

PR13 Implementation – Open Access Schedule 7 - Capacity Charge Amendments

SCHEDULE 7: TRACK CHARGES AND OTHER PAYMENTS

PART 1: INTERPRETATION

1 Definitions

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

“2008 Final Determinations” means the document entitled “Periodic Review 2008: Determination of Network Rail’s outputs and funding for 2009-14” and published by ORR on 30 October 2008;

“2013 Final Determinations” means the document entitled [“Periodic Review 2013: Determination of Network Rail’s outputs and funding for 2014-19”] and published by ORR on ● 2013;

“access charges review” has the meaning ascribed to it by Schedule 4A to the Act;

“Alliance Agreement” means an agreement between Network Rail and one or more train operators establishing an alliance in which those parties work jointly to carry out or otherwise share the risk of activities on a part of the Network;

“Capacity Charge” means a variable charge, calculated in accordance with paragraph 6 of Part 2;

“Capacity Charge Wash-up” means the charge calculated in accordance with paragraph 6.3;

“Capacity Charge Wash-up Rate” means:

(a) In respect of the Relevant Year commencing on 1 April 2014, the rate for the Existing Service Code corresponding to the day of the week on which the Service is operated as set out in the column headed “Wash-up rate” in the List of Capacity Charge Rates; and

(a)(b) In respect of any other Relevant Year t, the total of the rate for the Existing Service Code corresponding to the day of the week on which the Service is operated as set out in the column headed “Wash-up rate” in the List of Capacity Charge Rates multiplied by the indexation adjustment calculated in accordance with paragraph 6.4;

“Default Charge”

means the charge calculated in accordance with paragraph 3.3 of Part 2;

“Default Period”

means the period from the later of:

(a) the date on which the New Specified Equipment is first used on the Network by the Train Operator; or

(b) 1 April 2014,

until the date on which ORR consents to or determines the supplement to the Track Usage Price List for that vehicle under paragraph 9.11 of Part 2;

“Default Rate”

means, in respect of any New Specified Equipment used on the Network, the corresponding passenger default rate for that type of vehicle set out in the Track Usage Price List;

“Default Train Consist Data”

means the data listed in Appendix 7C as amended from time to time in accordance with paragraph 10.4 of Part 2;

“Delivery Plan”

means the document entitled [*insert title*], including its supporting documentation, published by Network Rail on or about 31 March 2014;

“Efficiency Benefit Share”	means the amount determined in accordance with paragraph 5.1 of Part 2;
<u>“Existing Service Codes”</u>	<u>means each of the following Service Coded Groups [identify relevant service codes for particular operator];</u>
“List of Capacity Charge Rates”	means the document entitled “List of Capacity Charge Rates” published by Network Rail on or about 20 December 2013;
“New Specified Equipment”	means a type of railway vehicle not included in the Track Usage Price List.
“Outperformance Sum”	shall be the amount, in the case of a REBS Outperformance, by which Network Rail’s performance on a REBS Route in Relevant Year t has exceeded the performance set in the Route Baseline, as determined by ORR’s annual efficiency and finance assessment of Network Rail;
“Period”	has the meaning ascribed to it in Schedule 8;
“REBS Outperformance”	means the situation where ORR’s annual efficiency and finance assessment of Network Rail in respect of the REBS Route in Relevant Year t has identified, in accordance with the methodology and principles set out in [<i>insert reference</i>] of the 2013 Final Determinations, that Network Rail’s performance has exceeded the performance set in the Route Baseline;
“REBS Route”	means a route specified in the table in Appendix 7A for the purposes of the Route-Level Efficiency Benefit Share Mechanism;
“REBS Underperformance”	means the situation where ORR’s annual efficiency and finance assessment of Network Rail in respect of the REBS Route in Relevant Year t has identified, in accordance with the methodology and principles set out in [<i>insert reference</i>] of the 2013 Final Determinations, that Network Rail’s performance has not achieved the performance set in the Route Baseline;

“Relevant Year”	means a year commencing at 0000 hours on 1 April and ending at 2359 hours on the following 31 March; “Relevant Year t” means the Relevant Year for the purposes of which any calculation falls to be made; “Relevant Year t-1” means the Relevant Year preceding Relevant Year t; and similar expressions shall be construed accordingly;
"Route Baseline"	means the baseline value in respect of a REBS Route in Relevant Year t that is published by Network Rail in its Delivery Plan, as adjusted for inflation in accordance with the methodology and principles set out in [insert reference] of the 2013 Final Determinations, and that ORR will use in its annual efficiency and finance assessment of Network Rail for the purposes of the Route Level Efficiency Benefit Share Mechanism;
“Route-Level Efficiency Benefit Share”	has the meaning ascribed to it in paragraph 1.1 of Part 3;
“Route Level Efficiency Benefit Share Mechanism”	means the provisions for the calculation and payment of the Route Level Efficiency Benefit Share in respect of one or more REBS Routes as described in paragraph 1.3 of Part 3.
“RPI”	means the General Index of Retail Prices All Items measured by CHAW and published each month, or: <ul style="list-style-type: none"> (a) if the index for any month in any year shall not have been published on or before the last day of the third month after such month, such index for such month or months as ORR may (after consultation with the parties and such other persons as it considers appropriate) determine to be appropriate in the circumstances; or (b) if there is a material change in the basis of the index, such other index as ORR may (after consultation with the parties and such other persons as it considers appropriate) determine to be appropriate in the circumstances;

“Service Coded Group”	<u>means any Service or collection of Services, operating under a service code specified in the List of Capacity Charge Rates and any Ancillary Movements relating to such Services</u> means a Service or collection of Services specified as such in the List of Capacity Charge Rates, and any Ancillary Movements relating to such Services;
“Track Usage Price List”	means the document entitled “Track Usage Price List” published by Network Rail on or about 20 December 2013;
“Train Consist Data”	means the information relating to the number(s) and type(s) of railway vehicle comprised in a train movement;
“Train Mile”	in relation to a train, means a mile travelled by that train on the Network;
“Underperformance Sum”	shall be the amount, in the case of a REBS Underperformance, by which Network Rail’s performance on a REBS Route in Relevant Year t has not achieved the performance set out in the Route Baseline, as determined by ORR’s annual efficiency and finance assessment of Network Rail;
“Variable Charge”	means the Variable Usage Charges;
“Variable Usage Charge”	means a variable charge, calculated in accordance with paragraph 3 of Part 2;
“Vehicle Mile”	in relation to a railway vehicle, means a mile travelled by that vehicle on the Network; and
“Weekday”	has the meaning ascribed to it in paragraph 1.1 of Schedule 5.

PART 2: TRACK CHARGES

1 Principal formula

During each Relevant Year, Network Rail shall levy and the Train Operator shall pay Track Charges in accordance with the following formula:

$$T_t = V_t + K_t + KW_t + D_t - BS_t$$

where:

T_t means Track Charges in Relevant Year t;

V_t means an amount in respect of the Variable Usage Charge in Relevant Year t which is derived from the formula in paragraph 3.1;

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

KW_t means an amount, if any, in respect of the Capacity Charge Wash-up in Relevant Year t which shall be calculated in accordance with paragraph 6.3;

D_t means an amount (if any) in respect of the Default Charge in Relevant Year t which is calculated in accordance with paragraph 3.3; and

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

2 Not used.

3 Variable usage charge

3.1 Variable usage charge

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

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

where:

V_{rit} means an amount for a category of vehicle i for Relevant Year t which is derived from the following formula:

$$V_{rit} = V_{rit-1} \cdot \left[\left(1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right) \cdot (1 + TRUEUP_{t-1}) \right]$$

where:

RPI_{t-1} means the average value of the monthly figures of RPI for the 12 months up to and including the month of December immediately preceding the relevant 1 April;

RPI_{t-2} means the average value of the monthly figures of RPI for the 12 months up to and including the month of December which is 16 months before the relevant 1 April; and

$$TRUEUP_{t-1} = \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} - \frac{(RPI_{t-2} - RPI_{t-3})}{RPI_{t-3}}$$

where:

RPI_{t-3} means the average value of the monthly figures of RPI for the 12 months up to and including the month of December which is 28 months before the relevant 1 April,

but so that in relation to the Relevant Year commencing on 1 April 2014, V_{rit} shall have, in respect of vehicle i , the corresponding variable usage charge rate per Vehicle Mile for that vehicle i set out in the Track Usage Price List and in relation to the next following Relevant Year V_{rit-1} shall have the same value;

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

Σ means the summation across all relevant categories of vehicle types i .

3.2 Not used.

3.3 *Default Charge*

For the purposes of paragraph 1, the term D_t means the amount of Default Charge payable in respect of New Specified Equipment in Relevant Year t which is derived from the following formula:

$$\sum D_{nt} \cdot UD_{nt}$$

where:

D_{nt} means:

- (a) in respect of the Relevant Year commencing on 1 April 2014 the Default Rate for that New Specified Equipment; and
- (b) in respect of any other Relevant Year t the total of the Default Rate for that New Specified Equipment multiplied by the following formula:

$$\left[\left(1 + \frac{(RPI_{t-1} - RPI_{2013})}{RPI_{2013}} \right) \cdot (1 + TRUEUP_{t-1}) \right]$$

where:

RPI_{t-1} has the meaning set out in paragraph 3.1 above;

RPI₂₀₁₃ means the average value of the monthly figures of RPI for the 12 months up to and including December 2013; and

TRUEUP_{t-1} has the meaning set out in paragraph 3.1 above;

UD_{nt} means the actual volume of usage of New Specified Equipment in Vehicle Miles during the Default Period in Relevant Year t operated by or on behalf of the Train Operator; and

Σ means the summation across all relevant New Specified Equipment.

4 Not used.

5. Efficiency benefit share

5.1 The Efficiency Benefit Share:

- (a) is an amount (which shall not be a negative value) representing a return of Track Charges which shall be identified in the ORR's annual assessment of Network Rail as the "Efficiency Benefit Share", if any, to be rebated to the Train Operator, such amount to be determined in accordance with the methodology and principles set out in paragraphs 27.34 to 27.53 (inclusive) of the 2008 Final Determinations; and
- (b) shall only be payable in respect of Relevant Years ending on or before 31 March 2014.

5.2 If, pursuant to paragraph 5.1, the Train Operator is entitled to payment of an Efficiency Benefit Share in respect of Relevant Year t, then, subject to paragraph 5.3, such payment shall be made by Network Rail to the Train Operator as a lump sum payment within 28 days after the end of the Period in which it is determined by the ORR that such payment should be made.

5.3 If, in respect of any Relevant Year t, an Efficiency Benefit Share is payable in accordance with paragraph 5.2 and this contract has either commenced or expired or otherwise been terminated during the course of that Relevant Year t, the Train Operator shall be entitled to a pro rata payment of the Efficiency Benefit Share payable in respect of that Relevant Year t. Such pro rata

payment (which shall be payable in accordance with paragraph 5.2) shall be calculated as follows:

$$\text{Pro rata BS}_t = \left(\frac{\text{EBS}}{13} \right) \times \text{CP}$$

where:

EBS means the total amount of the Efficiency Benefit Share that would have been payable to the Train Operator in respect of the whole of the Relevant Year t in question had this contract been in force for the entire Relevant Year t; and

CP means the number of Periods during that Relevant Year t either:

- (a) where this contract commences during the course of that Relevant Year t, following commencement of this contract; or
- (b) where this contract expires or is otherwise terminated during the course of that Relevant Year t, prior to the expiry or other termination of this contract,

provided that, in each case:

- (i) if this contract expires or is otherwise terminated on or before the fourteenth day of a Period, such Period shall not be included in the calculation of 'CP';
- (ii) if this contract expires or is otherwise terminated on or after the fifteenth day of a Period, such Period shall be included in the calculation of 'CP';
- (iii) if this contract commences on or before the fourteenth day of a Period, such Period shall be included in the calculation of 'CP'; and
- (iv) if this contract commences on or after the fifteenth day of a Period, such Period shall not be included in the calculation of 'CP'.

5.4 Without prejudice to the generality of Clause 16.3.1, any payment of an Efficiency Benefit Share (an "**EBS payment**") shall be made on the basis that it is to be treated as exclusive of VAT, so that where and to the extent that the EBS payment is consideration for a supply for VAT purposes Network Rail shall in addition pay to the Train Operator an amount equal to the amount of VAT due in respect of that EBS payment and either:

- (a) the Train Operator shall issue a VAT invoice to Network Rail in respect of the relevant amount; or

- (b) if the parties so agree and have entered into an applicable self-billing agreement (within the meaning of regulation 13(3A) of the Value Added Tax Regulations 1995 (the "VAT Regulations")) that continues in force then Network Rail shall produce for itself a self-billed invoice (within the meaning of regulation 13(3) of the VAT Regulations) in respect of the relevant amount.

6 Capacity Charge and Capacity Charge Wash-up

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

$$K_t = \left[\sum (P_{g_{twd}} \cdot T_{g_{twd}}) + (P_{g_{twe}} \cdot T_{g_{twe}}) \right]$$

where:

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

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

$$P_{g_{twd}} = P_{g_{twd-1}} \cdot \left[\left(1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right) \cdot (1 + TRUEUP_{t-1}) \right]$$

where:

RPI_{t-1} has the meaning set out in paragraph 3.1 above;

RPI_{t-2} has the meaning set out in paragraph 3.1 above; and

$TRUEUP_{t-1}$ has the meaning set out in paragraph 3.1 above,

but so that in relation to the Relevant Year t commencing on 1 April 2014, $P_{g_{twd}}$ shall have the value for the Weekday rate per Service Coded Group i shown for the Train Operator in the List of Capacity Charge Rates; and in relation to the next following Relevant Year, $P_{g_{twd-1}}$ shall have the same value;

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

$$P_{g_{twe}} = P_{g_{twe-1}} \cdot \left[\left(1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right) \cdot (1 + TRUEUP_{t-1}) \right]$$

where:

RPI_{t-1} has the meaning set out in paragraph 3.1 above;

RPI_{t-2} has the meaning set out in paragraph 3.1 above; and

$TRUEUP_{t-1}$ has the meaning set out in paragraph 3.1 above,

but so that in relation to the Relevant Year t commencing on 1 April 2014, Pg_{twe} shall have the value for the weekend rate per Service Coded Group i shown for the Train Operator in the List of Capacity Charge Rates; and in relation to the next following Relevant Year, Pg_{twe-1} shall have the same value;

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

Tg_{twe} means the actual Train Miles run on weekends by Services in Service Coded Group i in the Relevant Year t.

6.2 Within 90 days after the end of Relevant Year t, Network Rail shall calculate any Capacity Charge Wash-up for the Train Operator (KW_t) in accordance with paragraph 6.3 which, if a positive sum, shall be payable by the Train Operator. If KW_t is a negative sum or equal to zero then no sum shall be payable by the Train Operator or by Network Rail.

6.3 KW_t is derived from the following formula:

$$KW_t = \sum_e (M_{te} - B_{te} - A_{te})$$

Where:

M_{te} means Network Rail's reasonable estimate of the aggregate revenue it would have been entitled to receive during Relevant Year t from the Capacity Charge for Services operating under the Existing Service Codes under this track access agreement if, in the calculation of the Capacity Charge under paragraph 6.1 above, the weekday rate and weekend rate for any Existing Service Codes were interpreted to mean the Capacity Charge Wash-up Rate had been applied as such for all Services relating to the Existing Service Codes that had operated on the Network during Relevant Year t;

B_{te} means a baseline value in pounds for Existing Service Codes for the Train Operator, as set out in ORR's Determination of Capacity Charge Baselines published on or about [];

A_{te} means the aggregate income which Network Rail, acting reasonably, estimates is owed to it under paragraph 6.1 of Schedule 7 of this track access agreement in respect of the Capacity Charge for all Services relating to Existing Service Codes that have been operated on the Network during Relevant Year t; and

\sum_e means the summation across all Existing Service Codes

6.4 The indexation adjustment for Relevant Year t shall be derived from the following formula:

$$\left(1 + \frac{(RPI_{t-1} - RPI_{2013})}{RPI_{2013}}\right) \bullet (1 + TRUEUP_{t-1})$$

Where:

RPI_{t-1} has the meaning set out in paragraph 3.1 above;

RPI₂₀₁₃ means the average value of the monthly figures of RPI for the 12 months up to and including December 2013; and

TRUEUP_{t-1} has the meaning set out in paragraph 3.1 above,

*****The rest of Schedule 7 is not included in this document as we are only proposing changes relating to the capacity charge.*****