

Dated _____ 2003

WENSLEYDALE RAILWAY PLC

- and -

ENGLISH WELSH & SCOTTISH RAILWAY LIMITED

**TRACK ACCESS AGREEMENT
(NON-PASSENGER SERVICES)**

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THIS AGREEMENT is made the day of 2003

BETWEEN:

- (1) **WENSLEYDALE RAILWAY PLC**, a company registered in England (number 4093919) having its registered office at Leeming Bar Station, Leases Road Northallerton North Yorkshire DL7 9AR (**WR plc**); and
- (2) **ENGLISH WELSH & SCOTTISH RAILWAY LIMITED**, a company registered in England (number 2938988) having its registered office at 310 Goswell Road, London EC1V 7LW (**EWS**).

WHEREAS:

- (A) WR plc is the facility owner and infrastructure controller of the Network;
- and
- (B) WR plc has agreed to make the Network available to EWS for the purposes of the provision of non-passenger services on the terms and conditions of this Agreement.

IT IS HEREBY AGREED as follows:

1. INTERPRETATION

Definitions

1.1 In this Agreement, unless the context otherwise requires:

Access Dispute Resolution Rules means the set of rules regulating the resolution of disputes between Access Parties, entitled "Access Dispute Resolution Rules" and annexed to the publication entitled "The Railtrack Track Access Conditions 1995";

Access Parties means, in respect of an access agreement, the parties to that Agreement;

Act means the Railways Act 1993 (as amended by the Transport Act 2000) and any regulations or orders made under it;

Additional Service means a Service which is additional to the Services specified in Part III of Schedule 5, subject to such Additional Service becoming a Service in accordance with the provisions of paragraph 1.4 of Schedule 5;

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** shall have the meanings given in section 736 of the Companies Act 1985;

Ancillary Movements means train movements which are not an express part of any Service but which are necessary or reasonably required for giving full effect to the train movements which are an express part of the Services and shall include any

such train movement for the purpose of testing the physical or operational characteristics or capabilities of any railway asset;

Associate has the meaning attributed to it in section 17 of the Act;

Applicable Standards means the standards set out in WR plc Safety Case;

Applicable Systems means any systems which the parties may agree to use for the safe planning and operation of Train Movements over the Network;

Bid means a bid made by EWS to WR plc for one or more Train Slots in accordance with paragraph 4 of Schedule 5;

Change of Law means the application to any person of any Legal Requirement which did not previously so apply or the change of any Legal Requirement applying to that person (including any such Legal Requirement ceasing to apply, being withdrawn or not being renewed) other than in relation to:

- (a) corporation tax (or any other tax of a similar nature replacing corporation tax on profits or gains); or
- (b) Value Added Tax

Charges means the charges payable by or on behalf of EWS under this Agreement as set out in Schedule 7;

Charging Period means each period of twenty eight days which coincides with a WR plc accounting period provided that:

- (a) the first such period and the last such period may be of less than twenty eight days where:
 - (i) the Commencement Date does not coincide with the first day of one of WR plc's accounting periods; or
 - (ii) the Expiry Date does not coincide with the last day of one of WR plc's accounting periods;
- (b) the duration of the first and last such period in any Financial Year may be varied so as to coincide with the duration of WR plc's accounting periods by notice from WR plc to EWS;

Claims Allocation and Handling Agreement means the agreement of that name dated 1 April 1994 made between (1) The British Railways Board, (2) Network Rail, (3) Gatwick Express Limited, (4) European Passenger Services Limited and (5) Railway Claims Limited, by which the parties agreed to adopt certain procedures for the allocation and handling of certain claims by third parties against industry participants as modified from time to time;

Commencement Date means the later of:

- (i) the date upon which the Regulator, pursuant to section 18 of the Act, approves the terms of this Agreement and issues directions; and
- (ii) the date of the Agreement.

Competent Authority means any local, national or supra-national agency, authority, department, inspectorate, minister, ministry official, court, tribunal or public or statutory person (whether autonomous or not and including the Regulator) whether of the United Kingdom or of the European Union, which has, in respect of this Agreement, jurisdiction over either or both EWS and WR plc, or the subject matter of this Agreement, provided that Competent Authority shall not include Her Majesty's Government (or any department, minister, official or nominee thereof) where acting

as shareholder of either EWS or WR plc as applicable or other than pursuant to the Crown prerogative or a statutory function or power;

Confidential Information means information relating to the affairs of one party to this Agreement or any of its Affiliates which has been provided by any such person to the other party under or for the purposes of this Agreement, or any matter or thing contemplated by this Agreement or to which this Agreement relates, the disclosure of which may be likely to compromise or otherwise prejudice the commercial interests of any such person and which has been identified as falling within this definition by the party providing that information;

Dangerous Goods means dangerous goods as defined in the Carriage of Dangerous Goods by Rail Regulations 1996 (as amended from time to time);

Destination in relation to a Service means the point at which a Service is Planned to terminate, provided that if any such point is not on the Network, the point in question shall be the point on the Network at which the train in question could leave the Network and which is the most appropriate point for such train to use to arrive;

Default Interest Rate means the interest rate set out in paragraph 1.2 of Schedule 1;

Direction means any direction, requirement, instruction or rule binding on either or both of EWS or WR plc and includes any modification, extension or replacement of any such direction, requirement, instruction or rule for the time being in force;

Environmental Condition means:

(a) any Environmental Damage; or

(b) any event, circumstance, condition, operation or activity which it is reasonably foreseeable is likely to result in Environmental Damage

which (in either case) in WR plc's reasonable opinion could result in WR plc incurring any material liability or being subject to the Direction of any Competent Authority;

Environmental Damage means any material injury or damage to persons, living organisms or property (including offence to man's senses) or any pollution or impairment of the environment resulting from the discharge, emission, escape or migration of any substance, energy, noise or vibration;

Event of Default means an EWS Event of Default or a WR plc Event of Default as the context requires;

EWS Event of Default has the meaning given to that term in paragraph 1.1 of Schedule 11;

Expiry Date means 31 May 2007;

Financial Year means a period of a year commencing on 1 April in each calendar year and ending on 31 March in the following year save that (a) the first such period shall commence on the Commencement Date and (b) the last such period shall end on the Expiry Date;

Firm Contractual Right means a right under this Agreement in respect of the quantum, timing or any other characteristic of a train movement which is not expressed to be subject to any contingency outside the control of EWS;

Industry Committee means the Access Disputes Resolution Committee established pursuant to paragraph A2 of the Access Dispute Resolution Rules;

Insolvency Event in relation to either of the parties, shall have occurred where:

- (a) any step which has a reasonable prospect of success is taken by any person with a view to the administration of that party 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 was substituted £50,000 or such higher figure as the parties may agree in writing from time to time;
 - (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(l)(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 of that person or any person presents a winding-up petition which is not dismissed within 14 days, or that party 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);
- (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 in the case of paragraphs (a), (d) and (e) or (in relation to any matter analogous or equivalent to the matters referred to in paragraphs (a), (d) and (e)), (f), 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 and that party has reasonable prospect of successfully contesting the proceedings or action in question;

Intermediate Points in relation to a Service means those points at which that Service is Planned to call provided that if any such point is not on the Network, the point in question shall be the point on the Network at which the train in question could join the Network and which is the most appropriate for such train to use to move onto the Network to reach the Destination of that Service;

Legal Requirement means (for the purpose of the definition of Change of Law), in relation to any person, any of the following:

- (a) any enactment to the extent that it applies to that person;

- (b) any regulation made by the Council or the Commission of the European Union to the extent that it applies to that person or a decision taken by the said Commission which is binding on that person to the extent that it is so binding; and
- (c) any interpretation of law, or finding, contained in any judgement given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired which requires any legal requirement falling within paragraphs (a) or (b) above to have effect in a way which is different to that in which it previously had effect;

Method of Working means the arrangements agreed between WR plc and EWS for the safe operation of Services on the Network specified in Part III of Schedule 2;

Network means the network of which WR plc is the network operator and which is situated between Castle Hill Junction near Northallerton at milepost 30 & 63 chains and Redmire in North Yorkshire at milepost 22 & 13 chains and includes the Operating Constraints;

Network Plan means the plan of the Network specified in Part II of Schedule 2;

Network Rail means Network Rail Infrastructure Limited a company registered in England having its registered office at 40 Melton Street London NW1 2EE;

Nominated Location in relation to a Service means any of the Origin, Destination and Intermediate Points;

Non-Secure Services means Services which are not listed in Part III of Schedule 5 in relation to which Bids have been made by EWS pursuant to paragraph 4 of Schedule 5;

Operating Constraints means the constraints that affect the operation of the Network or trains on the Network set out in Part I of Schedule 2 to this Agreement;

Origin in relation to a Service means the point at which that Service is Planned to commence provided that if any such point is not on the Network, the point in question shall be the point on the Network at which the train in question could join the Network and which is the most appropriate for such train to use to move onto the Network to reach the Destination of that Service;

Planned means in relation to a Service a Bid that has been accepted or deemed accepted by WR plc pursuant to paragraph 4 of Schedule 5;

Possession means any restriction of use of all or any part of the Network for the purposes of or in connection with enhancement, upgrade, inspection, maintenance, renewal or repair thereof or of any other railway asset or any other works in relation thereto;

Prospective Access Contract means:

- (a) any proposed access contract or any amendment to an existing access contract which WR plc and a third party are actively negotiating in good faith, but which has not been submitted formally and finally under section 18 and/or section 22 of the Act;
- (b) any applications for directions which a third party has submitted under section 17 of the Act;

Railway Group Standards means:

- (i) technical standards with which railway assets or equipment used on or as part of railway assets must conform; and

- (ii) operating procedures with which the operators of railway assets must comply

in each case as authorised pursuant to the Railway Group Standards Code prepared pursuant to Network Rail's network licence;

Registered means registered in Network Rail's rolling stock library and which is acceptable to run on the Network;

Registered Equipment means the railway vehicles which are Registered, as such vehicles may be replaced, modified or added to from time to time;

Relevant Losses means all damage, losses, claims, proceedings, demands, liabilities, costs, damages, orders and out of pocket expenses (including costs reasonably incurred in investigating or defending any claim, proceedings, demands or orders and any expenses reasonably incurred in preventing, avoiding or mitigating loss, liability or damage);

Safety Case has the meaning given to that term in the Railways (Safety Case) Regulations 2000;

Safety Obligations means all applicable obligations and laws concerning health and safety (including any duty of care arising at common law, and any arising under statute, statutory instrument or mandatory codes of practice) in England and Wales;

Secure Right means in relation to a Service a Firm Contractual Right for a Train Movement having the Service Characteristics set out in Part III of Schedule 5;

Services means the non-passenger Services which EWS is entitled to operate in accordance with this Agreement, including Ancillary Movements and Service shall be construed accordingly;

Service Characteristics means, in relation to a Service, the characteristics of that Service set out in Part III of Schedule 5 or, where not specified in Part III of Schedule 5, the characteristics of that Service specified in EWS's Bid and accepted by WR plc;

Service Group means the group of Services specified in the Service Group Reference;

Service Group Reference means the parties' reference to a group of Services specified in Part III of Schedule 5, which is used for monitoring and general reference purposes;

Standard Length Unit measures 21 feet (6.4 metres);

SRA means the body known as the Strategic Rail Authority established under the Act;

Stabling means the parking or laying up of the Registered Equipment or such other railway vehicles as EWS is permitted by this Agreement to use on the Network, otherwise than in the course of operating the Services or carrying out of Ancillary Movements, which parking or laying up is reasonably required for giving full effect to the movements of Registered Equipment required for the provision of the Services, and **Stable** and **Stabled** shall be construed accordingly;

Suspension Notice means a notice in writing served by the relevant party on the other party in accordance with paragraph 2 of Schedule 11;

Term has the meaning ascribed to it in Clause 2.1 of this Agreement;

Termination Notice means a notice in writing served by the relevant party on the other party in accordance with paragraph 3 of Schedule 11;

Train Movements means movements on the Network of Services comprised of railway vehicles by EWS;

Train Slot means a Train Movement or a series of Train Movements identified by arrival and departure times at each of the start, intermediate (where appropriate) and end points of each Train Movement;

Unilateral Termination Notice means a notice in writing served by EWS on WR plc in accordance with Clause 2.2;

Value Added Tax means value added tax as provided for in the Value Added Tax Act 1994 and **VAT** shall be construed accordingly;

Varied Service means a Service which is a variation to the Services specified in Part III of Schedule 5 subject to such Varied Service becoming a Service in accordance with the provisions of paragraph 1.4 of Schedule 5;

WR plc Event of Default has the meaning given to that term in paragraph 1.3 of Schedule 11;

WR plc Safety Case means the WR plc Safety Case accepted from time to time by Her Majesty's Railway Inspectorate pursuant to the Railway (Safety Case) Regulations 2000;

Interpretation

1.2 In this Agreement, unless the context otherwise requires:

- (a) references to “this Agreement” include the schedules and appendices attached hereto;
- (b) the singular includes the plural and vice versa;
- (c) any one gender includes the others;
- (d) clause, sub-clause and paragraph headings are for convenience of reference only and do not form part of, and shall neither affect nor be used in the construction of, this Agreement;
- (e) reference to a statute, bye-law, regulation, rule, delegated legislation or order is to that statute, bye-law, regulation, rule, delegated legislation or order as amended, modified or replaced from time to time and to any bye-law, regulation, rule, delegated legislation or order made thereunder;
- (f) save as otherwise provided herein, reference to an agreement or instrument is to that agreement or instrument as amended, novated, modified, supplemented or replaced from time to time;
- (g) reference to a party is to a party to this Agreement, its successors and permitted assigns;
- (h) reference to a recital, Clause or Schedule is to a recital, clause or schedule of or to this Agreement; reference to a Part of a schedule is to a Part of the Schedule in which the reference appears and reference in a Schedule to a Table is a reference to the table annexed to that Schedule;
- (i) where a word or expression is defined (whether in this Agreement or by virtue of this Clause 1.2), cognate words and expressions shall be construed accordingly;
- (j) 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;
- (k) the words “other” and “otherwise” shall not be limited by any foregoing words where a wider construction is possible;
- (l) 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;
- (m) terms and expressions defined in the Act, the Railways (Safety Case) Regulations 2000 or WR plc’s network licence shall have the same meanings in this Agreement; and

1.3 The Appendix and Schedules (including appendices) to this Agreement shall have effect.

Continuity of Powers

1.4 Where this Agreement confers a power on the Regulator, that power may be exercised from time to time as the occasion requires.

2. TERM

Length of Term

2.1 This Agreement shall come into effect at 00.01 hours on the Commencement Date and shall continue in force until the earlier of:

- (a) its termination pursuant to paragraph 3 of Schedule 11 or Clause 2.2; and
- (b) 23.59 hours on the Expiry Date;

Unilateral Right of Termination

Unilateral Right of Termination

2.2 (a) EWS may at any time serve a Unilateral Termination Notice on WR plc to terminate this Agreement. EWS shall send a copy of the Unilateral Termination Notice to the Regulator.

Contents of a Unilateral Termination Notice

(b) The Unilateral Termination Notice shall specify a date and time on which termination of this Agreement is to take effect (which shall not be earlier than 12 months from the date on which the Unilateral Termination Notice is served on WR plc).

Effect of Termination

(c) The service of a Unilateral Termination Notice shall not affect the parties' continuing obligations under this Agreement up to the date and time of termination specified in the Unilateral Termination Notice.

- (d) The Agreement shall terminate on the later of:
- (i) the date and time specified in the Unilateral Termination Notice; and
 - (ii) the date upon which notice of such termination shall have been given to the Regulator

Consequences of Termination

(e) The provisions of paragraph 4 of Schedule 11 of this Agreement shall apply to the termination of this Agreement pursuant to this Clause 2.2.

3. COMMERCIAL PURPOSE AND STANDARD OF PERFORMANCE

General

Achievement of commercial purpose

- 3.1 (a) Subject to Clause 3.1 (b), WR plc and EWS shall each carry out their respective obligations under this Agreement, and take such other steps as shall be reasonably necessary or expedient, in order to achieve the commercial purpose.

Application of commercial purpose

- (b) Clause 3.1 (a) shall only apply in order to resolve any ambiguity as to the interpretation of any provision of this Agreement.

Commercial purpose

- 3.2 The commercial purpose is that:

- (a) EWS shall use Registered Equipment to operate the Services over the Network;
- (b) the parties shall maintain and operate:
- (i) the Network (in the case of WR plc); and
 - (ii) the Registered Equipment (in the case of EWS),

to a standard which is appropriate for the operation of the Services in accordance with the Operating Constraints, including in terms of safety and reliability.

Standard of performance

3.3 Without prejudice to any other obligations in this Agreement, in carrying out its obligations under this Agreement, each party shall act with due efficiency and economy and in a timely manner, and in all respects 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 WR plc); and
- (b) non-passenger train operator (in the case of EWS).

4. PERMISSION TO USE

Permission to use the Network

4.1 WR plc hereby grants EWS permission to use the Network in accordance with the terms of this Agreement.

Meaning

4.2 References in this Agreement to permission to use the Network shall, except where the context otherwise requires, be construed to mean permission:

- (a) to use the track comprised in the Network for the provision of the Services in accordance with their Service Characteristics using the Registered Equipment in accordance with the Operating Constraints;
- (b) for EWS and its Associates to load and unload the Registered Equipment in connection with Services at Redmire Sidings Loading Dock or at other locations on the Network as may be agreed from time to time.
- (c) to make Ancillary Movements;
- (d) to Stable;
- (e) for EWS and its Associates or its Associates' sub-contractors to enter upon the Network, with or without vehicles; and
- (f) for EWS and its Associates to bring things other than Registered Equipment but including vehicles on the Network and keep them there,

and such permission is subject, in each case and in all respects to the Operating Constraints.

Permission under Clauses 4.2(e) and 4.2 (f)

4.3 In relation to the permissions specified in Clauses 4.2 (e) and 4.2 (f):

- (a) EWS shall, and shall procure that its Associates or its Associates' sub-contractors shall, wherever reasonably practicable, first obtain the consent of WR plc, which consent shall not be unreasonably withheld or delayed;
- (b) EWS shall remove any vehicle or other thing so brought onto any part of the Network (not being Registered Equipment which EWS is otherwise entitled to bring onto the Network) when reasonably directed to do so by WR plc; and
- (c) whilst exercising any rights conferred by Clauses 4.2(e) and 4.2(f), EWS shall, and shall procure that its Associates shall, comply with such reasonable restrictions or instructions as WR plc shall specify,

provided that nothing in this Clause 4.3 shall prevent EWS from exercising the permissions granted in Clauses 4.2(a), 4.2(b), 4.2(c) and 4.2(d).

Stabling

4.4 WR plc shall use all reasonable endeavours to provide such Stabling facilities as are necessary or expedient for the provision of the Services.

Rights

4.5 WR plc hereby grants to EWS the Secure Rights and the right to make Bids for Non-Secure Services subject to the limitations contained in paragraph 1.6 of Part II of Schedule 5.

4.6 WR plc hereby grants to EWS the right to make requests to and obtain Additional Services and Varied Services in accordance with and subject to the terms set out in paragraph 1.4 of Part II of Schedule 5.

5. OPERATION AND MAINTENANCE OF TRAINS AND NETWORK

General

5.1 Without prejudice to the other provisions of this Agreement:

(a) EWS shall ensure that any Registered Equipment used in the operation of a Service on the Network:

- (i) complies with Railway Group Standards and is of a type and composition which permits the provision of such Service in accordance with the Service Characteristics as Planned for such Service;
- (ii) is kept in a condition which ensures that the maintenance and other costs of or in connection with the upkeep of the Network shall be as low as reasonably practicable; and
- (iii) that adequate and suitably qualified personnel are engaged in the provision of the Services;

(b) WR plc shall ensure that:

- (i) the Network is maintained and operated to a standard which shall permit the provision of the Services in accordance with their Service Characteristics, using the Registered Equipment in accordance with the Operating Constraints, and the making of Ancillary Movements;
- (ii) the Network is kept in a condition which ensures that the maintenance and other costs of or connected with the operation of the Registered Equipment shall be as low as reasonably practicable;
- (iii) adequate and suitably qualified personnel are engaged in the operation and maintenance of the Network; and
- (iv) the Network remains connected to Network Rail's network at Castle Hills Junction by means of a connection agreement entered into between WR plc and Network Rail and approved by the Regulator.

Trespass, vandalism and animals

5.2 Without prejudice to the other provisions of this Agreement, EWS and WR plc 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.

Safety

5.3 EWS shall comply with any reasonable request by WR plc in relation to any aspect of its operations which affects or is likely to affect the performance of WR plc's Safety Obligations.

Movements of Trains onto and off the Network

- 5.4 (a) EWS shall ensure that, in respect of each Nominated Location and other locations where railway vehicles under the control of EWS will move onto and off the Network, suitable access has been granted to it to such location by the party which controls the relevant facility connected to the Network at the Nominated Location or other location so that such railway vehicles shall promptly be accepted off the Network and/or presented onto the Network.
- (b) The parties shall ensure that, in respect of each Nominated Location and other locations where railway vehicles under the control of EWS will move onto and off the Network, they will facilitate, to the extent they are able, the prompt presentation of such railway vehicles onto and off the Network.

Use of Applicable Systems

General

- 5.5 (a) The parties shall use the Applicable Systems in their dealings with each other in connection with matters provided for in this Agreement.

Notification of movement onto and off the Network

- (b) EWS shall notify WR plc of any movement onto the Network and off the Network of any railway vehicle under the control of EWS by promptly making a full and accurate train release or acceptance entry to the appropriate Applicable Systems.

6. CHARGES

- 6.1 Each of the parties shall perform its respective obligations set out in Schedule 7

7. INDEMNITIES

EWS indemnity

7.1 EWS shall indemnify WR plc and keep it indemnified (on an after tax basis) against all Relevant Losses incurred or suffered by WR plc as a result of:

- (a) a failure by EWS to comply with the Safety Obligations which apply to its operations;
- (b) any Environmental Damage arising directly from the operations of EWS, or the proper taking by WR plc of any steps to prevent, mitigate or remedy an Environmental Condition pursuant to paragraph 2 of Schedule 10, including supervision of works to be carried out by EWS; and
- (c) any damage to the Network arising directly from EWS's negligence, the negligence of its Associates arising from its Associates' lawful access to the Network pursuant to Clauses 4.2 and 4.3 or EWS's failure to comply with its obligations under this Agreement,

save to the extent that any such Relevant Losses result from WR plc's negligence or its failure to comply with its obligations under this Agreement, and provided that this indemnity shall not extend to loss of profit or revenue or other indirect loss and shall be subject to any limitations provided for in the Claims Allocation and Handling Agreement.

WR plc indemnity

7.2 WR plc shall indemnify EWS and keep it indemnified (on an after tax basis) against all Relevant Losses incurred or suffered by EWS as a result of:

- (a) a failure by WR plc to comply with its Safety Obligations;
- (b) any Environmental Damage to the Network arising directly from the operations of WR plc; and
- (c) any damage to the Registered Equipment or other things brought onto the Network in accordance with Clause 4.2(f) arising directly from WR plc's negligence, or failure to comply with its obligations under this Agreement,

save to the extent that any such Relevant Losses result from EWS's negligence or its failure to comply with its obligations under this Agreement, and provided that this indemnity shall not extend to loss of profit or revenue or other indirect loss and shall be subject to any limitations provided for in the Claims Allocation and Handling Agreement.

Restrictions on claims

Notification and mitigation

7.3 A party wishing to claim under the indemnity in Clause 7.1 or 7.2 shall:

- (a) notify the other party of the relevant facts of which it is aware giving rise to that claim within 3 months after:

- (i) the date of the incident giving rise to that claim; or
- (ii) the date on which the results of an inquiry pursuant to the Applicable Standards has been notified to the parties,

whichever is the later;

- (b) as soon as reasonably practicable, consult with the other party as to the ways to which the circumstances giving rise to that claim and any Relevant Losses connected with that claim may be prevented, mitigated or restricted and take all reasonable steps to prevent, mitigate and restrict any and all of the same.

7.4 Neither party to this Agreement may recover from the other party any loss of revenue (including revenue from EWS's customers, subsidy, access charges, Charges and incentive payments) or other consequential loss caused to it by the other party, save to the extent expressly permitted by this Agreement or any other agreement between them.

8. GOVERNING LAW AND DISPUTE RESOLUTION

Governing law and jurisdiction

8.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and, subject to Clause 8.2, the High Court of England and Wales is to have exclusive jurisdiction to hear any dispute or claim which may arise out of or in connection with this Agreement.

Dispute Resolution

8.2 Subject to Clause 8.3, any dispute or claim arising out of or in connection with this Agreement shall be referred to the Industry Committee for determination pursuant to the Access Dispute Resolution Rules. If either party is dissatisfied with any determination of the Industry Committee in relation to any matter referred to it under this Clause, that party shall (subject to the provisions of Clause 8.3) be entitled to refer the matter to arbitration pursuant to the Access Dispute Resolution Rules. Appointment of the arbitrator shall proceed in accordance with Clause 8.4(a), save that the Regulator may be appointed as the arbitrator if both parties and the Regulator agree to such appointment.

Reference to the High Court of England and Wales

8.3 (a) Subject to Clause 8.3(b), either party shall be entitled to refer to the High Court of England and Wales any dispute or claim arising out of or in connection with this Agreement which may be referred to the Industry Committee pursuant to Clause 8.2. Where a party has referred any dispute or claim to the Industry Committee under Clause 8.2, the other party shall, within 21 days of such referral, be entitled to object to the dispute or claim being dealt with by the Industry Committee and refer the dispute or claim to the High Court of England and Wales. Upon such referral being made, the High Court of England and Wales shall deal with the dispute or claim.

(b) Upon notice given by the Regulator to the parties under this Clause 8.3(b), Clause 8.3(a) shall cease to have effect upon such date, for such period, to such extent (including in relation to the kinds of dispute or claim covered) and subject to such conditions as are specified in the notice.

Claims already subject to proceedings

(c) Any disputes or claims which are already the subject of proceedings in the High Court of England and Wales on the date on which the Regulator serves a notice under Clause 8.3(b) shall not be affected by such notice.

Appointment of arbitrator

Obligation to appoint arbitrator

8.4 (a) Where a party notifies the other party that it intends to proceed to arbitration as envisaged in Clause 8.2, the parties shall attempt to agree the identity of the arbitrator within 14 days of the date of that notice.

(b) Where the parties fail to agree the identity of an arbitrator pursuant to Clause 8.4(a), the matter shall be referred to the first arbitrator in descending order on the panel of arbitrators established and published by the Regulator who is available and willing to accept the reference.

Appointment by Regulator

(c) Where:

(i) the circumstances referred to in Clause 8.4(b) apply; and

(ii) none of the persons on the panel of arbitrators referred to in Clause 8.4(b) is available and willing to act,

the party seeking to make the referral shall so notify the Regulator and request that the Regulator nominate an appropriate arbitrator. The matter shall be referred by the party seeking to make the referral to such arbitrator as the Regulator nominates.

Qualification of arbitrators

(d) No person may be appointed by the parties as an arbitrator under Clause 8.4(a) unless his qualifications to sit as arbitrator meet the criteria published by the Regulator for the purposes of this Clause 8.4.

9. CONFIDENTIALITY

Confidential information

General obligation

9.1 (a) Except as permitted by Clause 9.2 and paragraph 9 of Schedule 13, all Confidential Information shall be held confidential during the continuance of this Agreement and thereafter, and shall not be divulged in any way to any third party without the prior written approval of the other party.

WR plc – affiliates

(b) Except as permitted by Clause 9.2 and paragraph 9 of Schedule 13, WR plc 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.

EWS – affiliates

- (c) Except as permitted by Clause 9.2 and paragraph 9 of Schedule 13, EWS 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.

Entitlement to divulge

9.2 Either party shall be entitled in good faith to divulge any Confidential Information without the approval of the other party in the following circumstances:

- (a) to the Regulator;
- (b) to the SRA;
- (c) to the Health and Safety Executive;
- (d) to any Affiliate of the divulging party;
- (e) to any officer or servant of the divulging party if disclosure is necessary or reasonably required to enable the party in question to perform its obligations under this Agreement, upon obtaining an undertaking of strict confidentiality from such officer or servant;
- (f) to any professional advisers or consultants of such party or to any rating agency 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;
- (g) to any lender, security trustee, bank or other financial institution from whom such party is seeking or obtaining finance, or any advisers to any such entity, upon obtaining an undertaking of strict confidentiality from the entity or advisers 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 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 any breach of confidence;
- (j) pursuant to the order of any court or tribunal of competent jurisdiction including the Industry Committee; and
- (k) to the insurers of the divulging party.

Return of Confidential Information

9.3 If this Agreement is terminated, WR plc shall return to EWS and EWS shall return to WR plc all of the Confidential Information within the possession or control of

WR plc or, as the case may be, EWS as supplied to WR plc by EWS or, as the case may be, as supplied to EWS by WR plc.

Ownership of Confidential Information

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

10. ASSIGNMENT AND NOVATION

No assignment

10.1 This Agreement is personal to the parties and neither party may assign, transfer or otherwise dispose of any of its rights and obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

Regulatory approval

10.2 The assignment, transfer or novation of this Agreement shall have no effect unless approved by the Regulator and effected in accordance with the conditions (if any) of his consent.

11. PAYMENTS, INTEREST AND VAT

Payment

No deduction

11.1 (a) Subject to Clauses 11.1 (b) and 11.4, all sums due or payable by either party under this Agreement shall be paid free and clear of any deduction or withholding, save only as may be required by law or where any sum shall be contested in good faith by the party from whom payment is due and payable with timely recourse to appropriate means of redress.

Disputed amounts

(b) Where either party wishes to contest any amount payable under an invoice issued to it by the other party, the first mentioned party shall, within \times days of receipt of the invoice, notify the other party in writing of the amount which is in dispute and the bona fide reasons for the dispute and shall pay the undisputed amount in accordance with the terms of the invoice.

Dispatch of invoices

(c) All invoices shall be sent by electronic or facsimile transmission (with confirmation copy by prepaid first class post) to the address for service for the recipient referred to in Schedule 1.

Payment and content of invoices

(d) All invoices, shall unless otherwise specified in Schedule 7:
(i) be paid within \times days of the date of their receipt, and

- (ii) contain such detail as to the constituent elements of the amount stated to be payable as shall be reasonable.

Method of payment

- (e) All payments shall be paid by cheque sent to the payee at the address for service for the recipient referred to in Schedule 1 on or before the date on which such payment becomes due and payable.

Interest

11.2 Without prejudice to any other rights or remedies which one party may have in respect of the failure of the other party to pay or credit any amount on the date on which it should have been paid or credited, such amount shall carry interest (incurred daily and compounded monthly) at the Default Interest Rate from the said date until the date of actual payment or crediting (as well after judgement as before).

VAT

Payment of VAT

- 11.3 (a) Where any taxable supply for VAT purposes is made under or in connection with this Agreement by one party to the other the payer shall, in addition to any payment required for that supply, pay upon presentation of a valid tax invoice, an amount equal to such VAT as is chargeable in respect of it.

Reimbursement of VAT

- (b) Where under this Agreement one party has agreed to reimburse or indemnify the other in respect of any payment made or cost incurred by the other then 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 that such VAT is not available for credit for the other, or for any person with whom the in 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.

VAT credit note to be issued on repayment

- (c) Where under this Agreement 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 Customs & Excise 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.

Issue of credit notes in the event of overpayments

11.4 If EWS has made a payment to WR plc pursuant to any provision of this Agreement which is greater than the amount due and payable by EWS at that time (whether as a result of a review and retrospective adjustment or recalculation of the Charges payable by EWS pursuant to Schedule 7 or otherwise) (**overpayment**), WR plc shall, promptly following notice of such overpayment or the date on which any

adjustment to the Charges becomes effective (as the case may be), issue a credit note to EWS for the full amount of such overpayment. On receipt of such credit note, EWS shall be entitled to apply the amount specified therein towards or against any amount due and payable by EWS under this Agreement or any future invoice or invoices it may receive pursuant to this Clause 11.

12. MISCELLANEOUS

Non waiver

12.1 No waiver by either party of any default by the other in the performance of any obligation under this Agreement shall operate or be construed as a waiver of any other or further default whether of a like or different character. The failure to exercise or delay in exercising a right of remedy under this Agreement 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 Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

Variations

- 12.2 (a) Subject to Clause 12.2(b), no modification to any provision of this Agreement (whether as a result of the exercise of a party's discretion or otherwise howsoever) which would, apart from that provision, require the Regulator's approval under section 22 of the Act, shall be effective unless such modification is in writing and signed by the parties and has been duly approved by the Regulator.
- (b) Clause 12.2(a) shall not apply to amendments of the following kinds:
- (i) an amendment made by virtue of a general approval issued by the Regulator pursuant to section 22 of the Act; and
 - (ii) an amendment made by virtue of Clause 12.4(b).
- (c) Modifications effected by virtue of any of the Schedules to this Agreement do not require the Regulator's approval under section 22 of the Act and so are not subject to Clause 12.2:

Entire agreement

12.3 This Agreement contains the entire agreement between the parties in relation to the subject matter of this Agreement and, supersedes all prior agreements and arrangements. This Clause 12.3 shall not have the effect of excluding any term implied by law nor preventing EWS from seeking access from WR plc on other terms.

Notices

Giving of notices

- 12.4 (a) Any notice to be given under this Agreement shall be in writing and 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 first class post or by facsimile transmission to the relevant address or facsimile

number set out in Schedule 1. For the purposes of this Clause 12.4, delivery by hand shall include delivery by a reputable firm of couriers.

Right to amend communication details

- (b) Either party shall be entitled to amend in any respect the communication particulars which relate to it and which are set out in Schedule 1. Any such amendment shall be made only by notice given to the other party in accordance with this Clause 12.4 and notified to the Regulator.

Deemed receipt

- (c) A notice shall be deemed to have been given or received:
- (i) if sent by hand or recorded delivery, at the time of delivery;
 - (ii) if sent by prepaid first class post, from and to any place within the United Kingdom, three days after posting unless otherwise proven; and
 - (iii) if sent by facsimile (subject to confirmation of uninterrupted transmission by a transmission report) before 17:00 hours on a business day, on the day of transmission and, in any other case, at 09:00 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).

Copy recipients

- (d) If there shall be specified in Schedule 1 any person to whom copies of notices shall also be sent, the party serving a notice in the manner required by this Clause 12.4 shall send a copy of the notice in question to such person at the address for serving 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 in accordance with this Clause 12.4. Such copy notice shall be sent immediately after the original notice.

Counterparts

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

No Partnership

12.6 Nothing in this Agreement shall create or be deemed to create a partnership between the parties hereto.

Contracts (Rights of Third Parties) Act 1999

12.7 Save as provided in Clause 12.8 and as expressly provided elsewhere in this Agreement, no person who is not a party to this Agreement shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

12.8 The Regulator shall have the right under the Contracts (Rights of Third Parties) Act 1999 to enforce directly such rights as he has been granted under this Agreement.

IN WITNESS whereof the duly authorised representatives of EWS and WR plc have respectively entered into this Agreement on the date first above written.

SCHEDULE 1

Contract Particulars

1.1 Contact Details

Name and Address of the Facility Owner

Name: Wensleydale Railway plc

Company Registration Number: 4093919

Address: Leeming Bar Station
Leases Road
Northallerton
North Yorkshire
DL7 9AR

Tel: 01609 779368

Fax: 01609 776240

All written notices to be marked
"URGENT: ATTENTION the Administration Manager"

and copied to:

Wensleydale Railway plc
35 High Street
Northallerton
North Yorkshire
DL7 8EE

Name and Address of EWS

Name: English, Welsh & Scottish Railway Limited

Company Registration Number: 2938988

Address: 310 Goswell Road
London
EC1V 7LW

Tel: 020 7713 2446

Fax: 020 7713 2497

All written notices to be marked
"URGENT: ATTENTION the Company Secretary"

and copied to: The Access Manager
English, Welsh & Scottish Railway Limited
310 Goswell Road
London
EC1V 7LW

Tel: 020 7713 2404

Fax: 020 7713 2310

1.2 Default Interest Rate

The Default Interest Rate shall be \times per cent. above the average of the Base Lending Rate published by Barclays Bank Plc during any period in which an amount is payable under this Agreement and remains unpaid.

Schedule 2

THE NETWORK

DEFINITIONS

In this Schedule 2, unless the context otherwise requires:

Network Change means, in relation to EWS,

- (i) any change (including any improvement or enlargement) to
 - (a) any part of the Network; or
 - (b) the format of any operational documentation (other than Railway Group Standards) owned or used by WR plc or EWS,

which is likely materially to affect the operation of the Network, or of trains operated by EWS on the Network; or

- (ii) any material change to the location of any specified monitoring points; or
- (iii) any change (not being a change within paragraph (i) or (ii) above) to the operation of the Network (including a temporary speed restriction) or series of such changes which has lasted for more than six months (or such other period as may be specified in this Agreement) and which is likely materially to affect the operation of trains by EWS on the Network; or
- (iv) any material change to a previously agreed Network Change (and for the purposes of this definition a previously agreed Network Change means any change as referred to in paragraph (i), (ii) or (iii) above which has not yet been implemented by WR plc but in respect of which the procedure set out Part IV of this Schedule has been initiated).

and shall not include any change to any System or System Interface of any System owned or used by WR plc or EWS;

System means any configuration of computer hardware, software and related communications equipment, whether or not the components are located on one site; and

System Interface means that part (whether logical, electrical, mechanical or otherwise) of any System which enables that System to interface with any other System, including but not limited to interfacing for the purpose of passing data or other information between them.

PART I Operating Constraints

1.1 **Opening Hours**

The Network shall be open between the hours of dawn and dusk 7 days per week.

1.2. **Signalling**

Signalling arrangements are as specified in the WR plc Safety Case

1.3. Special Arrangements and Instructions

Any special arrangements and instructions that apply to the Network are set out in the WR plc Safety Case

1.4. Route Availability

The Network shall be capable of accommodating Registered Equipment up to and including 25.5 tonne axle weight (RA 10) throughout with no restrictions.

1.5. Gauge

The Network shall be capable of accommodating Registered Equipment of up to W6 gauge throughout. Any Services conveying \otimes as specified in Annex I to this Schedule 2, which exceed W6 gauge shall not be constrained by the provisions of this paragraph 1.7.

With the exception of the conveyance of \otimes as specified in Annex I to this Schedule 2, EWS shall not knowingly cause or permit Services on the Network to exceed W6 gauge unless it shall have obtained WR plc's prior written consent such consent not to be unreasonably withheld.

1.6. Trailing Loads

Services shall not exceed the trailing loads set out in Annex II to this Schedule 2

1.7. Length Limits

Services shall not exceed the maximum length limit of 74 Standard Length Units (SLUs).

1.8. Speed Restrictions

The maximum permitted speed of Services on the Network is 15 mph.

1.9. Possession Opportunities

WR plc is permitted to carry out essential maintenance, replacement and repair work at any time that does not prevent the operation of any Service that has been Bid for by EWS and accepted or deemed accepted by WR plc pursuant to paragraph 4 of Schedule 5. WR plc shall advise EWS of all Possessions, which would have a direct effect on the ability of WR plc to accept Services at less than two weeks notice.

1.10. Dangerous Goods

EWS shall not knowingly cause or permit to be carried or stored any Dangerous Goods on the Network unless it shall have obtained WR plc's prior written consent such consent not to be unreasonably withheld.

EWS shall take all reasonable steps to ascertain whether any of the goods or commodities consigned to it for carriage or storage on the Network are Dangerous Goods.

PART II Network Plan

2.1. The Network Plan is included in the WR plc Safety Case.

PART III Method of Working

3.1 The Method of Working is included in the WR plc Safety Case.

PART IV Changes to the Network

4.1 WR plc shall, if it wishes to implement a Network Change:

- (a) give notice of its proposal for Network Change to:
 - (i) EWS;
 - (ii) the SRA;
 - (iii) the HSE;
 - (iv) the Regulator.

together with particulars of the proposed Network Change which are reasonably necessary to enable that person to assess the effect of the proposed Network Change and to enable EWS to assess the effect of the proposed Network Change on the operation of its Services; and

- (b) invite the submission of comments from the persons specified in paragraph 4.1 (a) within such period as is reasonable in the circumstances having due regard to the likely impact of the proposed Network Change on those persons.

4.2 To the extent that a proposed Network Change is required to be made by WR plc for safety reasons, WR plc shall not be obliged to implement the procedure set out in this Part IV until the change has lasted for three months. Upon expiry of the three months, WR plc shall promptly commence implementing and thereafter comply with the procedure set out in this Part IV as if the relevant Network Change were a Network Change proposed by WR plc.

4.3 EWS shall give notice to WR plc within the timescales prescribed in accordance with paragraph 4.1 above, if it wishes to:

- (a) object to the proposed Network Change in which case it shall give its reasons for such objection;
- (b) claim compensation from WR plc for the consequences of the implementation of the proposed Network Change in which case it shall provide a statement containing such detail as is reasonable to substantiate its claim;
- (c) seek further information from WR plc in respect of the proposed Network Change in which case it shall describe the information it requires.

4.4 Subject to paragraph 4.2 above, WR plc shall not implement a proposed

Network Change unless it has either satisfied any notice submitted by EWS in accordance with paragraph 4.3 above, or referred the matter for determination in accordance with clause 8.2 of this Agreement and such determination is made in WR plc's favour.

4.5 EWS shall, if it wishes to implement a Network Change, submit to WR plc a proposal for such change together with:

(a) such particulars of the proposed change as are reasonably necessary to enable WR plc to assess the effect of the change both on the operation by WR plc of the Network and on the operation of trains on the Network, and which it is reasonable to expect EWS to provide; and

(b) permission for WR plc to consult to the extent provided for under paragraph 4.1 subject to such requirements as to confidentiality as are reasonable.

4.6 WR plc shall following receipt of any proposal for Network Change from EWS:

(a) evaluate and discuss the proposal for change with EWS for such period as is reasonable having due regard to the likely impact of the proposed Network Change on either or both of WR plc and other operators of trains; and

(b) consult with all other operators of railway assets which are likely to be materially affected by the proposed change to the extent reasonably necessary so as properly to inform them of the change and to enable them to assess the consequences for them of the change.

4.7 WR plc shall, if requested to do so in writing by EWS, provide, at no cost to EWS, a preliminary response in respect of a proposed Network Change (which, unless WR plc indicates otherwise, shall be binding on it) to EWS as soon as practicable and in any event within the period of 28 days commencing on:

(a) the date of first notification to it in writing of the proposal for Network Change made by EWS; or (if later)

(b) the date of the request for a preliminary response,

and any such preliminary response, if negative, shall include the reasons therefore.

4.8 WR plc shall give notice to EWS if:

(a) it considers that one or more of the following conditions has been satisfied:

(i) the implementation of the proposed Network Change would necessarily result in WR plc breaching any access contract (other than an access contract to which EWS is a party);

(ii) EWS has failed in a material respect to comply with its obligations under paragraph 4.5 provided that WR plc shall first have given EWS a reasonable opportunity to remedy that failure; or

(iii) the implementation of that change would result in a material adverse effect on the maintenance or operation of the Network or the operation of any train on the Network which in any such case cannot adequately be compensated under this paragraph 4.8; or

- (b) EWS shall have given notice to WR plc that it considers that any of the conditions specified in paragraph (a) above has been satisfied;
- (c) it considers that it should be entitled to compensation from EWS for the consequences of the implementation of the change; or
- (d) any other operator of railway assets shall have given notice to WR plc that it considers that it should be entitled to compensation from EWS for the consequences of the implementation of the change.

4.9 Any notice of the kind referred to in paragraph (a) or (b) above shall include the reasons for the opinion in question. Any notice of the kind mentioned in paragraph (c) or (d) above shall include a statement of the amount of compensation required and the means by which the compensation should be paid, including any security or other assurances of payment which EWS should provide. Any such statement shall contain such detail as is reasonable to enable EWS to assess the merits of the statement or to substantiate the claim for compensation.

4.10 If:

- (a) WR plc shall have given notice to EWS pursuant to paragraph 4.8 (a) or (b) and EWS shall have failed to refer the matter for determination in accordance with clause 8.2 of this Agreement; or
- (b) WR plc shall have given notice to EWS pursuant to paragraph 4.8 (c) or (d) and EWS shall have failed either:
 - (i) to comply with the terms upon which the compensation in question shall be payable, having been given a reasonable opportunity to remedy that failure; or
 - (ii) to refer the matter for determination in accordance with clause 8.2 of this Agreement within 14 days of the date of the notice in question,

the proposed Network Change shall not be implemented. In any other case, and subject to the other provisions of this Part IV, EWS shall be entitled to have the Network Change implemented by WR plc.

4.11 Where WR plc is required (other than at its own request or instigation) to implement a Network Change as a result of any Change of Law or any Direction of any Competent Authority other than the Regulator:

- (a) WR plc shall, except to the extent that the relevant Change of Law or Direction otherwise requires, comply with paragraph 4.1 in respect of that Network Change;
- (b) EWS shall make such alterations (if any) to its railway vehicles and its Services as are reasonably necessary to accommodate that Network Change; and
- (c) each Access Party shall bear its own costs or losses arising out of the implementation of the Network Change or the consequences thereof.

4.12 The obligation to comply with the requirements of this Part IV shall be without prejudice to the obligations of the Access Parties to comply with the Railway Group Standards.

PART V - OPERATIONAL DISRUPTION

5.1 Definition.

A Disruptive Event is any event or circumstance which materially prevents or materially disrupts the operation of trains on any part of the Network.

5.2 Notification by EWS.

EWS shall notify WR plc of the occurrence of a Disruptive Event as soon as reasonably practicable after it becomes aware of it.

5.3 Notification by WR plc.

WR plc shall notify EWS of the occurrence of a Disruptive Event which is likely to affect the operation of trains by EWS, as soon as is reasonable practicable after it becomes aware of it.

5.4 Notification of expected Disruptive Events.

The parties shall use their reasonable endeavours to provide one another of as much notice as is reasonably practicable of any Disruptive Event which they believe is likely to occur.

5.5 Information to be provided in notices of Disruptive Events.

Each notice given pursuant to Clauses 5.2, 5.3 and 5.4 shall, as far as reasonably practicable, include a specification of the nature and extent of the Disruptive Event in question and its likely duration, in an amount of detail as shall be reasonably required so as to enable the person receiving the notice to inform his staff, customers and other associates of the disruption in question and minimise the inconvenience and disruption which is likely to be caused to them

5.6 Action following a Disruptive Event.

WR plc shall, as soon as reasonably practicable following the occurrence of a Disruptive Event, determine the most appropriate action to be taken to restore the operation of trains on the Network and in making its determination, shall consult as fully and as regularly as reasonably practicable with EWS as to the action which WR plc proposes to take in connection with that event.

EWS shall be entitled to require WR plc to take such actions as EWS shall reasonably specify in relation to the restoration of the operation of the affected part of the Network so as to permit the operation of trains on that part.

Schedule 3

Not Used

Schedule 4

Not Used

Schedule 5

SERVICES

PART I – DEFINITIONS

1.1 In this Schedule, unless the context otherwise requires:

Contract Miles shall have the meaning ascribed to it in Schedule 7;

Comments set out any additional contract terms or qualifications as set out in Part III to this Schedule 5;

Customer means the end customer of EWS as specified in Part III;

Description means the description of the Services as specified in Part III;

Days per Week means in relation to each specified Service the days of the week on which EWS has a Firm Contractual Right for it to run, expressed as the day the journey commences;

Max Trains Per Day means in relation to each specified Service, the maximum number of times that EWS has a Firm Contractual Right to operate that Freight Service during a day;

Max Trains Per Week means in relation to each specified Service, the maximum number of times that EWS has a Firm Contractual Right to operate that Service during a week;

Max Trains Per Year means in relation to each specified Service, the maximum number of times that EWS has a Firm Contractual Right to operate that Service during a Financial Year;

Minimum Dwell Time means the minimum amount of time (expressed in minutes) which a Train shall be entitled to stay at the relevant Intermediate Point, as referred to in Part III of Schedule 5;

Short Notice Bid means a bid made by EWS to WR plc for one or more Train Slots at less than 2 weeks notice before the date of operation of such Train Slots in accordance with paragraph 4.2 of Schedule 5;

Stanox means a numeric reference used by WR plc to describe a physical location, either part of the Network or a facility adjoining the Network;

TBA means to be advised by EWS;

Timing Flex Rights means, in relation to each specified Service, the maximum number of minutes which the timing of the Service contained in a Bid from EWS may be adjusted by WR plc in accordance with paragraph 2.1;

Timing Specifications means, any Service Characteristics set out at Part III which govern or provide for the timing of a Train Slot;

Train means each of the Services listed in Part III.

Y Path means, in relation to a specified Service, where EWS has the Firm Contractual Right to that Service to:

- (a) depart from one or more origins to the same destination; and/or
- (b) arrive at one or more destinations from the same origin,

as set out in Part III provided that EWS shall not be entitled to more than one Y Path Option within any one Y Path on any particular day;

Y Path Option means in relation to a Y Path, one origin and one destination from a combination of one or more origins and one or more destinations.

1.2 The following convention shall be used to denote days of the week:

M - Monday;

T - Tuesday;

W - Wednesday;

Th – Thursday;

F - Friday;

S - Saturday;

SUN – Sunday;

EWD - every day of a week i.e. Monday to Saturday inclusive;

O indicates services are run on that day alone (i.e. MFO - Monday and Friday only); and

X indicates Services are run on days other than the day or days shown with the exception of Sunday (i.e. MX – Monday excepted).

PART II - CONTRACT NOTES

Secure Rights

1.3 EWS shall be entitled to the Secure Rights to Services set out in Part III

Varied and Additional Services

1.4 In addition to its rights in paragraph 1.3 EWS may request Varied Services or Additional Services only if it has a reasonable commercial need (which shall include the facilitation of the efficient utilisation of EWS's resources). WR plc shall identify and inform EWS whether such requested Varied Services or Additional Services can be accommodated. To the extent that accommodating EWS's request would or is likely to:

- (i) place WR plc in breach of:

- (aa) any access contract in being at the date of EWS's request which will be in force at the time that the request by EWS would take effect; or
- (bb) any Prospective Access Contract; or
- (ii) impede WR plc or its contractors from maintaining, renewing and carrying out necessary planned work on or in relation to the Network provided that if WR plc can maintain, renew or carry out other necessary planned work on or in relation to the Network in an alternative manner (including the time at which such maintenance, renewal or other necessary planned work is carried out) which would permit WR plc to accommodate EWS's request for the Additional Service or Varied Service then to the extent that it is reasonable (having regard to the reasonable requirements of other parties affected by such alternative manner) WR plc shall do so; provided that, for the purposes of this sub-paragraph 1.4(ii) only, **planned work** shall mean possessions which have been planned in accordance with paragraph 1.11 of Schedule 2 prior to the time of EWS's request for such Additional Service or Varied Service,

WR plc shall, in either case, identify its best alternative (if any) as a Varied Service or Additional Service and EWS may accept that best alternative if it is reasonable to do so.

Any Varied Service or Additional Service which is accepted by WR plc in accordance with this paragraph 1.4 shall, subject to the approval of the Regulator, become a Secure Right to a Service and shall be included in Part III.

Ancillary Movements

1.5 If EWS wishes to make an Ancillary Movement(s) which is not set out in Part III the proposed Ancillary Movement(s) shall be treated as a Non-Secure Service.

Non-Secure Services

1.6 EWS shall be entitled to make Bids for Non-Secure Services provided that the duration of any such Non-Secure Services shall not be for a period greater than six months. WR plc will advise the Regulator where such Non-Secure Services pursuant to this paragraph 1.6 have been accepted.

1.7 For the purpose of paragraph 1.6, where Bids have been made for successive Non-Secure Services each having substantially the same characteristics, they shall be aggregated for the purpose of ascertaining whether the period of six months has been exceeded.

1.8 The Non-Secure rights referred to in paragraph 1.6 shall not be Firm Contractual Rights and are subject in all cases to EWS having a reasonable commercial need for such rights.

WR plc's Flexing Right

2.1 Unless otherwise specified in Part III and subject to paragraph 2.3 and 4.2, the maximum number of minutes by which WR plc may exercise its Timing Flex Rights in relation to any Bid for each specified Service made pursuant to paragraph 1.3, shall be plus or minus 15 minutes.

2.2 In respect of any Bid made by EWS for each Service made pursuant to paragraph 1.3, either party may request a variation in WR plc's Timing Flex Rights in respect of such Service and where either party reasonably requires such a variation the other party shall not unreasonably withhold its consent to such variation.

2.3 Where associations and connections are shown as comments in Part III, WR plc's Timing Flex Rights shall not be used to break such associations or connections.

Use of Access Rights

3.1 Without prejudice to the provisions of paragraphs 3.2 to 3.7, EWS shall voluntarily and in good faith relinquish those access rights or part or parts of such access rights with respect to the Services which are Secure Rights as described in Part III in respect of which it has no current or foreseeable reasonable commercial need.

3.2 Without prejudice to the provisions of paragraphs 3.1 and 3.7, if WR plc receives an application in writing from a third party (the **Applicant**) in which the Applicant requests firm access rights for services that are in all respects substantially similar to those set out in Part III, at the time of the application, and that such application specifies the reasons why such firm access rights are required by the Applicant and the proposed dates when such rights are to commence and terminate, then WR plc shall:

(a) take such steps as shall be necessary to establish whether or not the application is a bona fide application and that if granted the Applicant would be licensed to operate train services in accordance with such rights; and

(b) shall, without prejudice to its duties and obligations generally, use all reasonable endeavours to accommodate such application without serving notice on EWS as set out in paragraph 3.3.

3.3 If the provisions of paragraph 3.2 are complied with and WR plc cannot, having used all reasonable endeavours to do so, accommodate the application other than by granting the Applicant firm access rights at that time held by EWS then it shall notify EWS in writing that it requires EWS to relinquish, pursuant to this paragraph 3 specified Secure Rights and the date from which such access rights are to be relinquished (the **Third Party Notice**). A Third Party Notice served less than 60 days prior to the date upon which the rights applied for by the Applicant, and referred to in paragraph 3.2, are to commence shall not be a valid Third Party Notice and shall have no effect.

3.4 EWS shall be entitled, by notice in writing served on WR plc within 10 days of receipt of a Third Party Notice, to refuse to relinquish the Secure Rights specified therein if it has a reasonable ongoing commercial need for such rights after the date specified therein and shall set out such need in reasonable detail. If the access rights sought by the Applicant are for the provision of transport services to a third

party which are the subject of a competitive tendering process amongst other parties including EWS, then EWS shall be entitled to so notify WR plc in writing and the period of 10 days referred to above shall be deemed to commence on the date on which the tender identified by EWS to WR plc shall have been awarded.

3.5 If EWS refuses to relinquish the Secure Rights specified in the Third Party Notice, then WR plc shall either refuse the application from the Applicant or, on grounds that no reasonable ongoing commercial need of EWS shall have been demonstrated, shall refer the matter to the Regulator for determination of whether in fact EWS does have a reasonable ongoing commercial need for the rights after the date specified in the Third Party Notice. WR plc must make any such referral within 10 days of EWS's response. The determination by the Regulator shall be final and binding as between the parties.

3.6 If EWS does not refuse to relinquish the Secure Rights specified in the Third Party Notice or fails to respond to the Third Party Notice within the time period specified in paragraph 3.4 or the Regulator determines, pursuant to a referral made in accordance with paragraph 3.5, that EWS does not have a reasonable ongoing commercial need for the access rights, then EWS shall, with effect from the date specified in the Third Party Notice be deemed to have relinquished the specified Secure Rights and WR plc shall be entitled to grant the firm access rights specified in the Third Party Notice to the Applicant.

3.7 Without prejudice to the provisions of paragraphs 3.1 to 3.6 where any Secure Rights have not been used by EWS, either in part or in whole, for a continuous period of 12 months commencing on or after the date of this Agreement then to the extent that such Secure Rights have not been used, such rights shall be deemed to be relinquished by EWS

3.8 If EWS's rights to operate the Services as set out in Part III are reduced in accordance with this paragraph 3 then those Services shall be removed from Part III and the number of Services in respect of which EWS is entitled to Bid pursuant to Part III shall be reduced accordingly and WR plc will within 14 days of the date thereof notify the Regulator of any such variation.

3.9 WR plc hereby warrants to EWS that subject to approval by the Regulator, in any agreement granting access rights entered into by WR plc with an Applicant it will insert provisions that are, mutatis mutandis, the same as the terms set out in this paragraph 3.

Bids

4.1 EWS shall make Bids to WR plc for Train Slots giving at least 2 weeks notice before the day of operation of any such Train Slot.

4.2 EWS shall be able to make Short Notice Bids for Train Slots and WR plc shall use reasonable endeavours to accommodate such Short Notice Bids. If any Short Notice Bids are made by EWS in respect of any Secure Rights then such Secure Rights shall be treated as Non-Secure Services for the dates and times reflected in such Short Notice Bid.

4.3 EWS shall, in making a Bid for a Train Slot, indicate, in respect of the Train Slots for which the Bid has been made, the extent of its requirements (if any) as to:

- (a) dates on which the Train Slots are intended to be used;
- (b) start and end points of the Train Movement;
- (c) intermediate calling points;
- (d) the times of arrival and departure from any point specified under paragraphs 4.2 (b) and 4.2 (c);
- (e) Registered Equipment to be used; and
- (f) any Ancillary Movements

4.4 Without prejudice to paragraph 4.5, WR plc shall in relation to any Bid give notice to EWS within two working days of receipt of such Bid of its acceptance, modification or rejection of the Bid. Any notice of rejection shall include a concise explanation therefor.

4.5 Where Short Notice Bids are made by EWS pursuant to paragraph 4.2 at less than two days notice WR plc shall use reasonable endeavours to give notice to EWS of its acceptance, modification or rejection of the Bid as soon as reasonably practicable. Any notice of rejection shall include a concise explanation therefor.

4.6 WR plc shall, where it fails to notify EWS in accordance with paragraph 4.4 or 4.5 above, be deemed to have accepted EWS's Bid.

PART III

Freight Services

Part III is attached to this Agreement.

Schedule 6

Not Used

SCHEDULE 7

Charges

PART I Definitions and Interpretation

1.1 Definitions

For the purpose of calculating the charges payable under this Agreement:

Coaching Stock Miles means in relation to coaching stock, the Contract Miles travelled by that coaching stock on the Network;

Coaching Stock Weight means the weight of the coaching stock measured in tonnes;

Commodity means the commodity applying to each Service as shall be agreed between EWS and WR plc;

Contract Miles means in relation to a train, or a portion of a train, the actual distance in miles travelled by that train, or a portion of that train, on the Network;

Empty Wagon Miles means, in relation to empty wagons, the Contract Miles travelled by those empty wagons on the Network;

Empty Wagon Weight means the tare weight of a wagon measured in tonnes;

Gross Tonne Miles or **GTM** means, in respect of each locomotive type, loaded wagon type, empty wagon type or coaching stock type operated by EWS under this Agreement, the Locomotive, Loaded Wagon, Empty Wagon or Coaching Stock Miles multiplied by the Locomotive, Loaded Wagon, Empty Wagon or Coaching Stock Weight;

Incremental Costs means all reasonable additional costs properly and reasonably incurred by WR plc in respect of any modification referred to in paragraph 2.5, being the additional reasonable cost (if any) to WR plc in respect of its obligation to maintain or operate the Network but excluding:

- (a) any loss of income on the part of WR plc; and,
- (b) freight specific fixed and common costs of the Network

KGTM shall mean 1000 Gross Tonne Miles;

Loaded Wagon Miles means, in relation to loaded wagons, the Contract Miles travelled by those loaded wagons on the Network;

Loaded Wagon Weight means the gross weight of the loaded wagon measured in tonnes;

Locomotive Miles means, in relation to a locomotive, the Contract Miles travelled by that locomotive on the Network;

Locomotive Weight means the weight of the locomotive, measured in tonnes;

Track Usage Price List means the Regulator's track usage price list as may from time to time be published, updated and republished by the Regulator;

Variable Charge means the charge calculated in accordance with the formula set out in paragraph 2.2;

Variable Rate means, in respect of each locomotive type, empty wagon type, loaded wagon type and coaching stock type (in each case by Commodity) used in respect of each Service Group, the rate per KGTM set out in the Track Usage Price List as varied from time to time in accordance with paragraph 2.4.

PART II

CHARGES

The Charges

2.1 The Variable Charge and the Incremental Costs payable pursuant to this Schedule 7 shall have effect from the Commencement Date.

Variable Charge

2.2 In respect of each Charging Period, EWS shall pay or procure payment of Variable Charges. The summation across all Services of the Variable Charges calculated in accordance with the following formula, shall be the Variable Charge:

- Variable Charge = the sum of
- (1) The Variable Rate for each locomotive type multiplied by the KGTM for that locomotive type relating to the relevant Service; plus
 - (2) the Variable Rate for each empty wagon type multiplied by the KGTM for that empty wagon type relating to the relevant Service; plus
 - (3) the Variable Rate for each loaded wagon type multiplied by the KGTM for that loaded wagon type relating to the relevant Service; plus
 - (4) the Variable Rate for each coaching stock type multiplied by the KGTM for that coaching stock type relating to the relevant Service

each Variable Rate to be identified by Commodity.

Adjustments

2.3 The Charges will be rounded to the nearest penny. Where a calculation ends up exactly half way between whole numbers it will be adjusted upward.

Price Variation

- 2.4 ✂
- ✂
- ✂
- ✂
- ✂
- ✂
- ✂
- ✂

Incremental Costs

2.5(a) Where:

- (i) EWS makes a request for an Additional Service or a Varied Service or makes a Bid for a Non-Secure Service; and
- (ii) the operation of the Service requested or Bid for would exceed the Operating Constraints applying at the Commencement Date; and
- (iii) EWS wishes WR plc to modify the Operating Constraints applying at the Commencement Date in a manner so as to permit the Service requested or Bid for to operate under this Agreement; and
- (iv) WR plc is reasonably able to effect such modifications to a timescale that meets EWS's requirements

then paragraph 2.5(b) shall apply.

(b) Where WR plc incurs Incremental Costs pursuant to paragraph 2.5 (a), then such Incremental Costs shall be payable to WR plc by EWS in such amounts as are either:

- (i) agreed between the parties prior to operation of the Service requested or Bid for; or
- (ii) where the amount is not agreed in advance, as is reasonable in the circumstances

(c) If the parties have failed to agree the Incremental Costs in accordance with paragraphs 2.5 (a) and 2.5 (b) either party shall be entitled to refer the determination of the Incremental Costs to an arbitrator under paragraph 2.5 (d) and the Incremental Costs shall be determined by arbitration.

(d) If a reference is made to arbitration under paragraph 2.5 (c), the arbitrator's remit shall be that he shall:

- (i) reach a decision which is fair and reasonable;
 - (ii) have regard to;
 - (A) the duties which are imposed on the Regulator by virtue of section 4 of the Act;
 - (B) those matters set out in paragraph 2.5 (b) (ii); and
 - (C) the policy which the Regulator shall have most recently published (and identified as such) in relation to track access charges for freight train operators; and
 - (iii) give his reasons.
- (e) Other than as may be expressly agreed by the parties, nothing in this paragraph shall affect or otherwise vary EWS's obligations to pay the Charges pursuant to the terms of this Schedule 7.
- (f) If either party is dissatisfied with any decision of the arbitrator in relation to any matter referred to him under paragraph 2.5 (c), that party may refer the matter to the Regulator for determination.
- (g) Where any party shall have made a reference to the Regulator under paragraph 2.5 (f), the Regulator shall:
- (i) be entitled to decline to act on the reference if, having consulted all the parties concerned and considered the determination of the arbitrator, he shall determine that the reference should not proceed, including on the grounds that:
 - (A) the matter in question is not of sufficient importance to the industry;
 - (B) the reference to him is frivolous or vexatious; or
 - (C) the conduct of the party making the reference ought properly to preclude its being proceeded with;
 - (ii) not be liable in damages or otherwise for any act or omission to act on his part (including negligence) in relation to the reference.
- (h) WR plc shall be the legal and beneficial owner of all modifications effected by WR plc pursuant to paragraph 2.5 (a).

PART III

3. Invoice Frequency

3.1 WR plc shall issue to EWS valid invoices at the times and in respect of the Charges referred to in this Part III as follows:

3.2 WR plc shall issue to EWS an invoice as soon as practicable or as otherwise agreed following the expiry of each Charging Period (the first such period to

commence on the Commencement Date unless otherwise agreed by the parties) in respect of the Variable Charge incurred during that Charging Period.

3.3 WR plc shall issue to EWS an invoice as soon as practicable or as otherwise agreed following the expiry of each Charging Period in respect of Incremental Costs which EWS is required to pay WR plc pursuant to paragraph 2.5.

3.4 WR plc shall provide supporting information such that EWS can verify the calculation of the invoices supplied under paragraphs 3.1 and 3.2.

SCHEDULE 8

PERFORMANCE REGIME

1. Definitions

In this Schedule 8, where the context admits

Modification Notice means a notice given to the parties by the Regulator, following consultation with the parties and such other persons as the Regulator shall consider appropriate, specifying:

- (a) those modifications, if any, which the Regulator considers appropriate to be made to the Performance Regime submitted to him pursuant to paragraph 4.1; and
- (b) any further modification to any part of this Agreement which the Regulator considers appropriate to be made having regard to the Performance Regime and the modifications, if any, referred to in (a) above.

Performance Regime means such financial incentive regime as may be introduced by way of amendment to this Agreement pursuant to paragraph 2.

2. Negotiations

2.1 The parties undertake to each other to amend this Agreement so as to include provisions relating to a Performance Regime in the event that either party to this Agreement gives notice in writing to the other party proposing the adoption of a Performance Regime.

2.2 The Performance Regime shall include such financial incentives as are reasonably appropriate in all the circumstances to incentivise the minimisation of delays to trains. The parties undertake to each other to negotiate in good faith with a view to agreeing the provisions of the Performance Regime within 90 days of the event giving rise to the obligation to amend this Agreement as set out in paragraph 2.1.

2.3 Once the parties have agreed on the provisions to be included in relation to the Performance Regime pursuant to this paragraph 2, they shall submit such provisions to the Regulator for approval in accordance with the provisions of paragraph 4 below.

3. Expert Determination

3.1 *Right to refer to an expert*

- (a) If the parties fail to agree the Performance Regime pursuant to paragraph 2 above, either party shall be entitled to refer the matter for determination by an expert under Part D of the Access Dispute Resolution Rules.
- (b) It is the intention of the parties to refer to the expert only those issues

upon which they have failed to reach agreement.

3.2 *Expert's remit.*

In reaching his determination, the expert's remit shall be that he shall:

- (a) reach a decision that is fair and reasonable;
- (b) base his decision on the following criteria:
 - (1) the regime is intended to:
 - (i) incentivise WR plc to minimise the delay it causes to Services and to provide appropriate incentive payments where such delay increases above a benchmark level of performance; and
 - (ii) incentivise EWS to minimise the delay caused by Services to trains operated on the Network by other train operators and provide incentive payments where such delay increases above a benchmark level of performance;
 - (2) the regime will be financially neutral where EWS and WR plc both cause minutes of delay equal to their respective benchmarks.
- (c) not make a determination which is inconsistent with the criteria outlined in the most recent review of freight charging policy undertaken by the Regulator and the latest criteria document for the approval of freight track access agreements subsequent to that review of freight charging policy.
- (d) give his reasons.

3.3 *Rules.*

If reference is made to an expert for the purposes of this paragraph 3, the rules shall be those contained in or referred to in Part D of the Access Dispute Resolution Rules except that paragraph C6.3 of those rules (which is applicable by virtue of paragraph D2 of those rules) shall not apply.

4. Regulatory Approval

4.1 *General*

The Performance Regime agreed or determined in accordance with paragraphs 2 or 3 shall be submitted to the Regulator for his approval (pursuant to Section 22 of the Act) as soon as is reasonably practicable and in any event within 14 days of it being so agreed or determined.

4.2 *Parties to encourage Regulator to approve Performance Regime*

Upon submission of the Performance Regime to the Regulator under this paragraph 4, each party shall use all reasonable endeavours to provide the Regulator and the other party with all relevant information in relation to the Performance Regime,

including the bases and assumptions on which calculations and any other assessments have been made.

4.3 *Obligation to execute amendment to the Agreement*

The parties shall promptly execute an amendment of the Agreement giving effect from the relevant date:

- (a) to the Performance Regime which has been approved by the Regulator following its submission to him under paragraph 4.1; and
- (b) where:
 - (1) the Regulator has given a Modification Notice; and
 - (2) no notice of objection has been given by either party to the other and to the Regulator within 30 days of the date of the Modification Notice,

to any modifications to the Performance Regime as are specified in the Modification Notice.

4.4 *Objection by either party to Regulator's modifications*

If the Regulator has given a Modification Notice and either of the parties gives notice of objection to the other and to the Regulator within 30 days of the Modification Notice:

- (a) the parties shall not proceed with the execution of the amendment (as contemplated by paragraph 4.3); and
- (b) paragraphs 4.6 to 4.8 shall apply.

4.5 *Regulator's rejection of the Performance Regime*

If the Regulator rejects all or any part of the Performance Regime submitted to him, paragraphs 4.6 to 4.8 shall apply.

4.6 *Reasons for Regulator's modifications or rejection*

If any objection or rejection is made as envisaged under paragraph 4.4 or 4.5, the parties shall ask the Regulator to specify (to the extent that he has not already done so) his reasons for such modification or rejection.

4.7 *Renegotiation of Performance Regime to meet Regulator's objections*

Forthwith upon the Regulator notifying the parties of such reasons, or upon his declining to do so, the parties shall:

- (a) commence renegotiations on the Performance Regime, or that part of the Performance Regime which is affected by any such modification or rejection; and

- (b) continue to conduct such renegotiations;

in good faith and with all due diligence with a view to reconciling the Performance Regime with the Regulator's modification or rejection and/or the reasons (if any) given by the Regulator for such modification or rejection.

4.8 Expert's determination if failure to agree how to deal with Regulator's objections.

If, within 28 days of commencing to renegotiate in accordance with paragraph 4.7, the parties fail to agree on such reconciliation, either party may refer the matter to an expert in accordance with paragraph 3 above.

4.9 Criteria for the expert

If a reference to an expert is made pursuant to paragraph 4.8, the expert shall be required to determine the changes to the Performance Regime which both:

- (a) most closely satisfy the criteria specified in paragraph 2.2; and
- (b) have a reasonable prospect of securing the approval of the Regulator.

4.10 Resubmission to Regulator

The Performance Regime, incorporating such reconciliations as are agreed between the parties or determined in accordance with paragraph 4.9, shall be submitted by the parties to the Regulator for his approval and upon receipt of the Regulator's approval of the Performance Regime, the parties shall promptly execute an amendment to the Agreement giving effect to the Performance Regime for submission to the Regulator for approval (pursuant to Section 22 of the Act).

4.11 Replacement of Schedule 8

Upon the Performance Regime being approved by the Regulator, the Performance Regime shall replace the provisions of this Schedule 8 and accordingly shall constitute Schedule 8 for the purposes of this Agreement.

SCHEDULE 9

NOT USED

SCHEDULE 10

Environmental Protection

Definitions

1.1 In this Schedule, unless the context otherwise requires:

Relevant Liability means the obligation of any person to make any payment or to take or secure the taking of any action in relation to an Environmental Condition or the Direction of a Competent Authority of the kind referred to in paragraph 2.1.1 (b)

Relevant Steps in relation to EWS means the steps of the kind referred to in paragraph 2.1.3 (e) (i)

Environmental Information Requirements

EWS's licence compliance

1.2 EWS shall provide WR plc with a copy of its written environmental protection policy and operational objectives and management arrangements giving effect to that policy, as submitted to the Regulator pursuant to its licence authorising it to be the operator of trains.

WR plc's licence compliance

1.3 WR plc shall provide EWS with a copy of its written environmental protection policy and operational objectives and management arrangements giving effect to that policy, as submitted to the Regulator pursuant to its network licence.

Information as to materials to be transported

1.4 EWS shall from time to time, and within a reasonable time of being requested to do so by WR plc, provide WR plc with:

- (a) information as to any materials it proposes to transport on the Network which would by virtue of their nature or the quantity transported be likely to give rise to Environmental Damage if those materials were to be discharged or emitted or to escape or migrate;
- (b) in relation to such materials as are referred to in sub-paragraph (a) above, a copy of any licence, authorisation, consent or certificate of registration required for their carriage.

General information - EWS

1.5 EWS shall promptly notify WR plc (and where such notification is given orally shall promptly confirm such notification in writing) of any circumstances of which EWS is aware and which it is reasonably foreseeable are likely to give rise to Environmental Damage as a result of or affecting the activities of EWS. EWS shall at all times exercise due diligence to inform itself of any circumstances which would require such notification.

General information – WR plc

1.6 WR plc shall promptly notify EWS (and where such notification is given orally shall promptly confirm such notification in writing) of any circumstances of which WR plc is aware and which it is reasonably foreseeable are likely to give rise to Environmental Damage which may affect EWS. WR plc shall at all times exercise due diligence to inform itself of any circumstances which would require such notification.

Remedial Action

2.1 Assessment as to appropriate persons to take Relevant Steps

2.1.1 WR plc's assessment

Where:

- (a) WR plc becomes aware that, as a direct or indirect result of the activities of EWS, an Environmental Condition exists or has occurred and WR plc reasonably considers that action is required to prevent, mitigate or remedy that Environmental Condition; or
- (b) WR plc is given a Direction by a Competent Authority that some action is required to prevent, mitigate or remedy an Environmental Condition resulting directly or indirectly from the activities of EWS

WR plc shall make an assessment, on the best information available to it at the relevant time, as to which of WR plc and EWS is or are the persons who would be the most appropriate to take any Relevant Steps, and, if more than one is appropriate, in what proportions.

2.1.2 Relevant criteria

In making an assessment under paragraph 2.1.1, WR plc shall have due regard:

- (a) to the likelihood that the person in question may be liable (other than pursuant to this Schedule 10) to make any payment or to take or omit to take any action in relation to the Environmental Condition or Direction in question, whether under this Agreement or otherwise;
- (b) in relation to the steps to be taken and the objectives of those steps, to the efficiency and economy with which the steps may be taken, and the effectiveness of those steps, if that person takes those steps, irrespective of the matters referred to in sub-paragraph (a) above; and
- (c) all other relevant circumstances of the case.

2.1.3 Notice of WR plc's assessment

Within 60 days of making its assessment, WR plc shall give notice to EWS of:

- (a) the Environmental Condition or Direction of Competent Authority in question;
- (b) the assessment;
- (c) its reasons for reaching the assessment;
- (d) the availability for inspection by EWS of such information as WR plc shall have used in making the assessment; and
- (e) the steps which WR plc reasonably considers:
 - (i) will be necessary to prevent, mitigate or remedy the Environmental Condition or the events or circumstances giving rise to the Direction of the Competent Authority in question, or to comply with the Direction in question; and
 - (ii) which should be taken by EWS.

2.1.4 *Compliance with EWS's request for information*

WR plc shall comply with any reasonable request of EWS for additional information in relation to the Relevant Liability or WR plc's assessment, within a reasonable time of the request.

2.1.5 *Disagreement with WR plc's assessment*

If EWS shall be dissatisfied with WR plc's assessment or with any other statement or information provided by WR plc pursuant to paragraph 2.1.3, it shall be entitled to refer the matter for resolution to the Industry Committee and thereafter to arbitration pursuant to the Access Dispute Resolution Rules. It shall lose that entitlement if it fails to make the reference within 120 days of the later of:

- (a) the date of its receipt of WR plc's assessment; and
- (b) the date upon which it receives any further information to which it is entitled pursuant to this paragraph 2.1.

2.2 Requirement to take Relevant Steps

2.2.1 *Obligation*

Subject to paragraphs 2.1.5, 2.7 and 2.8, EWS shall:

- (a) take the steps of which WR plc gives it notice pursuant to paragraph 2.1.3 (e), provided WR plc shall have given it a reasonable opportunity to do so; and
- (b) bear the costs of taking those steps.

2.2.2 *WR plc assistance and supervision*

In cases where EWS reasonably requires access to any part of the Network in order to take any Relevant Steps, WR plc shall provide EWS with such assistance and co-operation as shall be reasonable in that respect.

2.3 *WR plc's right to take Relevant Steps*

If:

- (a) EWS fails to take any relevant step within a reasonable time or to the reasonable satisfaction of WR plc; or
- (b) in WR plc's reasonable opinion, either:
 - (i) it is necessary to take any relevant step urgently; or
 - (ii) it is not reasonably practicable in the circumstances for EWS to take any relevant step,

WR plc shall be entitled to take the step in question and to be reimbursed by EWS for a fair proportion of the reasonable costs of doing so. WR plc shall give notice to EWS of any step taken pursuant to this paragraph 2.3.

2.4 *Liability of WR plc*

Where WR plc takes any steps in accordance with paragraph 2.3, it shall not be liable to EWS for any direct physical damage which is caused as a result of the taking of such steps except to the extent that WR plc, or any person acting on behalf of or on the instructions of WR plc, has been negligent or has failed to perform any obligation.

2.5 *Access to land*

EWS shall use all reasonable endeavours to procure that WR plc shall be given such right of access to any land upon which plant, equipment, rolling stock or machinery of EWS is located as may be reasonably necessary to enable WR plc to take any Relevant Steps.

2.6 *General right to restrict access to Network*

- 2.6.1 Subject to having complied with Part IV of Schedule 2 and to having given to EWS as much notice as shall be reasonably practicable, WR plc shall have the right to restrict permission to use the Network to the extent and for such period as is reasonably necessary to prevent, mitigate or remedy an Environmental Condition or to comply with a relevant Direction of a Competent Authority in respect of an Environmental Condition.
- 2.6.2 Where permission to use the Network is restricted pursuant to paragraph 2.6.1, WR plc shall use all reasonable endeavours to keep the extent and duration of such a restriction to a minimum and shall keep EWS reasonably and regularly informed of the steps being taken by WR plc to remove the restriction.

2.7 *Payments to be made on without prejudice basis*

Payments by EWS under this paragraph 2 shall be made without prejudice to the right of EWS to recover the whole or any part of the amounts in question from WR plc or any other person, whether under an access agreement or in any other way.

2.8 *Action taken will not prejudice later claim*

No action taken by EWS in compliance with its obligations under this paragraph 2 shall prejudice the right of EWS at a later date to claim that any other person has the Relevant Liability.

SCHEDULE 11

Events of Default, Suspension and Termination

1. Events of Default

EWS Events of Default

1.1 The following shall be EWS Events of Default:

- (a) EWS 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 otherwise exempt from the requirement to be so authorised under section 7 of the Act and in the case of such cessation of authorisation or exemption, EWS is not otherwise authorised or exempted under sections 7 and 8 of the Act;
- (b) an Insolvency Event occurs in relation to EWS;
- (c)
 - (i) any breach by EWS of this Agreement or its Safety Obligations;
 - (ii) any material breach by EWS of the Claims Allocation and Handling Agreement; or
 - (iii) any other material event or circumstance which is likely to result in any such breach,

which by itself or taken together with any other such breach, event or circumstance, WR plc reasonably considers constitutes a threat to the safe operation of any part of the Network;

- (d) any Charges or other amount due by EWS to WR plc pursuant to this Agreement remains unpaid for more than \times days after their due date except where liability to pay such sum shall be contested by EWS in good faith and with timely recourse to appropriate means of redress;
- (e) any other breach of this Agreement or any material breach of the Claims Allocation and Handling Agreement by EWS which, by itself or taken together with any other such breach, results, or is likely to result, in material financial loss to WR plc; and
- (f) any breach of this Agreement or any material breach of the Claims Allocation and Handling Agreement by EWS 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.

Notification

1.2 EWS shall notify WR plc promptly on becoming aware of the occurrence of an EWS Event of Default.

WR plc Events of Default

1.3 The following shall be WR plc Events of Default:

- (a) WR plc ceases to be authorised to be the operator of the Network by a licence granted under section 8 of the Act unless otherwise exempt from the requirement to be so authorised under section 7 of the Act;
- (b) an Insolvency Event occurs in relation to WR plc:
- (c)
 - (i) any breach by WR plc of this Agreement or any breach of its Safety Obligations; or
 - (ii) any material breach by WR plc of the Claims Allocation and Handling Agreement; or
 - (iii) 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 EWS reasonably considers constitutes a threat to the safe operation of the Services; and
- (d) any other breach of any provision of this Agreement or any material breach of the Claims Allocation and Handling Agreement by WR plc which, by itself or taken together with any other such breach, results, or is likely to result, in material financial loss to EWS.

Notification

1.4 WR plc shall notify EWS promptly on becoming aware of the occurrence of a WR plc Event of Default.

2. Suspension

Right to suspend

- 2.1
 - (a) WR plc may serve a Suspension Notice where an EWS Event of Default has occurred and is continuing.
 - (b) EWS may serve a Suspension Notice where a WR plc Event of Default has occurred and is continuing.

Contents of Suspension Notice

- 2.2 A Suspension Notice shall specify:
 - (a) the nature of the relevant Event of Default;
 - (b) the date and time (which shall not precede the date and time of service of the Suspension Notice) at which suspension is to take effect;
 - (c) in the case of a Suspension Notice served on EWS: reasonable restrictions imposed while the Suspension Notice is in force on the permission to use the Network or any parts thereof;
 - (d) in the case of a Suspension Notice served on WR plc: details of any necessary suspension of the Services; and

- (e) where the Event of Default is capable of remedy:
 - (i) the steps reasonably required to remedy the Event of Default; or
 - (ii) a reasonable grace period for the defaulting party to remedy it (where the Event of Default which has occurred is failure to pay Charges, ~~30~~ days shall be a reasonable grace period).

Effect of Suspension Notice served by WR plc

2.3 Where WR plc has served a Suspension Notice on EWS:

- (a) EWS shall comply with any reasonable restrictions thereby imposed on it,
- (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 WR plc to EWS pursuant to paragraph 2.5(d);
- (c) the service of the Suspension Notice shall not affect EWS's Firm Contractual Rights in this Agreement.

Effect of a Suspension Notice served by EWS

2.4 Where EWS has served a Suspension Notice on WR plc:

- (a) it shall have the effect of suspending EWS's permission to use the Network to provide the Services to the extent specified in such 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 EWS to WR plc pursuant to paragraph 2.5(d); and
- (c) the service of the Suspension Notice shall not affect EWS's Firm Contractual Rights in this Agreement.

Suspension to be proportionate to breach

2.5 (a) A Suspension Notice served pursuant to paragraph 2.3 in respect of any of EWS 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:

- (i) railway vehicles;
- (ii) Services;
- (iii) categories of train movements or railway vehicles

(or (as the case may be) parts or part thereof) to which the relevant EWS Event of Default relates and the remainder of the rights and obligations of the parties shall remain in full force and effect.

- (b) A Suspension Notice served pursuant to paragraph 2.4 in respect of any of the WR plc Events of Default specified in paragraphs 1.3(a), (c) and (d) shall so far as reasonably practicable, apply only to the:
- (i) railway vehicles;
 - (ii) Services;
 - (iii) categories of train movements or railway vehicles
- (or (as the case may be) parts or part thereof) to which the relevant WR plc Event of Default relates and the remainder of the rights and obligations of the parties shall remain in full force and effect.
- (c) The party served with a Suspension Notice which specifies an Event of Default which is capable of remedy shall, with all reasonable diligence, take such steps as shall be specified in the Suspension Notice to remedy the Event of Default and shall keep the party serving the Suspension Notice fully informed of the progress which is being made in remedying the Event of Default.
- (d) Where a party served with a Suspension Notice has complied with its obligations under paragraph 2.5(c) (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 shall have 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 shall have effect.

3. Termination

WR plc's right to terminate

- 3.1 WR plc may serve a Termination Notice on EWS:
- (a) where EWS fails to comply with any material restriction in a Suspension Notice;
 - (b) where EWS fails to comply with its obligations under paragraph 2.5(c);
 - (c) where the EWS Event of Default described in paragraph 1.1(a) has occurred and is continuing; or
 - (d) where the EWS Event of Default specified in a Suspension Notice served by WR plc is not capable of being remedied and three months have elapsed from the service of the said Suspension Notice.

EWS's right to terminate

- 3.2 EWS may serve a Termination Notice on WR plc:
- (a) where WR plc fails to comply with its obligations under paragraph 2.5(c);

- (b) where the WR plc Event of Default described in paragraph 1.3(a) has occurred and is continuing; or
- (c) where the WR plc Event of Default specified in a Suspension Notice served by EWS is not capable of being remedied and three months have elapsed from the service of the said Suspension Notice.

Contents of Termination Notice

3.3 A Termination Notice shall specify:

- (a) the nature of the relevant Event of Default;
- (b) a date and time (which shall not precede the date and time of the Termination Notice) which shall be reasonable in the circumstances, at which termination is to take effect;
- (c) where the relevant Event of Default is capable of remedy:
 - (i) the steps reasonably required to remedy the Event of Default; and
 - (ii) a reasonable period within which such steps may be taken (where the Event of Default is a failure by EWS to pay Charges, \times days shall be a reasonable period).

Effect of Termination Notice

3.4 Where WR plc or EWS has served a Termination Notice on the other:

- (a) the service of such Termination Notice shall not affect the parties' continuing obligations under this Agreement up to the date of termination as specified in the Termination Notice or such later date as the party which has served the Termination Notice may notify to the other following the service of the Termination Notice but prior to the date upon which it shall have been specified to have effect;
- (b) the party which has served the Termination Notice shall withdraw it by notice to the other party, upon being reasonably satisfied that during the grace period specified in the Termination Notice (or any extension of such grace period) the relevant Event of Default has been remedied;
- (c) this Agreement shall, subject to paragraph 3.4(b), terminate on the later of:
 - (i) the date and time specified in the Termination Notice or such later date and time as the party which has served the Termination Notice may notify to the other prior to the date and time upon which it shall have been specified to have effect; and
 - (ii) the date upon which notice of such termination shall have been given to the Regulator.

4. Consequence of Termination

Directions regarding location of Registered Equipment

4.1 Immediately prior to, upon or following termination or expiry of this Agreement EWS shall comply or procure compliance with all reasonable directions given by WR plc regarding the positioning and location of the Registered Equipment.

Failure to comply with directions

4.2 If EWS fails to comply with any such directions as are referred to in paragraph 4.1, WR plc shall be entitled to remove from the Network or Stable any Registered Equipment left on the Network or to instruct a third party to do so and any reasonable costs incurred by WR plc in taking such steps shall be paid promptly by EWS.

Evidence of costs

4.3 WR plc shall provide such evidence of such costs as are referred to in paragraph 4.2 as EWS shall reasonably request.

Survival

4.4 This paragraph 4 shall survive termination of this Agreement irrespective of the reason for termination.

5. Exclusion of common law termination rights

5.1 The suspension and termination rights set out in Clause 2.1 of this Agreement and this Schedule 11 shall be the parties' only rights to suspend or terminate this Agreement or part thereof whether pursuant to its terms or at law but shall be without prejudice to the parties' rights under any provisions of this Agreement and to claim damages for breach of contract or other equivalent relief.

SCHEDULE 12

Information

1. Information Request

1.1 If, in order for EWS to exercise its rights under this Agreement to make a Bid for a Train Slot, EWS considers that it requires information in relation to the Network from WR plc which is not contained in the Operating Constraints, EWS may serve a request for information (an “**Information Request**”) on WR plc.

Contents of the Information Request

1.2 The Information Request shall contain:

- (a) a list of the specific information which EWS considers reasonably necessary in order for EWS to make an assessment about its ability to exercise its rights to Bid;
- (b) the timescale within which EWS considers it is reasonable for WR plc to provide the information requested.

Agreement of the Information Request

1.3 WR plc shall within five working days of the service of the Information Request by EWS, notify EWS of:

- (a) the specific information which it is able to provide within the suggested timescale;
- (b) any information which it is not able to provide within the suggested timescale and its alternative timescale for the provision of such information;
- (c) any information which it is not able to provide at all, together with its reasons therefor.

1.4 Following notification by WR plc pursuant to paragraphs 1.3(b) or (c), EWS and WR plc shall meet in good faith to agree the information which is to be provided and the timescales for the provision of such information. If the parties fail to agree the information to be provided and the timescales for the purposes of this paragraph 1.4 within 7 days of such notification by WR plc, then either party shall have a right to refer the determination of the specific information to be provided by WR plc and the timescales for the provision of such information to the Industry Committee in accordance with paragraph 1.5.

1.5 The remit of the Industry Committee shall be that it shall:

- (a) reach a decision which is fair and reasonable
- (b) have regard to
 - (i) the reasonableness of EWS’s request for the specific information;

- (ii) the reasonable timescale for the provision of the specific information which it is reasonable for WR plc to provide; and
- (c) give its reasons.

1.6 Following agreement or determination of the specific information and timescale for the provision of such information pursuant to paragraphs 1.4 or 1.5 (as the case may be), WR plc shall provide such information to EWS within the timescale so agreed or determined.

SCHEDULE 13

Adjustment and Surrender

1. Definitions

1.1 In this Schedule 13, unless the context otherwise requires:

access right means, in relation to an access contract, permission to use track for the purpose of the operation of trains on that track by a beneficiary and rights ancillary thereto which are provided or charged for in the contract in question;

affected person means, in relation to qualifying information, the person to whose affairs the information relates;

beneficiary has the meaning ascribed to it in section 17(7) of the Act;

Chairman means the Chairman of the Industry Committee;

confidentiality direction means a direction of the Chairman of the kind referred to in paragraph 9.3(a);

confidentiality undertaking means an undertaking of the kind referred to in paragraph 11.1;

corresponding access agreement means an access agreement which includes provisions in the same or substantially the same terms as this Schedule 13;

corresponding notice means a notice from WR plc which states that WR plc believes that, in order to provide a response analogous to a relevant response to another person who is party to a track access agreement:

- (a) WR plc believes that it shall be necessary for it to disclose to that person information which it has acquired in relation to the affairs of EWS; and
- (b) such disclosure would or might, in WR plc's reasonable opinion, seriously and prejudicially affect the interests of EWS;

costs include a fair allocation of WR plc's administrative and other regional and national costs of carrying on its business;

determination in relation to the Chairman means his directions of the kind referred to in paragraph 9.3(a);

notice of objection means a notice given by an affected person to WR plc of the kind referred to in paragraph 9.1(e)(ii);

period of objection means the period specified in paragraph 9.1(e)(ii);

qualifying information means information which WR plc has acquired in relation to the affairs of any affected person pursuant to an access contract between WR plc and that person;

quality adjustment means the alteration of any aspect of the access rights of EWS other than a *quantum* adjustment;

quantum adjustment means the surrender of any access right of EWS and the grant to it of any other access right;

released capacity means track capacity made available to WR plc as a consequence of the making of a specified relevant surrender or a specified relevant adjustment, and “release of capacity” shall be construed accordingly;

relevant adjustment means a quality adjustment or a *quantum* adjustment, and “adjust” shall be construed accordingly;

relevant criteria means the criteria which the Regulator shall have most recently published (and identified as such) in relation to the surrender or adjustment of access rights;

relevant enquiry means an enquiry made of WR plc by EWS pursuant to paragraph 2.1;

relevant financial consequences means the cost savings or costs incurred referred to in paragraph 4.1(a);

relevant information means information which complies with the provisions of paragraph 4.1;

relevant response means WR plc’s answer to a relevant enquiry pursuant to paragraph 2.2;

relevant surrender means the surrender to WR plc of access rights possessed by EWS;

specified relevant adjustment means a relevant adjustment specified in a relevant enquiry;

specified relevant surrender means a relevant surrender specified in a relevant enquiry; and

track access agreement means an access contract which confers permission to use track of which WR plc is the facility owner.

2 Obligation of WR plc to answer EWS’s enquiries

2.1 EWS may at any time make an enquiry of WR plc concerning any relevant surrender or relevant adjustment.

2.2 WR plc shall provide EWS with a relevant response within a reasonable time of the making of a relevant enquiry.

3 Enquiries

3.1 Each relevant enquiry shall contain:

- (a) a specification of the access rights (if any) which EWS, at that time, is aware that it may be willing to surrender to WR plc;
- (b) a specification of the access rights (if any) which EWS, at that time, is aware that it may be willing to adjust;
- (c) a request that WR plc provides EWS with relevant information in relation to:
 - (i) any specified relevant surrender: and
 - (ii) any specified relevant adjustment: and
- (d) a specification of the dates with effect from which the specified relevant surrender or specified relevant adjustment may be expected to take place.

4. Information to be provided by WR plc

Relevant information

4.1 Subject to paragraphs 9 and 11, the relevant information which WR plc shall provide in each relevant response shall be a statement of:

- (a) the costs which WR plc may reasonably expect to save or incur if any specified relevant surrender or specified relevant adjustment is made;
- (b) the times at which and the periods over which the relevant financial consequences will have effect;
- (c) the steps which WR plc would expect to take to achieve the relevant financial consequences within the times referred to in sub-paragraph 4.1(b) and the opportunities which WR plc has to accelerate or postpone the effect of the relevant financial consequences;
- (d) the extent to which any released capacity may reasonably be expected to be used:
 - (i) by any other operator of trains; and
 - (ii) in relation to the maintenance, re-alignment, re-configuration, repair or renewal of any part of the Network;
- (e) the reasonably foreseeable financial effects on WR plc of the release of capacity;
- (f) WR plc's proposals as to the amounts which should be payable by EWS under this Agreement as a consequence of the making of any specified relevant surrender or specified relevant adjustment and its reasons for them, including in relation to the sharing between WR plc and EWS of the financial effects of the surrender or adjustment in question; and

- (g) whether any other person shall have made an enquiry of WR plc pursuant to an agreement between that person and WR plc in relation to the surrender or adjustment of access rights under that agreement which, if made, might reasonably be expected to affect the interests of EWS, in relation to the specified relevant surrender or the specified relevant adjustment in question;

together with such other information as EWS shall reasonably request, in each case in a form and amount of detail which is sufficient to enable EWS to make a proper assessment of the effect of the making of the specified relevant surrender or specified relevant adjustment in question.

5. Consultation

Other train operators

5.1 In preparing each relevant response, WR plc shall:

- (a) except to the extent otherwise requested by EWS and in accordance with such (if any) conditions as EWS shall specify; and
- (b) subject to paragraphs 9, 10 and 11;

carry out such consultation of other operators of trains and persons whom it has reason to believe shall intend to become operators of trains, as shall be necessary or expedient so as to enable WR plc properly to inform itself of any effects on the capacity of the track that may be in question which any specified relevant surrender or specified relevant adjustment in question, if made, shall be likely to have.

Obligation to co-operate

5.2 If:

- (a) WR plc shall have made any enquiry of EWS, either in relation to a relevant enquiry made by EWS under this Schedule 13 or pursuant to the relevant provisions of a corresponding access agreement; and
- (b) the enquiry is one which EWS may reasonably be expected to answer;

EWS shall provide WR plc with an answer to the enquiry to the extent and in the amount of detail which is reasonable in the circumstances. Information provided in any such response shall be treated as qualifying information and this Schedule 13 shall apply accordingly.

6 Costs of Providing Relevant Response

Estimates

6.1 WR plc shall:

- (a) if so requested by EWS and as soon as reasonably practicable after the request, provide EWS with:
 - (i) its best estimate of its costs of providing a relevant response; and

- (ii) having provided such an estimate, its best estimate of the costs which it has incurred in preparing the relevant response in question up to the date of the request or any other date specified in the request; and
- (b) not, in preparing a relevant response, exceed the amount of the estimate without first notifying and obtaining the consent of EWS.

Payments of costs of relevant responses

6.2 EWS shall:

- (a) be entitled to make any request of the kind referred to in paragraph 6.1 at the time of making the relevant enquiry in question and at any time and from time to time thereafter, and the failure of EWS to make any such request on any occasion shall not prejudice its right to make such a request on a later occasion;
- (b) pay to WR plc an amount calculated pursuant to paragraph 6.3; and
- (c) be entitled to receive from WR plc a certificate from its auditors verifying that the costs referred to in paragraph 6.3 have been incurred in providing the relevant response.

Division and payment of costs

6.3 The amount referred to in paragraph 6.2(b) shall be an amount equal to seventy-five (75) per cent of the amount of those of WR plc's reasonable costs of providing the relevant response which exceed £1000 (excluding VAT). Such amount shall be payable not later than 30 days after the later of:

- (a) the date upon which the relevant response shall be provided; and
- (b) the date upon which WR plc requests payment of the amount in question in an invoice which is sufficient for the purposes of Value Added Tax.

7 EWS's Acceptance of Relevant Response

Right to elect surrender or adjust access rights

7.1 If, following receipt of a relevant response, EWS shall:

- (a) wish to make a specified relevant surrender or have a specified relevant adjustment effected; and
- (b) accept the amounts payable and sharing of the relevant financial consequences proposed by WR plc in the relevant response;

it shall be entitled to do so:

- (i) upon giving to WR plc a notice to that effect not later than 60 days after the date upon which it receives the relevant response in question; and
- (ii) unless the Regulator shall otherwise determine, so as to have effect not later than the date upon which the Regulator shall have given his

consent to the making of the relevant surrender or adjustment in question.

Regulator's consent

7.2(a) No relevant surrender or relevant adjustment shall have effect without the consent of the Regulator.

(b) WR plc and EWS shall use all reasonable endeavours to procure that the Regulator is furnished with sufficient information and evidence as he shall require to determine whether or not to give his consent to the making of the relevant surrender or relevant adjustment in question. Such information and evidence shall:

- (i) include the text of any necessary modifications of this Agreement; and
- (ii) be provided to the Regulator as soon as practicable after the date of the giving of the notice pursuant to paragraph 7.1.

8 Right to Refer to Arbitration

Reference to arbitration

8.1 If, having received a relevant response, EWS shall be dissatisfied with it (whether in relation to the amounts payable or sharing of benefits proposed by WR plc or in any other respect), it shall be entitled, by notice to WR plc, to refer the matter to an arbitrator for determination.

Selection of arbitrator

8.2 The arbitrator shall be chosen by agreement between WR plc and EWS. If they shall have failed to agree on the arbitrator to be appointed by a date which is 30 days after the giving of a notice by EWS pursuant to paragraph 8.1 the arbitrator shall be chosen by the Regulator on the application of either WR plc or EWS.

Arbitrator's remit and powers and confidentiality of award

Remit and powers

8.3(a) The arbitrator's remit shall be that he shall:

- (i) reach a decision which is fair and reasonable;
- (ii) have due regard to:
 - (A) the matters as respects which duties are imposed on the Regulator by section 4 of the Act; and
 - (B) relevant criteria;
- (iii) have the power:
 - (A) to give directions as to the procedure to be followed in the arbitration, including in relation to the making of any written or oral submissions and the extent to which any evidence or other

submissions made by one party to the arbitration shall be disclosed to the other; and

(B) to make such orders as he shall think fit in relation to the proportions of the costs of the arbitration (assessed in such manner as he shall determine) which shall be borne by either or both of the parties;

(iv) issue his decision as to:

(A) whether EWS should be entitled to make any relevant surrender or have any relevant adjustment given effect;

and if so:

(B) what the relevant surrender or relevant adjustment should be;

(C) what should be the amounts payable by EWS under this Agreement as a consequence of the making of the relevant surrender or adjustment in question, including the sharing between WR plc and EWS of the financial effects of the surrender or adjustment in question;

(D) when the relevant surrender or relevant adjustment in question should have effect;

(E) what modifications of the provisions of this Agreement shall be required to give effect to his decision; and

(F) such other matters as he shall consider relevant to the proper determination of the reference; and

(v) give his reasons.

Confidentiality of arbitrator's award

(b) Notwithstanding that the parties may have elected to adopt the whole or any part of Part C of the Access Dispute Resolution Rules to apply in the arbitration, paragraph C6 of those rules shall not apply.

Provision of information, compliance with directions and binding nature of arbitrator's decision

8.4 WR plc and EWS shall:

(a) use all reasonable endeavours to procure that the arbitrator is furnished with sufficient information and evidence to determine the matter in question as soon as reasonably practicable after the date of the reference; and

(b) be bound by the lawful directions of the arbitrator;

(c) comply with any decision of the arbitrator.

Right of EWS to have access rights adjusted subject to consent of the Regulator

8.5 If the arbitrator shall have determined that EWS should be entitled to make any relevant surrender or have any relevant adjustment given effect:

(a) EWS shall give notice to WR plc as to whether it elects to exercise that entitlement; and

(b) if EWS gives notice pursuant to sub-paragraph 8.5(a) of an election to exercise such an entitlement, it shall send a copy of the arbitrator's decision to the Regulator.

A notice under sub-paragraph 8.5(a) shall be given within 60 days of the date of the arbitrator's decision, and, if not given within that time, EWS shall lose the entitlement in question.

Regulator's consent

8.6 (a) No relevant surrender or relevant adjustment shall have effect without the consent of the Regulator.

(b) The arbitrator's decision (including the modifications contemplated by paragraph 8.3(a)(v)(E)) shall have effect upon the date which the Regulator shall have given his consent to the making of the relevant surrender or relevant adjustment in question, or such other date as the Regulator shall by notice to the parties have specified for the purpose of this paragraph 8.6.

Obligation of WR plc to give effect to any relevant surrender or adjustment

8.7 If the Regulator shall give his consent to the making of the relevant surrender or relevant adjustment determined by the arbitrator, WR plc shall:

(a) give effect to it in accordance with the terms of the arbitrator's decision; and

(b) send to the Regulator a copy of any necessary modifications of this Agreement.

9 Confidentiality

Affected persons and their interests

Notice to EWS of confidentiality considerations

9.1 (a) If, having received a relevant enquiry, WR plc shall have reasonable grounds for believing that, in order to provide the relevant response:

(i) it shall be necessary for it to disclose to EWS any qualifying information; and

(ii) such disclosure would or might, in WR plc's reasonable opinion, seriously and prejudicially affect the interests of the affected person,

WR plc shall give notice to that effect to EWS.

EWS's right to elect for relevant response without qualifying information

(b) Having received a notice from WR plc pursuant to paragraph 9.1(a), EWS shall be entitled, by notice given to WR plc, to elect either:

- (i) that the relevant response be provided to it without the qualifying information; or
- (ii) that WR plc should give notice to the affected person in question pursuant to paragraph 9.1(d) and thereafter comply with the procedures established in this paragraph 9.

WR plc shall not proceed with its preparation of the relevant response until EWS shall have made its election.

Relevant response without qualifying information

(c) If EWS makes an election pursuant to paragraph 9.1(b)(i):

- (i) WR plc shall proceed to prepare and provide the relevant response so as to omit the qualifying information; and
- (ii) if, having received a relevant response of the kind referred to in sub-paragraph (i), EWS wishes WR plc to revise it so as to include any qualifying information, it shall be entitled to do so by notice to WR plc.

If EWS gives notice to WR plc pursuant to sub-paragraph (ii), WR plc shall proceed to give notice to the affected person in question pursuant to paragraph 9.1(d) and thereafter comply with the procedures established in this paragraph 9.

Relevant response with qualifying information

(d) If EWS makes an election pursuant to paragraph 9.1(b)(ii), WR plc shall give notice to the affected person that it has grounds for a belief of the kind referred to in paragraph 9.1.(a).

Contents of notice to affected person

- (e) The notice given to the affected person pursuant to paragraph 9.1(d) shall be accompanied by:
- (i) a statement of the information which WR plc considers it necessary to disclose; and
 - (ii) a statement to the effect that unless the affected person gives notice to WR plc within 21 days of his receipt of the notice that he objects to the disclosure in question, that person shall have lost the right to object to its disclosure.

Entitlement of WR plc to include qualifying information if no notice of objection

- (f) Subject to paragraph 4.2 above, if no notice of objection shall have been given to WR plc within the period for objections, WR plc shall be entitled to include the qualifying information in the relevant response.

Discretion of Chairman of Access Disputes Resolution Committee to order confidentiality

9.2(a) If WR plc shall have received a notice of objection within the period for objections, WR plc shall immediately give notice of that fact to EWS and the Chairman.

(b) The notice given to EWS pursuant to paragraph 9.2(a) shall not contain any indication as to the identity of the affected person, whether by stating his name, the nature of his business or any information which may enable EWS to determine his identity.

(c) The notice given to the Chairman shall be accompanied by:

- (i) a copy of the notice of objection;
- (ii) an explanation by WR plc as to its reasons for the belief referred to in paragraph 9.1(a); and
- (iii) a request for directions of the kind referred to in paragraph 9.2(d).

(d) The parties shall comply with such directions which the Chairman shall give to them in relation to the preservation of the positions of the parties (including the affected person) and the confidentiality of the qualifying information pending the determination of the matter. No such directions shall have effect for a period which is longer than 90 days without being renewed by the Chairman.

Chairman's directions as to preservation of confidentiality of qualifying information

9.3(a) In a case to which paragraph 9.2 applies, and subject to paragraph 4.2, WR plc shall be entitled to include qualifying information in a relevant response except where directed not to do so by the Chairman, to the extent stated and subject to such conditions (if any) as shall be specified in the confidentiality direction.

(b) No relevant response containing qualifying information shall be given until after the expiry of the period specified by the Regulator in any directions of the kind referred to in paragraph 9.2(d).

Grounds on which the Chairman may order confidentiality

9.4 A confidentiality direction shall only have effect if:

- (a) it is stated by the Chairman to have been given on the grounds that:
- (i) the disclosure to EWS of the qualifying information in question would or might seriously and prejudicially affect the interests of the affected person; and
 - (ii) such prejudice outweighs or is likely to outweigh the interests of operators and potential operators of railway assets on the part of the

network in question in its disclosure to EWS, having due regard to the matters as respects which duties are imposed on the Regulator by section 4 of the Act; and

- (iii) the Chairman shall have complied with the requirements specified in paragraphs 9.6 and 9.7.

Opportunity to make representations to the Chairman

9.5 Within 28 days of the Chairman's receipt of a notice pursuant to paragraph 9.2(a) (or such longer period as the Regulator shall allow), WR plc, EWS and the affected person shall be entitled to make representations to the Chairman:

- (a) as to whether it considers that the Chairman should exercise his discretion to give a confidentiality direction; and, if so
- (b) the extent and conditions of the confidentiality direction.

Any such representations shall be accompanied by the reasons why the person in question believes the Chairman should or should not (as the case may be) give a confidentiality direction.

Hearing on confidentiality representations

9.6 If he shall have received any representations of the kind contemplated by paragraph 9.5, the Chairman shall be entitled to hear the parties on the matter. The Chairman shall have an absolute discretion as to the procedure to be followed in any such hearing, and shall have the power at any time to amend it if he considers it necessary to do so for the fair resolution of the matter.

Written reasons for determination

9.7 If any representations shall have been made to him pursuant to paragraph 9.5, unless the parties concerned otherwise agree the Chairman shall provide them with his reasons for his determination. Such reasons shall be given in writing.

Appeal against Chairman's determination

9.8 If WR plc, EWS or the affected person shall be dissatisfied with the Chairman's determination, it or he shall be entitled to refer the matter to the Regulator for determination.

Information to be provided in relation to appeals to Regulator and compliance with his directions

9.9 Where any person has referred the Chairman's determination to the Regulator:

- (a) the person making the reference shall include with it a statement in reasonable detail as to his reasons for making the reference; and
- (b) the parties shall comply with any directions of the Regulator in relation to the procedure (including in respect of the provision of information to the Regulator and the confidentiality of the proceedings) or the substance of the reference.

Right of Regulator to decline to hear appeal

9.10 Where a reference of the kind referred to in paragraph 9.8 above shall have been made to the Regulator, the Regulator shall be entitled to decline to act on the reference if, having consulted the parties concerned and considered the determination of the Chairman, he shall determine that the reference should not proceed, including on the grounds that:

- (a) the matter in question is not of sufficient importance to the relevant part of the industry;
- (b) the reference to him is frivolous or vexatious; or
- (c) the conduct of the person making the reference ought properly to preclude its being proceeded with.

Immunities of Chairman and Regulator

9.11(a) Neither the Chairman nor the Regulator shall be liable in damages or otherwise for any act or omission to act on his part (including negligence) in relation to any reference to him under this Schedule 13.

- (b) Each of EWS and WR plc shall:
 - (i) indemnify and hold harmless the Chairman, the Regulator and each other against every claim which may be made against any of them in relation to any of the matters referred to in paragraph 9.11(a); and
 - (ii) to the extent that it is the creditor in the indemnity in sub-paragraph (i), hold the benefit of that indemnity upon trust as bare trustee for the benefit of the Chairman and the Regulator.
- (c) No provision of this Agreement which may operate so as to exclude or restrict the liability of either party shall apply to the obligations of the parties under this paragraph 9.11.

Preservation of confidentiality of qualifying information pending determination

9.12(a) In making any determination of the kind contemplated by this paragraph 9, the remit of the Chairman and the Regulator shall include a requirement that:

- (i) any hearing of the kind contemplated by paragraph 9.6 shall be conducted in such a way as not to disclose any part of the qualifying information; and
 - (ii) the reasons for the Chairman's determination shall, if given to the parties, not disclose to EWS any part of the qualifying information.
- (b) If a reference shall have been made to the Regulator pursuant to paragraph 9.8, the Chairman shall be required by the parties to provide to the Regulator all relevant information in relation to his decision, including his reasons without any omissions which may have been necessary in order to comply with paragraph 9.12(a)(ii).

10 Reciprocal Provisions

Obligation to include analogous provisions in other track access agreements

10.1 Except where the Regulator shall give directions pursuant to sections 17, 18 or 19 of the Act to the contrary, WR plc shall ensure that every track access agreement into which it enters shall include provisions in the same terms as paragraphs 9, 10 and 11.

Entitlement of EWS to receive corresponding notices

10.2 EWS shall be entitled to receive a corresponding notice from WR plc in the circumstances contemplated by the track access agreements referred to in paragraph 10.1.

Corresponding rights of EWS against WR plc

10.3 If EWS receives a corresponding notice, it shall have rights and obligations in relation to WR plc and WR plc's freedom to disclose qualifying information to another person which are the same as those described in paragraph 9 above in relation to an affected person. WR plc shall have the corresponding obligations and rights in relation to EWS.

11 Confidentiality Undertaking From EWS

Obligation to provide confidentiality undertaking

11.1 If:

- (a) an affected person shall have given notice to WR plc that it does not propose to give a notice of objection within the period for objections; or
- (b) the Chairman shall have determined that no confidentiality direction shall be given in relation to qualifying information; or
- (c) the Regulator shall have determined that a determination of the Chairman of the kind referred to in sub-paragraph 11.1(b) shall be confirmed in whole or in part; and
- (d) the affected person shall require WR plc to procure that EWS gives a confidentiality undertaking for the benefit of the affected person,

EWS shall deliver to WR plc an undertaking of strict confidentiality in relation to the qualifying information.

Quality of confidentiality undertaking

11.2 A confidentiality undertaking shall:

- (a) contain an undertaking that the person giving it will hold the qualifying information disclosed to him strictly confidential and will not, without the consent of the affected person, disclose it to any person except:

- (i) to any of the persons referred to in Clause 9.2 of this Agreement, subject to the conditions which apply to such disclosures under that Clause;
 - (ii) in the course of an arbitration commenced pursuant to this Schedule 13; or
 - (iii) where required to do so pursuant to the order of a court of competent jurisdiction;
- (b) contain no limitations on the liability of the person who gives it in the case of its breach; and
- (c) in every other respect, be unqualified.

Supplemental

11.3 A confidentiality undertaking shall be:

- (A) given to WR plc by EWS as soon as reasonably practicable after WR plc shall have requested EWS to provide it; and
- (B) held by WR plc upon trust for the affected person.

Failure to comply with obligation to provide confidentiality undertaking

11.4 If EWS fails to comply with its obligations under this paragraph 11, WR plc shall not include the qualifying information in its relevant response.

SCHEDULE 14

NOT USED

SCHEDULE 15

Model Clauses Retrofit

1. Automatic effect

1.1 General

This Agreement shall have effect—

- (a) with the modifications; and
- (b) from the date

specified by the Regulator 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 the Regulator to the parties for the purposes of this Agreement which modifies specified provisions of this Agreement (other than this Schedule 15) by—

- (a) the replacement of specified provisions of this Agreement with specified provisions based on model clauses; and/or
- (b) the inclusion of specified additional provisions into this Agreement based on model clauses.

2.2 Contents of modification notice

A modification notice shall state—

- (a) the modifications which are to be made to this Agreement;
- (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) the Regulator'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 Regulator

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 the Regulator for his 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 the Regulator'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 the Regulator may have requested.

3.4 Agreed adaptations - Regulator's consent

If the Regulator is satisfied with the agreed requisite adaptations, and he gives a notice of consent to requisite adaptations, they shall have effect as provided for in paragraph 3.8.

3.5 Agreed requisite adaptations - Regulator's refusal of consent

If the Regulator gives notice to the parties that he is not satisfied with any or all of the agreed requisite adaptations, he may—

- (a) require the parties again to follow the procedure for negotiating requisite adaptations (with such modifications as to time limits as he specifies), in which case they shall do so; or
- (b) determine the requisite adaptations himself.

3.6 *Requisite adaptations - failure to agree or submit*

If the parties have failed to submit agreed requisite adaptations to the Regulator for his consent on or before the backstop date, he may determine the requisite adaptations himself.

3.7 *Notice of determined requisite adaptations*

A notice of determined requisite adaptations is a notice—

- (a) given by the Regulator to the parties for the purposes of this paragraph 3 following the failure of the parties to send to the Regulator on or before the backstop date requisite adaptations to which he gives his consent; and
- (b) which states the requisite adaptations which the Regulator has determined should be made using his 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 the Regulator has given a notice of consent to requisite adaptations under paragraph 3.4; or
- (b) by the determination of the Regulator under paragraph 3.5 or 3.6 and stated in a notice of determined requisite adaptations

shall have effect from such date as the Regulator 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 *Latest date for modification notice*

No modification notice may be given later than 31 December 2003.

4.3 *Differences etc as to requisite adaptations*

Any difference or question as to whether any thing is a requisite adaptation shall be determined by the Regulator—

- (a) on the application of either party; and
- (b) in accordance with such procedure (including as to consultation) as the Regulator may by notice to the parties determine.

4.4 *Co-operation and information*

If the Regulator gives notice to either or both of the parties that he 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 the Regulator; and
- (b) if that party fails timeously to do so, the Regulator shall be entitled to proceed with his 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.

4.5 *Regulator's criteria*

In relation to the negotiation of any requisite adaptation, the Regulator shall be entitled to—

- (a) give to the parties any criteria of his which he requires be applied in the negotiations; and
- (b) modify the criteria after consultation.

4.6 *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 the Regulator by a notice of procedural modification given by him to the parties; but
- (b) the Regulator may only give a notice of procedural modification if he 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.

4.7 *Dates*

In this Schedule 15—

- (a) where provision is made for a date to be specified or stated by the Regulator, he 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 the Regulator which states a date may state different dates for different purposes.

4.8 *Requirement for prior consultation*

No relevant notice shall have effect unless—

- (a) the Regulator has first consulted the parties in relation to the proposed relevant notice in question;
- (b) in the consultations referred to in paragraph 4.8(a), the Regulator has made available to the parties such drafts of the proposed relevant notice as he considers are necessary so as properly to inform them of its contents;
- (c) the Regulator 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 his decision on the relevant notice to be given;
- (d) the Regulator has notified the parties as to his 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 his reasons for those conclusions; and
- (e) in effecting the notifications required by paragraph 4.8(d), the Regulator 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 the Regulator or by endorsement on the representation of words indicating the confidential nature of such representation, has specified as confidential information.

4.9 *Consolidated contract*

Not later than 21 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)

WR plc shall prepare and send to EWS and the Regulator a copy of this Agreement as so modified.

4.10 *Saving*

Nothing in this Schedule 15 affects—

- (a) the right of either party to approach and obtain from the Regulator guidance in relation to the requisite adaptations; or
- (b) the ability of EWS at any time to seek the retrofitting into this Agreement of provisions based on model clauses by means of Schedule 13

5. **Definitions**

In this Schedule 15—

- “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);
- “model clauses” means model clauses published by the Regulator under section 21 of the Act;
- “modification notice” has the meaning ascribed to it in paragraph 2.1;
- “notice of consent to requisite adaptations” means a notice given by the Regulator under paragraph 3.4;
- “notice of determined requisite adaptations” has the meaning ascribed to it in paragraph 3.7;
- “notice of procedural modifications” means a notice given by the Regulator to the parties under paragraph 4.6 modifying any aspect of the procedure in this Schedule 15 for the agreement or establishment of requisite adaptations;
- “Regulator’s criteria” means the criteria established by the Regulator for the purposes of the negotiation of requisite adaptations and given to the parties, or modified, under paragraph 4.5;
- “relevant notice” means a modification notice, notice of determined requisite adaptations, notice of procedural modifications or modification of the Regulator’s criteria;
- “requisite adaptations” in relation to specified modifications, means the amendments (including the addition of information) to the model clauses 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.

**Execution Page to Track Access Agreement
between Wensleydale Railway plc and English, Welsh & Scottish Railway
Limited**

SIGNED by)
)
For and on behalf of)
WENSLEYDALE RAILWAY plc)
in the presence of:)

Authorised Signatory

Witness:

SIGNED by)
)
For and on behalf of)
ENGLISH, WELSH & SCOTTISH)
RAILWAY LIMITED)
in the presence of:)

Authorised Signatory

Witness: