties no later than 56 days after the date of referral of the matter to the expert, and that the expert establishes such rules and procedures for the conduct of the determination as he sees fit having regard to that timescale;
  - (ii) each of the parties shall abide by the rules and procedures established by the expert; and
  - (iii) the parties shall direct the expert to have regard to any relevant criteria issued by the Office of Rail Regulation.
- (d) Any amendment to Annex B shall take effect only when it has been approved by ORR under section 22 of the Act. Accordingly, as soon as reasonably practicable after any such amendment is agreed or determined in accordance with this paragraph 5, the parties shall use all reasonable endeavours to ensure that ORR is furnished with such amendment and sufficient information and evidence as it shall require to determine whether or not to approve the amendment.
- (e) Any amendment to Annex B shall apply with effect from:
  - (i) the relevant Principal Change Date or Subsidiary Change Date (where paragraph 5.2 (a) (i) applies); or
  - (ii) subject to paragraph 5.2 (d) the date proposed by the party requesting the change in accordance with paragraph 5.2 (a) (ii) (unless otherwise agreed by the parties or determined by the expert in relation to the change).

### 5.3 *Costs of implementing amendment*

The party proposing the amendment to Annex B shall (subject to any determination of an expert as to costs, where a matter is referred to that expert under paragraph 5.2(c)) pay 90 percent of costs incurred by or on behalf of the other party in assessing and implementing the amendments to Annex B, provided that those costs shall be the minimum reasonably necessary to assess and implement that amendment.

## **6 Not Used**

## **7 RoU Liability compensation for Type 3 Restrictions of Use**

### *7.1 Compensation arrangements*

- (a) Following receipt of an RoU Claim Notice in respect of a Type 3 Restriction of Use, Network Rail and the Train Operator shall (if they have not already done so) commence negotiations in respect of the RoU Liability compensation to be paid by Network Rail to the Train Operator in respect of the Type 3 Restriction of Use and, subject to paragraph 10, shall continue such negotiations in good faith until they are concluded.
- (b) Once the compensation referred to in paragraph 7.1(a) has been agreed or determined the compensation to be paid by Network Rail to the Train Operator shall be the full amount of the RoU Liability actually incurred by the Train Operator less any amounts received by the Train Operator from Network Rail in respect of such Restriction of Use (including in respect of the period of any Unplanned Over-run Period as referred to in paragraph 2.12(a)(ii) (A) any amounts under Schedule 8).
- (c) Network Rail shall include in the statement provided by it in respect of each Period under paragraph 13.1(a) details of the compensation agreed or determined under this paragraph 7 and paragraph 10 to be payable in respect of any Type 3 Restriction of Use taken in that Period and that compensation shall be due and payable by the relevant party to the other in accordance with paragraph 13.1.

## **8 Sustained Planned Disruption payments**

### *8.1 Payment arrangements*

- (a) Following an agreement or determination that a Sustained Planned Disruption has occurred during an SPD Period, Network Rail and the Train Operator shall (if they have not already done so) commence negotiations in respect of the RoU Liability compensation to be paid by Network Rail to the Train Operator in respect of the Restrictions of Use during the relevant SPD Period and, subject to paragraph 10, shall continue such negotiations in good faith until they are concluded.
- (b) Once the compensation referred to in paragraph 8.1(a) has been agreed or determined the compensation to be paid by Network Rail to the Train Operator in respect of the Restrictions of Use during the relevant SPD Period shall be the full amount of the RoU Liability actually incurred by the Train Operator less any amounts received by the Train Operator from Network Rail in respect of such Restrictions of Use (including in respect of the period of any Unplanned Over-run Period as referred to in paragraph 2.12(a)(ii)(A) any amounts under Schedule 8).
- (c) Following any agreement or determination of an amount to be paid by Network Rail to the Train Operator in respect of a Sustained Planned Disruption that amount shall (subject to the terms of any compensation arrangements agreed in writing between the parties) be due and payable by Network Rail to the Train Operator in accordance with paragraph 13.1.

- (d) Where a Sustained Planned Disruption applies due to a circumstance which it is agreed or determined affects a part only of the Train Operator's services (including whether by reference to geographic location or Service Group), then in agreeing or determining the RoU Liability in respect of that SPD the RoU Liability in respect of the part of the Train Operator's services not affected by that circumstance shall (unless otherwise proven) be presumed to be equal to the payments made under paragraphs 3 and 4 of this Schedule 4 in respect of those other services.

## **9 Notification Factors**

### **9.1 *Early notification***

The Notification Factor in respect of a Network Rail Restriction of Use in respect of any Service Group shall have the value specified for that Service Group in column C of Annex A to this Part 3 if and to the extent that:

- (a) the Network Rail Restriction of Use is reflected in the New Working Timetable; or
- (b)
  - (i) details of the Network Rail Restriction of Use are notified to the Train Operator on or before D-26 for the Timetable Period in respect of the Restriction of Use Day but, at the request of the Train Operator (as accepted by Network Rail), are not reflected in the New Working Timetable; and
  - (ii) subject to paragraph 9.1(b)(iii), the Network Rail Restriction of Use is reflected in the Working Timetable as entered into the train service database at 22:00 hours on the day which is 12 Weeks before the Restriction of Use Day; or
  - (iii) where paragraph 9.1(b)(ii) does not apply because the Train Operator has failed to give Network Rail a Revised Access Proposal in accordance with Condition D4.8.3, the Network Rail Restriction of Use is reflected in the Applicable Timetable in respect of the Restriction of Use Day.

### **9.2 *Notification TW-22***

The NF in respect of a Network Rail Restriction of Use in respect of any Service Group shall have the value specified for that Service Group in column D of Annex A to this Part 3 if and to the extent that paragraph 9.1 does not apply, and:

- (a) details of the Network Rail Restriction of Use are notified to the Train Operator by TW-22; and
- (b)
  - (i) the Network Rail Restriction of Use is reflected in the Working Timetable as entered into the train service database at 22:00 hours on the day which is 12 Weeks before the Restriction of Use Day; or
  - (ii) where paragraph 9.2(b)(i) does not apply because the Train Operator has failed to give Network Rail a Revised Access Proposal in accordance with Condition D3.9.4, the Network Rail Restriction of Use is reflected in the Applicable Timetable in respect of the Restriction of Use Day.

### 9.3 *Late Notification*

The NF in respect of a Network Rail Restriction of Use in respect of any Service Group shall have the value specified for that Service Group in column E of Annex A to this Part 3 if and to the extent paragraphs 9.1 and 9.2 do not apply but the Network Rail Restriction of Use is reflected in the Applicable Timetable, and includes where paragraph 9.1(b) or paragraph 9.2 would have been applicable but for a failure by Network Rail to fulfil the terms of paragraph 9.1(b)(ii) or paragraph 9.2(b)(i) respectively, notwithstanding the Train Operator having given a Revised Bid in accordance with Condition D3.9.4.

## 10 **Dispute resolution**

If the Train Operator and Network Rail fail to reach agreement as required under paragraph 2.6(c), 2.7(c), 2.10(g), 2.11, 6, 7 or 8 within 28 days following provision of the RoU Claim Notice, either party may notify the other that the dispute resolution procedure set out in paragraph 13.3 is to apply. Such procedure shall then apply in accordance with its terms (save that references to paragraph 13.2 shall be construed as being references to this paragraph 10).

## 11 **Schedule 8 application**

If and to the extent that a Network Rail Restriction of Use is not reflected in the Applicable Timetable for the Restriction of Use Day, the amount of compensation (if any) shall be calculated in accordance with Schedule 8 (to the exclusion of any compensation under this Schedule 4 except as provided in paragraphs 2.12, 7 or 8..

## 12 **Restriction of Use Day and Corresponding Day**

### 12.1 *Information provision*

In respect of any Restriction of Use Day for which there is either notional revenue loss or notional costs to be calculated in a Period under paragraphs 3 and 4, Network Rail shall accurately record such information as it uses and as may properly and reasonably be required to make the calculations required under paragraphs 3 and 4 (including the determination of NF and the relevant version of the Working Timetable referred to in paragraph 9.1(b)(ii) or paragraph 9.2(b)(i). Network Rail shall maintain that information until the calculations required under paragraphs 3 and 4 in respect of that Period are finally agreed or determined and provide such information to the Train Operator at its reasonable request.

### 12.2 *Corresponding Day*

- (a) If, for the purpose of identifying a Corresponding Day, no day is found under paragraph (a), (b) or (c) of the definition “Corresponding Day” and the parties have failed to reach agreement on the Corresponding Day by the date falling eight Weeks before the relevant Timetable Change Date then either party may require that the identification of the Corresponding Day be resolved by the relevant ADRR Panel.
- (b) The relevant ADRR Panel’s remit shall be that it shall:
  - (i) reach a decision which is fair and reasonable; and

- (ii) identify the day in either any version of the Working Timetable or any version of the New Working Timetable on or before D-26 in either case which has been produced in accordance with the Network Code as at the Restriction of Use Day and which most closely reflects the Services which would have been scheduled on the first day (as that term is used in the definition of Corresponding Day save that in respect of any Restriction of Use lasting more than two Timetable Periods, the first day may occur in any year preceding the Timetable Period) but for Restrictions of Use reflected in the New Working Timetable for the first day; or
  - (iii) where a Corresponding Day cannot be identified in accordance with paragraph 12.2(b)(ii) above, determine a notional Corresponding Day. The relevant ADRR Panel may have regard, where appropriate, to any pattern of services which may reasonably be expected to be operated during the relevant period when the Restriction of Use is being taken in the event of the permanent absence of any Corresponding Day.
- (c) If either party is dissatisfied with the decision of the relevant ADRR Panel or the ruling of the Chairman (as the case may be), such party shall be entitled to refer the matter for arbitration, pursuant to Part C of the Access Dispute Resolution Rules (except that Condition C6.3 of those rules shall not apply).

## **13 Payment procedures**

### **13.1 Network Rail Restrictions of Use**

- (a) Within 14 days after the end of each Period, Network Rail shall provide to the Train Operator a statement (the "Day 42 Statement") showing:
- (i) all Network Rail Restrictions of Use taken during that Period;
  - (ii) any notional revenue losses and notional costs calculated in accordance with paragraphs 3 and/or 4 in respect of the Network Rail Restrictions of Use identified; and
  - (iii) following any agreement or determination in the Period referred to in paragraph 13.1(a) of any RoU Liability in respect of a Type 3 Restriction of Use or a Sustained Planned Disruption (as applicable), any payment to be made by Network Rail to the Train Operator,

in sufficient detail to enable the Train Operator to make an informed assessment thereof.

### **13.2 Disputes**

Within 10 days of receipt of a statement from Network Rail under paragraph 13.1, the Train Operator shall notify Network Rail of any aspects of the statement which it disputes, giving reasons for any dispute. Save to the extent that disputes are so notified, the Train Operator shall be deemed to have agreed the contents of the statement.

### **13.3 Dispute resolution**

The procedure for resolving disputes notified under paragraph 13.2 shall be as follows:

- (a) within seven days of service of any notice under paragraph 13.2, the parties shall meet to discuss the disputed aspects of the statement with a view to resolving all disputes in good faith;
- (b) if, within seven days of that meeting (the “first meeting”), the parties are for any reason still unable to agree the disputed aspects of the statement, each party shall promptly (and in any event within seven days) prepare a written summary of the disputed aspects of the statement and the reasons for each such dispute and shall submit the summaries to the senior officer of each party;
- (c) within 28 days of the first meeting, the senior officers shall meet with a view to resolving all disputes;
- (d) if no resolution results within 14 days of that meeting, either party may require that the matter be resolved by the relevant ADRR Panel; and
- (e) if either party is dissatisfied with the decision of the relevant ADRR Panel or the ruling of the Chairman (as the case may be), such party shall be entitled to refer the matter for arbitration, pursuant to Part C of the Access Dispute Resolution Rules (except that paragraph C6.3 of those rules shall not apply).

#### 13.4 *Payments in the event of a dispute*

Where any amount under paragraph 13.1 is in dispute:

- (a) the undisputed amount shall be paid in accordance with paragraph 13.1;
- (b) the disputed amount shall be paid within 28 days after the dispute is resolved or determined to the extent that the amount in dispute is adjudged or resolved to be payable; and
- (c) the disputed amount shall carry interest (incurred daily and compounded monthly) at the Default Interest Rate from the date on which such amount would but for such dispute have been due to be paid until the date of payment.

### 14 **Indexation**

14.1 The formula applicable to this paragraph 14 is:

$$R_t = R_{t-1} \left( 1 + \frac{RPI_{t-1}}{100} \right)$$

where:

$R_t$  is the relevant rate in the Relevant Year t;

$R_{t-1}$  is the relevant rate in the Relevant Year t-1; and

$RPI_{t-1}$  means the percentage change (whether of a positive or negative value) in the Retail Prices Index published or determined with respect to November in the Relevant Year t-1 and the index published or determined with respect to November in the Relevant Year t-2,

14.2 Each of the EBMPR and TMPR (respectively defined in paragraph 4.2) shall be adjusted in respect of Periods in Relevant Year t in accordance with the formula set out in paragraph 14.1

so that in relation to the Relevant Year commencing on 1 April 2014],  $R_t$  shall have the value specified in:

- (a) paragraph 4.2 in respect of the EBMPR; and
- (b) in Annex C to this Part 3 of Schedule 4 in respect of TMPR,

and in the next following Relevant  $R_{t-1}$  shall respectively have the same value.

- 14.3 Each of the SPD Cost Threshold No.1 and SPD Cost Threshold No.2 shall be adjusted in respect of Periods in Relevant Year  $t$  in accordance with the formula set out in paragraph 14.1 but so that in relation to the Relevant Year commencing on 1 April 2014  $R_t$  shall have the relevant value specified in paragraph 1.1 of this Schedule 4 and in the next following Relevant Year  $R_{t-1}$  shall respectively have the same value.

**Annex A to Part 3 of Schedule 4 – Notification discount factors**

Name of Service Group A	Service Group B	NFMRE		
		C By D-26	D By T-22	E After TW-22
• Euston - Leeds	• TBA	• TBA	• TBA	• TBA
• Euston - Bradford	• TBA	• TBA	• TBA	• TBA
• Euston - Blackpool	• TBA	• TBA	• TBA	• TBA
• Euston - Carlisle	• TBA	• TBA	• TBA	• TBA

## **Annex B to Part 3 of Schedule 4 – Lookup Table for EBM Weights**

[This Annex will be agreed bilaterally between Network Rail and the relevant train operator] TBA

### **Annex C to Part 3 of Schedule 4 – Payment Rate per train mile**

[This annex contains information which is confidential as between Network Rail and the relevant train operator.]TBA

**PART 4: NOT USED**

## PART 5: ACCESS CHARGE SUPPLEMENT FOR RESTRICTIONS OF USE

- 1 The Train Operator shall pay or procure the payment to Network Rail of an Access Charge Supplement for Restrictions of Use (ACSRU) in respect of each Period equal to 1/13 of the amount specified below (as indexed in accordance with paragraph 2) in respect of the Relevant Year commencing 1 April in which the first day of the relevant Period falls:

Year	£
2013-2014	[            ]

Each such payment shall be made within 35 days after the end of the relevant Period.

- 2 Each such amount specified in paragraph 1 shall be adjusted in respect of payments made relating to Periods in the Relevant Year  $t$  in accordance with the following formula:

$$ACSRU_{pt} = ACSRU_t \cdot \frac{(RPI_{t-1})}{RPI_{[2014]}}$$

where:

$ACSRU_{pt}$  is the actual amount payable in the Relevant Year  $t$ ;

$ACSRU_t$  is the relevant amount specified in paragraph 1 of this Part 5 for the Relevant Year  $t$  (before indexation);

$RPI_{t-1}$  means the Retail Prices Index published or determined with respect to November in the Relevant Year  $t-1$ ; and

$RPI_{[2014]}$  means the Retail Prices Index published or determined with respect to November 2014,

but so that in relation to the Relevant Year commencing on 1 April 2014,  $ACSRU_t$  shall have the relevant value specified in the relevant column of the table in paragraph 1.

## SCHEDULE 5: THE SERVICES AND THE SPECIFIED EQUIPMENT

### 1 Definitions

1.1 In this Schedule unless the context otherwise requires:

- “Additional Specified Equipment”** has the meaning ascribed to it in paragraph 5.2;
- “Calling Pattern”** means a list of stations related to one or more Passenger Train Slots, at which stops are to be Scheduled in the Working Timetable;
- “Clockface Departures”** means, in respect of any Service, a pattern whereby departures from the point of origin of that Service, or any specified intermediate point, are fixed at the same number or numbers of minutes past each hour;
- “Contingent Right”** means a right under this Schedule 5 which is not a Firm Right and which is subject to the fulfilment of all competing Exercised Firm Rights and any additional contingency specified in this Schedule 5
- “Day”** means any period of 24 hours beginning at 0200 hours and ending immediately before the next succeeding 0200 hours, and any reference in this Schedule to any named day of the week shall be to such period commencing on that named day;
- Exercised** has the meaning ascribed to it in Part D of the Network Code;
- “Fastest Key Journey Time”** means, in respect of a Key Journey, the corresponding Journey Time, if any, set out in column 4 of Table 6.2;
- “Firm Right”** means:
- (a) in the case of a Timetable Participant, a right under its regulated access agreement in respect of the number (or quantum) of Passenger Train Slots in any specified period (including rights to Passenger Train Slots in respect of additional trains or relief services), timing (including departure and arrival times, clockface requirements, first and last Passenger Train Slots, intervals between Passenger Train Slots, Journey Times and turnaround times), routing, Specified Equipment, Calling Patterns (including rights to vary them and rights to stop short of a terminal station), rights to use particular parts of railway facilities (such

as dedicated platforms at stations and routes to maintenance facilities), and for ancillary services, connection requirements, rights to Stable trains and any other characteristic of a train movement; and

- (b) in the case of Network Rail, a right under the Applicable Engineering Access Statement or the Applicable Timetable Planning Rules,

which, in either case, is not expressed to be a Contingent Right or to be subject to any contingency outside the control of the holder of the right but which is, in a case within paragraph (a) above, subject to:

- (i) the Applicable Engineering Access Statement;
- (ii) the Applicable Timetable Planning Rules;
- (iii) the exercise by Network Rail of any applicable Flexing Right; and
- (iv) the operation of any other provision of the Network Code;

**“Journey Time”** means the time in the Working Timetable to be taken by a Service in travelling between the specified departure point and specified destination for that Service (including Pathing Time, station dwell time, performance allowances, engineering recovery allowances and any other allowances as provided for in the Applicable Timetable Planning Rules and/or the Applicable Engineering Access Statement);

**“Journey Time Review Notice”** has the meaning ascribed to it in paragraph 7.5;

**“Key Journey”** means a Passenger Train Slot with the characteristics specified in the first, second and third columns of Table 6.2 or 6.3;

**“Key Journey Time”** means a Fastest Key Journey Time or a Maximum Key Journey Time;

**“Maximum Journey Time”** means, in respect of a Passenger Train Slot, the corresponding Journey Time, if any, set out in column 4 of Table 6.1;

**“Maximum Key Journey Time”** means, in respect of a Key Journey, the corresponding Journey Time, if any, set out in column 4 of Table 6.3;

**“Modification Notice”** has the meaning ascribed to it in paragraph 7.10;

**“Network Change”** has the meaning ascribed to it in Part G of the Network Code;

**“Off-Peak Services”** means Services Scheduled on any part of a Weekday which are not “Peak Services”, and “Off-Peak” shall be construed accordingly;

<b>“Passenger Train Slot”</b>	means a Train Slot intended by the Train Operator to be used for the provision of a Service;
<b>“Pathing Time”</b>	means additional time in the schedule of a train between two points, or at a single location, caused by the application of margins required by the Timetable Planning Rules between trains proceeding along or across the same piece of the Network;
<b>Peak Services”</b>	means Services Scheduled on any part of a Weekday (excluding Public Holidays) (i) to arrive at London Euston between 0700 hours and 1000 hours or (ii) to depart from London Euston between 1600 hours and 1900 hours, and “Peak” shall be construed accordingly <sup>5</sup> ;
<b>Period of 60 Minutes”</b>	means a period commencing at xx00 hours and ending immediately before the next succeeding xx00 hours;
<b>“Public Holiday<sup>6</sup>”</b>	means any day other than Saturday or Sunday on which the banks in the City of London are not open for business;
<b>“Regular Calling Pattern”</b>	has the meaning ascribed to it in paragraph 4.1;
<b>“regulated access agreement”</b>	means an access agreement as that term is defined in section 83 of the Act;
<b>“Scheduled”</b>	means, in relation to the quantum, timing or any other characteristic of a train movement, that quantum, timing or other characteristic as included in the applicable Working Timetable;
<b>Rolled Over Access Proposal</b>	means a Train Slot which was obtained in the Prior Working Timetable and no variation is sought in the New Working Timetable;
<b>“Service Group”</b>	means any one or more (as the context may require) of the service groups described in this Schedule;
<b>“Standard Specified Equipment”</b>	means, in respect of any Service, the Specified Equipment listed opposite that Service in column 2 of Table 5.1;
<b>“Timetable Period”</b>	means the period of time between (and including) one Timetable Change Date and (but excluding) the immediately succeeding Timetable Change Date;
<b>“Train Service Code” or “TSC”</b>	means the eight character code applied in the Performance Monitoring System and used to identify Services;
<b>“Weekday”</b>	means any day (including, except for the purposes of paragraphs 6 and 7, a Public Holiday) which is not a

Saturday or Sunday; and

**“xx20”** means, as an example of this notation, 20 minutes past the hour.

- 1.2 Unless otherwise stated, where in this Schedule a period is expressed to be between two specific times that period shall be inclusive of both such times.
- 1.3 The Train Operator's rights under this Schedule as to numbers of Passenger Train Slots per Day are calculated by reference to departures from the Scheduled start point on the Day in question, notwithstanding that a Passenger Train Slot may not be Scheduled to arrive at its end point until the immediately succeeding Day.

## 2 Passenger Train Slots

1					2					
Service Group GNWR										
Service description					Passenger Train Slots					
From	To	Via	Description	TSC	Total Weekday	Peak times <sup>1</sup>		Off-Peak times <sup>2</sup>	Saturday	Sunday
						morning Peak	evening Peak			
London Euston	Leeds	Weedon, Stockport Huddersfield	1.1	<i>To be advised</i>	7	0	1	6	7	6
Leeds	London Euston	Huddersfield, Stockport Weedon	1.2	<i>To be advised</i>	6	1	0	5	7	6
London Euston	Bradford Interchange	Weedon, Warrington Bank Quay, Earlestown, Manchester Victoria, Rochdale, Halifax	1.3	<i>To be advised</i>	5	0	2	3	6	5
Bradford Interchange	London Euston	Halifax, Rochdale, Manchester Victoria, Earlestown, Warrington Bank Quay, Weedon	1.4	<i>To be advised</i>	6	0	0	6	6	5
Manchester Victoria	London Euston	Earlestown, Warrington Bank Quay, Weedon	1.5	<i>To be advised</i>	1	1	0	0	1	1
London Euston	Stockport	Weedon	1.6	<i>To be advised</i>	1	0	0	1	1	1
Crewe	London Euston	Weedon	1.7	<i>To be advised</i>	1	1	0	0	1	1
London Euston	Crewe	Weedon	1.8	<i>To be advised</i>	1	0	0	1	2	1
Crewe	Bradford Interchange	Manchester Victoria	1.9	<i>To be advised</i>	1	0	0	1	1	1

Bradford Interchange	Crewe	Manchester Victoria	1.10	<i>To be advised</i>	2	0	0	2	2	2
Crewe	Leeds	Huddersfield	1.11	<i>To be advised</i>	2	0	0	2	2	2
Leeds	Crewe	Huddersfield	1.12	<i>To be advised</i>	2	0	0	2	2	2
London Euston	Milton Keynes Central		1.13	<i>To be advised</i>	1	0	1	0	0	0
Milton Keynes Central	London Euston		1.14	<i>To be advised</i>	1	0	0	1	0	0
London Euston	Blackpool North	Weedon, Tamworth, Madeley, Warrington Bank Quay, Earlestown, Preston	2.1	<i>To be advised</i>	5	0	1	4	5	4
Blackpool North	London Euston	Preston, Earlestown, Warrington Bank Quay, Madeley, Tamworth, Weedon	2.2	<i>To be advised</i>	5	1	0	4	5	4
Crewe	Blackpool North	Earlestown, Preston	2.3	<i>To be advised</i>	1	0	0	1	1	1
Blackpool North	Crewe	Preston, Earlestown	2.4	<i>To be advised</i>	1	0	0	1	1	1
London Euston	Carlisle	Weedon, Madeley, Warrington Bank Quay, Earlestown, Preston, Ulverston, Whitehaven	3.1	<i>To be advised</i>	3	0	0	3	3	0
Carlisle	London Euston	Whitehaven, Ulverston, Preston, Earlestown, Warrington Bank Quay, Madeley, Weedon	3.2	<i>To be advised</i>	3	0	0	3	3	0
Crewe	Carlisle	Earlestown, Preston, Ulverston, Whitehaven	3.3	<i>To be advised</i>	1	0	0	1	1	0
Carlisle	Crewe	Whitehaven, Ulverston, Preston, Earlestown	3.4	<i>To be advised</i>	1	0	0	1	1	0

London Euston	Whitehaven	Weedon, Madeley, Warrington Bank Quay, Earlestown, Preston, Penrith	3.5	<i>To be advised</i>	0	0	0	0	0	1
Whitehaven	London Euston	Penrith, Preston, Earlestown, Warrington Bank Quay, Madeley, Weedon	3.6	<i>To be advised</i>	0	0	0	0	0	1
London Euston	Barrow-in-Furness	Weedon, Madeley, Warrington Bank Quay, Earlestown, Preston, Ulverston	3.7	<i>To be advised</i>	0	0	0	0	0	1
Barrow-in-Furness	London Euston	Ulverston, Preston, Earlestown, Warrington Bank Quay, Madeley, Weedon	3.8	<i>To be advised</i>	0	0	0	0	0	1

Notes to Table:

<sup>1</sup> Peak times – arriving Euston between 0800 and 1029, departing Euston between 1630 and 1859

<sup>2</sup> Off-Peak times - arriving at and departing from a relevant station outside Peak times

- 2.1 The Train Operator has Firm Rights to the number of Passenger Train Slots in the Working Timetable in respect of a Service Group as listed against each Service specified in Table 2.1 under the heading "Passenger Train Slots" and on the Days and within the Peak and Off-Peak times so listed. Passenger Train Slots listed under the sub-headings "Peak times" and "Off-Peak times" are the constituent parts of, and are not in addition to, those listed under the sub-heading "Total Weekday".
- 2.2 Not used
- 2.3 Not used

*Table 2.2:*

*Not used*

- 2.4 Not used
- 2.5 Not used
- 2.6 The Train Operator has Firm Rights to make Ancillary Movements of Specified Equipment to the extent necessary or reasonably required to give full effect to the other Firm Rights of the Train Operator, including:
  - (a) movements for the purpose of maintenance of rolling stock to and from the maintenance depots listed in Schedule 2;
  - (b) movements for driver training purposes; and
  - (c) empty stock movements.
- 2.7 For the purpose of paragraph 2.6, Ancillary Movements shall not include movements of rolling stock for the purpose of testing or driver training to the extent that:
  - (a) the rolling stock concerned has not achieved vehicle and route acceptance necessary for its use in the carriage of passengers on the Route in question; or
  - (b) where the Route in question is not used by the Train Operator for carriage of passengers, the rolling stock concerned has not achieved vehicle and route acceptance necessary to operate on the Route without passengers on board.
- 2.8 Not used
- 2.9 No services will operate on 25/26 December
- 2.10 Services on Public Holidays shall be operated in accordance with the normal Saturday timetable
- 2.11 The exercise of a Stabling right shall not count against the number of Passenger Train Slots listed in Table 2.1.

### **3 Intervals**

**Not Used**

- 3.1 Not Used
- 3.2 Not used
- 3.3 Not Used
- 3.4 Not Used

*Table 3.2: Not used*

3.5 Not used

3.6 Not used

3.7 Not used

*Table 3.3: Not used*

3.8 Not used

## 4 Calling Patterns<sup>7</sup>

Table 4.1: Calling Patterns

1					2	3
<b>Service Group GNWR</b>						
<b>Service description</b>						
From	To	Via	Description	TSC	Regular Calling Pattern	Additional stations
London Euston	Leeds	Weedon, Stockport, Huddersfield	1.1	<i>To be advised</i>	Stalybridge, Huddersfield	Milton Keynes Central, Rugby, Nuneaton, Tamworth, Lichfield Trent Valley, Crewe, Alderley Edge, Macclesfield, Stockport, Dewsbury
Leeds	London Euston	Huddersfield, Stockport, Weedon	1.2	<i>To be advised</i>	Dewsbury, Huddersfield, Stockport	Stalybridge, Alderley Edge, Crewe, Macclesfield, Lichfield Trent Valley, Tamworth, Nuneaton, Rugby, Milton Keynes Central
London Euston	Bradford Interchange	Halifax, Rochdale, Manchester Victoria, Earlestown, Warrington Bank Quay, Weedon	1.3	<i>To be advised</i>	Warrington Bank Quay, Newton-le-Willows, Eccles, Manchester Victoria, Rochdale, Hebden Bridge, Halifax	Milton Keynes Central, Nuneaton, Crewe, Winsford, Todmorden
Bradford Interchange	London Euston	Weedon, Warrington Bank Quay, Earlestown, Manchester Victoria, Rochdale, Halifax	1.4	<i>To be advised</i>	Halifax, Hebden Bridge, Rochdale, Manchester Victoria	Todmorden, Eccles, Newton-le-Willows, Warrington Bank Quay, Winsford, Crewe, Lichfield Trent Valley, Tamworth, Nuneaton, Rugby, Milton Keynes Central

<sup>7</sup> [\[Note that the Calling Pattern is indicative of the validated timetable work\]](#)

1					2	3
<b>Service Group GNWR</b>						
<b>Service description</b>						
<b>From</b>	<b>To</b>	<b>Via</b>	<b>Description</b>	<b>TSC</b>	<b>Regular Calling Pattern</b>	<b>Additional stations</b>
Manchester Victoria	London Euston	Earlestown, Warrington Bank Quay, Weedon	1.5	<i>To be advised</i>	Eccles, Newton-le-Willows, Warrington Bank Quay, Crewe, Lichfield Trent Valley, Tamworth, Nuneaton	Winsford, Milton Keynes Central
London Euston	Stockport	Weedon	1.6	<i>To be advised</i>	Milton Keynes Central, Crewe, Alderley Edge	
Crewe	London Euston	Weedon	1.7	<i>To be advised</i>	Rugby, Milton Keynes Central	Lichfield Trent Valley, Tamworth, Nuneaton
London Euston	Crewe	Weedon	1.8	<i>To be advised</i>		Milton Keynes Central, Rugby, Nuneaton, Tamworth, Lichfield Trent Valley
Crewe	Bradford Interchange	Manchester Victoria	1.9	<i>To be advised</i>	Warrington Bank Quay, Newton-le-Willows, Eccles, Manchester Victoria, Rochdale, Hebden Bridge, Halifax	Todmorden, Winsford
Bradford Interchange	Crewe	Manchester Victoria	1.10	<i>To be advised</i>	Halifax, Hebden Bridge, Rochdale, Manchester Victoria, Newton-le-Willows, Warrington Bank Quay	Eccles, Winsford, Todmorden
Crewe	Leeds	Huddersfield	1.11	<i>To be advised</i>	Stalybridge, Huddersfield, Dewsbury	Alderley Edge, Stockport, Warrington Bank Quay, Newton-le-Willows, Eccles, Manchester Victoria
Leeds	Crewe	Huddersfield	1.12	<i>To be advised</i>	Dewsbury, Huddersfield, Stalybridge	Manchester Victoria, Newton-le-Willows, Warrington Bank Quay, Stockport, Alderley Edge

1					2	3
<b>Service Group GNWR</b>						
<b>Service description</b>						
<b>From</b>	<b>To</b>	<b>Via</b>	<b>Description</b>	<b>TSC</b>	<b>Regular Calling Pattern</b>	<b>Additional stations</b>
London Euston	Blackpool North	Weedon, Warrington Bank Quay, Preston	2.1	<i>To be advised</i>	Crewe, Warrington Bank Quay, Preston, Poulton-le-Fylde	Milton Keynes Central, Rugby, Nuneaton, Tamworth, Lichfield Trent Valley, Newton-le-Willows, Kirkham & Wesham
Blackpool North	London Euston	Preston, Warrington Bank Quay, Weedon	2.2	<i>To be advised</i>	Poulton-le-Fylde, Preston, Warrington Bank Quay, Crewe	Kirkham & Wesham, Newton-le-Willows, Lichfield Trent Valley, Tamworth, Nuneaton, Rugby, Milton Keynes Central
Crewe	Blackpool North	Earlestown, Preston	2.3	<i>To be advised</i>	Warrington Bank Quay, Newton-le-Willows, Preston, Poulton-le-Fylde	Winsford, Kirkham & Wesham
Blackpool North	Crewe	Preston, Earlestown	2.4	<i>To be advised</i>	Poulton-le-Fylde, Preston, Newton-le-Willows, Warrington Bank Quay	Kirkham & Wesham, Winsford
London Euston	Carlisle	Weedon, Warrington Bank Quay, Preston, Ulverston, Whitehaven	3.1	<i>To be advised</i>	Crewe, Warrington Bank Quay, Preston, Lancaster, Carnforth, Ulverston, Barrow-in-Furness, Millom, Sellafield, Whitehaven, Workington, Maryport, Wigton	Milton Keynes Central, Rugby, Nuneaton, Tamworth, Lichfield Trent Valley, Newton-le-Willows
Carlisle	London Euston	Whitehaven, Ulverston, Preston, Warrington Bank Quay, Weedon	3.2	<i>To be advised</i>	Wigton, Maryport, Workington, Whitehaven, Sellafield, Millom, Barrow-in-Furness, Ulverston, Carnforth, Lancaster, Preston, Warrington Bank Quay, Crewe	Newton-le-Willows, Lichfield Trent Valley, Tamworth, Nuneaton, Rugby, Milton Keynes Central

1					2	3
Service Group GNWR						
Service description						
From	To	Via	Description	TSC	Regular Calling Pattern	Additional stations
Crewe	Carlisle	Warrington Bank Quay, Preston, Ulverston, Whitehaven	3.3	<i>To be advised</i>	Warrington Bank Quay, Preston, Lancaster, Carnforth, Ulverston, Barrow-in-Furness, Millom, Sellafield, Whitehaven, Workington, Maryport, Wigton	Winsford, Newton-le-Willows
Carlisle	Crewe	Whitehaven, Ulverston, Preston, Warrington Bank Quay	3.4	<i>To be advised</i>	Wigton, Maryport, Workington, Whitehaven, Sellafield, Millom, Barrow-in-Furness, Ulverston, Carnforth, Lancaster, Preston, Warrington Bank Quay	Newton-le-Willows, Winsford
London Euston	Whitehaven	Weedon, Warrington Bank Quay, Preston, Penrith	3.5	<i>To be advised</i>	Crewe, Warrington Bank Quay, Preston, Lancaster, Carlisle, Wigton, Maryport, Workington	Milton Keynes Central, Rugby, Nuneaton, Tamworth, Lichfield Trent Valley, Newton-le-Willows
Whitehaven	London Euston	Penrith, Preston, Warrington Bank Quay, Weedon	3.6	<i>To be advised</i>	Workington, Maryport, Wigton, Carlisle, Lancaster, Preston, Warrington Bank Quay, Crewe	Newton-le-Willows, Lichfield Trent Valley, Tamworth, Nuneaton, Rugby, Milton Keynes Central
London Euston	Barrow-in-Furness	Weedon, Warrington Bank Quay, Preston, Ulverston	3.7	<i>To be advised</i>	Crewe, Warrington Bank Quay, Preston, Lancaster, Carnforth, Ulverston	Milton Keynes Central, Rugby, Nuneaton, Tamworth, Lichfield Trent Valley, Newton-le-Willows
Barrow-in-Furness	London Euston	Ulverston, Preston, Earlestown, Warrington Bank Quay, Weedon	3.8	<i>To be advised</i>	Ulverston, Carnforth, Lancaster, Preston, Warrington Bank Quay, Crewe	Newton-le-Willows, Lichfield Trent Valley, Tamworth, Nuneaton, Rugby, Milton Keynes Central

### *Regular Calling Pattern*

4.1 In respect of each Service specified in column 1 of Table 4.1, the Train Operator has Firm Rights to the corresponding Calling Pattern listed in column 2 of that Table (the “Regular Calling Pattern”).

### *Reduced calls*

4.2 Subject to paragraph 4.3, if the Train Operator’s Access Proposal or Rolled Over Access Proposal in respect of any Passenger Train Slot contains a Calling Pattern which excludes any one or more of the stations (the “Excluded Stations”) listed in:

(a) the relevant Service’s Regular Calling Pattern; or

(b) any relevant Calling Pattern in Tables 6.1, 6.2 or 6.3 of this Schedule 5,

then the Train Operator has Firm Rights to the Calling Pattern specified in the Access Proposal or Rolled Over Access Proposal.

4.3 If the Train Operator makes an Access Proposal or Rolled Over Access Proposal of the kind specified in paragraph 4.2, Network Rail may insert, in respect of that Passenger Train Slot, an amount of Pathing Time up to an aggregate of:

(a) the total of the station dwell times for the Excluded Stations; and

(b) the time which the Specified Equipment would have required to decelerate into and accelerate out of each of the Excluded Stations.

4.4 Where:

(a) a Passenger Train Slot excludes stations in the Regular Calling Pattern or in any Calling Pattern referred to in paragraph 4.2(b); and

(b) Pathing Time may be inserted in accordance with paragraph 4.3,

the Regular Calling Pattern shall be deemed to have been maintained for the purposes of paragraphs 3.3 and 3.6 and the Calling Pattern shall be deemed to have been maintained for the purposes of paragraphs 6.3(a), 6.6(b) and 6.8(a).

### *Additional calls*

4.5 The Train Operator has Contingent Rights to have Scheduled, in respect of any Passenger Train Slot, calls at one or more of the stations set out opposite the Service in column 3 of Table 4.1 being stations which do not form part of the Regular Calling Pattern.

## 5 Specified Equipment

Table 5.1: Specified Equipment

1					2	3
Service Group GNWR						
Service description						
Between	And	Via	Description	TSC	Standard Specified Equipment <sup>1</sup>	Additional Specified Equipment <sup>1</sup>
All services	All services	All Routes	All	All	A tilting train of up to 8 23m vehicles capable of Enhanced Permissible Speeds on the West Coast Main Line	

Notes to Table:

<sup>1</sup> Any Standard Specified Equipment or Additional Specified Equipment included in this Table 5.1 may not be used until and unless the necessary route clearance (including agreement on performance assessment) has been obtained.

### *Standard equipment*

- 5.1 In respect of each Service specified in column 1 of Table 5.1, the Train Operator has Firm Rights to Passenger Train Slots matching the performance characteristics of the Specified Equipment set out opposite that Service in column 2 of that Table (“Standard Specified Equipment”).

### *Additional equipment*

- 5.2 In respect of each Service set out in column 1 of Table 5.1, the Train Operator has Contingent Rights to Passenger Train Slots matching the performance characteristics of the additional Specified Equipment set out opposite that Service in column 3 of that Table (“Additional Specified Equipment”).
- 5.3 Where the Train Operator’s Access Proposal or Rolled Over Access Proposal includes Additional Specified Equipment which is capable of at least equivalent performance to the Standard Specified Equipment for the relevant Service, it shall be deemed to be using the Standard Specified Equipment for the purposes of paragraphs 3.3, 3.6, 6.3(b), 6.6(b) and 6.8(b).

### *Train length*

- 5.4 In using the Standard Specified Equipment or Additional Specified Equipment, and subject to any limit specified in Table 5.1, the Train Operator has a Firm Right to the maximum train length in metres which the Network can from time to time accommodate, subject to a right of Network Rail to vary the train length in cases where the Network cannot accommodate all Access Proposals and Rolled Over Access Proposals to operate to the maximum length.
- 5.5 Nothing in paragraph 5.4 precludes the operation of trains in excess of platform lengths where appropriate measures have been taken to control, so far as is reasonably practicable, any risks introduced by the use of such longer trains.

## **6 Journey Times**

*Table 6.1: Not used*

### *Journey Times*

6.1 The Train Operator only has Firm Rights to Maximum Journey Times or Key Journey Times under this paragraph 6 in relation to Passenger Train Slots which are the subject of Firm Rights under paragraph 2.1.

### *Maximum Journey Time – Not used*

6.3 Not used

6.4 Not used

*Table 6.2: Fastest Key Journey Times*

*Not Used*

*Fastest Key Journey Time*

6.6 Not Used

*Table 6.3: Maximum Key Journey Times – Not Used*

6.7 Not Used

6.8 Not Used

## **7 Provisions applicable to Journey Time protection**

### *Restriction on changes to Engineering Access Statement and Timetable Planning Rules*

7.1 In relation to the Applicable Engineering Access Statement and the Applicable Timetable Planning Rules:

- (a) Network Rail shall not propose or agree to any amendments to the Applicable Engineering Access Statement or the Applicable Timetable Planning Rules in the Weekday and Saturday Working Timetables:
  - (i) which is equal to or less than the Fastest Key Journey Time specified for at least one Passenger Train Slot for each of the Key Journeys specified in Table 6.2 in respect of each Weekday; and
  - (ii) which is equal to or less than the relevant Maximum Key Journey Time specified for every Passenger Train Slot consistent with each Key Journey of the type specified in Table 6.3;
- (b) paragraph 7.1(a) shall not apply in relation to any such amendment which is proposed by the Train Operator or effected pursuant to the order of an appeal body under Part D of the Network Code or any other competent tribunal; and
- (c) Network Rail shall not be in breach of paragraph 7.1(a) to the extent that the failure to Schedule any Journey Time in accordance with paragraph 7.1(a)(i) or (ii) is the result of any Network Rail Restriction of Use, Competent Authority Restriction of Use, Operator Restriction of Use, .

### *Network Change*

7.2 If:

- (a) in any Timetable Period, 90 per cent or more of train movements which:
  - (i) are Scheduled in that Timetable Period; and
  - (ii) are Services to which in each case a Key Journey Time applies, exceed the applicable Scheduled Journey Time; and
- (b) the failure of such train movements to achieve those Scheduled Journey Times is attributable to the condition or operation of the Network,

then a Network Change within the meaning of paragraph (iii) of the definition of Network Change shall be treated as having occurred and the provisions of Part G of the Network Code shall apply:

- (i) as if such Network Change had been proposed by Network Rail; and

- (ii) as if the revisions to Key Journey Times agreed under paragraph 7.3, or determined under paragraph 7.4, subject to any modification under paragraph 7.10, constitute the scope of the relevant Network Change,

and compensation shall be payable to the Train Operator accordingly.

#### *Agreement of revised Key Journey Time*

7.3 If under paragraph 7.2 a Network Change is treated as having occurred, the parties will try to agree a revised Key Journey Time for each Key Journey affected by such Network Change. Any agreed revisions to Key Journey Time(s) will be incorporated into Table 6.2 and/or Table 6.3, as the case may be.

#### *Referral to mediation/arbitration*

- 7.4 If the parties fail to agree such revised Key Journey Time(s) within 3 months of the request of either party for revision of the relevant Key Journey Time(s), either party may require that the matter be submitted to mediation in accordance with Part B of the Access Dispute Resolution Rules. If mediation fails to resolve the matter within 28 days of its commencement, either party shall be entitled to refer the matter to arbitration in accordance with Part C of the Access Dispute Resolution Rules. In such a case, the arbitrator shall be required by the parties to reach a determination and make an award that is fair and reasonable on the basis of the following criteria:
- (a) Key Journey Times should be as short as is compatible with the development of a safe, reliable and robust timetable; and
  - (b) any relevant criteria which may have been published by ORR.

#### *Provisions applicable to Key Journeys and Maximum Journey Times*

- 7.5 A Journey Time Review Notice is a notice given to the parties by ORR:
- (a) requiring them to enter into negotiations in good faith to vary such Journey Times set out in Tables 6.1, 6.2 or 6.3 as are specified in the notice;
  - (b) after consultation with the parties, the Secretary of State and such other persons as it considers appropriate; and
  - (c) containing its reasons for giving it.
- 7.6 As soon as reasonably practicable after the service of a Journey Time Review Notice, the parties shall begin and in good faith diligently pursue the negotiations in question.
- 7.7 If the parties reach agreement on the variations in question, they shall send a copy of them to ORR for its consent, together with a note of the reasons for them and an explanation of how they are consistent with its statutory duties.
- 7.8 If the parties fail to reach agreement on the variations in question within 45 days of the giving of a Journey Time Review Notice, the matter shall be

referred to expert determination in accordance with Part D of the Access Dispute Resolution Rules. In such a case, the parties shall require:

- (a) that the expert's determination is delivered no later than 30 days after the date of referral of the matter to the expert;
- (b) the expert to establish such rules and procedures for the conduct of the determination as he sees fit having regard to that timescale;
- (c) the expert to give reasons for his determination; and
- (d) the expert to reach a determination that is fair and reasonable on the basis of the following criteria:
  - (i) Journey Times should be as short as is compatible with the development of a safe, reliable and robust timetable;
  - (ii) any relevant criteria which may have been published by ORR; and
  - (iii) the reasons for the service of the Journey Time Review Notice given by ORR in that notice.

*Requirement for Office of Rail Regulation's consent*

7.9 Subject to paragraph 7.10, a variation:

- (a) agreed under paragraph 7.3;
  - (b) agreed following mediation or determined by an arbitrator under paragraph 7.4;
  - (c) agreed under paragraph 7.7; or
  - (d) determined by an expert under paragraph 7.8,
- shall have effect:

- (i) only if ORR has given its consent to it; and
- (ii) from such date as is specified in that consent.

*Office of Rail Regulation's Modification Notice*

7.10 A Modification Notice is a notice given to the parties by ORR:

- (a) specifying the changes which ORR requires be made to the proposed variations which have been:
  - (i) agreed under paragraph 7.3;
  - (ii) agreed following mediation or determination by an arbitrator under paragraph 7.4;
  - (iii) specified in an agreement of the kind referred to in paragraph 7.7; or
  - (iv) determined by an expert following a reference under paragraph 7.8;
- (b) after consultation with the parties, the Secretary of State and such other persons as it considers appropriate; and

(c) containing its reasons for giving it.

7.11 If a Modification Notice is given, this contract will have effect with the variations referred to in paragraph 7.10(a) as modified in accordance with the terms of the notice.

*Office of Rail Regulation's notice for substitution of date/period*

7.12 ORR shall be entitled, by notice to the parties and the Secretary of State, to substitute for any date or period specified in paragraph 7.8, a date which is not more than 180 days later, or a period which is not more than 180 days longer, than that so specified.

*Requirements for notice under paragraph 7.12*

7.13 No notice under paragraph 7.12 may be given unless:

- (a) ORR has consulted the parties and the Secretary of State;
- (b) ORR has taken into account any representations or objections which have been made to it within such period as it has specified for the purpose; and
- (c) where the notice is given after the date or the expiry of the period to which it relates, it is given no later than 30 days after such date or expiry.

## **8 Other rights**

### *Platform rights*

8.1 Not used

8.2 Not used.

*Table 8.2: Not used*

*Connections*

8.3 Not used

8.4 Not used

*Table 8.3: Not used*

*Departure time ranges*

8.5 Not used

*Table 8.4: Stabling facilities – Not used*

*Stabling facilities*

- 8.6 The Train Operator has Firm Rights to use the Stabling facility specified in column 1 of Table 8.4 between the hours specified in column 2 for the purposes of Stabling the Specified Equipment specified in column 3.

*Table 8.5: Not used*

*Turnaround times*

8.7 Not used

*Quantum of additional calls*

8.8 Not used

*Table 8.6: Not used*

## **SCHEDULE 6: EVENTS OF DEFAULT, SUSPENSION AND TERMINATION**

### **1 Events of Default**

#### *1.1 Train Operator Events of Default*

The following are Train Operator Events of Default:

- (a) the Train Operator ceases to be authorised to be the operator of trains for the provision of the Services by a licence granted under section 8 of the Act unless it is exempt from the requirement to be so authorised under section 7 of the Act;
- (b) an Insolvency Event occurs in relation to the Train Operator;
- (c) (i) any breach by the Train Operator of this contract, its Safety Obligations or any of the Collateral Agreements; or  
(ii) any event or circumstance which is reasonably likely to result in any such breach,  
which, by itself or taken together with any other such breach, event or circumstance, Network Rail reasonably considers constitutes a threat to the safe operation of any part of the Network;
- (d) any Track Charges or other amount due by the Train Operator to Network Rail under this contract remain unpaid for more than 7 days after their due date;
- (e) any breach of this contract or any material breach of any of the Collateral Agreements by the Train Operator which, by itself or taken together with any other such breach, results, or is likely to result, in material financial loss to Network Rail;
- (f) any breach of this contract or any material breach of any of the Collateral Agreements by the Train Operator which, by itself or taken together with any other such breach, results, or is likely to result, in material disruption to train operations of other train operators; and
- (g) not used

#### *1.2 Notification*

The Train Operator shall notify Network Rail promptly on becoming aware of the occurrence of a Train Operator Event of Default.

#### *1.3 Network Rail Events of Default*

The following are Network Rail Events of Default:

- (a) Network Rail ceases to be authorised to be the operator of that part of the Network comprising the Routes by a licence granted under

section 8 of the Act unless exempt from the requirement to be so authorised under section 7 of the Act;

- (b) an Insolvency Event occurs in relation to Network Rail;
- (c) (i) any breach by Network Rail of this contract, its Safety Obligations or any of the Collateral Agreements; or  
(ii) any event or circumstance which is reasonably likely to result in any such breach,  
which, by itself or taken together with any other such breach, event or circumstance the Train Operator reasonably considers constitutes a threat to the safe operation of the Services or any Ancillary Movements; and
- (d) any breach of this contract or any material breach of any of the Collateral Agreements by Network Rail which, by itself or taken together with any other such breach, results, or is likely to result, in material financial loss to the Train Operator.

#### *1.4 Notification*

Network Rail shall notify the Train Operator promptly on becoming aware of the occurrence of a Network Rail Event of Default.

## **2 Suspension**

### *2.1 Right to suspend*

2.1.1 Network Rail may serve a Suspension Notice where a Train Operator Event of Default has occurred and is continuing.

2.1.2 The Train Operator may serve a Suspension Notice where a Network Rail Event of Default has occurred and is continuing.

### *2.2 Contents of Suspension Notice*

A Suspension Notice shall specify:

- (a) the nature of the relevant Event of Default;
- (b) the date and time at which suspension is to take effect;
- (c) in the case of a Suspension Notice served on the Train Operator, reasonable restrictions imposed while the Suspension Notice is in force on the permission to use the Routes or any parts of them or any other part of the Network;
- (d) in the case of a Suspension Notice served on Network Rail, details of any necessary suspension of the Services; and
- (e) whether the party serving the Suspension Notice reasonably considers that the Event of Default is capable of remedy, and where the Event of Default is capable of remedy:

- (i) the steps reasonably required to remedy the Event of Default; and
- (ii) a reasonable grace period for the defaulting party to remedy it (where the Event of Default which has occurred is a failure to pay Track Charges or other amount due, 7 days shall be a reasonable grace period).

### *2.3 Effect of Suspension Notice served by Network Rail*

Where Network Rail has served a Suspension Notice on the Train Operator:

- (a) the Train Operator shall comply with any reasonable restrictions imposed on it by the Suspension Notice;
- (b) the Suspension Notice shall remain in full force and effect in accordance with its terms until it has been revoked either in whole or in part by notice from Network Rail to the Train Operator under paragraph 2.5.4;
- (c) service of the Suspension Notice shall not affect the Train Operator's continuing obligation to pay the Track Charges; and
- (d) service of the Suspension Notice shall not affect the Train Operator's Firm Rights (as defined in Schedule 5) for the purposes of Part D of the Network Code.

### *2.4 Effect of a Suspension Notice served by the Train Operator*

Where the Train Operator has served a Suspension Notice on Network Rail:

- (a) it shall have the effect of suspending the Train Operator's permission to use the Routes to provide the Services to the extent specified in the Suspension Notice;
- (b) in relation to Services suspended by the Suspension Notice, the amount of the Fixed Track Charge (as that term is defined in Schedule 7) shall be abated on a daily basis by an amount equal to the proportion of passenger vehicle miles not run on any day due to the suspension divided by the passenger vehicle miles timetabled for the Corresponding Day to that day (as that term is defined and determined under Part 3 of Schedule 4), as multiplied by the daily amount of the Fixed Track Charge (as so defined);
- (c) the Suspension Notice shall remain in full force and effect in accordance with its terms until it has been revoked either in whole or in part by notice from the Train Operator to Network Rail under paragraph 2.5.4; and

- (d) the service of the Suspension Notice shall not affect the Train Operator's Firm Rights (as defined in Schedule 5) for the purposes of Part D of the Network Code.

*2.5 Suspension to be proportionate to breach*

- 2.5.1 A Suspension Notice served under paragraph 2.3 in respect of any of the Train Operator Events of Default specified in paragraphs (a) and (c) to (f) (inclusive) of paragraph 1.1 shall, so far as reasonably practicable, apply only to the:
  - (a) railway vehicles;
  - (b) Services;
  - (c) Routes; and
  - (d) categories of train movements or railway vehicles, (or (as the case may be) parts or part of them) to which the relevant Train Operator Event of Default relates.
- 2.5.2 A Suspension Notice served under paragraph 2.4 in respect of any of the Network Rail Events of Default specified in paragraphs 1.3(a), (c) and (d) shall, so far as reasonably practicable, apply only to the:
  - (a) railway vehicles;
  - (b) Services;
  - (c) Routes; and
  - (d) categories of train movements or railway vehicles, (or (as the case may be) parts or part of them) to which the relevant Network Rail Event of Default relates.
- 2.5.3 The party served with a Suspension Notice which specifies an Event of Default which is capable of remedy shall:
  - (a) with all reasonable diligence, take such steps as are specified in the Suspension Notice to remedy the Event of Default; and
  - (b) keep the party serving the Suspension Notice fully informed of the progress which is being made in remedying the Event of Default.
- 2.5.4 Where a party served with a Suspension Notice has complied with its obligations under paragraph 2.5.3 (whether in whole or in part) and it is reasonable for the suspension effected by the Suspension Notice to be revoked (whether in whole or in part), the party which served the Suspension Notice shall revoke the suspension to that extent. Such revocation shall be effected as soon as practicable after the remedy in question by notice to the other party specifying the extent of the revocation and the date on which it is to have effect.

### **3 Termination**

#### *3.1 Network Rail's right to terminate*

Network Rail may serve a Termination Notice on the Train Operator:

- (a) where the Train Operator fails to comply with any material restriction in a Suspension Notice;
- (b) where the Train Operator fails to comply with its obligations under paragraph 2.5.3;
- (c) where the Train Operator Event of Default specified in paragraph 1.1(a) has occurred and is continuing; or
- (d) where the Train Operator Event of Default specified in a Suspension Notice served by Network Rail is not capable of being remedied and three months have elapsed from the service of that Suspension Notice.

#### *3.2 Train Operator's right to terminate*

The Train Operator may serve a Termination Notice on Network Rail:

- (a) where Network Rail fails to comply with its obligations under paragraph 2.5.3;
- (b) where the Network Rail Event of Default specified in paragraph 1.3(a) has occurred and is continuing; or
- (c) where the Network Rail Event of Default specified in a Suspension Notice served by the Train Operator is not capable of being remedied and three months have elapsed from the service of that Suspension Notice.

#### *3.3 Contents of Termination Notice*

A Termination Notice shall specify:

- (a) the nature of the relevant Event of Default;
- (b) a date and time, which shall be reasonable in the circumstances, at which termination is to take effect; and
- (c) whether the party serving the Termination Notice reasonably considers that the Event of Default is capable of remedy, and where the relevant Event of Default is capable of remedy:
  - (i) the steps which the party serving the Termination Notice believes are reasonably required to remedy the Event of Default; and
  - (ii) a reasonable grace period within which such steps may be taken (where the Event of Default is a failure of the Train

Operator to pay Track Charges or other amounts due, 7 days is a reasonable grace period).

### **3.4** *Effect of Termination Notice*

Where Network Rail or the Train Operator has served a Termination Notice on the other:

- (a) the service of the Termination Notice shall not affect the parties' continuing obligations under this contract up to the date of termination, which date shall be determined in accordance with paragraph 3.4(c);
- (b) the party which has served the Termination Notice shall withdraw it by notice to the other party, upon being reasonably satisfied that the relevant Event of Default has been remedied; and
- (c) this contract shall terminate on the later of:
  - (i) the date and time specified in the Termination Notice for the contract to terminate (or such later date and time as the party which served the Termination Notice notifies to the other before the date and time so specified); and
  - (ii) the date on which a copy of the Termination Notice is given to ORR.

## **4** **Consequence of termination**

### **4.1** *Directions regarding location of Specified Equipment*

Immediately before, upon or following termination or expiry of this contract, the Train Operator shall comply or procure compliance with all reasonable directions given by Network Rail concerning the location of the Specified Equipment.

### **4.2** *Failure to comply with directions*

If the Train Operator fails to comply with any directions given under paragraph 4.1, Network Rail shall be entitled to remove from the Network or Stable any Specified Equipment left on the Network or to instruct a third party to do so and any reasonable costs incurred by Network Rail in taking such steps shall be paid promptly by the Train Operator.

### **4.3** *Evidence of costs*

Network Rail shall provide such evidence of such costs as are referred to in paragraph 4.2 as the Train Operator shall reasonably request.

## **SCHEDULE 7: TRACK CHARGES**

### **PART 1: INTERPRETATION**

#### **1 Definitions**

In Parts 1-8 inclusive, unless the context otherwise requires:

<b>“2008 Final Determinations”</b>	means the document entitled “Periodic Review 2008: Final Determinations” and published by ORR on 30 October 2008;
<b>“access charges review”</b>	has the meaning ascribed to it by Schedule 4A to the Act;
<b>“Additional Permitted Charges”</b>	means the charges specified in paragraph 2 of Part 5;
<b>“Adjusted Interest Cover Ratio”</b>	means the value of AICR derived from the formula set out in paragraph 2.2 of Part 7;
<b>“Aggregate Fixed Charges”</b>	means, in any Relevant Year $t$ , the sum of the values of $F_t$ under paragraph 1 of Part 2 and the corresponding provisions of each other relevant access agreement;
<b>“Basic Value”</b>	has the meaning ascribed to it in paragraph 1.1(a) of Part 3A;
<b>“Capacity Charge”</b>	means a variable charge, calculated in accordance with paragraph 6 of Part 2;
<b>“Default Train Consist Data”</b>	means the data listed in Appendix 7C as amended from time to time in accordance with paragraph 10.4 of Part 2;
<b>“Efficiency Benefit Share”</b>	means the amount determined in accordance with paragraph 3.2 of Part 2;
<b>“Electrification Asset Usage Charge”</b>	means an annual charge for electrification asset usage, calculated in accordance with paragraph 8 of Part 2;

<b>“excluded change”</b>	means, in relation to paragraph 2.1(b) of Part 7, a change to the arrangements established between Network Rail and any other person in respect of the payment of any amount under section 6 of the Railways Act 2005;
<b>“Fixed Track Charge”</b>	means a fixed annual charge, calculated in accordance with paragraph 2 of Part 2;
<b>“Fixed Track Charge Indexation”</b>	has the meaning ascribed to it in paragraph 2.1 of Part 2;
<b>“Geographic Area g”</b>	means, for the purposes of performing the calculations set out in paragraphs 4 and 5 of Part 2, the relevant geographic section of the Network as set out in the Traction Electricity Price List;
<b>“Grant Amount”</b>	has the meaning ascribed to it in paragraph 1.2 of Part 3A;
<b>“Grant Compensation Amount”</b>	has the meaning ascribed to it in paragraph 3.2 of Part 3A;
<b>“Grant Dilution”</b>	has the meaning ascribed to it in paragraph 2.1 of Part 3A;
<b>“Grant Dilution Date”</b>	has the meaning ascribed to it in paragraph 2.2 of Part 3A;
<b>“Gross Tonne Mile”</b>	in relation to a train, means a mile travelled on the Network, by each tonne of the aggregate weight of the train in question;
<b>“kWh”</b>	means kilowatt hours;
<b>“List of Capacity Charge Rates”</b>	means the document entitled “List of Capacity Charge Rates” published by Network Rail on or about 18 <sup>th</sup> December 2008
<b>“Network Rail Rebate”</b>	has the meaning ascribed to it in paragraph 7.1 of Part 2;
<b>“Payment Date”</b>	has the meaning ascribed to it in paragraph 1.1(b) of Part 3A;

<b>“Period”</b>	has the meaning ascribed to it in Schedule 8;
<b>“Rebatable Amount”</b>	has the meaning ascribed to it in paragraph 7.2 of Part 2;
<b>“relevant access agreement”</b>	<p>means an access agreement under which any of the following persons obtains permission from Network Rail to use the Network:</p> <ul style="list-style-type: none"> <li>(a) a franchise operator;</li> <li>(b) a concession operator within the meaning of the Merseyrail Electrics Network Order 2003;</li> <li>(c) a TfL concessionaire within the meaning of the Railways (North and West London Lines) Exemption Order 2007; or</li> <li>(d) any other person who benefits from a franchise exemption (within the meaning of Section 24 (13) of the Act) in relation to services for the carriage of passengers by railway; or</li> <li>(e) a relevant franchising authority (as defined in section 30 (3B) of the Act) or a person providing services for the carriage of passengers by railway on behalf of a relevant franchising authority under section 30 of the Act.</li> </ul>
<b>“Relevant Year”</b>	means a year commencing at 0000 hours on 1 April and ending at 2359 hours on the following 31 March; “Relevant Year t” means the Relevant Year for the purposes of which any calculation falls to be made; “Relevant Year t-1” means the Relevant Year preceding Relevant Year t; and similar expressions shall be construed accordingly;
<b>“Retail Prices Index”</b>	means the general index of retail prices published by National Statistics each month in respect of all items or:

- (a) if the index for any month in any year shall not have been published on or before the last day of the third month after such month, such index for such month or months as ORR may (after consultation with the parties and such other persons as it considers appropriate) determine to be appropriate in the circumstances; or
- (b) if there is a material change in the basis of the index, such other index as ORR may (after consultation with the parties and such other persons as it considers appropriate) determine to be appropriate in the circumstances;

<b>“route type k”</b>	Means route type k as identified by type of electrification (OLE or DC) in the Track Usage Price List;
<b>“Schedule of Fixed Charges”</b>	means the document entitled “Fixed Track Charges Schedule” published by Network Rail on or about the 18 <sup>th</sup> December 2008.
<b>“tariff band”</b>	means the tariff zone and time band in which the train in question is operated;
<b>“Track Usage Price List”</b>	means the document entitled “Track Usage Price List” published by Network Rail on or about the 18 <sup>th</sup> December 2008.
<b>“Traction Electricity Charge”</b>	means a variable charge for traction current calculated in accordance with paragraph 4 of Part 2;
<b>“Traction Electricity Price List”</b>	means the document entitled “Traction “Electricity Price List” published by Network Rail on or about the 18 <sup>th</sup> December 2008.
<b>“train category”</b>	means train type i used on the relevant route in question;
<b>“Train Consist Data”</b>	means the information relating to the number(s) and type(s) of railway vehicle comprised in a train movement;
<b>“Train Mile”</b>	in relation to a train, means a mile travelled by that train on the Network;

<b>“Variable Charge”</b>	means the Variable Track Usage Charges and, where the context admits, Traction Electricity Charges;
<b>“Variable Track Usage Charge”</b>	means a variable charge, calculated in accordance with paragraph 3 of Part 2; and
<b>“Vehicle Mile”</b>	in relation to a railway vehicle, means a mile travelled by that vehicle on the Network.

## **2 Interpretation**

The provisions of clause 1.2(e) of this contract shall not apply to any references to the Deed of Grant in this Schedule 7.

## **PART 2: TRACK CHARGES**

### **1 Principal formula**

During each Relevant Year (and, in respect of  $F_t$ , prorated for each day of any period of this contract comprising less than a full Relevant Year), Network Rail shall levy and the Train Operator shall pay Track Charges in accordance with the following formula:

$$T_t = V_t + E_t + K_t + EV_t - BS_t - W_t$$

where:

$T_t$  means Track Charges in Relevant Year t;

$V_t$  means an amount in respect of the Variable Track Usage Charge in Relevant Year t which is derived from the formula in paragraph 3;

$E_t$  means an amount in respect of the Traction Electricity Charge in Relevant Year t which is derived from the formula in paragraph 4;

$K_t$  means an amount in respect of the Capacity Charge in Relevant Year t which is derived from the formula in paragraph 6;

$EV_t$  means an amount in respect of the Electrification Asset Usage Charge, calculated in accordance with the formula in paragraph 8;

$BS_t$  means an amount (which shall not be a negative value) in respect of the Efficiency Benefit Share in Relevant Year t which is determined in accordance with paragraph 3.2; and

$W_t$  means an amount (which shall not be a negative value) in respect of the Network Rail Rebate in Relevant Year t, calculated in accordance with the provisions of paragraph 7.1.

### **2 Not Used**

### **3 Variable track charge and efficiency benefit share**

#### **3.1 Variable track charge**

For the purposes of paragraph 1, the term  $V_t$  means an amount in respect of the Variable Track Usage Charge in Relevant Year t which is derived from the following formula:

$$V_t = \sum V_{it} \cdot UV_{it}$$

where:

$V_{it}$  means an amount in respect of the Variable Track Usage Charge per Vehicle Mile for a category of vehicle i for Relevant Year t which is derived from the following formula:

$$V_{it} = V_{it-1} \left[ 1 + \frac{RPI_{t-1} - 0}{100} \right]$$

where:

$RPI_{t-1}$  means the percentage change (whether of a positive or negative value) between the Retail Prices Index published or determined with respect to November in Relevant Year t-1 and the index published or determined with respect to November in Relevant Year t-2,

but so that in relation to the Relevant Year commencing on 1 April 2014,  $V_{it}$  shall have, in respect of each Vehicle Mile, the value set out in the Track Usage Price List; and in relation to the next following Relevant Year  $V_{it-1}$  shall have the same value;

$UV_{it}$  means the actual volume of usage (in Vehicle Miles) in Relevant Year t of vehicle type i (referred to in the Track Usage Price List) operated by or on behalf of the Train Operator; and

$\Sigma$  means the summation across all relevant categories of vehicle types (i).

### 3.2 *Efficiency Benefit Share*

The Efficiency Benefit Share is an amount (which shall not be a negative value) representing a return of Track Charges which shall be identified in the ORR's annual assessment of Network Rail as the "Efficiency Benefit Share", if any, to be rebated to the Train Operator, such amount to be determined in accordance with the methodology and principles set out in paragraphs 27.34 to 27.53 (inclusive) of the 2008 Final Determinations.

## 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 Relevant Year t which is derived from the following formula:

$$E_t = \sum C_i \cdot EF_{gjt} \cdot UE_{igt}$$

where:

$\Sigma$  means the summation across all relevant train categories i, tariff bands j and/or Geographic Areas g, as appropriate, of;

$C_i$  means the calibrated modelled consumption rate (in kWh per Train Mile in relation to electric multiple units and kWh per Gross Tonne Mile in relation to locomotive-hauled units) for train category i, shown in the Traction Electricity Price List;

$EF_{gjt}$  means an amount for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g, in tariff band j, (i) as set out in the Traction Electricity Price List or (ii) as otherwise agreed or determined pursuant to paragraph 4.2;

$UE_{igt}$  means the actual volume of usage (in electrified Vehicle Miles in relation to electric multiple units or Gross Tonne Miles in relation to locomotive

hauled units) of trains operated by or on behalf of the Train Operator in train category i, in Geographic Area g, in tariff band j and in Relevant Year t, pursuant to this contract;

- 4.2 Network Rail shall at least three months prior to the start of each Relevant Year commencing on or after 1 April 2009 consult with the Train Operator regarding its strategy for the procurement of traction electricity in respect of that Relevant Year. If Network Rail receives agreement from the Train Operator, Network Rail will procure electricity in accordance with what has been agreed. In the event that agreement is not forthcoming from the Train Operator, Network Rail will, acting reasonably, determine the procurement strategy for electricity for traction.
- 4.3 Network Rail shall provide to the Train Operator within 30 days of the end of each calendar month in each Relevant Year, the total actual cost of traction electricity against the budgeted amounts. Network Rail shall also provide to the Train Operator provisional six month volume reconciliation before 30 October of each Relevant Year and the provisional nine month volume reconciliation before 30 January of each Relevant Year.
- 4.4 (a) If the Train Operator wishes to propose the introduction of on-train metering to measure traction electricity consumption for the purposes of invoicing Network Rail for traction electricity, it shall notify Network Rail of any required changes to the contract in connection with that proposal.
  - (b) Any notice under sub-paragraph 4.4(a) shall be accompanied by information and evidence in reasonable detail supporting the changes proposed and setting out the reasons for those changes, and Network Rail shall respond in writing within 56 days of service of any such notice.
  - (c) Promptly following any response served by Network Rail under sub-paragraph 4.4(b), the parties shall endeavour to agree whether the contract should be amended in connection with that proposal and if so the amendments.
  - (d) If the parties fail to reach agreement within 90 days after service of the relevant notice, or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, the parties shall notify ORR. If ORR elects to determine the matter, the parties shall furnish ORR with such information and evidence as ORR shall require to determine the matter and shall abide by any determination issued by ORR. If ORR does not so elect, the matter shall be referred for expert determination in accordance with Part D of the Access Dispute Resolution Rules save that:
    - (i) the parties shall each request that the expert's determination in writing is delivered to the parties no later than 56 days after the date of referral of the matter to the expert, and that the expert establishes such rules and procedures for the conduct of the determination as he sees fit having regard to that timescale;

- (ii) each of the parties shall abide by the rules and procedures established by the expert; and
  - (iii) the parties shall direct the expert to have regard to any relevant criteria and/or policy statement most recently issued by the Office of Rail Regulation.
- (e) Any amendment to the contract in connection with the proposal referred to in sub-paragraph 4.4(a) shall take effect only when it has been approved by ORR under section 22 of the Act. Accordingly, as soon as reasonably practicable after any such amendment is agreed or determined in accordance with this paragraph 4.4 (other than a determination by ORR pursuant to sub-paragraph 4.4(d)), the parties shall ensure that ORR is furnished with such amendment and such information and evidence as it shall require to determine whether or not to approve the amendment.
- (f) Any amendment to the contract in connection with the proposal referred to in sub-paragraph 4.4(a) shall apply with effect from, subject to paragraph 4.4(e), the date proposed by the Train Operator (unless otherwise agreed by the parties or determined by the ORR or the expert in relation to the proposal).

## 5. Volume and Cost Reconciliation

5.1 Within 90 days after the end of Relevant Year  $t$ , Network Rail shall calculate two supplementary amounts  $S1_t$  and  $S2_t$  which shall be payable by or to the Train Operator in accordance with this paragraph 5.

5.2  $S1_t$  is derived from the following formula:

$$S1_t = \sum E_{gt} \cdot \frac{(A_{gt} - M_{gt})}{M_{gt}}$$

where:

$\sum$  means the summation across all relevant train categories  $i$ , tariff bands  $j$  and Geographic Areas  $g$  for Relevant Year  $t$ , as appropriate;

$E_{gt}$  is part of the Traction Electricity Charge payable by the Train Operator for each applicable Geographic Area  $g$  in Relevant Year  $t$ , determined in accordance with the following formula:

$$E_{gt} = \sum C_i \cdot EF_{gjt} \cdot UE_{igt}$$

where:

$C_i$  means the calibrated modelled consumption rate (in kWh per Train Mile in relation to passenger electric multiple units and kWh per Gross Tonne Mile in relation to locomotive-hauled units and all freight traffic) for train category  $i$ , shown in the Traction Electricity Consumption Rates List;

$EF_{gjt}$  means an amount for traction current (in pence per kWh) determined in accordance with paragraph 4 of this Part 2; and

$UE_{igt}$  means the actual volume of usage (in electrified Vehicle Miles in relation to passenger electric multiple units or Gross Tonne Miles in relation to locomotive hauled units and all freight traffic), if any, of trains operated in Relevant Year t by or on behalf of the Train Operator in train category i, in Geographic Area g and in tariff band j;

$M_{gt}$  means the total modelled electricity consumption in Geographic Area g and in Relevant Year t which is derived from the following formula:

$$M_{gt} = \sum C_i \cdot UE_{igt}$$

where:

$\sum$  means the summation across all train categories i and Geographic Areas g for Relevant Year t, as appropriate; and

$C_i$  has the meaning given to it in this paragraph 5.2; and

$UE_{igt}$  means the actual volume of usage (in electrified Vehicle Miles in relation to passenger electric multiple units or Gross Tonne Miles in relation to locomotive hauled units and all freight traffic), if any, of trains operated in Relevant Year t by or on behalf of all train operators in train category i, in Geographic Area g;

$A_{gt}$  means the total actual electricity consumption (in kWh), if any, in Geographic Area g in Relevant Year t by or on behalf of all train operators, assessed by Network Rail (as accurately as possible) as being the appropriate proportion of the electricity consumption billed to Network Rail by its electricity suppliers in that area for traction electricity consumed in accordance with the terms for the purchase of traction electricity entered into by Network Rail,

provided that, if:

- (a) any train operator is charged by Network Rail for its traction electricity consumption based on that train operator's actual metered traction electricity consumption plus an amount in respect of the associated transmission and distribution losses ("**metered traction electricity**"); and
- (b) that train operator's access contract in relation to track provides that no supplementary amount  $S1_t$  shall apply to that train operator in respect of that metered traction electricity,

then the values of  $M_{gt}$  and  $A_{gt}$  shall be calculated excluding:

- (i) in the case of  $M_{gt}$ , that train operator's actual volume of usage of metered traction electricity; and

- (ii) in the case of  $A_{gt}$ , the metered traction electricity consumption so charged to that train operator.

5.3  $S2_t$  is derived from the following formula:

$$S2_t = (EP_t + S1_t) * (CS_t - CW_t) / CW_t$$

where:

$S1_t$  means the supplementary amount in respect of the Train Operator for Relevant Year t calculated in accordance with paragraph 5.2;

$EP_t$  means the summation of  $E_{gt}$  for the Train Operator as referred to in paragraph 5.2 across all Geographic Areas g for Relevant Year t;

$CS_t$  means the total actual cost to Network Rail for traction electricity for each train operator whose access contract incorporates a provision in relation to  $S2_t$  in substantially similar terms to this paragraph 5 in Relevant Year t; and

$CW_t$  means the total modelled cost for traction electricity for each train operator whose access contract incorporates a provision in relation to  $S2_t$  in substantially similar terms to this paragraph 5 in the Relevant Year t as notified to the Train Operator by Network Rail which is derived from the following formula:

$$CW_t = \sum (EP_t + S1_t)$$

where:

$\sum$  means the summation across all train operators whose access contracts incorporate a provision in relation to  $S2_t$  in substantially similar terms to this paragraph 5 in Relevant Year t;

$EP_t$  means the summation of  $E_{gt}$  for each train operator calculated in accordance with paragraph 5.2 across all Geographic Areas g for Relevant Year t; and

$S1_t$  means (where applicable) the supplementary amount  $S1_t$  in respect of each train operator for Relevant Year t calculated in accordance with paragraph 5.2.

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

- (a) a statement of the amounts  $S1_t$  and  $S2_t$  (whether of a positive or negative amount);
- (b) such background workings as may reasonably be required for a proper understanding of the calculation; and
- (c) a certificate of the auditors of Network Rail confirming the accuracy of the calculation.

5.5 Within 30 days after the date upon which Network Rail shall have provided to the Train Operator the information referred to in paragraph 5.4, the amounts  $S1_t$  and  $S2_t$  shall be invoiced for payment as provided under this contract. If the aggregate of the amounts  $S1_t$  and  $S2_t$  is positive, the invoice shall be issued by Network Rail and payable by the Train Operator. If the aggregate of the amounts  $S1_t$  and  $S2_t$  is negative, Network Rail will issue a credit note to the Train Operator.

## 6 Capacity Charge

For the purposes of paragraph 1, the term  $K_t$  means an amount in respect of the Capacity Charge in Relevant Year  $t$  which shall be derived from the following formula:

$$K_t = \left[ \sum (Pg_{twd} * Tg_{twd}) + (Pg_{twe} * Tg_{twe}) \right]$$

where:

$\sum$  means the sum across all Service Coded Groups;

$Pg_{twd}$  means the Weekday rate per Service Coded Group  $g$  in respect of Relevant Year  $t$  shown in the List of Capacity Charge Rates and indexed in accordance with the following formula:

$$Pg_{twd} = Pg_{twd - 1} \left[ 1 + \frac{RPI_{t - 1}}{100} \right]$$

where:

$RPI_{t - 1}$  means the percentage change (whether of a positive or negative value) between the Retail Prices Index published or determined with respect to November in Relevant Year  $t-1$  and the index published or determined with respect to November in Relevant Year  $t-2$ ,

but so that in relation to the Relevant Year  $t$  commencing on 1 April 2009,  $Pg_{twd}$  shall have the value for the Weekday rate per Service Coded Group  $g$  shown for the Train Operator in the List of Capacity Charge Rates; and in relation to the next following Relevant Year,  $Pg_{twd-1}$  shall have the same value;

$Pg_{twe}$  means the weekend rate per Service Coded Group  $g$  in respect of Relevant Year  $t$  shown in the List of Capacity Charge Rates and indexed in accordance with the following formula:

$$Pg_{twe} = Pg_{twe - 1} \left[ 1 + \frac{RPI_{t - 1}}{100} \right]$$

where:

$RPI_{t-1}$  means the percentage change (whether of a positive or negative value) between the Retail Prices Index published or determined with respect to November in Relevant Year t-1 and the index published or determined with respect to November in Relevant Year t-2,

but so that in relation to the Relevant Year t commencing on 1 April 2009,  $Pg_{tw}$  shall have the value for the weekend rate per Service Coded Group g shown for the Train Operator in the List of Capacity Charge Rates; and in relation to the next following Relevant Year,  $Pg_{tw-1}$  shall have the same value;

$Tg_{twd}$  means the actual Train Miles run on Weekdays by Services in Service Coded Group g in the Relevant Year t;

$Tg_{twe}$  means the actual Train Miles run on weekends by Services in Service Coded Group g in the Relevant Year t; and

“**Service Coded Group**” means a Service or collection of Services specified as such in the List of Capacity Charge Rates, and any Ancillary Movements relating to such Services.

## 7 Network Rail Rebate

7.1 For the purpose of paragraph 1, the Network Rail Rebate in respect of any Relevant Year t ( $W_t$ ) is an amount (which shall not be a negative value) by way of a return of Track Charges paid in Relevant Year t-1, derived from the following formula:

$$W_t = RA_t \cdot \frac{F_t}{AF_t}$$

where:

$RA_t$  means the Rebatable Amount declared by Network Rail in relation to Relevant Year t-1 under paragraph 7.2;

$F_t$  has the meaning ascribed to it in paragraph 1 as if references to “Relevant Year t” in the definition of “ $F_t$ ” in paragraph 1 were references to “Relevant Year t-1”; and

$AF_t$  means the Aggregate Fixed Charge in Relevant Year t-1, calculated as if references to “Relevant Year t” in the definition of “Aggregate Fixed Charge” and in the definition of “ $F_t$ ” in paragraph 1 were references to “Relevant Year t-1”.

7.2 The Rebatable Amount shall be the amount, if any:

(a) which represents such proportion of Network Rail’s total income for Relevant Year t-1 as it reasonably considers that it does not require in order to discharge its obligations under its network licence and any contracts to which it is a party;

- (b) which Network Rail, in its discretion, considers it appropriate, having regard to the matters specified in paragraph 7.3, to rebate as an amount representing a return of Track Charges payable by persons who provide services for the carriage of passengers by railway under the relevant access agreements to which they are parties; and
  - (c) which Network Rail notifies as such to ORR before the end of each Relevant Year t-1.
- 7.3 In considering the amount of the Rebatable Amount in any Relevant Year, Network Rail shall have regard to:
- (a) its obligations under its network licence and any contracts to which it is a party;
  - (b) the extent to which its efficiency and economy in discharging the obligations referred to in paragraph 7.3(a) matches or exceeds any assumption which ORR made in the 2008 Final Determinations;
  - (c) its current and foreseeable future financial position; and
  - (d) the need for long term investment in the Network.
- 7.4 No amount of Track Charges shall be rebated under this paragraph 7 unless ORR, having regard to the matters:
- (a) to which Network Rail is to have regard under paragraph 7.3; and
  - (b) in respect of which duties are imposed on it under section 4 of the Act, has consented to such rebate.
- 7.5 Paragraphs 3.2.4 and 3.2.5 shall apply to a payment of Network Rail Rebate in the same way as they apply in relation to a payment of an Efficiency Benefit Share, as if references in paragraphs 3.2.4 and 3.2.5 to “Efficiency Benefit Share” and “EBS payment” were instead references to, respectively, “Network Rail Rebate” and “Network Rail Rebate payment”.

## 8 Electrification Asset Usage Charge

For the purposes of paragraph 1, the term  $EAV_t$  means an amount for electrification asset usage which is derived from the following formula:

$$\text{Electrification Asset Usage Charge} = \sum EV_{tk} \cdot UV_{tk}$$

where:

$\sum$  means the summation across all route types;

$EV_{tk}$  means an amount in respect of the Electrification Asset Usage Charge per electrified Vehicle Mile on route type k for Relevant Year t which is derived from the following formula:

$$EV_{tk} = EV_{tk-1} \cdot \left[ 1 + \frac{RPI_{t-1} - 0}{100} \right]$$

where:

$RPI_{t-1}$  means the percentage change (whether of a positive or negative value) between the Retail Prices Index published or determined with respect to November in Relevant Year t-1 and the index published or determined with respect to November in Relevant Year t-2,

but so that in relation to the Relevant Year commencing on 1 April 2009,  $EV_{tk}$  shall have, in respect of each electrified Vehicle Mile on route type k, the value per electrified Vehicle Mile for the Electrification Asset Usage Charge set out in the Track Usage Price List; and in relation to the next following Relevant Year  $EV_{tk-1}$  shall have the same value; and

$UV_{tk}$  means the actual number of electrified Vehicle Miles on route type k in Relevant Year t operated by or on behalf of the Train Operator.

## **9 Changes to the List of Capacity Charge Rates, Traction Electricity Consumption Rates List and Track Usage Price List**

9.1 No supplement to the Traction Electricity Consumption Rates List or Track Usage Price List, and no change to the List of Capacity Charge Rates, shall have effect unless the supplement or change has been:

- (a) determined in accordance with the procedure set out in this paragraph 9; or
- (b) agreed between the parties,

and ORR shall have given its consent to the supplement or change.

9.2 Either of the Train Operator or Network Rail shall be entitled to propose that:

- (a) the Traction Electricity Consumption Rates List shall be supplemented or amended so as to include modelled consumption rates in respect of regenerative braking for any new or additional train category or any relevant route by tariff band (any such being a “relevant category”);
- (b) the Track Usage Price List shall be amended so as to include a vehicle category which is not included in the list;
- (c) the List of Capacity Charge Rates shall be amended so as to take account of changes in the pattern and number of Services; or
- (d) the Traction Electricity Consumption Rates List or Track Usage Price List shall be amended to correct any manifest error.

9.3 Any proposition of a kind referred to in paragraph 9.2 shall be made by notice to the other party and shall be accompanied by a specification in reasonable

detail of the change proposed and the reasons for it. The parties shall thereafter negotiate in good faith the necessary supplements or changes to the list in question.

- 9.4 If the parties shall have failed to agree such supplements or changes within 45 days of the date of the notice given under paragraph 9.3, either party shall be entitled to refer the matter to an arbitrator for determination pursuant to Part C of the Access Dispute Resolution Rules. Unless the parties otherwise agree, paragraphs C1.24 to C1.30 inclusive of those rules shall not apply to the arbitration.
- 9.5 The remit of the arbitrator shall be to determine:
- (a) whether any such new relevant category or vehicle category (as the case may be) should be added to the list in question or whether changes in the pattern and/or number of Services warrant a change to the list in question; and, if so,
  - (b) which new categories should be added and what prices and/or modelled consumption rates and/or appropriate discounts should be included in relation to each such category or what change to the List of Capacity Charge Rates should be made.
- 9.6 In determining the matter referred to him under paragraph 9.4, the arbitrator shall be required by the parties to reach a decision which is fair and reasonable to them, having regard to:
- (a) the matters in respect of which duties are imposed on ORR by section 4 of the Act; and
  - (b) the criteria which ORR shall have most recently published (and identified as such) in relation to charging for permission to use track.
- 9.7 The parties shall procure that the decision of the arbitrator shall be delivered to ORR within seven days after the date of the decision.
- 9.8 No decision of an arbitrator appointed under paragraph 9.4 shall have effect without the consent of ORR.
- 9.9 If ORR gives its consent to:
- (a) the decision of an arbitrator appointed under paragraph 9.4; or
  - (b) a supplement of the Traction Electricity Consumption Rates List or the Track Usage Price List, or a change to the List of Capacity Charge Rates, agreed between the parties,

the supplement or change in question shall have effect from such date as ORR shall determine by notice to the parties.

## **10 Payment of access charges**

### *10.1 Payment of access charges*

- (a) The Train Operator shall pay or procure the payment to Network Rail of:
  - (i) the Variable Track Usage Charge;

- (ii) the Traction Electricity Charge;
- (iii) the Capacity Charge;
- (iv) the Electrification Asset Usage Charge; and
- (v) the Additional Permitted Charges,

attributable to any Period as invoiced by Network Rail on or after expiry of each such Period within 21 days of the invoice date or 28 days after the end of the Period, whichever is later.

- (b) The Train Operator shall pay or procure the payment to Network Rail of that part of the Fixed Track Charge attributable to any Period as invoiced by Network Rail on or after the expiry of each such Period within seven days of the invoice date or seven days after the end of the Period, whichever is later.
- (c) Not used.
- (d) Any invoice issued by Network Rail under paragraph 5.5 of Part 2 (relating to modelled and actual rates of electricity consumption) shall be payable by the Train Operator within 21 days of the relevant invoice date.

#### *10.2 Train Consist Data*

Network Rail shall calculate the Variable Charges payable by the Train Operator in respect of each Period using the Train Consist Data supplied by the Train Operator and, to the extent such Train Consist Data is not available to Network Rail, the Default Train Consist Data.

#### *10.3 Invoices and right to object to invoices*

- (a) Network Rail will notify the Train Operator on a weekly basis of the train movements for which Default Train Consist Data has been used to establish the Variable Charges payable by the Train Operator. At either party's request, the parties shall consult with a view to substituting Train Consist Data for Default Train Consist Data but such consultation shall not delay the issue by Network Rail of the invoice for the Variable Charges in respect of the Period concerned.
- (b) For each Period, Network Rail shall be entitled to invoice the Train Operator for Variable Charges in respect of any and all train movements operated by the Train Operator during that Period based on either:
  - (i) Train Consist Data provided by the Train Operator in respect of any train movement at or prior to the time that such train movement is completed; or
  - (ii) Train Consist Data agreed by the parties under paragraph 10.3(a) in respect of any train movement; or
  - (iii) Train Consist Data provided by the Train Operator in respect of any train movement (other than any train movement where the

Specified Equipment used in operating the relevant movement is loco hauled) by the end of the day on which such train movement has been completed,

or (to the extent that (i) or (ii) or (iii) above do not apply) Default Train Consist Data. Each such invoice will be payable in accordance with the provisions of paragraph 10.1.

- (c) Either party shall be entitled, at any time prior to the later of 2359 hours on the fourteenth day following the expiration of the relevant Period and seven days following receipt by the Train Operator of the relevant invoice, to notify the other that it objects to any Train Consist Data (including, where applicable, the use of Default Train Consist Data) on which the whole or any part of the Variable Charges included in the relevant invoice are based and any such notice shall specify in reasonable detail what that party believes to be the Train Consist Data for the relevant train movement(s) (“notice of objection”). In the absence of any notice of objection being served within such time the Train Consist Data used in the relevant invoice shall be final and binding on the parties.
- (d) The parties shall seek to agree the Train Consist Data specified in any notice of objection and any consequential financial adjustment required to the relevant invoice. If the parties are unable to agree such Train Consist Data within 14 days following receipt of a notice of objection, the Train Consist Data shall be determined at the request of either party by arbitration in accordance with Part C of the Access Dispute Resolution Rules save that:
  - (i) the parties shall use their respective endeavours to ensure a joint paper setting out their respective positions on the matter in dispute is agreed for delivery to the arbitrator no later than three working days following the expiration of a period of 14 days following receipt of a notice of objection;
  - (ii) the parties shall each request that the arbitrator’s decision in writing (following any discussions or meetings between or with the parties that the arbitrator considers necessary) is delivered to the parties no later than 56 days after the expiration of the relevant Period and that the arbitrator establish such rules and procedures for the conduct of the arbitration as he sees fit having regard to such timescale; and
  - (iii) each of the parties shall accept and abide by the rules and procedures established by the arbitrator under paragraph 10.3(d)(ii).
- (e) Within seven days of any Train Consist Data being agreed or determined in accordance with paragraph 10.3(d), Network Rail shall, if any consequential or financial adjustment of the relevant invoice is required, issue a further invoice to, or (as the case may be) a credit note in favour

of, the Train Operator in the amount of the relevant adjustment. The invoice or credit note shall be payable at the same time as the invoice for Variable Charges for the relevant Period or, if issued later than 21 days after the end of the relevant Period, within seven days after the date of its issue.

- (f) The actual volume of usage used to calculate any supplementary amount payable under paragraph 5 of Part 2 shall be established on the basis of the Train Consist Data and the Default Train Consist Data applied in calculating the Variable Charges for each of the Periods in Relevant Year t as adjusted in accordance with paragraph 10.3(d) on or before 90 days after the end of Relevant Year t.
- (g) Where, as a result of any invoice or credit note issued pursuant to paragraph 10.3, any sum of money which has been paid shall become repayable or any sum of money which has been unpaid shall become payable the party to whom such sum shall be paid shall be paid or allowed interest at the Default Interest Rate on such sum from the date when it (if repayable) was paid or the date when such sum (if payable) ought to have been paid until the date of payment or repayment.

#### *10.4 Unrepresentative Train Consist Data*

- (a) If at any time during this contract either party considers the Default Train Consist Data specified in Appendix 7C is not representative of the Train Operator's Services and in particular, but without limitation, the type(s) of railway vehicles then in use and the regular number of carriages forming part of those railway vehicles in the operation of its Services, either party shall be entitled on written notice to the other to request that the Default Train Consist Data be amended. Any such request shall specify in reasonable detail the grounds for the request and the proposed amendments to the Default Train Consist Data.
- (b) The parties shall endeavour to reach agreement on any amendments to the Default Train Consist Data within 21 days of the date of the request referred to in paragraph 10.4(a) and if the parties are unable to agree such amendments within such time period, the matter shall be referred to expert determination in accordance with Part D of the Access Dispute Resolution Rules.
- (c) Upon the earlier of agreement between the parties or expert determination, the parties shall notify ORR of the proposed amendments to the Default Train Consist Data and, subject to ORR not objecting to the proposed amendments within 14 days (the "14 day period") of receipt of the notification by ORR, such amendments shall take effect from the first day of the next Period following the earlier of ORR confirming its consent to the proposed amendments and the expiry of the 14 day period. If ORR objects to the proposed amendments within the 14 day period, the parties shall endeavour to reach agreement with ORR on the appropriate amendments, if any, to the Default Train Consist Data which

shall then take effect on the first day of the Period next following that in which agreement is reached.

#### *10.5 Disputed amounts repayment and interest rate*

- (a) Where a party wishes to contest any invoice issued to it under this Schedule 7 (including any invoice in respect of Track Charges) it shall, within 14 days of receipt of the invoice, notify the other party in writing of the amount which is in dispute but shall pay the full amount of the invoice, including the disputed amount, in accordance with the terms of the invoice.
- (b) Where a party has given notice under paragraph 10.5(a) that it disputes part of any invoiced amount:
  - (i) payment of such sum shall be without prejudice to the determination of whether such sum is properly due or not; and
  - (ii) if it is subsequently determined that the disputed sum, or part of it, was not properly due the payee shall repay the disputed sum, or relevant part, to the payer together with interest (to accrue daily and be compounded monthly) at the Default Interest Rate from the date of payment until the actual date of repayment.

### **PART 3: NOT USED**

#### **PART 3A: GRANT DILUTION**

##### **1 Not Used**

###### *1.1*

### **PART 4: NOT USED**

#### **PART 5: ADDITIONAL PERMITTED CHARGES**

##### **1 Obligation to pay**

Network Rail may make and the Train Operator shall be required to pay under this contract, in addition to Track Charges, only such Additional Permitted Charges as are enumerated in paragraph 2.

##### **2 Definition**

Additional Permitted Charges shall comprise the following:

- (a) such amounts payable to Network Rail as are specified in, or calculated in accordance with, Schedule 4;
- (b) such amounts payable to Network Rail as are specified in, or calculated in accordance with, Schedule 8; and
- (c) such amounts payable to Network Rail pursuant to any provision of the Network Code.

## **PART 6: SUPPLEMENTAL PROVISIONS**

Each invoice issued by Network Rail to the Train Operator shall contain or be accompanied by separate itemisation of the following charges and other information in respect of the period covered by the invoice:

- (a) the daily amount of the Fixed Track Charge and the number of days covered by the invoice;
- (b) the rate of Variable Track Usage Charge and the relevant number of Vehicle Miles comprised in vehicles for each service (i) so charged;
- (c) the rate of Traction Electricity Charge and the number of Vehicle Miles comprised in vehicles for each service or Gross Tonne Miles comprised in units for each service, (i) so charged;
- (d) the amount of the Electrification Asset Usage Charge and the number of days covered by the invoice;
- (e) not used;
- (f) not used;
- (g) the amount of any Efficiency Benefit Payment Share;
- (h) not used;
- (i) the amount of any sum  $S_t$  payable as provided in paragraph 5 of Part 2;
- (j) the amount of any sum  $K_t$  payable as provided in paragraph 6 of Part 2; and
- (k) in respect of any Additional Permitted Charge, separately the amount payable in respect of each head of charge for Additional Permitted Charges.

## **PART 7: FUTURE ACCESS CHARGES REVIEWS**

### **1 General**

ORR may carry out one or more access charges reviews of all or part of this contract as follows:

- (a) an access charges review such that amendments to this contract to give effect to the conclusions of such an access charges review come into operation on and from 1 April 2014 or such later date as may be specified in that review; and
- (b) as provided in paragraph 2 (and only as provided in paragraph 2), an access charges review such that amendments to this contract to give effect to the conclusions of such an access charges review come into operation before 1 April 2014.

### **3. Definitions and interpretation**

In this Part 7:

- (a) **“corporation tax”** means the amount of corporation tax payable by Network Rail in accordance with the Income and Corporation Taxes Act 1988 net of any group relief;
- (b) **“enhancements expenditure”** has the meaning ascribed to it in the Regulatory Accounting Guidelines dated March 2008;
- (c) **“net interest payable”** is:
  - (i) interest, issuance costs and financing fees payable by Network Rail; less
  - (ii) interest receivable by Network Rail,  
in each case, on an accruals basis,  
and for these purposes, any calculation of interest
  - (iii) shall treat all amounts payable and receivable under interest rate and foreign exchange derivative transactions as though such transactions fully qualified for hedge accounting whether or not they in fact do so  
but:
  - (iv) shall not include:
    - (A) capital accretion on index-linked debt; or
    - (B) interest that is payable but rolled-up under intercompany loan arrangements
- (d) **“renewals expenditure”** has the meaning ascribed to it in the Regulatory Accounting Guidelines dated March 2008;
- (e) **“Review Period”** means a period commencing at any time and ending 36 consecutive months later, provided that if a period of 36 consecutive months would, but for this proviso, extend beyond 31 March 2014, the relevant Review Period shall be deemed to end, and shall end on 31 March 2014;
- (f) **“total expenditure”** means any cost Network Rail incurs operating, maintaining, renewing and enhancing the Network where, for the purposes of this definition, the cost is net of other operating income treated by ORR as an operating cost in Table 16.3 of the 2008 Final Determinations;
- (g) **“income”** is as provided in Annex B to the Regulatory Accounting Guidelines dated March 2008 except that income shall not include the final bullet of paragraph 9 of Annex B being “other income – income generated by Network Rail from sources other than those described above.”;
- (h) any calculation of income, expenditure and corporation tax made under or in connection with paragraph 2.1 shall be carried out on an accruals basis; and
- (i) references to ORR carrying out an access charges review shall be construed as including references to its initiating implementation of that review.

**PART 8: NOT USED**

## **APPENDIX 7A**

Not Used

## APPENDIX 7B

The table below describes the Geographic Areas g for the purposes of Traction Electricity Charge calculations.

ESTA	Traction electricity Geographic Area / Tariff Zone	Description
M	Merseyside	Comprises the Merseyside third rail electrified system between Liverpool, Southport, Ormskirk, Kirkby, Hunts Cross, Ellesmere Port, Chester, New Brighton and West Kirby.
N	Midland Main Line	Comprises the overhead line electrified routes from London St Pancras, Farringdon and Moorgate (Midland) to Bedford.
O	London Tilbury & Southend	Comprises the overhead line electrified London Tilbury and Southend routes from Fenchurch Street to Shoeburyness via Laindon, Rainham and Chafford Hundred; the route from Barking to Forest Gate Junction; and the route between Gas Factory Junction and Bow Junction.
P	Great Eastern	Comprises the electrified Great Eastern Main Line routes from Liverpool Street to Bow Junction, Upminster, Southend Victoria, Southminster, Braintree, Sudbury, Clacton, Walton-on Naze, Harwich Town and Norwich; the West Anglia route from Liverpool Street to Hackney Downs station; the Lea Valley Line between Stratford and Coppermill Junction, and the ac and dc section of the North London Line route between Stratford and York Way neutral section (north of Kings Cross).
Q	West Anglia	Comprises the electrified West Anglia routes from Hackney Downs station to Chingford, Enfield Town, Hertford East, Stansted Airport, Cambridge and Kings Lynn and the electrified route between Cambridge Junction (on the East Coast Main Line near Hitchin) and Cambridge.

<b>ESTA</b>	<b>Traction electricity Geographic Area / Tariff Zone</b>	<b>Description</b>
R	East Coast Main Line South	Comprises the electrified East Coast Main Line from Kings Cross to the neutral section at Tallington (between Peterborough and Grantham), the electrified route between Moorgate and Finsbury Park; the electrified route between Canonbury West Junction and Finsbury Park; and the Kings Cross Incline between Camden Road East Junction and Freight Terminal Junction.
A	East Coast Main Line Central	Comprises the electrified East Coast Main Line between the neutral sections at Tallington (between Peterborough and Grantham), South Kirkby and Hambleton Junction (between Doncaster and York).
B	East Coast Main Line North	Comprises the electrified East Coast Main Line between the neutral sections at Hambleton Junction (between Doncaster and York) and Chathill (between Alnmouth and Belford).
C	East Coast Main Line Leeds	Comprises the electrified East Coast Main Line between the neutral section at South Kirkby and Leeds, Bradford and Skipton.
S	Scotland Glasgow	Comprises the electrified routes in Scotland between the neutral sections at Coatbridge, Rutherglen, Bishopston, Lochwinnoch and Carstairs.
D	Scotland East	Comprises the electrified routes in Scotland between the neutral sections at Chathill (between Alnmouth and Belford) and Auchengray (between Edinburgh and Carstairs).
E	Scotland North & West	Comprises the electrified routes in Scotland on the North Clyde between the neutral sections at Coatbridge and Rutherglen, the routes from Bishopston neutral section to Gourock and Wemyss Bay and the routes from Lochwinnoch neutral section to Ayr and Largs.
F	Scotland WCML	Comprises the electrified routes in Scotland between the neutral sections at Penrith, Carstairs and Auchengray (between Edinburgh and Carstairs).

<b>ESTA</b>	<b>Traction electricity Geographic Area / Tariff Zone</b>	<b>Description</b>
T	West Coast Main Line South	Comprises the West Coast Main Line routes from Euston to the neutral sections at Berkswell and Nuneaton; the third rail electrified lines from Euston to Watford Junction; the West London Line to the North Pole junction; the North London Line between South Acton and York Way (north of Kings Cross) and the route between the Primrose Hill tunnels and Camden Road.
G	West Coast Main Line Central	Comprises the West Coast Main Line routes between Nuneaton and Liverpool bounded by the neutral sections at Nuneaton, Queensville (Stafford), Stone – Colwich, Stone - Norton Bridge, Kidsgrove, Chelford and Weaver Junction.
H	West Coast Main Line West Midlands	Comprises the West Coast Main Line routes around Birmingham between the neutral sections at Berkswell and Queensville (Stafford).
I	West Coast Main Line Manchester	Comprises the West Coast Main Line routes between Manchester and Stone bounded by the neutral sections at Stone – Colwich, Stone - Norton Bridge, Kidsgrove, Chelford.
J	West Coast Main Line North	Comprises the West Coast Main Line routes between Weaver Junction and Penrith (neutral sections).
U	Southern	Comprises all third rail electrified routes south from Farringdon, Cannon Street, Charing Cross, London Bridge, Waterloo and Victoria, covering the international route as far as the Network Rail/Eurotunnel boundary; the West London Line to the south of North Pole junction; and the North London Line between Richmond and Acton Central.
V	Great Western	Comprises the electrified route from Paddington to Heathrow Airport.

## APPENDIX 7C

### Default Consist

Train Service Code	Type of Train Movement	Default Train Consist data
All (tba)	All routes as specified above	Bi-mode tilting train of 6 x 23m vehicles capable of Enhanced Permissible Speeds on the West Coast Main Line and 100 mph under diesel power.

## SCHEDULE 8: PERFORMANCE REGIME

### 1 Interpretation

#### 1.1 Definitions

In this Schedule 8 and its Appendices 1 and 2, unless the context otherwise requires:

**“Applicable Timetable”** means, in respect of a day, that part of the Working Timetable in respect of that day which is required to be drawn up in accordance with Condition D2.1.1 as at 2200 hours on the day prior to that day, and which is applicable to the Trains;

**“Bi-annual Timetable”** means in respect of any day or any Period the Passenger Timetable commencing on either the Principal Change Date or Subsidiary Change Date (as the case may be) in which falls the last day of the Period containing that day or the last day of that Period respectively;

**“Cancelled Stop”** means in relation to a Train scheduled in the Applicable Timetable to stop to set down passengers at a Monitoring Point, the Train failing to trigger that Monitoring Point (except where the failure of the train to trigger the Monitoring Point is due to a malfunction of the Monitoring Point);

**“Cancellation Minutes”** means, in relation to a Cancelled Stop, the number of Cancellation Minutes specified in column J of Appendix 1 for the Service Group which includes that Train;

**“Cap”** means, in relation to a Monitoring Point, or a Train, the cap for the relevant Service Group in column K of Appendix 1;

**“Capped Value”** means in relation to any Service Group, the capped value (if any) specified in respect of that Service Group in Appendix 1 (as indexed in accordance with paragraph 9);

**“Charter Destination Point”** means any such station so specified in Part 1 of Appendix 2;

**“Charter Service Group”** means a Charter Service Group specified in Part 1 of Appendix 2 and comprising all of the Service Groups listed in Part 1 of Appendix 2 as forming that Charter Service Group;

<b>“Joint Inquiry”</b>	means a formal inquiry which is required by any of the Railway Group Standards to be held or is permitted by any of the Railway Group Standards to be held and is in fact held;
<b>“Minutes Delay”</b>	means, in relation to a Train and a Recording Point, the delay at that Recording Point, calculated in accordance with paragraph 3;
<b>“Minutes Late”</b>	means, in relation to a day and a Monitoring Point, the lateness at that Monitoring Point, calculated in accordance with paragraph 2;
<b>“Monitoring Point”</b>	means, in relation to a direction of a Service, a point listed in column N of Appendix 1 as a point to be used for recording lateness of Trains in accordance with paragraph 2, and each such Monitoring Point shall be treated as a separate Monitoring Point notwithstanding that it may also be a Monitoring Point for the same Service in the opposite direction and/or for other Services;
<b>“Network Rail Performance Point”</b>	means, in relation to a Service Group, the Network Rail performance point specified in column B of Appendix 1;
<b>“Passenger’s Charter”</b>	means a commitment to passengers generally (whether or not legally binding) made by the Train Operator or any Passenger Transport Executive (in respect of any services operated by the Train Operator which are the subject of arrangements between the Train Operator and that Passenger Transport Executive) in relation to the punctuality and/or reliability of all or any of the Trains. The foregoing shall not be construed as to include any specific alternative or additional arrangements with any particular passenger (whether or not legally binding);
<b>“Passenger Timetable”</b>	means the timetable referred to within the Performance Monitoring System as the passenger timetable and which reflects the Applicable Timetable;
<b>“Performance Data Accuracy Code”</b>	means the version of the Performance Data Accuracy Code referred to in Part B of the Network Code;
<b>“Performance Monitoring System”</b>	means the recording system which Network Rail is required to operate under Part B of the Network Code;

<b>“Performance Sum”</b>	means, in relation to a Service Group, a sum of money which Network Rail or the Train Operator is liable to pay to the other under this Schedule 8, as calculated in accordance with paragraph 9 or 10, as the case may be;
<b>“Period”</b>	means each consecutive period of 28 days during the term of this contract commencing at 0000 hours on 1 April in each year, provided that the length of the first and last such Period in any year may be varied by up to seven days on reasonable prior notice from Network Rail to the Train Operator;
<b>“Recording Point”</b>	means a point at which Network Rail records Trains using the Performance Monitoring System;
<b>“Recovery Time”</b>	means additional time incorporated in the Applicable Timetable to allow for a Train to regain time lost during an earlier part of its journey;
<b>“Relevant Year”</b>	has the meaning ascribed to it in Schedule 7;
<b>“Restriction of Use”</b>	has the meaning ascribed to it in Schedule 4;
<b>“Retail Prices Index”</b>	has the meaning ascribed to it in Schedule 7;
<b>“Season Ticket”</b>	means any ticket valid for unlimited travel on a Service for not less than a period of one calendar month;
<b>“Service Code”</b>	means the third, fourth and fifth digits of an eight character train service code applied in the Performance Monitoring System to Trains and used to identify them;
<b>“Service Group”</b>	means a collection of Services contained within the service groups specified in column A of Appendix 1;
<b>“Train”</b>	means each train operating a Service which is: <ul style="list-style-type: none"> <li>(a) operated by or on behalf of the Train Operator pursuant to the permission to use the Routes granted under this contract; and</li> <li>(b) used to provide services for the carriage of passengers by railway,</li> </ul> but excludes any and all trains making an Ancillary Movement; and
<b>“Train Operator Performance Point”</b>	means, in relation to a Service Group, the Train Operator performance point specified in column F of Appendix 1.

## 1.2 Interpretation

For the purposes of this Schedule 8:

- (a) a Train shall be treated as being in a Service Group for that part of its journey during which it satisfies the characteristics specified in columns A, L and N of Appendix 1 as forming a Service which is included in that Service Group;
- (b) events in respect of a Train shall be treated as occurring on the day on which the Train is scheduled in the Applicable Timetable to depart from the first point at which it is to pick up passengers; and
- (c) save as otherwise provided, each final calculation of minutes shall be accurate to three decimal places.

## 1.3 Suspension Notices

Wherever a Suspension Notice is in force, the effects of that Suspension Notice shall be the subject of Clause 3.6 and not of this Schedule 8. Accordingly, for the purposes of this Schedule 8:

- (a) neither Network Rail nor the Train Operator shall be allocated any responsibility for those effects; and
- (b) those effects shall not be regarded as causing any Minutes Late or Minutes Delay or Cancelled Stops.

## 2 Calculation of Minutes Late

The Minutes Late at a Monitoring Point on a day shall be derived from the following formula:

$$\text{Minutes Late} = \Sigma L$$

where:

L in respect of a Train is the lesser of:

- (i) the number of minutes (rounded down to the nearest whole minute) by which the time at which the Train stops at the Monitoring Point is later than the time at which that Train is scheduled in the Passenger Timetable to stop at that Monitoring Point; and
- (ii) the Cap,

provided that no regard shall be had for any Train which is not recorded as stopping at the Monitoring Point; and

$\Sigma$  is the sum across all those Trains in the relevant Service Group which are scheduled in the Passenger Timetable to stop at that Monitoring Point on that day which do so stop.

## 3 Calculation of Minutes Delay

The Minutes Delay in respect of a Train when it triggers a Recording Point shall be equal to:

- (a) in respect of the first Recording Point triggered by that Train on any day, the number of minutes (rounded down to the nearest whole minute) by which the time at which that Train triggers the Recording Point is later than the time at which that Train is scheduled in the Applicable Timetable to do so; and
- (b) in respect of any other Recording Point, the lesser of:
  - (i) the number of Minutes Delay in respect of that Recording Point calculated in accordance with paragraph 3(a) (as if that Recording Point were the first Recording Point triggered by that Train); and
  - (ii) the greater of  $((A_1 - A_2) + B)$  and zero

where:

$A_1$  is the number of minutes between the time at which the Train triggers the Recording Point (rounded down to the nearest whole minute) and the time the Train last triggered a Recording Point (rounded down to the nearest whole minute);

$A_2$  is the relevant time lapse scheduled in the Applicable Timetable between those same two Recording Points; and

$B$  is any Recovery Time between those Recording Points incorporated in the Applicable Timetable;

provided that:

- (1) any Minutes Delay which arise from a single incident or a series of related incidents and which are less than three minutes in aggregate shall be deemed to be zero; and
- (2) if for any Train the aggregate Minutes Delay in respect of all Recording Points caused by a single incident are in excess of the Cap specified in column K of Appendix 1 for that Service Group, then such excess shall be disregarded.

## **4 Recording of performance information**

### *4.1 Recording of lateness, Minutes Delay and Cancelled Stops*

Without prejudice to its obligations under Part B of the Network Code, Network Rail shall use the Performance Monitoring System to record for each day in respect of each Train scheduled in the Applicable Timetable:

- (a) the time at which the Train stops to set down passengers at each Monitoring Point;
- (b) each Cancelled Stop and the incident(s) causing such Cancelled Stop where the incident can be identified;
- (c) the time at which the Train triggers each Recording Point;
- (d) the Minutes Delay for that Train at each Recording Point;

- (e) where the Minutes Delay which that Train has accrued since the last Recording Point are greater than or equal to three minutes:
  - (i) the incident(s) causing each minute of any delay included in Minutes Delay; and
  - (ii) those Minutes Delay for which Network Rail is unable to identify a cause; and
- (f) for each Charter Destination Point in respect of Trains for which the Charter Destination Point is a destination for the purposes of a Passenger's Charter, the time of the Train's arrival.

The provisions of this Schedule 8, which concern the recording of train performance information or which refer to information regarding train performance, and the rights and remedies of the parties in respect of the recording of that information, shall be subject to and interpreted in accordance with the provisions of the Performance Data Accuracy Code.

#### *4.2 Recording of allocated responsibility for Minutes Delay and Cancelled Stops*

Network Rail shall for each day and for each Train scheduled in the Applicable Timetable record separately in the Performance Monitoring System those Minutes Delay and Cancelled Stops caused by incidents:

- (a) for which Network Rail is allocated responsibility in accordance with paragraph 5.2;
- (b) for which the Train Operator is allocated responsibility in accordance with paragraph 5.3;
- (c) for which Network Rail and the Train Operator are allocated joint responsibility, in accordance with paragraph 5.4;
- (d) for which no cause can be identified; and
- (e) which are planned incidents in accordance with paragraph 5.7.

#### *4.3 Failed Recording Points*

Without prejudice to its obligations under Part B of the Network Code, Network Rail shall use all reasonable endeavours:

- (a) to restore as soon as reasonably practicable any failed Recording Point; and
- (b) pending such restoration, to compile such information from manual records and other sources, including the Train Operator, and otherwise to substitute such information as is appropriate to reflect as accurately as is reasonably practicable the actual performance of the relevant Trains for the purposes of this Schedule 8.

#### *4.4 Provision of information by Train Operator*

The Train Operator shall record and shall continue to record such information as Network Rail may reasonably require and which it is reasonable to expect

the Train Operator to have or procure in connection with any Minutes Delay that may arise and shall provide such information to Network Rail promptly after such information first becomes available to the Train Operator.

Network Rail shall promptly notify the Train Operator upon Network Rail becoming aware of any failure or any likely failure to record accurately the information which it is required to record under paragraph 4.1. Any such notification shall be in sufficient detail to enable the Train Operator to institute the recording of such information in connection with the Trains for which the recording of information is subject to such failure or likely failure as the Train Operator may reasonably achieve. The Train Operator shall institute such recording as soon as it is reasonably able following receipt of the notification from Network Rail and will provide Network Rail with the resulting information no later than 1700 hours two Working Days following the day on which it was recorded.

## **5 Allocation of responsibility for Minutes Delay and Cancelled Stops**

### *5.1 Assessment of incidents causing Minutes Delay and Cancelled Stops*

- (a) In assessing the cause of any Minutes Delay or Cancelled Stop, there shall be taken into account all incidents contributing thereto including:
  - (i) the extent to which each party has taken reasonable steps to avoid and/or mitigate the effects of the incidents; and
  - (ii) where a Restriction of Use overruns due to the start of such Restriction of Use being delayed by a late running Train, the incident(s) giving rise to that late running;
- (b) The parties shall take reasonable steps to avoid and mitigate the effects of any incidents upon the Trains and any failure to take such steps shall be regarded as a separate incident;
- (c) Network Rail shall identify:
  - (i) in respect of each incident recorded under paragraph 4.1(e)(i) as causing Minutes Delay, the extent to which that incident caused each of the Minutes Delay; and
  - (ii) in respect of each incident recorded under paragraph 4.1(b), the extent to which that incident caused the Cancelled Stop;
- (d) So far as Network Rail is reasonably able to do so, it shall identify whether responsibility for incidents causing Minutes Delay or Cancelled Stops is to be allocated to Network Rail or to the Train Operator or to them jointly in accordance with the following provisions of this paragraph 5.

### *5.2 Network Rail responsibility incidents*

Responsibility for Minutes Delay and Cancelled Stops on a day caused by incidents for which Network Rail is allocated responsibility pursuant to this paragraph 5.2 shall be allocated to Network Rail. Unless and to the extent

otherwise agreed, Network Rail shall be allocated responsibility for an incident other than a planned incident (as defined in paragraph 5.7), if that incident is caused wholly or mainly:

- (a) by breach by Network Rail of any of its obligations under this contract; or
- (b) (whether or not Network Rail is at fault) by circumstances within the control of Network Rail in its capacity as operator of the Network; or
- (c) (whether or not Network Rail is at fault) by any act, omission or circumstance originating from or affecting the Network (including its operation), including, subject to paragraph 5.3(b)(i), any incident in connection with rolling stock on the Network for which any train operator other than the Train Operator would be allocated responsibility if it were the Train Operator under this contract.

### 5.3 *Train Operator responsibility incidents*

Responsibility for Minutes Delay and Cancelled Stops on a day caused by incidents for which the Train Operator is allocated responsibility pursuant to this paragraph 5.3 shall be allocated to the Train Operator. Unless and to the extent otherwise agreed, the Train Operator shall be allocated responsibility for an incident other than a planned incident (as defined in paragraph 5.7) if that incident:

- (a) is caused wholly or mainly:
  - (i) by breach by the Train Operator of any of its obligations under this contract; or
  - (ii) (whether or not the Train Operator is at fault) by circumstances within the control of the Train Operator in its capacity as an operator of trains; or
  - (iii) (whether or not the Train Operator is at fault) by any act, omission or circumstance originating from or affecting rolling stock operated by or on behalf of the Train Operator (including its operation), including any such act, omission or circumstance originating in connection with or at any station (other than in connection with signalling under the control of Network Rail at that station or physical works undertaken by Network Rail at that station), any light maintenance depot or any network other than the Network; or
- (b) causes delay to:
  - (i) rolling stock operated by or on behalf of another train operator which is delayed in entering or leaving the Network due to any act, omission or circumstance originating in connection with a light maintenance depot or network other than the Network and, as a result of that delay, rolling stock operated by or on behalf of the Train Operator which is scheduled to leave or enter the Network at the connection with that light maintenance depot or other network is then delayed behind the first mentioned rolling stock; or

- (ii) the commencement of a Train's journey, which is caused by the late running for any reason whatever of any rolling stock included in that Train when that rolling stock is operated by or on behalf of another train operator.

#### 5.4 *Joint responsibility incidents*

- (a) Network Rail and the Train Operator shall be allocated joint responsibility for:
  - (i) any incident which is not a planned incident (as defined in paragraph 5.7), caused by an act, omission or circumstance originating in connection with or at a station which:
    - (1) is an act, omission or circumstance which affects the Network, or its operation, and prevents a Train entering or passing through a station at the time it is scheduled to do so; and
    - (2) prevents the access of passengers through the station to or from the Train;and paragraphs 5.2 and 5.3 shall not apply to any such incident; or
  - (ii) any identified incident in respect of which Network Rail and the Train Operator are equally responsible and for which neither Network Rail nor the Train Operator is allocated responsibility under paragraph 5.2 or 5.3.
- (b) Unless and to the extent otherwise agreed, Minutes Delay or Cancelled Stops caused by incidents for which Network Rail and the Train Operator are allocated joint responsibility pursuant to paragraph 5.4(a) shall be allocated 50% to Network Rail and 50% to the Train Operator.

#### 5.5 *Unidentified incidents: Minutes Delay*

Responsibility for Minutes Delay on any day in respect of a Service Group caused by incidents which are unidentified, as recorded under paragraph 4.2(d), shall be allocated as follows:

- (a) if there are any Minutes Delay in respect of the Service Group recorded as being caused by incidents for which Network Rail or the Train Operator are allocated responsibility:
  - (i) 50% of the unidentified Minutes Delay under paragraph 4.2(d) shall be allocated to Network Rail, the Train Operator and joint responsibility incidents *pro rata* to the aggregate Minutes Delay for that Service Group respectively recorded as being their responsibility under this paragraph 5 for that day; and
  - (ii) the balance of the Minutes Delay under paragraph 4.2(d) shall be allocated to Network Rail; and
- (b) if no Minutes Delay on that day in respect of the Service Group are recorded as being caused by incidents for which Network Rail or the Train Operator are allocated responsibility, then Network Rail and the

Train Operator shall each be allocated 50% of the unidentified Minutes Delay recorded under paragraph 4.2(d).

*5.6 Unidentified incidents: Cancelled Stops*

Responsibility for Cancelled Stops on a day in respect of a Service Group caused by incidents which are unidentified shall be allocated 50% to Network Rail and 50% to the Train Operator.

*5.7 Planned incidents*

An incident shall be treated as a planned incident if and to the extent that:

- (a) such incident was a Restriction of Use notified in accordance with Schedule 4 by Network Rail to the Train Operator; or
- (b) there is Recovery Time in respect of that incident.

*5.8 Allocation of responsibility for Minutes Delay at Service Group level: aggregate Minutes Delay*

In respect of a Service Group, the aggregate Minutes Delay on a day shall be the aggregate of all Minutes Delay recorded under paragraphs 4.2(a) to 4.2(d) in respect of all Trains in that Service Group scheduled in the Applicable Timetable.

*5.9 Allocation of responsibility for Minutes Delay at Service Group level: Network Rail Minutes Delay*

In respect of a Service Group, the Minutes Delay on a day allocated to Network Rail shall be the aggregate of any Minutes Delay allocated to Network Rail under paragraph 5.2, paragraph 5.4 and paragraph 5.5.

*5.10 Allocation of responsibility for Minutes Delay at Service Group level: Train Operator Minutes Delay*

In respect of a Service Group, the Minutes Delay on a day allocated to the Train Operator shall be the aggregate of any Minutes Delay allocated to the Train Operator under paragraph 5.3, paragraph 5.4 and paragraph 5.5.

*5.11 Network Rail Cancelled Stops at Monitoring Point level*

In respect of a Monitoring Point, the Cancelled Stops on a day allocated to Network Rail shall be the aggregate of any Cancelled Stops allocated to Network Rail under paragraph 5.2, paragraph 5.4 and paragraph 5.6.

*5.12 Train Operator Cancelled Stops at Monitoring Point level*

In respect of a Monitoring Point, the Cancelled Stops on a day allocated to the Train Operator shall be the aggregate of any Cancelled Stops allocated to the Train Operator under paragraph 5.3, paragraph 5.4 or paragraph 5.6.

## **6 Statement of allocated responsibility**

### *6.1 Initial statement*

For each day, Network Rail shall provide to the Train Operator as soon as reasonably practicable and in any event no later than the following Working Day:

- (a) the allocation of responsibility for incidents made by Network Rail under paragraph 5; and
- (b) a summary for each Service Group showing:
  - (i) the aggregate Minutes Delay and Cancelled Stops recorded under each category set out in paragraph 4.2; and
  - (ii) a list of the Minutes Delay and Cancelled Stops (in each case broken down by incident) recorded as the responsibility of Network Rail and as the responsibility of the Train Operator.

### *6.2 Further statements*

If Network Rail's nominated representative has reasonable grounds to believe that any further incident was the responsibility of the Train Operator or of Network Rail but was not shown as such in the information made available in accordance with paragraph 6.1, then Network Rail may, within seven days after the last Minutes Delay or Cancelled Stop caused by that incident, issue a notice in accordance with paragraph 15 revising the information and/or allocations of responsibility made available under paragraph 6.1.

### *6.3 Adjustment statements*

If Condition B3.3 (adjustment to prior results) applies in respect of all or part of a Period, then Network Rail shall promptly issue to the Train Operator a statement showing the necessary adjustments (if any) to statements already issued and Performance Sums already paid in respect of the Period, and any such adjusting statement shall be treated as if it were a statement under paragraph 11.1 and, subject to paragraph 12.2, an adjusting payment shall be payable within 28 days of Network Rail's statement.

### *6.4 Disputes about statements of allocated responsibility*

- (a) Except to the extent that it has, within two Working Days of receipt, notified Network Rail in accordance with paragraph 15 that it disputes the contents of a statement under paragraphs 6.1 or 6.2, the Train Operator shall be deemed to have agreed the contents of that statement. Any notification of a dispute shall specify the reasons for that dispute.
- (b) The parties shall attempt to resolve disputes notified in accordance with paragraph 6.4(a) as follows:
  - (i) within the next two clear Working Days after notification of any dispute, nominated representatives of the parties shall attempt to resolve that dispute; and

- (ii) if agreement has not been reached after two clear Working Days, representatives authorised by a more senior level of management of the parties shall use all reasonable endeavours to negotiate a resolution of the dispute.
- (c) Negotiations under paragraph 6.4(b)(ii) shall continue, if necessary, until a date no earlier than five clear Working Days after the end of the Period in which the event giving rise to the dispute referred to in paragraph 6.4(a) occurred.

## 7 Allocation of Minutes Late to Network Rail

In respect of each Monitoring Point, the Minutes Late on a day at that Monitoring Point allocated to Network Rail (MLNR) shall be calculated according to the following formulae:

if MD is greater than zero

$$MLNR = \frac{MDNR \cdot ML}{MD} + DMLNR$$

or if MD is equal to zero

$$MLNR = (0.5 \cdot ML) + DMLNR$$

where:

ML is the aggregate Minutes Late at that Monitoring Point on that day for all Trains in that Service Group, calculated in accordance with paragraph 2;

MD is the aggregate Minutes Delay on that day in respect of the Service Group under which that Monitoring Point is listed in column N of Appendix 1, calculated in accordance with paragraph 5.8;

MDNR is that part of such MD allocated to Network Rail in accordance with paragraph 5.9; and

DMLNR is the deemed minutes late at that Monitoring Point on that day allocated to Network Rail, derived from the following formula:

$$DMLNR = RC \cdot CM$$

where:

RC is the number of Cancelled Stops recorded at that Monitoring Point on that day for which Network Rail is allocated responsibility in accordance with paragraph 5.11; and

CM is the Cancellation Minutes for that Service Group set out in column J of Appendix 1.

## 8 Allocation of Minutes Late to the Train Operator

In respect of each Monitoring Point, the Minutes Late at that Monitoring Point on a day allocated to the Train Operator (MLT) shall be calculated according to the following formulae:

if MD is greater than zero

$$MLT = \frac{(MDT \cdot ML)}{MD} + DMLT$$

or if MD is equal to zero

$$MLT = (0.5 \cdot ML) + DMLT$$

where:

ML is the aggregate Minutes Late at that Monitoring Point on that day for all Trains in that Service Group, calculated in accordance with paragraph 2;

MD is the aggregate Minutes Delay on that day in respect of the Service Group under which that Monitoring Point is listed in column N of Appendix 1, calculated in accordance with paragraph 5.8;

MDT is that part of such MD allocated to the Train Operator in accordance with paragraph 5.10; and

DMLT is the deemed minutes late at that Monitoring Point on that day allocated to the Train Operator, derived from the following formula:

$$DMLT = TC \cdot CM$$

where:

TC is the number of Cancelled Stops recorded at that Monitoring Point on that day for which the Train Operator is allocated responsibility in accordance with paragraph 5.12; and

CM is the Cancellation Minutes for that Service Group set out in column J of Appendix 1.

## 9 Network Rail Performance Sums

9.1 In respect of a Service Group, the Network Rail Performance Sum (NRPS) for each Period shall be calculated according to the following formula:

$$NRPS = (NRPP - NRWAML) \cdot BF \cdot NRPR$$

where:

NRPP is the Network Rail Performance Point for that Service Group specified in column B of Appendix 1 for the year in which that Period falls;

NRWAML is the aggregate for all Monitoring Points in the Service Group of the weighted average minutes late allocated to Network Rail in accordance with the following formula:

$$\text{NRWAML} = \sum \frac{(\text{MLNR} \cdot \text{MPW})}{\text{SP}}$$

where:

- $\sum$  is the sum across all Monitoring Points in the Service Group;
- MLNR is the Minutes Late allocated to Network Rail in respect of each Monitoring Point in that Period, in accordance with paragraph 8;
- MPW is the weighting attributable to that Monitoring Point, as specified in column O of Appendix 1; and
- SP is the aggregate number of stops to set down passengers at that Monitoring Point scheduled for the Period in the Applicable Timetable for which a stop or Cancelled Stop is recorded in accordance with paragraphs 4.1(a) and (b) except that if SP=0 for any Monitoring Point, then for that Monitoring Point it shall be deemed that  $\frac{(\text{MLNR} \cdot \text{MPW})}{\text{SP}}$  shall equal zero;
- BF is the relevant busyness factor estimated for the Period according to the following formula:

$$\text{BF} = \sum \frac{(\text{MPW} \cdot \text{SD})}{\text{AS}}$$

where:

- $\sum$  is the sum across all Monitoring Points in the Service Group;
- MPW is the weighting attributable to that Monitoring Point, as specified in column O of Appendix 1;
- SD is the aggregate number of stops to set down passengers at that Monitoring Point scheduled in the Applicable Timetable for that Period for that Service Group; and
- AS is the average number of stops per day at the Monitoring Point scheduled in the Bi-annual Timetable in respect of that Period except that if AS=0 for any Monitoring Point it shall be deemed that  $\frac{(\text{MPW} \cdot \text{SD})}{\text{AS}}$  shall equal zero; and

NRPR is the relevant Network Rail payment rate for that Service Group specified in column E of Appendix 1 (being the sum of the amount for the marginal revenue effect specified in column C of Appendix 1

and the amount for the societal rate specified in column D of Appendix 1) as indexed in accordance with paragraph 13,

provided that:

- (i) if a Capped Value is specified in respect of that Service Group in Appendix 1 and the value of NRPS in respect of any Period is determined in accordance with the formula set out in this paragraph to be greater than the Capped Value in respect of such Period, then the value of NRPS shall be deemed to be equal to the Capped Value in respect of such Period;
- (ii) the Capped Value shall be multiplied by the CV indexation figure for the Relevant Year;
- (iii) the CV indexation figure in Relevant Year t shall be derived from the following formula:

$$CV_t = 1 + \left( \frac{RPI_{t-1} - RPI_{2008}}{RPI_{2008}} \right)$$

where:

- CV<sub>t</sub> means the CV indexation in Relevant Year t;
- RPI<sub>t-1</sub> means the Retail Prices Index published or determined with respect to November in Relevant Year t-1; and
- RPI<sub>2008</sub> means the Retail Prices Index published or determined with respect to November 2008.

9.2 Where NRPS is less than zero, Network Rail shall pay the amount of the NRPS to the Train Operator. Where NRPS is greater than zero, the Train Operator shall pay that amount to Network Rail.

## 10 Train Operator Performance Sums

10.1 In respect of a Service Group, the Train Operator Performance Sum (TPS) for each Period shall be calculated according to the following formula:

$$TPS = (TPP - TWAML) \cdot BF \cdot TPR$$

where:

- TPP is the Train Operator Performance Point for the Service Group specified in column F of Appendix 1;
- TWAML is the aggregate for all Monitoring Points in the Service Group of the weighted average minutes late allocated to the Train Operator in accordance with the following formula:

$$TWAML = \sum \frac{(MLT \cdot MPW)}{SP}$$

where:

$\Sigma$  is the sum across all Monitoring Points in the Service Group;

MLT is the Minutes Late allocated to the Train Operator in respect of each Monitoring Point in that Period, in accordance with paragraph 8;

MPW is the weighting attributable to that Monitoring Point, as specified in column O of Appendix 1; and

SP is the aggregate number of stops to set down passengers at that Monitoring Point scheduled for the Period in the Applicable Timetable for which a stop or Cancelled Stop is recorded in accordance with paragraphs 4.1(a) and (b) except that if SP=0 for any Monitoring Point, then for that Monitoring Point it shall be deemed that  $\frac{(MLT \cdot MPW)}{SP}$  shall equal zero;

BF is the relevant busyness factor estimated for the Period according to the following formula:

$$BF = \frac{\Sigma(MPW \cdot SD)}{AS}$$

where:

$\Sigma$  is the sum across all Monitoring Points in the Service Group;

MPW is the weighting attributable to that Monitoring Point, as specified in column O of Appendix 1;

SD is the aggregate number of stops to set down passengers at the Monitoring Point scheduled in the Applicable Timetable for that Period for that Service Group; and

AS is the average number of stops per day at the Monitoring Point scheduled in the Bi-annual Timetable in respect of that Period except that if AS=0 for any Monitoring Point it shall be deemed that  $\frac{(MPW \cdot SD)}{AS}$  shall equal zero; and

TPR is the relevant Train Operator payment rate for that Service Group specified in column I of Appendix 1 (being the sum of the amount of the Train Operator rate specified in column G of Appendix 1 and the amount of the Passenger Charter rate specified in column H of Appendix 1) as indexed in accordance with the provisions in paragraph 13.

10.2 Where TPS is less than zero, the Train Operator shall pay the amount of the TPS to Network Rail. Where TPS is greater than zero, Network Rail shall pay that amount to the Train Operator.

## **11 Notification of Performance Sums**

### *11.1 Notification*

Within 14 days after the end of each Period, Network Rail shall provide the Train Operator with a statement for each Service Group for that Period showing:

- (a) any Performance Sums for which Network Rail or the Train Operator is liable, together with such supporting information (other than information in respect of incidents recorded as the responsibility of Network Rail) as the Train Operator may reasonably require; and
- (b) any matter referred to in paragraph 6.1 which the Train Operator has disputed in accordance with paragraph 6.4(a) and which is still in dispute.

### *11.2 Disputes*

Within 14 days after receipt by the Train Operator of a statement required under paragraph 11.1, the Train Operator shall notify Network Rail of any aspects of such statement which it disputes, giving reasons for each such dispute. The Train Operator shall not dispute any matter which it has agreed or deemed to have agreed under paragraph 6. Such disputes and any matter referred to in paragraph 11.1(b) shall be resolved in accordance with the procedure in paragraph 16. Save to the extent that disputes are so notified, the Train Operator shall be deemed to have agreed the contents of each statement.

## **12 Payment procedures**

### *12.1 Payments and set-off*

- (a) In respect of any and all Performance Sums for which Network Rail and the Train Operator are liable in any Period, the aggregate liabilities of Network Rail and the Train Operator shall be set off against each other. The balance shall be payable by Network Rail or the Train Operator, as the case may be, within 35 days after the end of the Period to which the payment relates.
- (b) Subject to paragraph 12.2, and save as otherwise provided, all other sums payable under this Schedule 8 shall be paid within 35 days after the end of the Period to which such payment relates.

### *12.2 Payments in the event of dispute*

Where any sum which is payable under this paragraph 12 is in dispute:

- (a) the undisputed amount shall be paid or set off (as the case may be) in accordance with paragraph 12.1;
- (b) the disputed balance (or such part of it as has been agreed or determined to be payable) shall be paid or set off (as the case may be)

within 35 days after the end of the Period in which the dispute is resolved or determined; and

- (c) from the date at which such balance would but for the dispute have been due to be paid or set off, the disputed balance shall carry interest (incurred daily and compounded monthly) at the Default Interest Rate, unless the dispute relates to an incident the responsibility for which is the subject of a Joint Inquiry, in which case interest shall be payable at the prevailing base rate of Barclays Bank plc.

### **13 Payment rates**

- 13.1 Each payment rate in columns E and I of Appendix 1 shall be adjusted in respect of Periods in Relevant Year t in accordance with the following formula:

$$R_t = R_{t-1} \left( 1 + \frac{RPI_{t-1}}{100} \right)$$

where:

$R_t$  is the relevant rate in the Relevant Year t;

$R_{t-1}$  is the relevant rate in the Relevant Year t-1; and

$RPI_{t-1}$  means the percentage change (whether of a positive or negative value) in the Retail Prices Index published or determined with respect to November in the Relevant Year t-1 and the index published or determined with respect to November in the Relevant Year t-2,

but so that in relation to the Relevant Year commencing on 1 April 2014,  $R_t$  shall have the relevant value specified in the relevant column (either E or I) of Appendix 1 and in the next following Relevant Year  $R_{t-1}$  shall have the same value.

### **14 Compensation under the Passenger's Charter**

#### *14.1 Scope of indemnification*

- (a) For each Charter Service Group Network Rail shall indemnify the Train Operator for revenue actually lost by the Train Operator as a direct result of the Train Operator:

- (i) in respect of a void day, giving an extension of any Season Ticket or a refund in lieu of an extension; or
- (ii) otherwise than for a void day, giving discounts on the purchase of any Season Ticket,

where the Train Operator is required (or elects by declaring a void day) to offer such extension, discount (or the refund in lieu of an extension) under the Passenger's Charter in force on 28 May 2000 and as described in Part 2 of Appendix 2.

- (b) In this paragraph 14, a void day is as set out in Appendix 2.

14.2 Calculation of payments in respect of extensions

- (a) Subject to paragraphs 14.2(c) and 14.2(d), the liability of Network Rail, under paragraph 14.1(a), for the costs of offering an extension for poor reliability (or refund in lieu of the extension for poor reliability) in relation to a Season Ticket (RRSC) shall be determined in accordance with the following formula:

$$RRSC = TRLC \cdot \frac{CRDT}{CDT}$$

where

TRLC means the revenue actually lost by the Train Operator as a direct result of the Train Operator giving an extension of that Season Ticket as a result of poor reliability (or refund in lieu of extension);

CRDT means the number of Cancelled Stops allocated to Network Rail under paragraph 5.11 on that void day for the Charter Service Group, in respect of which such an extension (or refund in lieu of extension) is given; and

CDT means the aggregate number of Cancelled Stops on that void day for the Charter Service Group in respect of which such extension (or refund in lieu of extension) is given, recorded under paragraphs 4.2(a) to 4.2(d) inclusive.

- (b) Subject to paragraphs 14.2(c) and 14.2(d), the liability of Network Rail under paragraph 14.1(a) for the costs of offering an extension for poor punctuality (or refund in lieu of the extension for poor punctuality) in relation to a Season Ticket (RRS) shall be determined in accordance with the following formula:

$$RRS = TRL \cdot \frac{MRDT}{MDT}$$

where

TRL means the revenue actually lost by the Train Operator as a direct result of the Train Operator giving an extension of that Season Ticket as a result of poor punctuality (or refund in lieu of extension);

MRDT means the aggregate Minutes Delay allocated to Network Rail under paragraph 5.9 on that void day for the Charter Service Group, in respect of which such an extension (or refund in lieu of extension) is given; and

MDT means the aggregate Minutes Delay on that void day for the Charter Service Group in respect of which such extension (or

refund in lieu of extension) is given, recorded under paragraphs 4.2(a) to 4.2(d) inclusive.

- (c) Subject to paragraph 14.2(d), the liability of Network Rail under subparagraph 14.1(a) for the costs of offering an extension for both poor reliability and poor punctuality (or refund in lieu of extension for poor reliability and poor punctuality) shall be 50% of the aggregate of:
  - (i) such costs calculated in accordance with paragraph 14.2(a) (as if such extension or refund was for poor reliability only); and
  - (ii) such costs calculated in accordance with paragraph 14.2(b) (as if such extension or refund was for poor punctuality only).
- (d) In respect of a void day satisfying:
  - (i) the punctuality criterion in Appendix 2, liability in respect of extensions (or refunds in lieu of such extensions) of Season Tickets shall only be allocated to Network Rail under paragraph 14.1(a)(i) if the Train Operator, under the Passenger's Charter, has also declared void days in accordance with the criteria set out in Part 2 of Appendix 2 (and granted extensions or refunds in lieu of extensions to passengers) in respect of all days in the relevant Period which have had a greater or equal detrimental impact on punctuality performance measures (under the Passenger's Charter in force on 28 May 2000) compared to the void day concerned; or
  - (ii) the reliability criterion in Appendix 2, liability in respect of extensions (or refunds in lieu of such extensions) of Season Tickets shall only be allocated to Network Rail under paragraph 14.1(a)(i) if the Train Operator, under the Passenger's Charter, has also declared void days in accordance with the criteria set out in Part 2 of Appendix 2 (and granted extensions or refunds in lieu of extensions to passengers) in respect of all days in the relevant Period which have had a greater or equal detrimental impact on reliability performance measures (under the Passenger's Charter in force on 28 May 2000) compared to the void day concerned; or
  - (iii) both the reliability and the punctuality criterion in Appendix 2, liability in respect of extensions (or refunds in lieu of such extensions) of Season Tickets shall only be allocated to Network Rail under paragraph 14.1(a)(i) if either paragraph 14.2(d)(i) or paragraph 14.2(d)(ii) is satisfied.

### 14.3 Calculation of punctuality payments

For each Period, for each Charter Service Group, the extent of Network Rail's liability under this paragraph 14 with regard to discounts given in respect of punctuality shall be determined in accordance with the following formula:

$$R_p = PCP \cdot \frac{C}{C + D}$$

where:

$R_p$  is Network Rail's liability for poor punctuality in respect of the indemnity under paragraph 14.1;

PCP is the revenue actually lost by the Train Operator on the sale of any Season Tickets in that Period as the direct result of the discounts given in respect of punctuality of Trains in accordance with paragraph 14.1;

C is the aggregate of the Minutes Delay allocated to Network Rail under paragraph 5.9 in respect of that Charter Service Group for every day in the thirteen Periods immediately preceding that Period; and

D is the aggregate of the Minutes Delay allocated to the Train Operator under paragraph 5.10 in respect of that Charter Service Group for every day in the thirteen Periods immediately preceding that Period.

#### 14.4 *Calculation of reliability payments*

For each Period, for each Charter Service Group, the extent of Network Rail's liability under this paragraph 14 with regard to discounts given in respect of reliability of Trains shall be determined in accordance with the following formula:

$$R_r = PCR \cdot \frac{Y}{Y + Z}$$

where:

$R_r$  is Network Rail's liability for poor reliability in respect of the indemnity under paragraph 14.1;

PCR is the revenue actually lost by the Train Operator on the sale of any Season Tickets in that Period as the direct result of the discounts given in respect of reliability of Trains in accordance with paragraph 14.1;

Y is the aggregate number of total cancellations of Trains for which Network Rail is allocated responsibility in accordance with paragraph 5 for that Charter Service Group for every day in the thirteen Periods immediately preceding that Period; and

Z is the aggregate number of total cancellations of Trains for which the Train Operator is allocated responsibility in accordance with paragraph 5 for that Charter Service Group for every day in the thirteen Periods immediately preceding that Period,

and for the purposes of this paragraph 14.4, "total cancellation" means a cancellation of a Train resulting in a reduction of 50% or more of the number of miles run by that Train which it was scheduled, in the Applicable Timetable, to run.

#### 14.5 *Extensions and charter excluded events*

For the purpose of paragraphs 14.3 and 14.4 there shall be disregarded the Minutes Delay and total cancellations for any day in respect of which any

extension of any Season Ticket (or any refund in lieu of such an extension) shall have been given pursuant to the Passenger's Charter and in respect of any event which is excluded from the performance statistics under the Passenger's Charter.

#### *14.6 Statements*

Within 14 days of the end of each Period, the Train Operator shall in respect of each Charter Service Group forward to Network Rail a statement setting out its calculation of the liability of Network Rail under this paragraph 14. That statement shall be in sufficient detail to enable Network Rail to make an informed assessment thereof. Network Rail shall co-operate with the Train Operator in the production of such statements by providing to the Train Operator within a reasonable time of any request the values of CDT, CDRT, MDRT, MDT, C, D, Y and Z under this paragraph 14. In addition, the Train Operator shall include in any such statement details of any incident occurring during that Period which it considers is the responsibility of Network Rail in accordance with paragraph 5 and is of such type that the Train Operator will be liable in accordance with the Passenger's Charter to pay compensation. Save to the extent that any such details are included in such statement, the Train Operator shall be deemed to have agreed that no such incidents occurred.

#### *14.7 Disputes*

- (a) Within 14 days after receipt of each such statement from the Train Operator, Network Rail shall notify the Train Operator of any aspects of the statements which it disputes, giving the reason for any dispute. Any such disputes shall be resolved in accordance with the procedure set out in paragraph 16. Save to the extent that disputes are so notified, Network Rail shall be deemed to have agreed the contents of such statement and the undisputed amount of any such statement shall become due and payable by the later of:
  - (i) 35 days after the end of the Period to which it relates; and
  - (ii) 21 days from the date of service of such statement.
- (b) Where, in any Period and in respect of any Charter Service Group either the parties are unable or the parties agree that it is impracticable to allocate responsibility for any liability to Network Rail under this paragraph 14, then responsibility shall be allocated to Network Rail according to actual performance as established using all relevant data available to the parties in respect of that Period or on such other basis as the parties may agree. The parties shall consult each other with regard to the application of this paragraph 14.7(b).

#### 14.8 Network Rail audit

- (a) The Train Operator shall, for a period of not less than six years, keep all material information relating to extensions, refunds in lieu of extensions, and discounts under the Passenger's Charter.
- (b) Network Rail may upon giving not less than two Working Days prior notice to the Train Operator:
  - (i) audit and inspect and take copies of such books, documents, data and other information (whether stored electronically or otherwise); and
  - (ii) question such employees of the Train Operator or of any of its contractors, sub-contractors and consultants,

as Network Rail may reasonably require to verify the amount of any revenue actually lost by the Train Operator in respect of which the Train Operator has claimed the benefit of the indemnity in paragraph 14.1. Network Rail may use the information for verification of those amounts but for no other purpose.

#### 14.9 Adjustment statements

If in respect of any Period it is established in accordance with paragraph 14.7 that the amount of revenue actually lost by the Train Operator is less than that in respect of which the Train Operator has claimed the benefit of the indemnity in paragraph 14.1 then the Train Operator shall promptly issue to Network Rail a statement showing the necessary adjustments to statements already issued and sums already paid by Network Rail in respect of the Period and any such adjusting statement shall be treated as if it were a statement under paragraph 14.6 and an adjusting payment shall be payable by the Train Operator to Network Rail in accordance with paragraph 14.7.

#### 14.10 Access charge supplement for the Passenger's Charter arrangements

- (a) The Train Operator shall pay or procure the payment to Network Rail of an access charge supplement (ACSPC) in respect of each Period equal to 1/13 of the amount specified in Table A in respect of the Relevant Year in which the first day of the relevant Period falls:

**Table A**

Year	£
2012-2013	[ ]
2013-2014	[ ]

Each such payment shall be made within 35 days after the end of the relevant Period.

- (b) The ACSPC calculated pursuant to paragraph 14.10(a) shall be adjusted in respect of payments made relating to Periods in the Relevant Year t in accordance with the following formula:

$$ACSPC_{pt} = ACSPC_t \cdot \frac{RPI_{t-1}}{RPI_{[2014]}}$$

where:

$ACSPC_{pt}$  is the actual amount payable in the Relevant Year t;

$ACSPC_t$  is the relevant amount set out in Table A above;

$RPI_{t-1}$  means the Retail Prices Index published or determined with respect to November in the Relevant Year t-1; and

$RPI_{[2014]}$  means the Retail Prices Index published or determined with respect to November 2008,

but so that in relation to the Relevant Year commencing on 1 April 2014,  $ACSPC_t$  shall have the relevant value specified in the relevant column of Table A above.

## 15 Notices

- 15.1 All notices under this Schedule 8 shall be given in writing and shall be sent by prepaid first class post, email or fax or delivered by hand to the party in question at the address for service last notified by that party.
- 15.2 Any such notice shall be deemed to have been duly received:
- (a) if sent by prepaid first class post, three days after posting unless otherwise proven;
  - (b) if sent by hand, when delivered;
  - (c) if sent by facsimile, (subject to confirmation of uninterrupted transmission by a transmission report) before 1700 hours on a business day, on the day of transmission and, in any other case, at 0900 hours on the next following business day ("business day" for these purposes being a day which is not a Saturday, Sunday or a public holiday in the place where the transmission is to be received); and
  - (d) if sent by email, (unless a notice of non-delivery is received) upon receipt.

## 16 Disputes

- 16.1 If any dispute is notified under paragraph 11.2 or 14.6 it shall be resolved according to the following procedure:
- (a) within seven days of service of the relevant notice (or, if the dispute relates to an incident the responsibility for which is or is to be the subject of a Joint Inquiry, within seven days of publication of the conclusion of that Joint Inquiry), the parties shall meet to discuss the disputed aspects with a view to resolving all disputes in good faith;

- (b) if, for any reason, within seven days of the meeting referred to in paragraph 16.1(a), the parties are still unable to agree any disputed aspects, each party shall promptly and in any event within seven days prepare a written summary of the disputed aspects and the reasons for each such dispute and submit such summaries to the senior officer of each party;
- (c) within 28 days of the first meeting of the parties, the senior officers of the parties shall meet with a view to resolving all disputes;
- (d) if no resolution results before the expiry of 14 days following that meeting, then either party may require that the matter be resolved by the relevant ADRR Panel; and
- (e) if either party is dissatisfied with the decision of the relevant ADRR Panel or the ruling of the chairman thereof (as the case may be) such party shall be entitled to refer the matter for arbitration, pursuant in each case to Part C of the Access Dispute Resolution Rules.

## **17 Amendments to Appendix 1**

### *17.1 Circumstances in which parties agree to amend Appendix 1*

Either party may by notice to the other propose that Appendix 1 be amended in accordance with this paragraph 17.

### *17.2 Procedure for amendments to Appendix 1*

- (a) The party who wishes to amend Appendix 1 shall notify the other party of any such proposed change and the date from which it proposes that such change will have effect:
  - (i) where such change relates to a forthcoming timetable change, on or before the first day of the month six months before the relevant Principal Change Date or Subsidiary Change Date on which that timetable change is due to occur; and
  - (ii) in any other case, prior to the date from which it proposes such change shall have effect.
- (b) Any notice under paragraph 17.2(a) shall:
  - (i) specify as far as possible that party's proposed amendments to Appendix 1; and
  - (ii) be accompanied by information and evidence in reasonable detail supporting the change proposed and setting out the reasons for it.
- (c) The party receiving a notice issued under paragraph 17.2(a) shall respond to that notice in writing, in reasonable detail and with reasons for its response, within 56 days of service of such notice.
- (d) Promptly (and in any event within 34 days) following the service of any response under paragraph 17.2(c), the parties shall endeavour to agree

whether Appendix 1 should be amended in accordance with this paragraph 17 and, if so, the amendments.

- (e) If the parties fail to reach agreement within 90 days after service of the relevant notice under paragraph 17.2(a), or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, the parties shall notify the ORR. If the ORR elects to determine the matter, the parties shall furnish the ORR with such information and evidence as the ORR shall require to determine the matter and shall abide by any determination issued by the ORR. If the ORR does not so elect within 56 days of receipt by the ORR of notification in accordance with this paragraph 17.2(e), the matter shall be referred for expert determination in accordance with Part D of the Access Dispute Resolution Rules save that:
  - (i) the parties shall each request that the expert's determination in writing is delivered to the parties no later than 56 days after the date of referral of the matter to the expert, and that the expert establishes such rules and procedures for the conduct of the determination as the expert sees fit having regard to that timescale;
  - (ii) each of the parties shall abide by the rules and procedures established by the expert; and
  - (iii) the parties shall direct the expert to (A) have regard to any relevant criteria and/or policy statement most recently issued by the ORR and/or any guidance issued by the ORR in relation to the reference of the matter to the expert, including in relation to the introduction of any capped value in respect of any Service Group in Appendix 1, and (B) set out in its determination the reasons for that determination.
- (f) Any amendment to Appendix 1 shall take effect only when it has been approved by the ORR under section 22 of the Act. Accordingly, as soon as reasonably practicable after any such amendment is agreed or determined in accordance with this paragraph 17 (other than a determination by the ORR pursuant to paragraph 17.2(e)), the parties shall ensure that the ORR is furnished with such amendment and such information and evidence as it shall require to determine whether or not to approve the amendment.
- (g) Any amendment to Appendix 1 shall apply with effect from:
  - (i) the relevant Principal Change Date or Subsidiary Change Date (where paragraph 17.2(a)(i) applies); or
  - (ii) subject to paragraph 17.2(f), the date proposed by the party requesting the change in accordance with paragraph 17.2(a)(ii) (unless otherwise agreed by the parties or determined by the ORR or the expert in relation to the change).

### *17.3 Adjustments to the Performance Monitoring System*

Network Rail shall make appropriate amendments to the Performance Monitoring System to reflect the amendments to Appendix 1 by the date when in accordance with paragraph 17.2(e) such amendments are to take effect, or as soon as reasonably practicable thereafter. Where any such amendment to Appendix 1 or any consequential amendment to the Performance Monitoring System is not made until after that date, Network Rail shall, promptly following such amendments being made, issue to the Train Operator a statement showing the necessary adjustments to the statements already issued and the payments already made in respect of Performance Sums up to and including the Period commencing on the date when in accordance with paragraph 17.2(e) such amendments to Appendix 1 are to take effect. Any such adjusting statement shall be treated as if it were a statement under paragraph 11.1 and, subject to paragraph 12.2, an adjusting payment shall be payable within 35 days of that adjusting statement.

### *17.4 Costs of implementing amendment*

Network Rail shall (subject to any determination of an expert as to costs, where a matter is referred to that expert under paragraph 17.2(c)) be entitled to ninety percent (90%) of costs incurred by or on behalf of Network Rail in assessing and implementing any amendments to Appendix 1 and the Performance Monitoring System, provided that those costs shall be the minimum reasonably necessary for Network Rail to assess and implement that amendment.

### *17.5 Relationship with Appendix 3 and remainder of Schedule 8*

References in this paragraph to amendments to Appendix 1 shall include any amendments to Appendix 3 or any other relevant parts of Schedule 8 which are agreed or determined to be reasonably required in connection with those amendments to Appendix 1.

## **18. Compensation for sustained poor performance**

### *18.1 Definitions*

In this paragraph 18, unless the context otherwise requires:

**“Average Periodic Liability”** means one thirteenth of the sum of all values of NRPS (as that term is defined in paragraph 9) to be calculated by deducting the sum of all values of NRPS for which the Train Operator is liable from the sum of all values of NRPS for which Network Rail is liable in each case in respect of the relevant Calculation Term, so that in respect of the period prior to 10 December 2006 such calculation shall be made with reference to the values of NRPS in the relevant period under all of the Previous Access Agreements (as defined in Clause 19.2) after such adjustment as is reasonably required to make them correspond to the values which would have applied if all the Services concerned had been operated throughout the relevant period under a single track access agreement with a Schedule 8 on the same terms as the Schedule 8 included in this contract;

**“Calculation Term”** means the 13 Periods immediately preceding each Periodic Liability Date;

**“Periodic Liability Date”** means the first day of the first, fourth, seventh and eleventh Periods in each Relevant Year ignoring for these purposes any Period that commences before the Transition Date as referred to in Clause 19; and

**“SPP Threshold”** means the value specified in respect of the end of the relevant Calculation Term in Appendix 3 (as indexed in accordance with paragraph 19).

## *18.2 Indemnity*

Network Rail shall indemnify the Train Operator against all Relevant Losses in accordance with this paragraph 18 if, and to the extent that, the Average Periodic Liability shows Network Rail has exceeded (that is, equalled or been worse than) the relevant SPP Threshold.

## *18.3 Determination of Relevant Losses*

Subject to paragraph 18.4, the liability of Network Rail under paragraph 18.2 for sustained poor performance (SPPL) shall be determined in accordance with the following formula:

$$\text{SPPL} = \text{RL} - (\text{PS} + \text{NRp} + \text{NRr})$$

where:

**RL** means the Train Operator’s Relevant Losses arising as a direct result of Minutes Delay and Cancelled Stops during the Calculation Term in each case insofar as these do not arise as a result of an incident for which the Train Operator is allocated responsibility pursuant to paragraph 5.3;

**PS** means the sum of all values of NRPS (as that term is defined in paragraph 9) to be calculated by deducting the sum of all values of NRPS for which the Train Operator is liable from the sum of all values of NRPS for which Network Rail is liable in each case in respect of the relevant Calculation Term;

**NRp** means Network Rail’s liability, if any, for poor punctuality calculated in accordance with paragraph 14.2 in respect of the relevant Calculation Term; and

**NRr** means Network Rail’s liability, if any, for poor reliability calculated in accordance with paragraph 14.3 in respect of the relevant Calculation Term.

## *18.4 Restrictions on claims by Train Operator*

The Train Operator shall not be entitled to make a claim for Relevant Losses pursuant to this paragraph 18:

- (a) if and to the extent that it has previously recovered those Relevant Losses whether under this paragraph 18 or otherwise; or

- (b) in relation to any Calculation Term or part of it that precedes the Transition Date as referred to in Clause 19.

## **19 SPP Indexation**

### *19.1 SPP Indexation*

Each value specified in Appendix 3 shall be multiplied by the SPP indexation figure for the Relevant Year.

### *19.2 Application of SPP Indexation*

The SPP indexation figure in Relevant Year t shall be derived from the following formula:

$$SPPI_t = 1 + \left( \frac{RPI_{t-1} - RPI_{2008}}{RPI_{2008}} \right)$$

where:

$SPPI_t$  means the SPP indexation in Relevant Year t;

$RPI_{t-1}$  means the Retail Prices Index published or determined with respect to November in Relevant Year t-1; and

$RPI_{2008}$  means the Retail Prices Index published or determined with respect to November 2008.

**APPENDIX 1**

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	
Service Group	Network Rail				TOC										
	Performance Point	Payment Rate			Performance Point	Payment Rate			Cancellation Minutes	Cap	Service Code		Direction	Monitoring Point	Weighting
		MRE	Societal Rate	Total		Train Operator Rate	Passenger Charter Rate	Total							

**APPENDIX 2**

**Part 1 Charter Service Groups**

**Part 2 Passenger Charter Arrangements**

### APPENDIX 3 - SPP THRESHOLD

	Period:	3	6	10	13
2013/14					

## **SCHEDULE 9: LIMITATION ON LIABILITY**

### **1 Definitions**

In this Schedule

“Liability Cap” means:

- (a) in relation to the first Contract Year, the sum of £5,000,000 and
- (b) in relation to any subsequent Contract Year, the sum calculated in accordance with the following formula:

$$C_n = C_1 * \left( \frac{RPI_n}{RPI_1} \right)$$

where:

- (i)  $C_1$  is the sum of £[Enter details];
- (ii)  $C_n$  is the Liability Cap in the nth subsequent Contract Year;
- (iii)  $RPI_n$  is the Retail Prices Index (as defined in Schedule 7) published or determined with respect to the first month of the subsequent Contract Year n; and
- (iv)  $RPI_1$  is the Retail Prices Index (as defined in Schedule 7) published or determined with respect to the month in which this contract became effective under Clause 3.1.

### **2 Application**

The limitations on liability contained in this Schedule apply in the circumstances set out in Clause 11.5.

### **3 Limitation on Network Rail’s liability**

In relation to any claim for indemnity made by the Train Operator to which this Schedule 9 applies:

- (a) Network Rail shall not be liable to make payments in relation to such claims which are admitted in writing or finally determined in any Contract Year to the extent that its liability for such claims exceeds the Liability Cap for such Contract Year; and
- (b) to the extent that its liability for such claims exceeds the Liability Cap for such Contract Year, any claim for payment of a sum which exceeds such Liability Cap shall be extinguished and Network Rail shall have no further liability for it.

### **4 Limitation on Train Operator’s liability**

In relation to any claims for indemnity made by Network Rail to which this Schedule 9 applies:

- (a) the Train Operator shall not be liable to make payments in relation to such claims which are admitted in writing or finally determined in any

Contract Year to the extent that its liability for such claims exceeds the Liability Cap for such Contract Year; and

- (b) to the extent its liability for such claims exceeds the Liability Cap for such Contract Year, any claim for payment of a sum which exceeds such Liability Cap shall be extinguished and the Train Operator shall have no further liability for it.

## **5 Disapplication of limitation**

To the extent that any Relevant Losses:

- (a) result from a conscious and intentional breach by a party; or
- (b) are in respect of obligations to compensate any person for liability for death or personal injury, whether resulting from the negligence of a party or the negligence of any of its officers, employees or agents or from a failure by a party to comply with its Safety Obligations,

such Relevant Losses:

- (i) shall not be subject to the limitation of liability in Schedule 9; and
- (ii) shall not be taken into account when calculating the amount of Relevant Losses in respect of claims admitted or finally determined in a Contract Year for the purposes of the limitations of liability in this Schedule 9.

## **6 Exclusion of legal and other costs**

The limits on the parties' liabilities provided for in paragraphs 3 and 4 shall not apply to costs incurred in recovering any amount under a relevant claim, including legal, arbitral and other professional fees and expenses.

## **7 Exclusion of certain Relevant Losses**

A party shall have no claim for Relevant Losses to the extent that such Relevant Losses result from its own negligence or breach of this contract.

## **8 Continuing breaches**

Nothing in this Schedule 9 shall prevent a party making a new claim for indemnity in respect of a continuing breach of contract which:

- (a) is a continuing breach of contract which continues for more than 12 months;
- (b) is a continuing breach of contract which continues beyond a period within which it might reasonably be expected to have been remedied; or
- (c) is a breach of a Performance Order in relation to a breach of contract,

but any such new claim shall not include any sum which was the subject matter of a previous claim and was extinguished by virtue of paragraph 3(b) or 4(b).

## **9 Final determination of claims**

For the purpose of this Schedule 9, a determination of a claim for Relevant Losses by a Court or other tribunal shall be treated as final when there is no further right of appeal or review from such determination or in respect of which any right of appeal or review has been lost, whether by expiry of time or otherwise.

## **SCHEDULE 10: NETWORK CODE MODIFICATIONS**

### **1 Automatic effect**

#### *1.1 General*

This contract shall have effect:

- (a) with the modifications; and
- (b) from the date,

specified by ORR in a modification notice as supplemented (where appropriate) by a notice of consent to requisite adaptations or a notice of determined requisite adaptations.

#### *1.2 Retrospective effect*

No relevant notice may have retrospective effect.

### **2 Modification notice**

#### *2.1 Meaning*

A modification notice is a notice given by ORR to the parties for the purposes of this contract which modifies specified provisions of this contract (other than this Schedule 10) by making such modifications as are consequential upon, or necessary to give full effect to, any change to the Network Code.

#### *2.2 Contents of modification notice*

A modification notice shall state:

- (a) the modifications which are to be made to this contract;
- (b) the date from which specified modifications are to have effect; and, if any such modifications are to have effect from different dates, the dates applicable to each modification; and
- (c) which of the specified modifications are to be subject to adaptation and the backstop date for the requisite adaptations in question.

### **3 Adaptation procedure**

#### *3.1 Application*

This paragraph 3 applies in the case of specified modifications which are specified as being subject to adaptation.

#### *3.2 Negotiation of adaptations*

In respect of the modifications in each modification notice:

- (a) within 14 days of the date of service of the relevant modification notice, the parties shall meet and in good faith negotiate and attempt to agree the requisite adaptations;

- (b) each party shall ensure that:
  - (i) such negotiations are conducted in good faith in a timely, efficient and economical manner, with appropriate recourse to professional advice; and
  - (ii) ORR's criteria are applied in the negotiations; and
- (c) the negotiations shall not continue after the backstop date.

### 3.3 *Agreed adaptations - notice to the Office of Rail Regulation*

If the parties have agreed the requisite adaptations on or before the backstop date, not later than 7 days after the backstop date the agreed requisite adaptations shall be sent by the parties to ORR for its consent, together with a statement, signed by or on behalf of both parties:

- (a) stating the reasons for the agreed requisite adaptations;
- (b) stating the extent to which and ways in which ORR's criteria have been applied in arriving at the agreed requisite adaptations and, in any case where they have not been applied, the reasons; and
- (c) giving such other information as ORR may have requested.

### 3.4 *Agreed adaptations – Office of Rail Regulation's consent*

If ORR is satisfied with the agreed requisite adaptations, and it gives a notice of consent to requisite adaptations, they shall have effect as provided for in paragraph 3.8.

### 3.5 *Agreed requisite adaptations – Office of Rail Regulation's refusal of consent*

If ORR gives notice to the parties that it is not satisfied with any or all of the agreed requisite adaptations, it may:

- (a) require the parties again to follow the procedure for negotiating requisite adaptations (with such modifications as to time limits as it specifies), in which case they shall do so; or
- (b) determine the requisite adaptations itself.

### 3.6 *Requisite adaptations - failure to agree or submit*

If the parties have failed to submit agreed requisite adaptations to ORR for its consent within 7 days after the backstop date, it may determine the requisite adaptations itself.

### 3.7 *Notice of determined requisite adaptations*

A notice of determined requisite adaptations is a notice:

- (a) given by ORR to the parties for the purposes of this paragraph 3 following the failure of the parties to send to ORR within 7 days of the backstop date requisite adaptations to which it gives its consent; and

- (b) which states the requisite adaptations which ORR has determined should be made using its powers to do so under paragraph 3.5 or 3.6.

### **3.8** *Effect of requisite adaptations*

Requisite adaptations established either:

- (a) by agreement of the parties and in respect of which ORR has given a notice of consent to requisite adaptations under paragraph 3.4; or
- (b) by the determination of ORR under paragraph 3.5 or 3.6 and stated in a notice of determined requisite adaptations,

shall have effect from such date as ORR states in the relevant notice of consent to requisite adaptations or (as the case may be) the relevant notice of determined requisite adaptations.

## **4** **Procedural matters**

### **4.1** *More than one notice*

More than one modification notice may be given.

### **4.2** *Differences etc as to requisite adaptations*

Any difference or question as to whether anything is a requisite adaptation shall be determined by ORR:

- (a) on the application of either party; and
- (b) in accordance with such procedure (including as to consultation) as ORR may by notice to the parties determine.

### **4.3** *Co-operation and information*

If ORR gives notice to either or both of the parties that it requires from either or both of them information in relation to any requisite adaptation or proposed requisite adaptation:

- (a) the party of whom the request is made shall provide the requested information promptly and to the standard required by ORR; and
- (b) if that party fails timeously 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 it without the information in question and the party in default shall have no grounds for complaint in that respect.

### **4.4** *Office of Rail Regulation's criteria*

In relation to the negotiation of any requisite adaptation, ORR shall be entitled to:

- (a) give to the parties any criteria which it requires to be applied in the negotiations; and
- (b) modify the criteria after consultation.

#### 4.5 *Procedural modifications*

In relation to the procedure in paragraph 3 for the agreement or establishment of requisite adaptations (including the times within which any step or thing requires to be done or achieved):

- (a) such procedure may be modified by ORR by a notice of procedural modification given by it to the parties; but
- (b) ORR may give a notice of procedural modification only if it is satisfied that it is necessary or expedient to do so in order to promote or achieve the objectives specified in section 4 of the Act or if such a notice is requested by both parties.

#### 4.6 *Dates*

In this Schedule 10:

- (a) where provision is made for a date to be specified or stated by ORR it may, instead of specifying or stating a date, specify or state a method by which a date is to be determined, and references to dates shall be construed accordingly; and
- (b) any notice given by ORR which states a date may state different dates for different purposes.

#### 4.7 *Requirement for prior consultation*

No relevant notice shall have effect unless:

- (a) ORR has first consulted the parties in relation to the proposed relevant notice in question;
- (b) in the consultations referred to in paragraph 4.7(a), ORR has made available to the parties such drafts of the proposed relevant notice as it considers are necessary so as properly to inform them of its contents;
- (c) ORR has given each party the opportunity to make representations in relation to the proposed relevant notice and has taken into account all such representations (other than those which are frivolous or trivial) in making its decision on the relevant notice to be given;
- (d) ORR has notified the parties as to its conclusions in relation to the relevant notice in question (including by providing to each such person a copy of the text of the proposed relevant notice) and its reasons for those conclusions; and
- (e) in effecting the notifications required by paragraph 4.7(d), ORR has treated as confidential any representation (including any submission of written material) which (and to the extent that) the person making the representation, by notice in writing to ORR or by endorsement on the representation of words indicating the confidential nature of such representation, has specified as confidential information.

#### 4.8 *Consolidated contract*

Not later than 28 days after the giving of the last of:

- (a) a modification notice; and
- (b) a notice of determined requisite adaptations or a notice of consent to requisite adaptations (as the case may be),

Network Rail shall prepare and send to the Train Operator and the ORR a copy of this contract as so modified.

#### 4.9 *Saving*

Nothing in this Schedule 10 affects:

- (a) the right of either party to approach and obtain from ORR guidance in relation to the requisite adaptations; or
- (b) the right of ORR at any time to effect modifications to the Network Code under Condition C8 of that code.

### 5 **Definitions**

In this Schedule 10:

- “backstop date”** means the date (being not earlier than 28 days from the date of the modification notice) specified as such in a modification notice (or such later date as may be established under paragraph 3.5(a) or 4.6);
- “modification notice”** has the meaning ascribed to it in paragraph 2.1;
- “notice of consent to requisite adaptations”** means a notice given by ORR under paragraph 3.4;
- “notice of determined requisite adaptations”** has the meaning ascribed to it in paragraph 3.7;
- “notice of procedural modification”** means a notice given by ORR to the parties under paragraph 4.5 modifying any aspect of the procedure in this Schedule 10 for the agreement or establishment of requisite adaptations;
- “ORR’s criteria”** means the criteria established by ORR for the purposes of the negotiation of requisite adaptations and given to the parties, or modified, under paragraph 4.4;
- “relevant notice”** means a modification notice, notice of determined requisite adaptations, notice of procedural modification or notice of modification of ORR’s criteria;

**“requisite adaptations”**

in relation to specified modifications, means the amendments (including the addition of information) to the provisions in question which are necessary or expedient so as to give full effect to them in the particular circumstances of the case, and “adaptation” shall be construed accordingly; and

**“specified”**

means specified in a modification notice.



## **SCHEDULE 12 RELEVANT SCHEDULE 8 MODIFICATIONS [ MAY OR MAY NOT BE NEEDED]**

### **1 Automatic effect**

#### *(a) General*

This contract shall have effect:

- (a) with the Relevant Schedule 8 Modifications; and
- (b) from the date,

specified by ORR in a Notice of Consent or Notice of Determined Relevant Schedule 8 Modifications.

#### *(b) Retrospective effect*

A Notice of Consent or Notice of Determined Relevant Schedule 8 Modifications may have retrospective effect.

### **2 Procedures governing Relevant Schedule 8 Modifications**

#### *2.1 Negotiation of Relevant Schedule 8 Modification*

In respect of the Relevant Schedule 8 Modifications:

- (a) the parties shall, within 14 days from the Start Date, meet and negotiate and attempt to agree the Relevant Schedule 8 Modifications;
- (b) each party shall ensure that:
  - (i) such negotiations are conducted in a timely, efficient and economical manner, with appropriate recourse to professional advice; and
  - (ii) the ORR's Criteria are applied in the negotiations; and
- (c) the negotiations shall not continue after the Backstop Date.

#### *2.2 Relevant Schedule 8 Modifications - failure to agree*

If the parties fail to agree the Relevant Schedule 8 Modifications on or before the Backstop Date:

- (a) the matter shall be submitted to arbitration in accordance with Part C of the Access Dispute Resolution Rules; and
- (b) Network Rail shall within 5 Working Days notify ORR in writing of such submission to arbitration.

## **SCHEDULE 11 NOT USED**

### 2.3 *Use of the ORR's Criteria in arbitration*

If a matter is referred to arbitration under paragraph 2.2, the arbitrator shall be required by the parties to:

- (a) determine the Relevant Schedule 8 Modifications in accordance with the ORR's Criteria and make such orders in its award as it considers necessary to establish the requisite Relevant Schedule 8 Modifications;
- (b) provide reasons for its award; and
- (c) state the extent to which and ways in which the ORR's Criteria have been applied in determining the Relevant Schedule 8 Modifications and, in any case where they have not been applied, give the reasons.

### 2.4 *Relevant Schedule 8 Modifications – notice to ORR*

Not later than 7 days after the Backstop Date or the conclusion of arbitration, as the case may be, the Relevant Schedule 8 Modifications shall be sent by the parties to ORR for its consent, together with a statement, signed by or on behalf of both parties:

- (a) stating the reasons for the Relevant Schedule 8 Modifications;
- (b) stating the extent to which and ways in which the ORR's Criteria have been applied in determining the Relevant Schedule 8 Modifications and, in any case where they have not been applied, the reasons; and
- (c) giving such other information as ORR may have requested.

### 2.5 *Relevant Schedule 8 Modifications – ORR's consent*

If ORR is satisfied with the Relevant Schedule 8 Modifications submitted to it pursuant to paragraph 2.4, and it gives a notice to that effect, such modifications shall have effect as provided for in paragraph 1.1.

### 2.6 *Relevant Schedule 8 Modifications – ORR's refusal of consent*

If ORR gives notice to the parties that it is not satisfied with any or all of the proposed Relevant Schedule 8 Modifications, it may:

- (a) require the parties again to follow the procedure or any part of the procedure set out in paragraphs 2.1 to 2.4 for agreeing Relevant Schedule 8 Modifications (with such modifications as to time limits as it specifies), in which case they shall do so; or
- (b) following such consultation with the parties as it considers necessary, determine the Relevant Schedule 8 Modifications itself and give a notice specifying such Relevant Schedule 8 Modifications.

## 2.7 *Payment adjustments*

Within 10 Working Days of the date of any notice referred to in paragraph 1.1 the parties shall make such adjustments to the payments made under Schedule 8 as are necessary to ensure that the parties are in the financial position in respect of the Relevant Schedule 8 Modifications as if those modifications had had effect from the date specified in the notice given under paragraph 1.1.

## 3 **Procedural matters**

### 3.1 Co-operation and information

If ORR gives notice to either or both of the parties that it requires from either or both of them information in relation to the Relevant Schedule 8 Modifications or proposed Relevant Schedule 8 Modifications:

- (a) the party of whom the request is made shall provide the requested information promptly and to the standard required by ORR; and
- (b) if that party fails timeously 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 it without the information in question and the party in default shall have no grounds for complaint in that respect.

### 3.2 *ORR's Criteria*

Any Relevant Schedule 8 Modifications shall:

- (a) be drafted to meet a high standard of simplicity, clarity and legal precision;
- (b) use definitions, terminology and numbering, including any bespoke provisions based on previous track access agreements, which are consistent with the defined terms, terminology and numbering used in this contract;
- (c) take account, where relevant, of the 'Criteria and procedures for the approval of passenger track access contracts: fourth edition' published by the Office of Rail Regulation and dated May 2006; and
- (d) take account of the duties of ORR under section 4 of the Act ;

### 3.3 *Procedural modifications*

In relation to the procedure in paragraph 2 for the Relevant Schedule 8 Modifications (including the times within which any step or thing requires to be done or achieved):

- (a) such procedure may be modified by ORR by a Notice of Procedural Modifications; but

- (b) ORR may only give a Notice of Procedural Modifications if it is satisfied that it is necessary or expedient to do so in order to promote or achieve the objectives specified in section 4 of the Act or if it is requested by both parties.

### 3.4 *Dates*

In this Schedule:

- (a) where provision is made for a date to be specified or stated by ORR, it may, instead of specifying or stating a date, specify or state a method by which a date is to be determined, and references to dates shall be construed accordingly; and
- (b) any notice given by ORR which states a date may state different dates for different purposes.

### 3.5 *Consolidated contract*

Not later than 28 days after the giving of a Notice of Consent or Notice of Determined Relevant Schedule 8 Modifications, Network Rail shall prepare and send to the Train Operator and ORR a copy of this contract as so modified.

### 3.6 *Saving*

Nothing in this Schedule affects the right of either party to approach and obtain from ORR guidance in relation to Relevant Schedule 8 Modifications.

## 4 **Definitions**

In this Schedule 11:

“**Backstop Date**” means [Enter details];

“**Notice of Consent**” means a notice given by ORR to the parties under paragraph 2.5;

“**Notice of Determined Relevant Schedule 8 Modifications**” means a notice given by ORR to the parties under paragraph 2.6 (b);

“**Notice of Procedural Modifications**” means a notice given by ORR to the parties under paragraph 3.3 modifying any aspect of the procedures in this Schedule;

“**ORR’s Criteria**” means the criteria set out in paragraph 3.2;

“**Start Date**” means [Enter details];

“**Relevant Schedule 8 Modifications**” means:

- (a) any modifications required to the Monitoring Points and associated weightings, Network Rail Performance Points and Train Operator
- (b) any modifications to any other part of Schedule 8 of this contract which are necessary as a consequence of any modifications under paragraph (a).

**IN WITNESS** whereof the duly authorised representatives of Network Rail and the Train Operator have executed this contract on the date first above written.

Signed by .....

Print name .....

Duly authorised for and on behalf of  
NETWORK RAIL INFRASTRUCTURE LIMITED

Signed by .....

Print name .....

Duly authorised for and on behalf of  
ALLIANCE RAIL HOLDINGS LIMITED