

Schedule 4

(Variations to Combined Network Services)

Explanatory Note:

- (a) *Where there is a CVL TAC (Freight Services), matters concerning variations to services for the CVL Network will be administered by Network Rail through (and as part of) Schedule 4 of this contract.*
- (b) *On or around the date of the CVL TAC (Freight Services), the CVL IM and Network Rail will enter into a bilateral agreement which will attribute performance matters, including payments arising due to variations to services, as appropriate, between the CVL IM and Network Rail.*
- (c) *This explanatory note does not form part of this contract.*

Part 1

(General Provisions)

1. Definitions

1.1 Definitions

In this Schedule 4 unless the context otherwise requires:

"Actual Costs" means any costs, direct losses and expenses (including any loss of revenue) reasonably incurred or reasonably expected to be incurred by the Train Operator including those attributable to limb (f) of a Combined Network Category 3 Disruption and any increase in Variable Costs but net of:

- (a) any benefit arising from a Combined Network Category 3 Disruption including any decrease in Variable Costs as a consequence of a Combined Network Category 3 Disruption; and
- (b) any Enhanced Planned Disruption Sum due to the Train Operator in connection with the relevant Combined Network Service affected by a Combined Network Category 3 Disruption;

"Actual Costs Claim Notice" has the meaning specified in paragraph 3.4.3;

"Applicable Service" means a Revised Base Service, a Diverted Service or any Service which suffers a Cancellation;

"Base Service" means:

- (a) a Planned Service which is not able to operate as Planned; or
- (b) a Train Slot in respect of a Freight Access Right as described in sub-paragraph "(a)" of that definition contained in Schedule 5 which is not able to be entered in the New Working Timetable or the Working Timetable in accordance with that right;

in either case because of the non-availability of any part of the Network as a result of a Network Rail Early Notice Possession;

"Category 1 Disruption" means a variation to any Base Service which would otherwise have operated, where such variation has one or more of the following effects:

- (a) the Planned departure time from Origin of the Revised Base Service differs from that of the Base Service by more than 60 minutes;
- (b) the Planned arrival time at Destination of the Revised Base Service differs from that of the Base Service by more than 60 minutes;

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- (c) the end to end journey of the Revised Base Service exceeds that of the Base Service by more than 10 miles; or
- (d) the imposition of more demanding length or weight restrictions for the Revised Base Service compared to the Base Service,

provided that:

- (i) the relevant variation arises as a direct result of a Network Rail Early Notice Possession; and
- (ii) a Category 2 Disruption or a Category 3 Disruption has not been claimed and paid in relation to the relevant Base Service;

"Category 2 Disruption" means a variation to any Base Service which would otherwise have operated, where such variation has one or more of the following effects:

- (a) there is no Revised Base Service;
- (b) the imposition of more demanding gauge restrictions for the Revised Base Service compared to the Base Service;
- (c) at least one additional locomotive is used for the Revised Base Service over the number used for the Base Service; or
- (d) a diesel locomotive is required to be used for the Revised Base Service in circumstances where Network Rail has agreed to provide electricity for traction purposes for the Base Service as apparent from the column headed "Timing Load" in the Rights Table annexed to Schedule 5;

provided that:

- (i) the relevant variation arises as a direct result of a Network Rail Early Notice Possession; and
- (ii) a Category 3 Disruption has not been claimed and paid in relation to the relevant Base Service;

"Category 3 Disruption" means a variation to any Base Service which would otherwise have operated, where such variation has one or more of the following effects:

- (a) there is no Revised Base Service and the access from the Origin or to the Destination of the Base Service is blocked to all rail freight services (except as a result of the non-availability of the applicable gauge cleared route);
- (b)
 - (i) there is no Revised Base Service due to the lack of an applicable gauge cleared route between the Origin and the Destination which has lasted or lasts in total for more than 60 hours; or
 - (ii) the Revised Base Service does not have an applicable gauge cleared route between the Origin and the Destination where:
 - (A) the lack of such applicable gauge cleared route has lasted or lasts in total for more than 60 hours; and
 - (B) the Revised Base Service operates in whole, or in part, at the relevant location within this 60 hour period;
- (c) all or part of the goods planned to be carried by the Base Service are required to be transported by any mode other than rail, for all or any part of the journey from its Origin to its Destination;
- (d) at least one additional locomotive is used for the Revised Base Service over the number used for the Base Service;
- (e) a diesel locomotive is required to be used for the Revised Base Service in circumstances where Network Rail has agreed to provide electricity for traction

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purposes for the Base Service as apparent from the column headed "Timing Load" in the Rights Table annexed to Schedule 5; or

- (f) the parties agree that there is a requirement for a specified number of the Train Operator's train crew to acquire knowledge of any diversionary route which may form part of the Revised Base Service and such requirement has come about as a direct result of the exceptional nature of the variation to the Base Service,

provided that the relevant variation arises as a direct result of a Network Rail Early Notice Possession;

"Category 3 Disruption Trigger" means where the Train Operator incurs Actual Costs as a consequence of any Category 3 Disruption arising from a single Network Rail Early Notice Possession;

"Combined Network" has the meaning ascribed to it in paragraph 1 of Schedule 8;

"Combined Network Access Proposal" means (as the case may be):

- (a) an Access Proposal; or
- (b) a CVL Access Proposal;

"Combined Network Alternative Train Slot" means (as the case may be):

- (a) an Alternative Train Slot; or
- (b) a CVL Alternative Train Slot;

"Combined Network Applicable Service" means (as the case may be):

- (a) an Applicable Service; or
- (b) a CVL Applicable Service;

"Combined Network Base Service" means (as the case may be):

- (a) a Base Service; or
- (b) a CVL Base Service;

"Combined Network Cancellation" has the meaning ascribed to it in paragraph 1 of Schedule 8;

"Combined Network Category 1 Disruption" means (as the case may be):

- (a) a Category 1 Disruption; or
- (b) a CVL Category 1 Disruption;

"Combined Network Category 2 Disruption" means (as the case may be):

- (a) a Category 2 Disruption; or
- (b) a CVL Category 2 Disruption;

"Combined Network Category 3 Disruption" means (as the case may be):

- (a) a Category 3 Disruption; or
- (b) a CVL Category 3 Disruption;

"Combined Network Category 3 Disruption Trigger" means (as the case may be):

- (a) a Category 3 Disruption Trigger; or
- (b) a CVL Category 3 Disruption Trigger;

"Combined Network Disruptive Event" means (as the case may be):

- (a) a Disruptive Event; or
- (b) a CVL Disruptive Event;

"Combined Network Diverted Service" means (as the case may be):

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- (a) a Diverted Service; or
- (b) a CVL Diverted Service;

“Combined Network Early Notice Possession” means (as the case may be):

- (a) an Early Notice Possession; or
- (b) a CVL Early Notice Possession;

“Combined Network Environmental Damage” means (as the case may be):

- (a) Environmental Damage; or
- (b) CVL Environmental Damage;

“Combined Network Late Notice Cancellation” has the meaning ascribed to it in paragraph 1 of Schedule 8;

“Combined Network Original Service” means (as the case may be):

- (a) an Original Service; or
- (b) a CVL Original Service;

“Combined Network Restriction of Use” means (as the case may be):

- (a) a Restriction of Use; or
- (b) a CVL Restriction of Use;

“Combined Network Rolled Over Access Proposal” means (as the case may be):

- (a) a Rolled Over Access Proposal; or
- (b) a CVL Rolled Over Access Proposal;

“Combined Network Round Trip” means (as the case may be):

- (a) a Round Trip; or
- (b) a CVL Round Trip;

“Combined Network Services” has the meaning ascribed to it in paragraph 1 of Schedule 8;

“Combined Network Short Notice Service” means (as the case may be):

- (a) a Short Notice Service; or
- (b) a CVL Short Notice Service;

“Combined Network Train Operator Variation” means (as the case may be):

- (a) a Train Operator Variation; or
- (b) a CVL Train Operator Variation;

“Combined Network Train Operator Variation Request” means (as the case may be):

- (a) a Train Operator Variation Request; or
- (b) a CVL Train Operator Variation Request;

“Combined Network Train Slot” means (as the case may be):

- (a) a Train Slot; or
- (b) a CVL Train Slot;

“Combined Network Variable Charge” means (as the case may be):

- (a) the Variable Charge; or
- (b) a CVL Variable Charge;

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

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“CVL Alternative Train Slot” has the meaning ascribed to it in paragraph 1 of Schedule 8;

“CVL Ancillary Movements” has the meaning ascribed to it in paragraph 1 of Schedule 8;

“CVL Applicable Service” means a CVL Revised Base Service, a CVL Diverted Service or any CVL Service which suffers a CVL Cancellation;

“CVL Base Service” means:

- (a) a Planned CVL Service which is not able to operate as Planned; or
- (b) a CVL Train Slot in respect of a CVL Freight Access Right as described in subparagraph "(a)" of the definition of "Freight Access Right" contained in Schedule 5 of the CVL TAC (Freight Services) which is not able to be entered in the CVL New Working Timetable or the CVL Working Timetable in accordance with that right;

in either case because of the non-availability of any part of the CVL Network as a result of a Network Rail Early Notice Possession;

“CVL Cancellation” has the meaning ascribed to it in paragraph 1 of Schedule 8;

“CVL Category 1 Disruption” means a variation to any CVL Base Service which would otherwise have operated, where such variation has one or more of the following effects:

- (a) the Planned departure time from Origin of the CVL Revised Base Service differs from that of the CVL Base Service by more than 60 minutes;
- (b) the Planned arrival time at Destination of the CVL Revised Base Service differs from that of the CVL Base Service by more than 60 minutes;
- (c) the end to end journey of the CVL Revised Base Service exceeds that of the CVL Base Service by more than 10 miles; or
- (d) the imposition of more demanding length or weight restrictions for the CVL Revised Base Service compared to the CVL Base Service,

provided that:

- (i) the relevant variation arises as a direct result of a Network Rail Early Notice Possession; and
- (ii) a CVL Category 2 Disruption or a CVL Category 3 Disruption has not been claimed and paid in relation to the relevant CVL Base Service;

“CVL Category 2 Disruption” means a variation to any CVL Base Service which would otherwise have operated, where such variation has one or more of the following effects:

- (a) there is no CVL Revised Base Service;
- (b) the imposition of more demanding gauge restrictions for the CVL Revised Base Service compared to the CVL Base Service;
- (c) at least one additional locomotive is used for the CVL Revised Base Service over the number used for the CVL Base Service; or
- (d) a diesel locomotive is required to be used for the CVL Revised Base Service in circumstances where the CVL IM has agreed to provide electricity for traction purposes for the CVL Base Service as apparent from the column headed "Timing Load" in the CVL Rights Table;

provided that:

- (i) the relevant variation arises as a direct result of an Network Rail Early Notice Possession; and
- (ii) a CVL Category 3 Disruption has not been claimed and paid in relation to the relevant CVL Base Service;

“CVL Category 3 Disruption” means a variation to any CVL Base Service which would otherwise have operated, where such variation has one or more of the following effects:

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- (a) there is no CVL Revised Base Service and the access from the Origin or to the Destination of the CVL Base Service is blocked to all rail freight services (except as a result of the non-availability of the applicable gauge cleared route);
- (b)
 - (i) there is no CVL Revised Base Service due to the lack of an applicable gauge cleared route between the Origin and the Destination which has lasted or lasts in total for more than 60 hours; or
 - (ii) the CVL Revised Base Service does not have an applicable gauge cleared route between the Origin and the Destination where:
 - (B) the CVL Revised Base Service operates in whole, or in part, at the relevant location within this 60 hour period;
- (c) all or part of the goods planned to be carried by the CVL Base Service are required to be transported by any mode other than rail, for all or any part of the journey from its Origin to its Destination;
- (d) at least one additional locomotive is used for the CVL Revised Base Service over the number used for the CVL Base Service;
- (e) a diesel locomotive is required to be used for the CVL Revised Base Service in circumstances where the CVL IM has agreed to provide electricity for traction purposes for the CVL Base Service as apparent from the column headed "Timing Load" in the in the CVL Rights Table; or
- (f) the parties agree that there is a requirement for a specified number of the Train Operator's train crew to acquire knowledge of any diversionary route which may form part of the CVL Revised Base Service and such requirement has come about as a direct result of the exceptional nature of the variation to the CVL Base Service,

provided that the relevant variation arises as a direct result of a Network Rail Early Notice Possession;

"CVL Category 3 Disruption Trigger" means where the Train Operator incurs Actual Costs as a consequence of any CVL Category 3 Disruption arising from a single Network Rail Early Notice Possession;

"CVL Decision Criteria" has the meaning ascribed to the term **"Decision Criteria"** in Part D of the CVL Network Code;

"CVL Disruptive Event" has the meaning ascribed to the term **"Disruptive Event"** in Part H of the CVL Network Code;

"CVL Diverted Service" means a CVL Service, as defined in paragraph 1.2 of this Schedule 4, operated using a CVL Alternative Train Slot established under paragraphs 4 or 5 of this Schedule 4;

"CVL Early Notice Possession" means any CVL Restriction of Use of all or part of the CVL Network notified in all material respects to a Train Operator in accordance with sections 4, 5 or 7 of the CVL Engineering Access Statement prior to the Possession Notice Date;

"CVL Engineering Access Statement" has the meaning ascribed to that term in clause 1 of the CVL TAC (Freight Services);

"CVL Environmental Damage" has the meaning ascribed to **"Environmental Damage"** in Part E of the CVL Network Code;

"CVL Force Majeure Event" has the meaning ascribed to it in paragraph 1 of Schedule 8;

"CVL Freight Access Right" has the meaning ascribed to the term **"Freight Access Right"** in paragraph 1 of Schedule 5 of the CVL TAC (Freight Services);

"CVL IM" has the meaning ascribed to it in paragraph 1 of Schedule 8;

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“CVL Network” has the meaning ascribed to it in paragraph 1 of Schedule 8;

“CVL Network Change” has the meaning ascribed to that term in Part G of the CVL Network Code;

“CVL Network Code” has the meaning ascribed to it in paragraph 1 of Schedule 8;

“CVL New Working Timetable” has the meaning ascribed to the term **“New Working Timetable”** in clause 1 of the CVL TAC (Freight Services);

“CVL Original Service” means a Planned CVL Service which:

- (a) is affected by a CVL Disruptive Event as described in paragraph 4.1; or
- (b) is not able to operate because of the non-availability of any part of the CVL Network as described in paragraph 5.1;

“CVL Railway Operational Code” has the meaning ascribed to it in paragraph 1 of Schedule 8;

“CVL Restriction of Use” means any restriction of use of all or any part of the CVL Network for the purposes of, or in connection with, inspection, maintenance, renewal or repair of the CVL Network or any other works carried out in relation to the CVL Network or any other railway asset or any other works in relation to it;

“CVL Revised Base Service” means a CVL Base Service which is varied and/or operated using a revised CVL Train Slot established in accordance with Condition D2 or D3 of the CVL Network Code;

“CVL Rights Table” has the meaning ascribed to the term **“Rights Table”** in paragraph 1 of Schedule 5 of the CVL TAC (Freight Services);

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

“CVL Round Trip” means any CVL Service conveying loaded wagons and any Empty Services and CVL Ancillary Movements associated with that Service;

“CVL Short Notice Service” has the meaning ascribed to it in paragraph 1 of Schedule 8;

“CVL TAC (Freight Services)” has the meaning ascribed to it in paragraph 1 of Schedule 8;

“CVL Train Operator Variation” has the meaning ascribed to it in paragraph 1 of Schedule 8;

“CVL Train Operator Variation Request” has the meaning ascribed to it in paragraph 1 of Schedule 8;

“CVL Train Slot” has the meaning ascribed to it in paragraph 1 of Schedule 8;

“CVL Variable Charge” has the meaning ascribed to the term **“Variable Charge”** in Schedule 7 of the CVL TAC (Freight Services);

“CVL Working Timetable” has the meaning ascribed to it in paragraph 1 of Schedule 8;

“Destination” has the meaning ascribed to it in paragraph 1A of Schedule 8;

“Disruption Claim Notice” has the meaning specified in paragraph 3.4.2;

“Disruptive Event” has the meaning ascribed to it in Part H of the Network Code;

“Early Notice Possession” means any Restriction of Use of all or part of the Network notified in all material respects to a Train Operator in accordance with sections 4, 5 or 7 of the Engineering Access Statement prior to the Possession Notice Date;

“Empty Service” has the meaning ascribed to it in paragraph 1A of Schedule 8;

“Enhanced Planned Disruption Sum” means the Enhanced Planned Disruption Sum specified in Appendix 1;

“Late Notice Actual Costs” means any costs, direct losses and expenses (including any loss of revenue) reasonably incurred or reasonably expected to be incurred by the Train Operator including any increase in Variable Costs but net of:

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- (a) any benefit arising from a Relevant Cancellation or Relevant Service Variation (as the case may be) including any decrease in Variable Costs as a consequence of such Relevant Cancellation or Relevant Service Variation (as the case may be); and
- (b) any Late Notice Cancellation Sum or Service Variation Sum (as the case may be) due to the Train Operator in connection with the relevant Combined Network Service affected by such Relevant Cancellation or Relevant Service Variation (as the case may be);

"Late Notice Actual Costs Claim Notice" has the meaning specified in paragraph 9.3;

"Late Notice Actual Costs Claim Trigger" means:

- (a) in respect of a Relevant Cancellation, the condition specified in paragraph 9.1(b); or
- (b) in respect of a Relevant Service Variation, the condition specified in paragraph 9.2(b);

"Late Notice Cancellation Sum" has the meaning ascribed to it in Schedule 8;

"Network Rail Early Notice Possession" means any Combined Network Early Notice Possession other than an Operator Early Notice Possession;

"Normal Planned Disruption Sum" means the Normal Planned Disruption Sum specified in Appendix 1;

"Operator Early Notice Possession" means any Combined Network Early Notice Possession to the extent:

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

"Origin" has the meaning ascribed to it in paragraph 1A of Schedule 8;

"Original Service" means a Planned Service which:

- (a) is affected by a Disruptive Event as described in paragraph 4.1; or
- (b) is not able to operate because of the non-availability of any part of the Network as described in paragraph 5.1;

"Originally Requested" has the meaning specified in paragraph 4.1;

"Planned" has the meaning ascribed to it in paragraph 1A of Schedule 8;

"Planned Disruption Sum" means a Normal Planned Disruption Sum or an Enhanced Planned Disruption Sum;

"Possession Notice Date" means, in respect of each Combined Network Service, the day which is 84 days before the day on which the Combined Network Service is Planned to depart its Origin;

"Relevant Cancellation" has the meaning specified in paragraph 9.1;

"Relevant Service Variation" has the meaning specified in paragraph 9.2;

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"Revised Base Service" means a Base Service which is varied and/or operated using a revised Train Slot established in accordance with Condition D2 or D3 of the Network Code;

"Round Trip" means any Service conveying loaded wagons and any Empty Services and Ancillary Movements associated with that Service;

"Service Variation" has the meaning attributed to it in paragraph 7.1;

"Variable Charge" has the meaning ascribed to it in Schedule 7; and

"Variable Costs" means the Train Operator's costs which vary as a result of a Combined Network Category 3 Disruption, a Relevant Cancellation or a Relevant Service Variation (as the case may be) arising directly from changes in train mileage including staff, maintenance, fuel or electricity costs, and the Combined Network Variable Charge.

1A. Treatment of other defined terms used in this Schedule 4

1A.1 In this Schedule 4 only, the following capitalised terms shall have the following meanings (disregarding, for the avoidance of doubt, the definitions ascribed to these capitalised terms elsewhere in this contract):

(a) **"Service Characteristics"** means:

(i) in relation to a Service, the characteristics of that Service:

(A) specified in the Rights Table (as defined in Schedule 5); or

(B) where not specified in the Rights Table, specified in an Access Proposal, Rolled Over Access Proposal, Train Operator Variation Request, or in a proposal by the Train Operator of an Alternative Train Slot under paragraphs 4 or 5 of Schedule 4, and accepted by Network Rail;

(ii) in relation to a CVL Service, the characteristics of that CVL Service:

(A) specified in the CVL Rights Table; or

(B) where not specified in the CVL Rights Table, specified in a CVL Access Proposal, CVL Rolled Over Access Proposal, CVL Train Operator Variation Request, or in a proposal by the Train Operator of a CVL Alternative Train Slot under paragraphs 4 or 5 of Schedule 4, and accepted by Network Rail.

1.2 Interpretation

References in this Schedule to:

(a) a **"Service"**, except in the definition of "Round Trip", shall include, in relation to any Planned Service, any Empty Services or Ancillary Movements associated with such Planned Service; and

(b) a **"CVL Service"**, except in the definition of "CVL Round Trip", shall include, in relation to any Planned CVL Service, any Empty Services or CVL Ancillary Movements associated with such Planned CVL Service.

1.3 CVL Force Majeure Events

The parties hereby acknowledge and agree that the occurrence of a CVL Force Majeure Event affecting the CVL IM shall be treated for the purposes of this Schedule 4 as the occurrence of a Force Majeure Event affecting Network Rail in respect of which the provisions of Clause 17 of this contract shall apply (save that Clause 17.9 shall not, in the circumstances of this paragraph 1.3, apply).

2. Payment

Subject to and in accordance with this Schedule 4 and paragraph 9 of Schedule 8, Network Rail shall, in respect of each Charging Period, pay or procure payment of:

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- (a) a Service Variation Sum in respect of each Service Variation and, where applicable subject to paragraph 9.2, any Late Notice Actual Costs arising from the process set out in paragraph 9.4 and in accordance with paragraph 9.4;
- (b) a Late Notice Cancellation Sum in respect of each Combined Network Late Notice Cancellation and, where applicable subject to paragraph 9.1, any Late Notice Actual Costs arising from the process set out in paragraph 9.4 and in accordance with paragraph 9.4;
- (c) a Normal Planned Disruption Sum in respect of each Combined Network Category 1 Disruption;
- (d) an Enhanced Planned Disruption Sum in respect of each Combined Network Category 2 Disruption;
- (e) an Enhanced Planned Disruption Sum in respect of each Combined Network Category 3 Disruption and, where applicable subject to paragraph 3.3.2, the Actual Costs arising from the process set out in paragraph 3.3.3 and in accordance with paragraph 3.3.3,

provided that a Train Operator shall not be entitled to receive more than one Planned Disruption Sum or one Service Variation Sum or one Cancellation Sum or one Late Notice Cancellation Sum in respect of a Combined Network Applicable Service, whether under this Schedule 4 or under Schedule 8 or otherwise.

Part 2

(Compensation for notification before the Possession Notice Date)

3. Disruption compensation

3.1 **Combined Network Category 1 Disruption**

Subject to paragraphs 2, 3.4.1 and 3.5, Network Rail shall be liable in any Charging Period for a Normal Planned Disruption Sum in respect of each Combined Network Category 1 Disruption in respect of any Combined Network Base Service which is either:

- (a) Planned to depart its Origin in that Charging Period; or
- (b) is a Freight Access Right or CVL Freight Access Right (as the case may be) as described in sub-paragraph "(a)" of either such definition (as applicable) contained in Schedule 5 or Schedule 5 of the CVL TAC (Freight Services) which but for a Network Rail Early Notice Possession a Train Slot or CVL Train Slot in accordance with those rights would have been Planned to depart its Origin in that Charging Period.

3.2 **Combined Network Category 2 Disruption**

Subject to paragraphs 2, 3.4.1 and 3.5, Network Rail shall be liable in any Charging Period for an Enhanced Planned Disruption Sum in respect of each Combined Network Category 2 Disruption in respect of any Combined Network Base Service which is either:

- (a) Planned to depart its Origin in that Charging Period; or
- (b) is a Freight Access Right or CVL Freight Access Right (as the case may be) as described in sub-paragraph "(a)" of either such definition (as applicable) contained in Schedule 5 or Schedule 5 of the CVL TAC (Freight Services) which but for a Network Rail Early Notice Possession a Train Slot or CVL Train Slot in accordance with those rights would have been Planned to depart its Origin in that Charging Period.

3.3 **Combined Network Category 3 Disruption**

3.3.1 Subject to paragraphs 2, 3.4.1 and 3.5, Network Rail shall be liable in any Charging Period for an Enhanced Planned Disruption Sum in respect of each Combined Network Base Service affected by a Combined Network Category 3 Disruption which is either:

- (a) Planned to depart its Origin in that Charging Period; or
- (b) is a Freight Access Right or CVL Freight Access Right (as the case may be) as described in sub-paragraph "(a)" of either such definition (as applicable) contained in Schedule 5 or Schedule 5 of the CVL TAC (Freight Services) which but for a Network

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Rail Early Notice Possession a Train Slot or CVL Train Slot in accordance with those rights would have been Planned to depart its Origin in that Charging Period.

- 3.3.2 If the Train Operator reasonably believes or expects that the Combined Network Category 3 Disruption Trigger will be satisfied then the Train Operator will be entitled to serve an Actual Costs Claim Notice.
- 3.3.3 Within 56 days (or such other period as the parties may agree) of receipt by Network Rail of an Actual Costs Claim Notice, Network Rail shall notify the Train Operator that either:
- (a) it agrees that the Combined Network Category 3 Disruption Trigger is satisfied and agrees to the amount of Actual Costs claimed by the Train Operator in the Actual Costs Claim Notice, in which case Network Rail shall also pay such Actual Costs to the Train Operator within 56 days of receipt by Network Rail of the relevant Actual Costs Claim Notice; or
 - (b) it agrees that the Combined Network Category 3 Disruption Trigger is satisfied but does not agree to the amount of the Actual Costs claimed by the Train Operator in the Actual Costs Claim Notice, in which case Network Rail shall:
 - (i) (if it has not already done so) commence negotiations with the Train Operator in respect of its Actual Costs in respect of the Combined Network Base Service(s) affected by a Network Rail Early Notice Possession and shall continue such negotiations in good faith until they are concluded or until the Actual Costs are determined in accordance with Clause 13; and
 - (ii) pay to the Train Operator its Actual Costs within 28 days of those Actual Costs being agreed or determined in accordance with Clause 13 (as the case may be); or
 - (c) it does not agree that the Combined Network Category 3 Disruption Trigger is satisfied, in which case the matter shall be immediately referred for determination in accordance with Clause 13, and if it is determined in accordance with Clause 13 that the Combined Network Category 3 Disruption Trigger is satisfied then Network Rail shall:
 - (i) (if it has not already done so) commence negotiations with the Train Operator in respect of its Actual Costs in respect of the Combined Network Base Service(s) affected by a Network Rail Early Notice Possession and shall continue such negotiations in good faith until they are concluded or until the Actual Costs are determined in accordance with Clause 13; and
 - (ii) pay to the Train Operator such Actual Costs within 28 days of those Actual Costs being agreed or determined in accordance with Clause 13 (as the case may be).

3.4 Notification, Disruption Claim Notices and Actual Costs Claim Notices

- 3.4.1 The Train Operator shall notify Network Rail of any Network Rail Early Notice Possession that it reasonably considers is likely to give rise to any Combined Network Category 3 Disruption as soon as reasonably practicable after it has been notified of such Network Rail Early Notice Possession.
- 3.4.2 The Train Operator must notify Network Rail of any Combined Network Category 1 Disruption, Combined Network Category 2 Disruption or Combined Network Category 3 Disruption, unless otherwise agreed in writing, within 56 days of its occurrence and include within such notice details of the affected Combined Network Base Services and the Planned Disruption Sums claimed (a "**Disruption Claim Notice**").
- 3.4.3 In respect of a claim for Actual Costs for Combined Network Category 3 Disruptions relating to a single Combined Network Early Notice Possession, the Train Operator shall, unless otherwise agreed in writing, serve a claim on Network Rail:
- (a) no later than the day falling 56 days after the end of the occurrence of the Network Rail Early Notice Possession giving rise to a Combined Network Category 3 Disruption; or
 - (b) where a Combined Network Early Notice Possession is reasonably believed to have exceeded 13 consecutive Charging Periods in length or upon the termination or expiry of this contract, whichever comes first, no later than the day falling 112 days after the

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end of the 13th consecutive Charging Period or the termination or expiry of this contract (as applicable),

whichever is the earlier, and such claim must include details of the estimate of the Actual Costs which are attributable to all relevant Combined Network Category 3 Disruptions triggered by the relevant Network Rail Early Notice Possession (an "**Actual Costs Claim Notice**").

- 3.4.4 Nothing in paragraph 3.4.3 shall prevent the Train Operator from issuing more than one Actual Costs Claim Notice in respect of the same Network Rail Early Notice Possession, provided that:
- (a) each such Actual Costs Claim Notice relates to a different period covered by the relevant Network Rail Early Notice Possession; and
 - (b) no Actual Costs Claim Notice can be issued after the last day for serving notice specified under paragraph 3.4.3.

3.5 Planned Disruption Sum on Combined Network Round Trip

Network Rail shall not be liable to the Train Operator for more than one Planned Disruption Sum in respect of any Combined Network Round Trip.

3.6 Early notice of potential Actual Cost claims

The parties may at any time engage in discussions on any matter likely to result in payments of any Actual Costs and shall use reasonable endeavours to agree whether such Actual Costs arising from the process set out in paragraph 3.3 are likely to arise and/or what mitigating actions should be contemplated to reduce or avoid such Actual Costs. The party initiating such discussions shall provide to the other reasonable evidence in writing of why it considers such Actual Costs will arise and what mitigating actions should be contemplated. Following any agreement or determination that such Actual Costs are likely to arise in connection with one or more future Network Rail Early Notice Possessions or that mitigating actions should be contemplated, the parties shall where reasonably practicable engage in discussions on any options for mitigating costs, revenue loss and/or disruption including any advance compensation for such Network Rail Early Notice Possession(s) to the extent such advance compensation would or would reasonably be expected to facilitate the mitigation of the contemplated disruption. Nothing in this Agreement shall prevent Network Rail and the Train Operator agreeing any options for mitigating costs and disruption in respect of any Network Rail Early Notice Possession(s). Unless otherwise agreed, the timescales for claiming Actual Costs in paragraph 3.4 shall still apply.

Part 3

(Processes and compensation for notification after the Possession Notice Date)

4. Services rescheduled following a Combined Network Disruptive Event

4.1 Establishing an Alternative Train Slot or CVL Alternative Train Slot

Where there is a Combined Network Disruptive Event:

- (a) to the extent that there is appropriate capacity available on the relevant part of the Combined Network; and
- (b) subject (as applicable) to Part H of the Network Code, Part H of the CVL Network Code, the Railway Operational Code and the CVL Railway Operational Code,

Network Rail shall promptly nominate a Combined Network Alternative Train Slot which most nearly accommodates the Combined Network Service as originally included in a Combined Network Access Proposal, Combined Network Rolled Over Access Proposal or Combined Network Train Operator Variation Request ("**Originally Requested**") in respect of any Combined Network Service which is affected by the Combined Network Disruptive Event and notify the Train Operator of it.

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4.2 Train Operator's response

On receiving Network Rail's nomination (if any) of a Combined Network Alternative Train Slot as referred to in paragraph 4.1, the Train Operator shall promptly by notice to Network Rail either:

- (a) accept the Combined Network Alternative Train Slot nominated by Network Rail (in which case the nomination by Network Rail and its acceptance by the Train Operator shall be treated as a Combined Network Train Operator Variation); or
- (b) reasonably reject the Combined Network Alternative Train Slot nominated by Network Rail.

4.3 Rejection of Combined Network Alternative Train Slot

If the Train Operator reasonably rejects under paragraph 4.2(b) the Combined Network Alternative Train Slot nominated by Network Rail, it may in its notice of rejection propose a different Combined Network Alternative Train Slot, which Network Rail shall treat as a Combined Network Train Operator Variation Request.

4.4 Measure of performance

If a Combined Network Alternative Train Slot is accepted under paragraph 4.2(a) or is accepted as a Combined Network Train Operator Variation under paragraph 4.3, then:

- (a) Network Rail shall permit the Train Operator to make the relevant movement in accordance with that Combined Network Alternative Train Slot;
- (b) the Service Characteristics of the Planned Combined Network Service shall be those of the original Combined Network Train Slot; and
- (c) the performance of the movement shall be measured accordingly.

4.5 Combined Network Cancellation

4.5.1 Where:

- (a) Network Rail is not able to nominate a Combined Network Alternative Train Slot as referred to in paragraph 4.1;
- (b) the Train Operator rejects the Combined Network Alternative Train Slot nominated by Network Rail as referred to in paragraph 4.2(b) and does not propose a different Combined Network Alternative Train Slot as referred to in paragraph 4.3; or
- (c) the Train Operator proposes a different Combined Network Alternative Train Slot under paragraph 4.3 and this is not accepted by Network Rail,

the relevant Combined Network Service shall be treated as a Combined Network Cancellation for the purposes of paragraph 8.1(d) of Schedule 8 or paragraph (d) of the definition of CVL Cancellation (as such term is defined in Schedule 8) (as the case may be) and paragraph 2 of Schedule 4 and paragraphs 8 and 9 of Schedule 8 shall apply.

4.5.2 Where a Combined Network Alternative Train Slot is:

- (a) accepted under paragraph 4.2(a); or
- (b) accepted as a Combined Network Train Operator Variation under paragraph 4.3,

the Combined Network Original Service shall not be treated as a Combined Network Cancellation for the purposes of Schedule 8.

4.6 Part H of the Network Code and CVL Network Code

This paragraph 4 is subject to the rights and obligations of the parties under Part H of the Network Code, the Railway Operational Code, the rights and obligations of the Train Operator and the CVL IM under the CVL Network Code and the CVL Railway Operational Code.

5. Other variations to Planned Combined Network Services

5.1 Non-availability of a Combined Network Service

This paragraph 5 applies if, for any reason other than:

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- (a) a Combined Network Restriction of Use to be taken pursuant to the Engineering Access Statement or CVL Engineering Access Statement (as the case may be) which has been notified in all material respects prior to the Possession Notice Date; and
- (b) the circumstances envisaged by paragraph 4,

Network Rail nominates that any part of the Combined Network will not be available for a Planned Combined Network Service to operate at the Planned time and such non-availability is:

- (i) Attributable to Network Rail (as defined in Schedule 8); and
- (ii) known about in sufficient time for an alternative Combined Network Service to be the subject of a Combined Network Train Operator Variation Request and entered into the Working Timetable or CVL Working Timetable (as the case may be) as a new Planned Combined Network Service.

5.2 Establishing a Combined Network Alternative Train Slot

To the extent that there is appropriate capacity available on the relevant part of the Combined Network, and subject to Parts D and H of the Network Code and the Decision Criteria and Parts D and H of the CVL Network Code and the CVL Decision Criteria, Network Rail shall promptly nominate a Combined Network Alternative Train Slot which most nearly accommodates the Combined Network Service as Originally Requested and notify the Train Operator of it.

5.3 Train Operator's response

On receiving Network Rail's nomination (if any) of a Combined Network Alternative Train Slot as referred to in paragraph 5.2, the Train Operator shall promptly by notice to Network Rail either:

- (a) accept the Combined Network Alternative Train Slot nominated by Network Rail (in which case the nomination by Network Rail and its acceptance by the Train Operator shall be treated as a Combined Network Train Operator Variation); or
- (b) reasonably reject the Combined Network Alternative Train Slot nominated by Network Rail.

5.4 Rejection of Combined Network Alternative Train Slot

If the Train Operator reasonably rejects under paragraph 5.3(b) the Combined Network Alternative Train Slot nominated by Network Rail, it may in its notice of rejection propose a different Combined Network Alternative Train Slot, which Network Rail shall treat as a Combined Network Train Operator Variation Request.

5.5 Measure of performance

If a Combined Network Alternative Train Slot is accepted under paragraph 5.3(a) or is accepted as a Combined Network Train Operator Variation under paragraph 5.4, then:

- (a) Network Rail shall permit the Train Operator to make the relevant movement in accordance with the Combined Network Alternative Train Slot;
- (b) the Service Characteristics of the Planned Combined Network Service shall be those of the Combined Network Alternative Train Slot; and
- (c) the performance of the movement shall be measured accordingly.

5.6 Combined Network Cancellation

5.6.1 Where:

- (a) Network Rail is not able to nominate a Combined Network Alternative Train Slot as referred to in paragraph 5.2;
- (b) the Train Operator rejects the Combined Network Alternative Train Slot nominated by Network Rail as referred to in paragraph 5.3(b) and does not propose a different Combined Network Alternative Train Slot as referred to in paragraph 5.4; or
- (c) the Train Operator proposes a different Combined Network Alternative Train Slot under paragraph 5.4 and this is not accepted by Network Rail,

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the relevant Combined Network Service shall be treated as a Combined Network Cancellation for the purposes of paragraph 8.1(d) of Schedule 8 or paragraph (d) of the definition of CVL Cancellation (as such term is defined in Schedule 8) (as the case may be), paragraph 2 of Schedule 4 shall apply and Network Rail shall be liable for the Late Notice Cancellation Sum in respect of that Combined Network Cancellation in accordance with paragraphs 8.2.3 and 9 of Schedule 8.

5.6.2 Where a Combined Network Alternative Train Slot is:

- (a) accepted under paragraph 5.3(a); or
- (b) accepted as a Combined Network Train Operator Variation under paragraph 5.4,

the Combined Network Original Service shall not be treated as a Combined Network Cancellation for the purposes of Schedule 8.

Part 4

(Combined Network Restrictions of Use before Possession Notice Date)

6. Combined Network Restrictions of Use before Possession Notice Date

Without prejudice to any invoices issued under paragraphs 2 or 3 of Schedule 4 or paragraph 9 of Schedule 8, if Network Rail nominates that any part of the Combined Network will not be available for a Combined Network Service to operate at the Planned time by reason of a Combined Network Restriction of Use to be taken pursuant to the Engineering Access Statement or CVL Engineering Access Statement (as the case may be) which has been notified to the Train Operator in all material respects prior to the Possession Notice Date, Network Rail shall have no liability to the Train Operator under Parts 3, 5 or 7 of Schedule 4 or Schedule 8 in respect of the effect of that Combined Network Restriction of Use on such Combined Network Service.

Part 5

(Service Variation)

7. Service Variation

7.1 Service Variation

For the purposes of this Schedule 4, "**Service Variation**" means a variation to any Combined Network Service which:

- (a) the Train Operator has accepted under paragraphs 4 or 5, and which is Attributable to Network Rail (as defined in Schedule 8); and
- (b) has one or more of the following effects:
 - (i) the end to end journey of the Combined Network Diverted Service exceeds that of the Combined Network Original Service by more than five miles;
 - (ii) the addition of at least one Planned reversing movement for the Combined Network Diverted Service over the number of Planned reversing movements for the Combined Network Original Service;
 - (iii) the imposition of any more demanding length, weight or gauge restrictions for the Combined Network Diverted Service compared with the Combined Network Original Service;
 - (iv) the use of at least one additional locomotive for the Combined Network Diverted Service over the number for the Combined Network Original Service or use of a diesel locomotive for the Combined Network Diverted Service in circumstances where Network Rail or the CVL IM (as the case may be) has agreed to provide Electricity for Traction for that Combined Network Original Service as shown in Schedule 5 or Schedule 5 of the CVL TAC (Freight Services) (as the case may be);
 - (v) the Planned departure time from Origin of the Combined Network Diverted Service differs from that of the Combined Network Original Service by more than 30 minutes but less than 12 hours;

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- (vi) the Planned arrival time at Destination of the Combined Network Diverted Service differs from that of the Combined Network Original Service by more than 30 minutes but less than 12 hours; and
- (vii) while the Train Operator Originally Requested the Combined Network Train Slot in accordance with Part D of the Network Code or Part D of the CVL Network Code, the nomination and acceptance of the Combined Network Alternative Train Slot which is established for the Combined Network Diverted Service is treated as a Combined Network Short Notice Service because an act or omission of Network Rail resulted in the Originally Requested Combined Network Train Slot not being Planned in accordance with the applicable Part D.

7.2 Network Rail liability

Subject to paragraphs 7.3 and 7.4, Network Rail shall be liable in any Charging Period for a Service Variation Sum in respect of each Service Variation relating to a Combined Network Service Planned to depart its Origin in that Charging Period.

7.3 Service Variation Sum on Combined Network Round Trip

Network Rail shall not be liable to the Train Operator for more than one Service Variation Sum in respect of any Combined Network Round Trip.

7.4 Service Variation / Cancellation

Network Rail shall not be liable to the Train Operator for a Service Variation Sum if, following the Service Variation, the Train Operator is entitled to a Late Notice Cancellation Sum in respect of the Combined Network Diverted Service.

Part 6

(Not Used)

8. Not Used

Part 7

(Late Notice Actual Costs Claims)

9. Late Notice Actual Costs Claims

9.1 Late Notice Actual Costs Claim arising from Relevant Cancellation

If, pursuant to paragraph 5.6.1, Network Rail is liable for a Late Notice Cancellation Sum in respect of a Combined Network Cancellation (a "**Relevant Cancellation**"), and:

- (a) either:
 - (i) the Relevant Cancellation occurs because the access from the Origin or to the Destination of the Combined Network Original Service is blocked to all rail freight services (except as a result of the non-availability of the applicable gauge cleared route); or
 - (ii) the Relevant Cancellation occurs because of the lack of an applicable gauge cleared route between the Origin and the Destination which has lasted or lasts in total for more than 60 hours; or
 - (iii) as a result of the Relevant Cancellation, all or part of the goods planned to be carried by the Combined Network Original Service are required to be transported by any mode other than rail, for all or any part of the journey from its Origin to its Destination; and
- (b) the Train Operator incurs Late Notice Actual Costs as a consequence of the Relevant Cancellation, then the Train Operator will be entitled to serve a Late Notice Actual Costs Claim Notice in accordance with paragraph 9.3 below.

9.2 Late Notice Actual Costs Claim arising from Relevant Service Variation

If, pursuant to paragraph 7, Network Rail is liable for a Service Variation Sum in respect of a Service Variation (other than a Service Variation which arises from a variation to a Combined

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Network Service which the Train Operator has accepted under paragraph 4) (a "**Relevant Service Variation**"), and:

- (a) either:
 - (i) the Combined Network Diverted Service does not have an applicable gauge cleared route between the Origin and the Destination where:
 - (A) the lack of such applicable gauge cleared route has lasted or lasts in total for more than 60 hours; and
 - (B) the Combined Network Diverted Service operates in whole, or in part, at the relevant location within this 60 hour period; or
 - (ii) at least one additional locomotive is used for the Combined Network Diverted Service over the number used for the Combined Network Original Service; or
 - (iii) a diesel locomotive is required to be used for the Combined Network Diverted Service in circumstances where Network Rail or the CVL IM (as the case may be) has agreed to provide Electricity for Traction for the Combined Network Original Service as shown in Schedule 5 or schedule 5 of the CVL TAC (Freight Services) (as the case may be); or
 - (iv) the parties agree that there is a requirement for a specified number of the Train Operator's train crew to acquire knowledge of any diversionary route which may form part of the Combined Network Diverted Service and such requirement has come about as a direct result of the exceptional nature of the variation to the Combined Network Original Service; and
- (b) the Train Operator incurs Late Notice Actual Costs as a consequence of the Relevant Service Variation,

then the Train Operator will be entitled to serve a Late Notice Actual Costs Claim Notice in accordance with paragraph 9.3 below.

9.3 Late Notice Actual Costs Claim Notice

In respect of a claim for Late Notice Actual Costs arising under paragraphs 9.1 or 9.2 above, the Train Operator shall, unless otherwise agreed in writing, serve a claim on Network Rail no later than the day falling 56 days after the occurrence of the Relevant Cancellation or Relevant Service Variation (as the case may be), and such claim must include details of the estimate of the Late Notice Actual Costs which are attributable to the Relevant Cancellation or Relevant Service Variation (as the case may be) (a "**Late Notice Actual Costs Claim Notice**").

9.4 Late Notice Actual Costs Claim Process

Within 56 days (or such other period as the parties may agree) of receipt by Network Rail of a Late Notice Actual Costs Claim Notice, Network Rail shall notify the Train Operator that either:

- (a) it agrees that the Late Notice Actual Costs Claim Trigger is satisfied and agrees to the amount of the Late Notice Actual Costs claimed by the Train Operator in the Late Notice Actual Costs Claim Notice, in which case Network Rail shall also pay such Late Notice Actual Costs to the Train Operator within 56 days of receipt by Network Rail of the relevant Late Notice Actual Costs Claim Notice; or
- (b) it agrees that the Late Notice Actual Costs Claim Trigger is satisfied but does not agree to the amount of the Late Notice Actual Costs claimed by the Train Operator in the Late Notice Actual Costs Claim Notice, in which case Network Rail shall:
 - (i) (if it has not already done so) commence negotiations with the Train Operator in respect of its Late Notice Actual Costs and shall continue such negotiations in good faith until they are concluded or until the Late Notice Actual Costs are determined in accordance with Clause 13; and
 - (ii) pay to the Train Operator its Late Notice Actual Costs within 28 days of those Late Notice Actual Costs being agreed or determined in accordance with Clause 13 (as the case may be); or

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- (c) it does not agree that the Late Notice Actual Costs Claim Trigger is satisfied, in which case the matter shall be immediately referred for determination in accordance with Clause 13, and if it is determined in accordance with Clause 13 that the Late Notice Actual Costs Claim Trigger is satisfied then Network Rail shall:
 - (i) (if it has not already done so) commence negotiations with the Train Operator in respect of its Late Notice Actual Costs and shall continue such negotiations in good faith until they are concluded or until the Late Notice Actual Costs are determined in accordance with Clause 13; and
 - (ii) pay to the Train Operator such Late Notice Actual Costs within 28 days of those Late Notice Actual Costs being agreed or determined in accordance with Clause 13 (as the case may be).

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Appendix 1

The Normal Planned Disruption Sum shall be £336, amount to be expressed in pounds sterling and rounded to zero decimal places.

The Enhanced Planned Disruption Sum shall be £894, amount to be expressed in pounds sterling and rounded to zero decimal places.

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