

## SCHEDULE 4: RULES OF THE ROUTE, RULES OF THE PLAN AND RESTRICTIONS OF USE

~~[Note: The drafting does not address how open access passenger operators will be treated if they elect not to have the full rights to compensation for all types of Restrictions of Use.]~~

[Note: Schedule 4 applicable to non-franchised<sup>1</sup> passenger Train Operators which have not elected to pay the access charge supplement.]

### PART 1

NOT USED

### PART 2

NOT USED

## PART 3: COMPENSATION FOR RESTRICTIONS OF USE

### 1 Definitions

#### 1.1 Defined terms

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

- |                               |   |
|-------------------------------|---|
| <b>“Applicable Timetable”</b> | means, in respect of any day, that part of the Working Timetable in respect of that day which is required to be drawn up in accordance with Condition D1.6.1 as at 22:00 hours on the day prior to that day;  |
| <b>“Cancellation Minutes”</b> | shall have the meaning ascribed to it in Schedule 8;  |
| <b>“Cap”</b>                  | shall have the meaning ascribed to it in Schedule 8;  |
| <b>“Corresponding Day”</b>    | means, in respect of any day (the <b>“first day”</b> ): <ul style="list-style-type: none"><li>(a) a day which is contained in the same Timetable Period as the first day and on which the Services scheduled in the First Working Timetable are the same as would have been scheduled on the first day but for Restrictions of Use reflected in the First Working Timetable for the first day; or</li><li>(b) if no day is found under paragraph (a) above, then a day which is contained in the equivalent Timetable Period for the time of year, in the year immediately preceding the Timetable Period which includes the first day and on which the Services scheduled in the First Working Timetable are the same as would have been scheduled on the first day but for Restrictions of Use reflected in the First Working Timetable for the first day; or</li></ul> |

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<sup>1</sup> Meaning any passenger Train Operator which has either entered into a franchise agreement with the Secretary of State for Transport (or previously the Strategic Rail Authority) or Scottish ministers or a concession agreement with Transport for London or Merseyside PTE.

	(c) if no day is found under paragraph (a) or (b) above, such other day as the parties may agree or as may be determined in accordance with paragraph 12.2;
<b>“Corresponding Day Timetable”</b>	means, in relation to a Corresponding Day, the First Working Timetable or such other timetable as may be agreed between the parties or otherwise determined in accordance with paragraph 12.2;
<b>“CTRL Possession”</b>	shall have the meaning ascribed to it in Part 4 or Part 6 of this Schedule 4 as appropriate;]
<b>“Day 42 Statement”</b>	shall have the meaning ascribed to it in paragraph 13.1(a);
<b>“Disrupted”</b>	means: <ul style="list-style-type: none"><li>(a) cancelled;</li><li>(b) diverted off the Route over which it was scheduled to run in the Corresponding Day Timetable; and/or</li><li>(c) starting or finishing short in comparison with the Service as timetabled in the Corresponding Day Timetable;</li></ul>
<b>“First Restriction”</b>	shall have the meaning ascribed to it in paragraph 2.12(a)(i);
<b>“First Restriction Period”</b>	shall have the meaning ascribed to it in paragraph 2.12(a)(ii);
<b>“First Working Timetable”</b>	means, in respect of any day, the version of the Working Timetable for that day provided by Network Rail in accordance with Condition D3.2.7, as amended pursuant to Condition D3.2.9;
<b>“Further Restriction”</b>	shall have the meaning ascribed to it in paragraph 2.12(a)(ii)(B);
<b>“High Speed Diversion”</b>	means a situation in which a Train is diverted between successive Monitoring Points such that it travels a longer distance at a higher average speed than that normally scheduled and arrives at its destination at a time later than that specified in the First Working Timetable;
<b>“Monitoring Point”</b>	shall have the meaning ascribed to it in Schedule 8;
<b>“Network Rail Restriction of Use”</b>	means any Restriction of Use other than an Operator Restriction of Use, a CTRL Possession or, if applicable, a Thameslink Possession;
<b>“Notification Factor” or “NF”</b>	shall have the meaning ascribed to it in paragraph 9;
<b>“Operator Restriction of Use”</b>	means a Restriction of Use of the type referred to in paragraph 2.3;
<b>“Over-run”</b>	shall have the meaning ascribed to it in paragraph 2.12(a);
<b>“Period”</b>	means each consecutive period of 28 days during the term of this contract commencing at 00:00 hours on 1 April in each

	<p>year, provided that the length of the first and last such Period in any year may be varied by up to 7 days on reasonable prior notice from Network Rail to the Train Operator;</p>
<b>“Public Holiday”</b>	<p>means any day other than Saturday or Sunday on which the banks in the City of London are not open for business;</p>
<b>“Recovery Allowance”</b>	<p>means an allowance for additional time incorporated in the First Working Timetable or (where the Train Operator requests that the allowance is not incorporated in the First Working Timetable and Network Rail complies with that request) the Applicable Timetable to allow a Train to regain time lost during an earlier part of its journey;</p>
<b>“Restriction of Use”</b>	<p>means, in respect of any day, any restriction of use of all or any part of the Routes (other than one caused by a Recovery Allowance which was contained in the Applicable Rules of the Plan relevant to that day notified to each Bidder on or before the end of the Drafting Period under Part D of the Network Code) which results in:</p> <ul style="list-style-type: none"><li>(a) a difference between the Applicable Timetable on that day as compared with the First Working Timetable in respect of that day; and/or</li><li>(b) a difference between the First Working Timetable on that day as compared with the Corresponding Day Timetable in respect of the Corresponding Day;</li></ul>
<b>“Restriction of Use Day”</b>	<p>means a day on which a Network Rail Restriction of Use is taken or deemed to be taken;</p>
<b>“RoU Claim Notice”</b>	<p>means a notice issued by either party pursuant to paragraph 2.8;</p>
<b>“RoU Direct Costs”</b>	<p><del>means the aggregate amount of:</del></p> <ul style="list-style-type: none"><li><del>(a) bus and taxi hire costs;</del></li><li><del>(b) publicity costs;</del></li><li><del>(c) train planning and diagramming costs; and</del></li><li><del>(d) other costs directly related to the organisation and management of the Train Operator’s response to a Type 2 Restriction of Use,</del></li></ul> <p><del>reasonably incurred by the Train Operator as a result of a Type 2 Restriction of Use, adjusted by:</del></p> <ul style="list-style-type: none"><li><del>(i) adding any increase in RoU Variable Costs; and</del></li><li><del>(ii) deducting any decrease in RoU Variable Costs;</del></li></ul>
<b>“RoU Liability”</b>	<p>means any costs, direct losses and expenses (including any loss of revenue) reasonably incurred or reasonably expected to be incurred by the Train Operator (including any increase in RoU Variable Costs but net of any benefit arising from the</p>

	taking of a Restriction of Use including any decrease in RoU Variable Costs) as a consequence of a Type 3 Restriction of Use or any Restriction(s) of Use covered by an SPD Claim;
<b>“RoU Losses”</b>	<del>means any RoU Direct Costs or RoU Liability (as applicable);</del>
<b>“RoU Trigger Date”</b>	<del>means, in respect of any Period, the later to occur of the following: (a) <del>the date on which Network Rail issues a Day 42 Statement; and</del> (b) <del>in the event of any dispute in respect of Network Rail’s Day 42 Statement, the date on which such dispute is agreed or determined;</del></del>
<b>“RoU Variable Costs”</b>	means any Train Operator costs which vary as a result of a Restriction of Use or where applicable an Over-run arising directly from changes in train mileage including maintenance, fuel or electricity costs, the Variable Track Usage Charge and the Capacity Charge;
<b>“SPD Claim”</b>	has the meaning specified in paragraph 2.10(c);
<b>“SPD Notice”</b>	means a notice issued by either party pursuant to paragraph 2.10(a);
<b>“SPD Period”</b>	means the period for which a claim is being made in an SPD Claim which is consistent with the requirements of paragraph 2.10(d);
<b>“SPD Cost Threshold No.1”</b>	means $[\pounds 500,000]/[\pounds 250,000]$ <sup>42</sup> ;
<b>“SPD Cost Threshold No.2”</b>	means $[\pounds 1,000,000]/[\pounds 500,000]$ <sup>23</sup> ;
<b>“SPD Revenue Threshold No.1”</b>	means [●]; <sup>34</sup>
<b>“SPD Revenue Threshold No.2”</b>	means [●]; <sup>45</sup>
<b>“Sustained Planned Disruption”</b>	or means a circumstance where:
<b>“SPD”</b>	(a) the aggregate of <del>the compensation</del> <u>all of the Train Operator’s notional revenue losses</u> calculated in accordance with paragraph 3 for any Restrictions of Use during: (i) 3 consecutive Periods is equal to or exceeds SPD Revenue Threshold No.1; or

<sup>42</sup> The lower threshold shall only apply in respect of the following small operators: Chiltern, Merseyrail, C2C and non-franchised passenger operators.

<sup>23</sup> Ibid.

<sup>34</sup> The methodology for calculating the threshold will be set out in the Criteria and Procedures. The SPD Revenue Thresholds will be either (i) 20% and 15% over 3 and 7 Periods respectively of the defined Service Group or (ii) the difference between the formulaic cost compensation and reasonably incurred costs where this is more than £0.5m over 3 consecutive Periods or £1m over 7 consecutive Periods which would apply to all train operators except Chiltern, MerseyRail C2C and open access operators for whom the values ~~of~~ £0.25m over 3 consecutive Periods and £0.5m over 7 consecutive Periods will be used.

<sup>4</sup> ~~Ibid.~~



- (a) the Corresponding Day Timetable for all days in the period from and including the Principal Change Date up to but excluding the immediately following Subsidiary Change Date; or
- (b) the Corresponding Day Timetable for all days from and including the Subsidiary Change Date up to but excluding the immediately following Subsidiary Change Date or Principal Change Date, as the case may be;

**“Type 1 Restriction of Use”** ~~means any single Restriction of Use which does not fall within the definition of Type 2 Restriction of Use or Type 3 Restriction of Use;~~

**“Type 2 Restriction of Use”** means:  
~~(a) a single Restriction of Use of more than 60 consecutive hours (excluding any part of that Restriction of Use which occurs during a Public Holiday); and~~  
~~(b) which results in a Service being Disrupted, but excluding any Restriction of Use which falls within the definition of Type 3 Restriction of Use;~~

**“Type 3 Liability Claim”** has the meaning specified in paragraph 2.7(b);

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

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

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

**“White Period”** means any period during which the taking of a Restriction of Use would not result in any ~~compensation~~notional revenue loss being ~~payable~~calculated in accordance with paragraph 3.

## 1.2 *Suspension Notices*

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

## 1.3 *Possession*

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

#### 1.4 *White Period*

In respect of any ~~Type 1 Restriction of Use, Type 2 Restriction of Use or~~ Type 3 Restriction of Use, where a Restriction of Use starts before and/or ends after a White Period, the entire length of the Restriction of Use shall be taken into account when counting the cumulative total hours.

## **2 Application of this Part**

### 2.1 *Entry into effect*

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

### 2.2 *Applicable Rules of the Route and the Network Code*

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

- (a) Network Rail’s right to take Restrictions of Use under or pursuant to the Applicable Rules of the Route;
- (b) the establishment of any amended Working Timetable under Part H of the Network Code; and
- (c) any rights pursuant to the Network Code that the Train Operator may have to challenge any decision of Network Rail.

### 2.3 *Operator Restriction of Use*

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

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

### 2.4 *Network Rail payments*

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

- (a) for each Network Rail Restriction of Use, in accordance with ~~paragraphs 2.5 to~~ paragraph 2.7 and 2.10 where applicable; and
- (b) for each CTRL Possession and Thameslink Possession, in accordance with Part 4.

2.5 ~~Type 1 Restriction of Use~~ NOT USED

~~Network Rail shall make payments (in accordance with the procedure in paragraph 13) calculated in accordance with paragraphs 3 and 4 to the Train Operator in respect of any Type 1 Restriction of Use.~~

2.6 ~~Type 2 Restriction of Use~~ NOT USED

~~(a) Except where paragraph 2.6(c) applies, Network Rail shall make payments (in accordance with the procedure in paragraph 13) calculated in accordance with paragraphs 3 and 4 to the Train Operator in respect of any Type 2 Restriction of Use.~~

~~(b) If either party reasonably believes or expects that the difference between RoU Direct Costs calculated in accordance with paragraph 6 would exceed the costs calculated under paragraph 4 by more than £10,000 then that party will be entitled to require that the costs be calculated in accordance with paragraph 6 by serving an RoU Claim Notice within the time periods set out in paragraph 2.8.~~

~~(c) Following a request in accordance with paragraph 2.6(b), if it is agreed or determined that the difference between RoU Direct Costs calculated in accordance with paragraph 6 exceeds the costs calculated under paragraph 4 by more than £10,000 then the relevant party shall make payments to the other (in accordance with the procedure in paragraph 13) calculated in accordance with paragraphs 3 and 6.~~

2.7 ~~Type 3 Restriction of Use~~

~~(a) Except where paragraph 2.7(c) applies, Network Rail shall make payments (in accordance with the procedure in paragraph 13) calculated in accordance with paragraphs 3 and 4 to the Train Operator in respect of any Type 3 Restriction of Use.~~

~~(b) If either party reasonably believes or expects that the difference between RoU Liability calculated in accordance with paragraph 7 would exceed the costs and losses calculated under paragraphs 3 and 4 by more than £10,000 then that party will be entitled to require that the costs and losses be calculated in accordance with paragraph 7 instead by serving an RoU Claim Notice within the time periods set out in paragraph 2.8 (a "Type 3 Liability Claim").~~

~~(c) Following a request in accordance with paragraph 2.7(b), if it is agreed or determined that the difference between RoU Liability calculated in accordance with paragraph 7 exceeds the costs and losses calculated under paragraphs 3 and 4 by more than £10,000 then the relevant party~~Where a Train Operator's RoU Liability exceeds £10,000 in respect of any Type 3 Restriction of Use Network Rail shall make payments to the other Train Operator (in accordance with the procedure in paragraph 13) calculated in accordance with paragraph 7.

2.8 RoU Claim Notice

(a) ~~Either party~~A Train Operator wishing to make a request pursuant to Clause ~~2.6(b) or Clause 2.7(b)~~ must notify ~~the other~~Network Rail that a Restriction of Use is a ~~Type 2 Restriction of Use or a~~ Type 3 Restriction of Use and that the circumstances in paragraph ~~2.6(b) or 2.7(b) (as applicable)~~2.7 apply within [56] days of the ~~RoU Trigger Date relating to the Period in which that~~date of the end of such Type 3 Restriction of Use ~~commences~~.



- (b) The notice referred to in paragraph 2.8(a) must, ~~if provided by the Train Operator,~~ include details of the estimate of the RoU ~~Direct Costs or RoU-Liability (as applicable)~~ which the Train Operator has incurred in respect of the relevant Restriction of Use.

## 2.9 *Changes to Restrictions of Use*

- (a) Where a single Restriction of Use falls within the definition of ~~one type of a Type 3~~ Restriction of Use and there is a change which means that no Restriction of Use occurs or that the Restriction of Use ~~occurs as another type of~~ no longer falls within the definition of a Type 3 Restriction of Use, then that Restriction of Use shall be treated, for the purposes of the calculation and payment of compensation, as if it had ~~always never~~ been ~~the latter type of a Type 3~~ Restriction of Use (or, where applicable, as if it had not been a Restriction of Use).
- (b) Where a single Restriction of Use does not fall within the definition of a Type 3 Restriction of Use and there is a change which means that the Restriction of Use then falls within the definition of a Type 3 Restriction of Use, then that Restriction of Use shall be treated, for the purposes of the calculation and payment of compensation, as if it had always been a Type 3 Restriction of Use.
- (c) ~~(b)~~-For the purposes of paragraph 2.9(~~ed~~), a Restriction of Use shall be deemed to be taken if and to the extent that it results in any difference between timetables of the type referred to in the definition of “Restriction of Use” when notified, whether or not the restriction giving rise to that Restriction of Use was subsequently cancelled in whole or in part.
- (d) ~~(e)~~-Where a change to a Type 3 Restriction of Use reduces the impact of ~~the that~~ Restriction of Use and accordingly changes ~~its type~~ it so that it no longer falls within the definition of a Type 3 Restriction of Use or means that there is no Restriction of Use in accordance with paragraph 2.9(a), the Train Operator may, within 28 days of the date on which the change to the Type 3 Restriction of Use was notified to the Train Operator by Network Rail, serve a notice on Network Rail which sets out any costs to which the Train Operator is already committed or has already incurred and any costs associated with responding to the Type 3 Restriction of Use (both before and after the change). The Train Operator shall be entitled to recover such costs provided that such costs are reasonable and were properly committed or incurred in the circumstances. ~~For the purposes of this Clause 2.9(e), references to “costs” shall mean those categories of costs which the Train Operator would have been entitled to recover under this Schedule 4 for that type of Restriction of Use which the Restriction of Use was classified as prior to its change.~~

## 2.10 *Sustained Planned Disruption*

- (a) If either party reasonably believes that a Sustained Planned Disruption has occurred then that party will be entitled to require that the costs and losses for the Restrictions of Use during the period when the Sustained Planned Disruption is reasonably believed to have occurred be calculated in accordance with paragraph 8 by serving a notice on the other (an “SPD Notice”) in accordance with paragraph 2.10(b).
- (b) Unless otherwise agreed in writing, an SPD Notice must be served no later than the day falling [56] days after the issue of the Day 42 Statement which followed the end of the period of 3 Periods or, where applicable, 7 Periods during which the Sustained Planned Disruption is reasonably believed to have occurred and must include a short

explanation of why it reasonably believes a Sustained Planned Disruption has occurred.

- (c) Following the issue of an SPD Notice the party that issued that notice must serve a claim (an “SPD Claim”):
  - (i) no later than the day falling [56] days after the issue of the Day 42 Statement which followed the first Period after the Sustained Planned Disruption where no Sustained Planned Disruption is reasonably believed to have occurred; or
  - (ii) where a Sustained Planned Disruption is reasonably believed to have exceeded 13 consecutive Periods in length or upon the termination or expiry of this Access Agreement, whichever comes first, unless otherwise agreed in writing, no later than the day falling [112] days after the issue of the Day 42 Statement which followed the 13<sup>th</sup> consecutive Period [or the termination or expiry of this Access Agreement (as applicable)],  
whichever is the earlier.<sup>6</sup>
- (d) Provided a party has issued an SPD Notice in accordance with paragraph 2.10(b), nothing in paragraph 2.10(c) shall prevent that party from issuing more than one SPD Claim in respect of the same Sustained Planned Disruption, provided that:
  - (i) each such SPD Claim relates to a different period within the said Sustained Planned Disruption; and
  - (ii) no SPD Claim can be issued after the last day for serving notice specified under paragraph 2.10(c).
- (e) An SPD Claim must include details of when and why that party reasonably believes that a Sustained Planned Disruption has occurred and in particular:
  - (i) if the claim is made by the Train Operator, such details as may reasonably be available of the RoU Liability which the Train Operator has incurred or reasonably expects to incur in respect of the relevant Restrictions of Use during the SPD Period; or
  - (ii) if the claim is made by Network Rail, the reasons why Network Rail reasonably believes that the Train Operator has been overcompensated or may be overcompensated by more than the relevant amount.
- (f) Following the issue of an SPD Claim, if it is agreed or determined that a Sustained Planned Disruption has occurred during the relevant SPD Period then the relevant party shall make payments to the other (in accordance with the procedure in paragraph 13) calculated in accordance with paragraph 8.
- (g) Once a Sustained Planned Disruption has occurred it shall be treated as continuing for such number of consecutive Periods as exist until the first Period after the Sustained Planned Disruption where no Sustained Planned Disruption is reasonably believed to have occurred.

## 2.11 Early notice of RoU ~~Losses~~Liability

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<sup>6</sup> This clause may need to be amended if, once the analysis of the data being put together by Network Rail is complete, it is agreed that a tailing-off period is required.

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

## 2.12 Over-runs

- (a) ~~For the purposes of this paragraph 2.12, an~~An over-run ("Over-run") occurs where:
- (i) there is a Restriction of Use which is not an Operator Restriction of Use (the "First Restriction"); and
  - (ii) following the end of the relevant period of difference between timetables referred to in sub-paragraphs (a) and (b) of the definition of Restriction of Use which served to establish the existence of that Restriction of Use (the "First Restriction Period"), there is either:
    - (A) a further period of at least one hour during which Services are Disrupted due to (1) any incident attributed under Schedule 8 to circumstances arising from any restriction of operation of the Network which are a consequence of the First Restriction or (2) any act or omission in connection with any activities planned or undertaken which are directly attributable to the First Restriction (including any failure to remove the First Restriction by the time scheduled for its removal in the Applicable Rules of the Route) but excluding any act or omission by the Train Operator for which it would be allocated responsibility under this Contract (the "Unplanned Over-run Period"); and/or
    - (B) a further Restriction of Use is taken which is at the same location as all or part of the First Restriction and directly connected with or attributable to any activities undertaken or planned to be undertaken under the First Restriction (a ~~"Further Restriction"~~"Further Restriction"),in each case without there being any intervening period between the First Restriction and the relevant Unplanned Over-run Period or Further Restriction, which is not either a White Period, Unplanned Over-run Period or a Further Restriction~~.~~.
- (b) Where a Restriction of Use is subject to one or more Over-runs, then the entire duration from the start of the First Restriction to the end of the last Over-run in

respect of the Restriction of Use shall be treated as making up a single Restriction of Use.

- ~~(c) — Where there is an Over-run which results in a Service being Disrupted which:~~
- ~~(i) — is not part of either a Type 2 or Type 3 Restriction of Use;~~
  - ~~(ii) — lasts for more than one hour; and~~
  - ~~(iii) — results in the Train Operator incurring costs in the category of RoU Direct Costs in relation to the Over-run in excess of £10,000;~~
- ~~then the Unplanned Over-run Period element of that Over-run (but not the relevant First Restriction Period or the period of any Further Restriction) shall for the purposes only of calculating RoU Direct Costs be deemed to constitute a Type 2 Restriction of Use.~~
- ~~(d) — For the purposes only of calculating RoU Liability under paragraph 7 (when it is agreed or determined that the requirements of paragraph 2.7(c) are satisfied) or paragraph 8 when there is agreed or determined to be a Sustained Planned Disruption, the amount of the RoU Liability shall be calculated:~~
- ~~(i) — including costs, direct losses and expenses (including loss of revenue and any increase in RoU Variable Costs) reasonably incurred or reasonably expected to be incurred by the Train Operator as a consequence of any Unplanned Over-run Period; and~~
  - ~~(ii) — offsetting any benefit as a consequence of the Unplanned Over-run Period including:~~
    - ~~(A) — any reduction in RoU Variable Costs;~~
    - ~~(B) — any payments made as result of paragraph 2.12(c); and~~
    - ~~(C) — any payments received by the Train Operator under Schedule 8.~~
- (c) ~~(e)~~ This paragraph 2.12 shall not result in any Unplanned Over-run Period being subject to either revenue loss compensation for Network Rail Restrictions of Use under paragraph 3 or costs compensation for Network Rail Restrictions of Use under paragraph 4.

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

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

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

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

### 3.2 *Separate calculations*

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

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

### 3.3 *Meaning of T1 and T2*

In paragraph 3.4:

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

### 3.4 *Formula*

The formula referred to in paragraph 3.1 is as follows:

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

where:

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

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

where:

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

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

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

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

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

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

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

$$\text{NREJT} = \text{EJT} \cdot \left(1 - \frac{\sum (\text{MPW} \cdot \text{CS})}{\text{SS}}\right)$$

where:

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

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

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

if otherwise,

EJT is the lesser of:

- (i) the number of minutes specified as the Cap for the Service Group in column K of Appendix 1 to Schedule 8; and
- (ii)  $\text{AJT} \cdot ((u-v)/v)$ ,

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

where:

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

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

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

and for the purposes of this paragraph 3.4:

“Journey”

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

“Journey Time”

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

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

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

where:

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

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

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

### 3.5 *High Speed Diversions*

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

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

where:

ANRP is the additional Network Rail payment;

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

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

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

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



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

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

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

If any Service Group on any day is subject to a Train-Bus-Train Pattern on account of a Network Rail Restriction of Use, and where WACM, as defined in paragraph 3.4(b), has a value equal to or less than zero, then Network Rail shall pay to the Train Operator an additional payment calculated as follows:

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

where:

ANRP is the additional Network Rail payment;

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

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

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

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

DV shall have the value of 0.125,

provided that if:

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

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

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

## 4 ~~Costs compensation for~~ Notional costs consequent on Network Rail Restrictions of Use

### 4.1 *Basis for calculations*

For each Period and for each Service Group, Network Rail shall calculate the ~~compensation payable in respect~~ notional costs of all Network Rail Restrictions of Use on each Restriction



of Use Day in that Period by applying the formulae in paragraph 4.2. For the purposes of determining for this paragraph 4 to which Service Group a particular Train is allocated, a Train (or portion of a Train) shall be treated as allocated to a particular Service Group by reference to its Service Code<sup>57</sup>, provided that where a particular Train (or portion of a Train) is given a different Service Code in the First Working Timetable from the Service Code given to it in the Applicable Timetable or a different Service Code in the Corresponding Day Timetable from the Service Code given to it in the First Working Timetable it shall be treated as part of the Service Group in relation to whichever of those Service Codes most correctly applies to that Train or, where both Service Codes could equally apply to that Train, to the Service Code applied to that Train in the First Working Timetable.

4.2 ~~Cost compensation~~ Notional cost calculation formula

The formula referred to in paragraph 4.1 is as follows:

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

where:

(a)  $\sum$  is the sum across all applicable Network Rail Restrictions of Use in the Period;

(b) RRBC is the rail replacement bus cost, calculated according to the following formula:

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

where:

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

EBMPR is the payment rate per EBM, which is £[•]<sup>68</sup>.

and

$$\text{EBM} = \sum (\text{RL} \times \text{TA} \times \text{EBMW} [\times \text{ITS}])$$

where:

RL is the length of route, in miles, over which train services are affected;

TA is the number of trains affected, compared to the Corresponding Day Timetable;

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

ITS is 1 or  $\frac{1}{2}$  the percentage of trains stopping at intermediate stations for those cases where EBMW = 50%.

and

(c) TMC is the cost or saving resulting from train mileage change, calculated according to the following formula:

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

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<sup>57</sup> The references to Service Codes depends on further work by Faber Mansell.

<sup>68</sup> It is anticipated that there will be two rates - one for London and the SE and one for the rest of the Network.

where:

TM is the change in train mileage; and

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

## **5 Estimated Bus Miles change mechanism<sup>79</sup>**

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

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

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

- (a) The party who wishes to amend Annex B shall notify the other party of any such proposed change and the date from which it proposes that such change will have effect:
  - (i) where such change relates to a forthcoming timetable change, on or before the first day of the month which falls 6 months before the relevant Principal Change Date or Subsidiary Change Date on which that timetable change is due to occur; and
  - (ii) in any other case, prior to the date from which it proposes such change shall have effect.
- (b) Any notice under sub-paragraph 5.2(a) shall specify as far as possible that party's proposed amendments to Annex B. Promptly following the service of any such notice the parties shall endeavour to agree whether Annex B should be amended in accordance with this paragraph 5 and if so the amendments.
- (c) If the parties fail to reach agreement within 90 days after service of the relevant notice, or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, the matter shall be referred for expert determination in accordance with Part D of the Access Dispute Resolution Rules save that:
  - (i) the parties shall each request that the expert's determination in writing is delivered to the parties no later than 56 days after the date of referral of the matter to the expert, and that the expert establishes such rules and procedures for the conduct of the determination as he sees fit having regard to that timescale;
  - (ii) each of the parties shall abide by the rules and procedures established by the expert; and
  - (iii) the parties shall direct the expert to have regard to any relevant criteria issued by the Office of Rail Regulation.
- (d) Any amendment to Annex B shall take effect only when it has been approved by ORR under section 22 of the Act. Accordingly, as soon as reasonably practicable after any such amendment is agreed or determined in accordance with this paragraph 5, the parties shall use all reasonable endeavours to ensure that ORR is

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<sup>79</sup> In due course ORR expects to include some guidance in its Criteria and Procedures on the circumstances when it would usually expect to approve changes under this paragraph.

furnished with such amendment and sufficient information and evidence as it shall require to determine whether or not to approve the amendment.

- (e) Any amendment to Annex B shall apply with effect from:
- (i) the relevant Principal Change Date or Subsidiary Change Date (where paragraph 5.2 (a) (i) applies); or
  - (ii) subject to paragraph 5.2 (d) the date proposed by the party requesting the change in accordance with paragraph 5.2 (a) (ii) (unless otherwise agreed by the parties or determined by the expert in relation to the change).

### 5.3 *Costs of implementing amendment*

Network Rail shall (subject to any determination of an expert as to costs, where a matter is referred to that expert under paragraph 5.2(c)) be entitled to [90]<sup>810</sup> percent of costs incurred by or on behalf of Network Rail in assessing and implementing any amendments to Annex B, provided that those costs shall be the minimum reasonably necessary for Network Rail to assess and implement that amendment.

## 6 ~~RoU Direct Costs compensation for Type 2 Restrictions of Use~~ Not Used

### ~~6.1 Compensation arrangements~~

- ~~(a) Following receipt of an RoU Claim Notice in respect of a Type 2 Restriction of Use, Network Rail and the Train Operator shall (if they have not already done so) commence negotiations in respect of the RoU Direct Costs compensation to be paid by one party to the other in respect of such Type 2 Restriction of Use and, subject to paragraph 10, shall continue such negotiations in good faith until they are concluded.~~
- ~~(b) Once the compensation referred to in paragraph 6.1(a) has been agreed or determined (and has been compared against any amounts calculated under paragraph 4 together with any other amounts paid or due to the Train Operator from Network Rail in relation to such Restriction of Use) then, in the event of:~~
- ~~(i) a shortfall for the Train Operator, the compensation to be paid by Network Rail to the Train Operator shall be the full amount of the RoU Direct Costs actually incurred by the Train Operator less any amounts calculated under paragraph 4 which have already been paid or are due for such Restriction of Use and any other amounts in respect of any RoU Direct Costs received by the Train Operator from Network Rail in respect of such Restriction of Use; or~~
  - ~~(ii) an overpayment by Network Rail to the Train Operator, the compensation to be paid by the Train Operator to Network Rail shall be the difference between the amount received by the Train Operator which was calculated under paragraph 4 and the RoU Direct Costs actually incurred by the Train Operator in respect of such Restriction of Use.~~
- ~~(c) Network Rail shall include in the statement provided by it in respect of each Period under paragraph 13.1(a) details of the compensation agreed or determined under this paragraph 6 and paragraph 10 to be payable in respect of any Type 2 Restriction~~

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<sup>810</sup>This figure will mirror the percentage figure used in paragraph 17.4 of Schedule 8, which at present is 90%. The figure in paragraph 17.4 of Schedule 8 is currently being consulted on ~~at the moment~~ and, if it changes, any amendment will also need to be reflected here.

~~of Use taken in that Period and that compensation shall be due and payable by the relevant party to the other in accordance with paragraph 13.1.~~

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

### 7.1 Compensation arrangements

- (a) Following receipt of an RoU Claim Notice in respect of a Type 3 Restriction of Use, Network Rail and the Train Operator shall (if they have not already done so) commence negotiations in respect of the RoU Liability compensation to be paid by ~~one party~~Network Rail to the ~~other~~Train Operator in respect of the Type 3 Restriction of Use and, subject to paragraph 10, shall continue such negotiations in good faith until they are concluded.
- ~~(b) — Once the compensation referred to in paragraph 7.1(a) has been agreed or determined (and has been compared against the aggregate of any amounts calculated under paragraphs 3 and 4 together with any other amounts paid or due to the Train Operator from Network Rail in relation to such Restriction of Use) then, in the event of:~~
- ~~(i) a shortfall for the Train Operator, Once the compensation referred to in paragraph 7.1(a) has been agreed or determined~~ the compensation to be paid by Network Rail to the Train Operator shall be the full amount of the RoU Liability actually incurred by the Train Operator less any amounts ~~calculated under paragraphs 3 and 4 which have already been paid or are due for such Restriction of Use and any other amounts~~ received by the Train Operator from Network Rail in respect of such Restriction of Use; ~~or (including in respect of the period of any Unplanned Over-run Period as referred to in paragraph 2.12(a)(ii)(A) any amounts under Schedule 8).~~
- ~~(ii) — an overpayment by Network Rail to the Train Operator, the compensation to be paid by the Train Operator to Network Rail shall be the difference between the amount received by the Train Operator which was calculated under paragraphs 3 and 4 and the RoU Liability actually incurred by the Train Operator in respect of such Restriction of Use.~~
- (c) Network Rail shall include in the statement provided by it in respect of each Period under paragraph 13.1(a) details of the compensation agreed or determined under this paragraph 7 and paragraph 10 to be payable in respect of any Type 3 Restriction of Use taken in that Period and that compensation shall be due and payable by the relevant party to the other in accordance with paragraph 13.1.

## 8 Sustained Planned Disruption payments

### 8.1 Payment arrangements

- (a) Following an agreement or determination that a Sustained Planned Disruption has occurred during an SPD Period, Network Rail and the Train Operator shall (if they have not already done so) commence negotiations in respect of the RoU Liability compensation to be paid by ~~one party~~Network Rail to the ~~other~~Train Operator in respect of the Restrictions of Use during the relevant SPD Period and, subject to paragraph 10, shall continue such negotiations in good faith until they are concluded.
- ~~(b) — Once the compensation referred to in paragraph 8.1(a) has been agreed or determined (and has been compared against the aggregate of any amounts~~

~~calculated under paragraphs 3 and 4 together with any other amounts paid or due to the Train Operator from Network Rail in respect of such Restriction of Use) then, in the event of:~~

- (b) ~~(i) a shortfall for the Train Operator, Once the compensation referred to in paragraph 8.1(a) has been agreed or determined~~ the compensation to be paid by Network Rail to the Train Operator in respect of the Restrictions of Use during the relevant SPD Period shall be the full amount of the RoU Liability actually incurred by the Train Operator less any amounts ~~calculated under paragraphs 3 and 4 which have already been paid or are due for Restrictions of Use during the relevant SPD Period and any other amounts~~ received by the Train Operator from Network Rail in respect of such Restrictions of Use; ~~or~~
- ~~(ii) — an overpayment by Network Rail to the Train Operator, the compensation to be paid by the Train Operator to Network Rail shall be the difference between the amount received by the Train Operator for Restrictions of Use during the relevant SPD Period and the RoU Liability actually incurred by the Train Operator during the same SPD Period. (including in respect of the period of any Unplanned Over-run Period as referred to in paragraph 2.12(a)(ii)(A) any amounts under Schedule 8).~~
- (c) Following any agreement or determination of an amount to be paid by ~~one party~~ Network Rail to the ~~other~~ Train Operator in respect of a Sustained Planned Disruption that amount shall (subject to the terms of any compensation arrangements agreed in writing between the parties) be due and payable by ~~one party~~ Network Rail to the ~~other~~ Train Operator in accordance with paragraph 13.1.

## 9 Notification Factors

### 9.1 Early notification

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

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

9.2 *Notification by Revision Notification Date*

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

- (a) details of the Network Rail Restriction of Use are notified to the Train Operator by the Revision Notification Date; and
- (b)
  - (i) the Network Rail Restriction of Use is reflected in the Working Timetable as entered into the train service database at 22:00 hours on the day which is 12 Weeks before the Restriction of Use Day; or
  - (ii) where paragraph 9.2(b)(i) does not apply because the Train Operator has failed to give Network Rail a Revised Bid in accordance with Condition D4.8.3, the Network Rail Restriction of Use is reflected in the Applicable Timetable in respect of the Restriction of Use Day.

9.3 *Late Notification*

The NF in respect of a Network Rail Restriction of Use in respect of any Service Group shall have the value specified for that Service Group in column E of Annex A to this Part 3 if and to the extent paragraphs 9.1 and 9.2 do not apply but the Network Rail Restriction of Use is reflected in the Applicable Timetable, and includes where paragraph 9.1(b) or paragraph 9.2 would have been applicable but for a failure by Network Rail to fulfil the terms of paragraph 9.1(b)(ii) or paragraph 9.2(b)(i) respectively, notwithstanding the Train Operator having given a Revised Bid in accordance with Condition D4.8.3.

**10 Dispute resolution**

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

**11 Schedule 8 application**

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

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

12.1 *Information provision*

In respect of any Restriction of Use Day for which ~~compensation may be payable~~[there is either notional revenue loss or notional costs to be calculated](#) in a Period under paragraphs 3 and 4, Network Rail shall accurately record such information as it uses and as may properly and reasonably be required to make the calculations required under paragraphs 3

and 4 (including the determination of NF and the relevant version of the Working Timetable referred to in paragraph 9.1(b)(ii) or paragraph 9.2(b)(i). Network Rail shall maintain that information until the ~~compensation payable~~calculations required under paragraphs 3 and 4 in respect of that Period ~~is~~are finally agreed or determined and provide such information to the Train Operator at its reasonable request.

## 12.2 *Corresponding Day*

- (a) If, for the purpose of identifying a Corresponding Day, no day is found under paragraph (a), (b) or (c) of the definition “Corresponding Day” and the parties have failed to reach agreement on the Corresponding Day by the date falling eight Weeks before the relevant Passenger Change Date then either party may require that the identification of the Corresponding Day be resolved by the relevant ADRR Panel.
- (b) The relevant ADRR Panel’s remit shall be that it shall:
  - (i) reach a decision which is fair and reasonable; and
  - (ii) identify the day in either any version of the Working Timetable or any Draft Timetable notified to the Train Operator on or before the end of the Drafting Period in either case which has been produced in accordance with the Network Code as at the Restriction of Use Day and which most closely reflects the Services which would have been scheduled on the first day (as that term is used in the definition of Corresponding Day [save that in respect of any Restriction of Use lasting more than two Timetable Periods, the first day may occur in any year preceding the Timetable Period]) but for Restrictions of Use reflected in the First Working Timetable for the first day; or
  - (iii) where a Corresponding Day cannot be identified in accordance with paragraph 12.2(b)(ii) above, determine a notional Corresponding Day. The relevant ADRR Panel may have regard, where appropriate, to any pattern of services which may reasonably be expected to be operated during the relevant period when the Restriction of Use is being taken in the event of the permanent absence of any Corresponding Day.
- (c) If either party is dissatisfied with the decision of the relevant ADRR Panel or the ruling of the Chairman (as the case may be), such party shall be entitled to refer the matter for arbitration, pursuant to Part C of the Access Dispute Resolution Rules (except that Condition C6.3 of those rules shall not apply).

## 13 **Payment procedures**

### 13.1 *Network Rail Restrictions of Use*

- (a) Within 14 days after the end of each Period, Network Rail shall provide to the Train Operator a statement (the “Day 42 Statement”) showing:
  - (i) all Network Rail Restrictions of Use taken during that Period;
  - (ii) any ~~compensation~~notional revenue losses and notional costs calculated in accordance with paragraphs 3 and/or 4 ~~payable by Network Rail~~ in respect of the Network Rail Restrictions of Use identified; and



- (iii) following any agreement or determination in the Period referred to in paragraph 13.1(a) of any RoU ~~Losses~~Liability in respect of ~~a Type 2 Restriction of Use~~, a Type 3 Restriction of Use or a Sustained Planned Disruption (as applicable), any payment to be made by ~~one party~~Network Rail to the ~~other~~Train Operator,

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

- ~~(b) — The aggregate liabilities of Network Rail and the Train Operator, in respect of any and all compensation for which either is liable to the other under this Part 3 and under Part 5 in respect of each Period shall, to the extent that such compensation is not under dispute, be set off against each other and the balance (if any) shall be payable by Network Rail or the Train Operator, as the case may be, within 35 days after the end of that Period.~~

### 13.2 *Disputes*

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

### 13.3 *Dispute resolution*

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

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

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

Where any amount under paragraph 13.1 is in dispute:

- (a) the undisputed amount shall be paid in accordance with paragraph 13.1;
- (b) the disputed amount shall be paid within 28 days after the dispute is resolved or determined to the extent that the amount in dispute is adjudged or resolved to be payable; and



- (c) the disputed amount shall carry interest (incurred daily and compounded monthly) at the Default Interest Rate from the date on which such amount would but for such dispute have been due to be paid until the date of payment.

#### 14 Indexation

The EBMPR and the TMPR (as defined in paragraph 4.2) shall be adjusted in respect of Periods in Relevant Year<sup>911</sup> t in accordance with the following formula:

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

where:

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

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

$RPI_{t-1}$  means the percentage change (whether of a positive or negative value) in the Retail Prices Index<sup>4012</sup> published or determined with respect to November in the Relevant Year t-1 and the index published or determined with respect to November in the Relevant Year t-2,

but so that in relation to the Relevant Year commencing on [1 April 2009]<sup>4413</sup>,  $R_t$  shall have the relevant value specified in the relevant column (either E or I) of Appendix 1 of Schedule 8 and in the next following Relevant Year  $R_{t-1}$  shall have the same value.

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<sup>911</sup>To be defined in the agreement and not by reference to schedule 7.

<sup>4012</sup>Ibid.

<sup>4413</sup>To be confirmed.

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

Name of Service Group A	Service Group B	NFMRE		
		C to FWT	D FWT to ITWTT	E from ITWTT
<b>Anglia</b>				
Anglia InterCity (off-peak)	hs01op			
Anglia InterCity (peak)	hs01p			
Anglia Locals	hs02			
<b>Arriva Trains Northern</b>				
North East PTE	hc02			
North East Urban & Long Distance	hc01			
North Yorkshire Urban & L-Dist	hc03			
Rural	hc04			
South Yorkshire PTE	hc05			
Transpennine Express North	hc08			
Transpennine Express South	hc09			
West Yorkshire PTE Long	hc06			
West Yorkshire PTE Short	hc07			
Yorkshire Inter PTE	hc10			
<b>e2c</b>				
e2c (off-peak)	ht02op			
e2c (peak)	ht01p			
<b>Cardiff</b>				
South, West and Central Wales	HL02			
Wales to England	HL03			
Gambrian	HL04			
Cardiff Valleys (off-peak) <sup>12</sup>	HL05			
Marches	HL06			
North Wales Rural	HL07			
Inter-Urban N Wales	HL08			
<b>Central</b>				
Core Inter-Urban	hg05			

<sup>12</sup> –And Cardiff Valleys (peak)?

**[Non-Franchised Passenger Version: ORR Comments marked against Industry proposal]**

Name of Service Group A	Service Group B	NFMRE		
		C to FWT	D FWT to ITWTT	E from ITWTT
East Midlands	hg03			
Liverpool—Norwich	hg07			
Other Inter-Urban	hg06			
Robin Hood	hg12			
West Midlands—New Street (off-peak)	hg02op			
West Midlands—New Street (peak)	hg02p			
West Midlands—Snow Hill (off-peak)	hg01op			
West Midlands—Snow Hill (peak)	hg01p			
<b>Chiltern</b>				
Birmingham (off-peak)	ho02op			
Birmingham (peak)	ho02p			
Joint (off-peak)	ho03op			
Joint (peak)	ho03p			
Met (off-peak)	ho01op			
Met (peak)	ho01p			
<b>First Great Western Link</b>				
Inner Charter (off-peak)	hn02op			
Inner Charter (peak)	hn02p			
Inner Other	hn04			
Outer Charter (off-peak)	hn01op			
Outer Charter (peak)	hn01p			
Outer Other	hn03			
Reading—Gatwick—Three Bridges	hn05			
<b>Gatwick Express</b>				
Gatwick Express (off-peak)	hv01op			
Gatwick Express (peak)	hv01p			
<b>Great Eastern</b>				
Great Eastern Inners (off-peak)	hr01op			
Great Eastern Inners (peak)	hr01p			
Great Eastern Outers (off-peak)	hr03op			

**[Non-Franchised Passenger Version: ORR Comments marked against Industry proposal]**

Name of Service Group A	Service Group B	NFMRE		
		C to FWT	D FWT to ITWTT	E from ITWTT
Great Eastern Outers (peak)	hr03p			
Southend and Southminster (off peak)	hr02op			
Southend and Southminster (peak)	hr02p			
<b>Great North Eastern</b>				
Anglo-Scottish-Aberdeen/Inverness	hb05			
Anglo-Scottish-Core	hb01			
West Yorkshire-Core	hb02			
West Yorkshire-Extensions	hb04			
<b>Great Western</b>				
Avon	hj01			
Bristol-Didcot-Oxford	hj99			
Gotswolds	hj03			
South-Wales	hj02			
West-of-England	hj04			
<b>Merseyrail</b>				
Northern-Lines	he01			
Wirral-Lines	he02			
<b>Midland Mainline</b>				
Midland Mainline—Class 170s	hi02			
Midland Mainline—HST	hi01			
North West Trains				
Inter-Urban-NW-Express	hd01			
Lancashire & Cumbria-Rural	hd09			
<b>Long Distance</b>	hd02			
Manchester North (off peak)	hd04op			
Manchester North (peak)	hd04p			
Manchester South (off peak)	hd03op			
Manchester South (peak)	hd03p			
Merseyside-City-Lines	hd06			
<b>ScotRail</b>				

**[Non-Franchised Passenger Version: ORR Comments marked against Industry proposal]**

Name of Service Group A	Service Group B	NFMRE		
		C to FWT	D FWT to ITWTT	E from ITWTT
East Coast Suburban	ha02			
Express	ha04			
Highland Rural	ha04			
Qualifying Sleepers	ha11			
South West Rural	ha03			
Strathclyde Electric (off peak)	ha06op			
Strathclyde Electric (peak)	ha06p			
Strathclyde PTE Diesel	ha07			
<b>Silverlink</b>				
Express (off peak)	hp03op			
Express (peak)	hp03p			
Orbitals (off peak)	hp01op			
Orbitals (peak)	hp01p			
Rural	hp04			
Watford (off peak)	hp06op			
Watford (peak)	hp06p			
<b>South Eastern</b>				
Kent Coast (off peak)	hu01op			
Kent Coast (peak)	hu04p			
Kent Link (off peak)	hu02op			
Kent Link (peak)	hu05p			
Kent Rural	hu03			
<b>Southern</b>				
Gatwick – Rugby	hw06			
Rural	hw01			
South London Lines (off peak)	hw04op			
South London Lines (peak)	hw05p			
Sussex Coast (off peak)	hw03op			
Sussex Coast (peak)	hw02p			
<b>South West Trains</b>				

**[Non-Franchised Passenger Version: ORR Comments marked against Industry proposal]**

Name of Service Group A	Service Group B	NFMRE		
		C to FWT	D FWT to ITWTT	E from ITWTT
Main Suburban (off peak)	hy01op			
Main Suburban (peak)	hy01p			
Portsmouth – Reading & Weymouth	hy02			
Waterloo – Farnham/Alton (off peak)	hy04op			
Waterloo – Farnham/Alton (peak)	hy04p			
Waterloo – Portsmouth (off peak)	hy07op			
Waterloo – Portsmouth (peak)	hy07p			
Waterloo – West England (off peak)	hy03op			
Waterloo – West England (peak)	hy03p			
Waterloo – Weymouth (off peak)	hy08op			
Waterloo – Weymouth (peak)	hy08p			
Windsor Inners (off peak)	hy05op			
Windsor Inners (peak)	hy05p			
Windsor Outers (off peak)	hy06op			
Windsor Outers (peak)	hy06p			
<b>Thameslink</b>				
Bedford Mainline (off peak)	hx01op			
Bedford Mainline (peak)	hx01p			
Brighton Mainline (off peak)	hx02op			
Brighton Mainline (peak)	hx02p			
South London (off peak)	hx03op			
South London (peak)	hx03p			
<b>TransPennine Express</b>				
North Trans Pennine	EA01			
South Trans Pennine	EA02			
North West	EA03			
Yorkshire (Traded)	EA04			
Leeds-Blackpool (Traded)	EA05			
<b>Virgin Cross Country</b>				
Cross Country All Services	hh01			

**[Non-Franchised Passenger Version: ORR Comments marked against Industry proposal]**

Name of Service Group A	Service Group B	NFMRE		
		C to FWT	D FWT to ITWTT	E from ITWTT
<b>WAGN</b>				
Anglia Inners (off peak)	hq01op			
Anglia Inners (peak)	hq01p			
Anglia Outers (off peak)	hq03op			
Anglia Outers (peak)	hq03p			
Northern Inners (off peak)	hq04op			
Northern Inners (peak)	hq04p			
Northern Outers (off peak)	hq05op			
Northern Outers (peak)	hq05p			
<b>Wales and West</b>				
Bristol Commuter	hk11			
Devon	hk12			
Wessex Mainline	hk14			
Plymouth and Cornwall	hk15			





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

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

<b>Franchise TOC</b>	<b>Payment Rate per train mile £</b>
Chiltern	
East Coast Mainline	
East Midlands	
Great Western	
Greater Anglia	
London Rail Concession	
Merseyrail	
New Cross Country	
Northern	
Scotrail	
South Central	
South West Trains	
Southeastern First	
Thameslink/GN First	
TPE	
Wales	
West Coast Main Line	
West Midlands	



**PART 4: ~~GTRL AND THAMESLINK~~ [NOT USED]**

~~[Customised arrangements to be submitted for approval]~~

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

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

Year	£
2009-2010	[ ]
2010-2011	[ ]
2011-2012	[ ]
2012-2013	[ ]
2013-2014	[ ]

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

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

$$ACSRU_{pt} = ACSRU_t \cdot \frac{(RPI_{t-1})}{RPI_{[2008]}}$$

where:

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

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

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

$RPI_{[2008]}$  means the Retail Prices Index published or determined with respect to November 2008,

but so that in relation to the Relevant Year commencing on 1 April 2009,  $ACSRU_t$  shall have the relevant value specified in the relevant column of the table in paragraph 1.

- 3 ORR may at any time carry out and initiate implementation of an access charges review in relation to:
- (a) compensation under Part 3 of this Schedule 4 and the manner in which it is paid; and
  - (b) access charge supplements under this Part 5 and the manner in which they are paid.

Document comparison done by DeltaView on 08 April 2008 18:21:59

Input:	
Document 1	PowerDocs://LNDOCS01/552136/6
Document 2	PowerDocs://LNDOCS01/553625/3
Rendering set	Shearman & Sterling

Legend:	
<a href="#">Insertion</a>	
<del>Deletion</del>	
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Redline Summary:		
No.	Change	Text
1-2	Change	"[Version" changed to "Non-Franchised Passenger Version"
3	Deletion	Version: ORR Comments...Industry proposal]
4-5	Change	"LNDOCS01/552136.6" changed to "LNDOCS01/553625.3"
6-7	Change	"LNDOCS01/552136.6" changed to "LNDOCS01/553625.3"
8-9	Change	"LNDOCS01/552136.6" changed to "LNDOCS01/553625.3"
10	Deletion	[Note: The drafting does...of Restrictions of Use.]
11	Insertion	[Note: Schedule 4 applicable to non-franchised <sup>1</sup>
12	Insertion	<sup>1</sup> Meaning any passenger...or Merseyside PTE.
13	Insertion	passenger Train Operators...charge supplement.]
14	Deletion	"RoU Direct Costs"
15	Deletion	means the aggregate amount of:

16	Deletion	(a) bus and taxi hire costs;
17	Deletion	(b) publicity costs;
18	Deletion	(c) train planning and diagramming costs; and
19	Deletion	(d) other costs directly...2 Restriction of Use,
20	Deletion	reasonably incurred by...of Use, adjusted by:
21	Deletion	(i) adding any increase...RoU Variable Costs; and
22	Deletion	(ii) deducting any...in RoU Variable Costs;
23	Deletion	"RoU Losses"
24	Deletion	means any RoU Direct...(as applicable);
25	Deletion	"RoU Trigger Date"
26	Deletion	means, in respect of any...occur of the following:
27	Deletion	(a) the date on which...a Day 42 Statement; and
28	Deletion	(b) in the event of any...is agreed or determined;
29-30	Change	"means[£500,000]/[£250,000] <sup>1</sup> " changed to "means[£500,000]/[£250,000] <sup>2</sup> "
31-32	Change	" <sup>1</sup> The lower threshold" changed to " <sup>2</sup> The lower threshold"
33-34	Change	"[£1,000,000]/[£500,000] <sup>2</sup> " changed to "[£1,000,000]/[£500,000] <sup>3</sup> "
35-36	Change	" <sup>2</sup> Ibid." changed to " <sup>3</sup> Ibid."
37-38	Change	"means [●]; <sup>3</sup> " changed to "means [●]; <sup>4</sup> "
39-40	Change	" <sup>3</sup> The methodology" changed to " <sup>4</sup> The methodology"
41	Change	"difference between formulaic cost" changed to "difference between the formulaic cost"
42	Change	"the values of £0.25m over" changed to "the values £0.25m over"
43-44	Change	"means [●]; <sup>4</sup> " changed to "means [●]; <sup>5</sup> "
45	Deletion	<sup>4</sup> Ibid.
46-47	Change	"aggregate of the compensation calculated" changed to "aggregate of all of the...losses calculated"

48	Change	"7 consecutive" changed to "(ii) 7 consecutive"
49-50	Change	"paragraph 8 and the compensation calculated" changed to "paragraph 8 and the Train...losses calculated"
51	Change	"3 consecutive" changed to "(i) 3 consecutive"
52	Change	"s costs calculated" changed to "s notional costs calculated"
53	Change	"7 consecutive" changed to "(ii) 7 consecutive"
54	Change	"s costs calculated" changed to "s notional costs calculated"
55	Deletion	"Type 1 Restriction of Use"
56	Deletion	means any single...3 Restriction of Use;
57	Deletion	"Type 2 Restriction of Use"
58	Deletion	means:
59	Deletion	(a) a single Restriction...a Public Holiday); and
60	Deletion	(b) which results in a Service being Disrupted,
61	Deletion	but excluding any...3 Restriction of Use;
62	Deletion	"Type 3 Liability Claim"
63	Deletion	has the meaning specified in paragraph 2.7(b);
64	Change	"Restriction of Use of more than" changed to "Restriction of Use...Over-run) of more than"
65-66	Change	"result in any compensation being" changed to "result in any notional revenue loss being"
67-68	Change	"being payable in accordance" changed to "being calculated in accordance"
69	Change	"respect of any Type 1...or Type 3 Restriction" changed to "respect of any Type 3 Restriction"
70-71	Change	"accordance with paragraphs 2.5 to 2.7 and 2.10" changed to "accordance with paragraph 2.7 and 2.10"
72-73	Change	"2.5 Type 1 Restriction of Use" changed to "2.5 NOT USED"
74	Deletion	Network Rail shall make...1 Restriction of Use.
75-76	Change	"2.6 Type 2 Restriction of Use" changed to "2.6 NOT USED"
77	Deletion	(a) Except where...2 Restriction of Use.
78-79	Deletion	(b) If either party...out in paragraph 2.8.
80-82	Deletion	(c) Following a request...with paragraphs 3 and 6.
83	Deletion	(a) Except where...3 Restriction of Use.



84-85	Deletion	(b) If either party...3 Liability Claim”).
86-87	Deletion	(c) Following a request...then the relevant party
88	Change	"shall make" changed to "Where a Train Operator's...Network Rail shall make"
89-90	Change	"payments to the other (in accordance" changed to "payments to the Train Operator (in accordance"
91-92	Change	"(a) Either party wishing to" changed to "(a) A Train Operator wishing to"
93	Change	"pursuant to Clause 2.6(b) or Clause 2.7" changed to "pursuant to Clause 2.7"
94	Change	"2.7(b) must notify" changed to "2.7 must notify"
95-96	Change	"must notify the other that a Restriction" changed to "must notify Network Rail that a Restriction"
97	Change	"of Use is a Type 2 Restriction of Use or a" changed to "of Use is a"
98-99	Change	"in paragraph 2.6(b) or ...applicable) apply within" changed to "in paragraph 2.7 apply within"
100-101	Change	"days of the RoU Trigger...which that Restriction" changed to "days of the date of the...such Type 3 Restriction"
102	Change	"Restriction of Use commences." changed to "Restriction of Use."
103	Change	"2.8(a) must, if provided...include details" changed to "2.8(a) must include details"
104	Change	"of the RoU Direct Costs or RoU Liability" changed to "of the RoU Liability"
105	Change	"Liability (as applicable) which the Train" changed to "Liability which the Train"
106-107	Change	"definition of one type of Restriction" changed to "definition of a Type 3 Restriction"
108-109	Change	"Restriction of Use occurs...type of Restriction" changed to "Restriction of Use no...of a Type 3 Restriction"
110-111	Change	"as if it had always been" changed to "as if it had never been"
112-113	Change	"been the latter type of Restriction" changed to "been a Type 3 Restriction"
114-115	Insertion	(b) Where a single...3 Restriction of Use.
116	Change	"For the purposes" changed to "(b) For the purposes"
117-118	Change	"paragraph 2.9(c), a Restriction" changed to "paragraph 2.9(d), a Restriction"
119	Change	"Where a change" changed to "(c) Where a

		change"
120	Change	"change to a Restriction" changed to "change to a Type 3 Restriction"
121-122	Change	"the impact of the Restriction" changed to "the impact of that Restriction"
123-124	Change	"accordingly changes its type or means that" changed to "accordingly changes it so...of Use or means that"
125	Change	"change to the Restriction" changed to "change to the Type 3 Restriction"
126	Change	"responding to the Restriction" changed to "responding to the Type 3 Restriction"
127	Deletion	circumstances. For the...as prior to its change.
128	Insertion	the earlier. <sup>6</sup>
129	Insertion	<sup>6</sup> This clause may need to...period is required.
130-131	Change	"notice of RoU Losses" changed to "notice of RoU Liability"
132-133	Change	"of any RoU Losses and shall use" changed to "of any RoU Liability and shall use"
134-135	Change	"whether such RoU Losses calculated" changed to "whether such RoU Liability calculated"
136-137	Change	"avoid such RoU Losses. The party" changed to "avoid such RoU Liability. The party"
138-139	Change	"thinks such RoU Losses will arise" changed to "thinks such RoU Liability will arise"
140-141	Change	"that such RoU Losses are likely" changed to "that such RoU Liability are likely"
142-143	Change	"claiming RoU Losses shall still" changed to "claiming RoU Liability shall still"
144-145	Change	"(a) For the purposes of...an over-run ("Over-run")" changed to "(a) An over-run ("Over-run")"
146	Insertion	Restriction"); and
147-148	Change	"Restriction (a "Further Restriction" changed to "Restriction (a "Further Restriction"
149-150	Change	"Restriction")," changed to "Restriction"),"
151-152	Change	"Restriction," changed to "Restriction."
153	Deletion	(c) Where there is an...being Disrupted which:
154	Deletion	(i) is not part of either...3 Restriction of Use;
155	Deletion	(ii) lasts for more than one hour; and
156	Deletion	(iii) results in the...in excess of £10,000,
157	Deletion	then the Unplanned...2 Restriction of Use.
158	Deletion	(d) For the purposes only...shall be calculated:
159	Deletion	(i) including costs,...Over-run Period; and

160	Deletion	(ii) offsetting any...Period including:
161	Deletion	(A) any reduction in RoU Variable Costs;
162	Deletion	(B) any payments made as...paragraph 2.12(c); and
163	Deletion	(C) any payments received...under Schedule 8.
164	Change	"This paragraph" changed to "(e) This paragraph"
165-166	Change	"3 Revenue loss" changed to "3 Notional revenue loss"
167	Change	"loss compensation for Network" changed to "loss for Network"
168-169	Change	"calculate the compensation payable in respect" changed to "calculate the notional revenue loss in respect"
170-171	Change	"calculate the compensation payable separately" changed to "calculate the notional revenue of loss separately"
172-175	Change	"4 Costs compensation for Network Rail" changed to "4 Notional costs consequent on Network Rail"
176-177	Change	"calculate the...respect of all Network" changed to "calculate the notional costs of all Network"
178-179	Change	"Service Code <sup>5</sup> " changed to "Service Code <sup>7</sup> "
180-181	Change	" <sup>5</sup> The references" changed to " <sup>7</sup> The references"
182-183	Change	"4.2 Cost compensation formula" changed to "4.2 Notional cost calculation formula"
184-185	Change	"Cost compensation = $\sum$ (RRBC +" changed to "Notional cost = $\sum$ (RRBC +"
186-187	Change	"which is £[] <sup>6</sup> " changed to "which is £[] <sup>8</sup> "
188-189	Change	" <sup>6</sup> It is anticipated" changed to " <sup>8</sup> It is anticipated"
190	Change	"ITS is 1 or the percentage" changed to "ITS is 1 or, the percentage"
191-192	Change	"change mechanism <sup>7</sup> " changed to "change mechanism <sup>9</sup> "
193-194	Change	" <sup>7</sup> In due course" changed to " <sup>9</sup> In due course"
195	Change	"any other case prior to the" changed to "any other case, prior to the"
196-197	Change	"entitled to [90] <sup>8</sup> " changed to "entitled to [90] <sup>10</sup> "
198-199	Change	" <sup>8</sup> This figure" changed to " <sup>10</sup> This figure"
200	Change	"Schedule 8 is being consulted" changed to "Schedule 8 is currently being consulted"
201	Change	"consulted on at the moment and, if it changes," changed to "consulted on and, if it changes,"

202-204	Change	"6 RoU Direct Costs...2 Restrictions of Use" changed to "6 Not Used"
205-206	Deletion	6.1 Compensation arrangements
207	Deletion	(a) Following receipt of...they are concluded.
208-209	Deletion	(b) Once the compensation...then, in the event of:
210	Deletion	(i) a shortfall for the...Restriction of Use; or
211	Deletion	(ii) an overpayment by...such Restriction of Use.
212	Deletion	(c) Network Rail shall...with paragraph 13.1.
213-214	Change	"be paid by one party to the" changed to "be paid by Network Rail to the"
215-216	Change	"to the other in respect" changed to "to the Train Operator in respect"
217-218	Deletion	(b) Once the compensation...then, in the event of:
219-220	Change	"the compensation" changed to "(i) a shortfall for the...the compensation"
221	Change	"any amounts calculated...amounts received by" changed to "any amounts received by"
222-223	Change	"Restriction of Use; or" changed to "Restriction of Use...under Schedule 8)."
224	Deletion	(ii) an overpayment by...such Restriction of Use.
225-226	Change	"be paid by one party to the" changed to "be paid by Network Rail to the"
227-228	Change	"to the other in respect" changed to "to the Train Operator in respect"
229	Deletion	(b) Once the compensation...then, in the event of:
230-231	Change	"the compensation" changed to "(i) a shortfall for the...the compensation"
232	Change	"any amounts calculated...amounts received by" changed to "any amounts received by"
233	Deletion	Restrictions of Use; or
234	Deletion	(ii) an overpayment by...the same SPD Period.
235	Insertion	(including in respect of...under Schedule 8).
236-237	Change	"be paid by one party to the" changed to "be paid by Network Rail to the"
238-239	Change	"to the other in respect" changed to "to the Train Operator in respect"
240-241	Change	"payable by one party to the" changed to "payable by Network Rail to the"
242-243	Change	"to the other in accordance" changed to "to the Train Operator in accordance"
244-245	Change	"provided in paragraph 2.12)." changed to

		"provided in paragraphs 2.12, 7 or 8)."
246-247	Change	"Day for which...be payable in a Period" changed to "Day for which there is...calculated in a Period"
248-249	Change	"information until the...payable under paragraphs" changed to "information until the...under paragraphs"
250-251	Change	"that Period is finally agreed" changed to "that Period are finally agreed"
252-253	Change	"(ii) any compensation calculated" changed to "(ii) any notional revenue...costs calculated"
254	Change	"3 and/or 4 payable by Network Rail in respect of" changed to "3 and/or 4 in respect of"
255-256	Change	"of any RoU Losses in respect" changed to "of any RoU Liability in respect"
257	Change	"in respect of a Type 2...a Type 3 Restriction" changed to "in respect of a Type 3 Restriction"
258-259	Change	"be made by one party to the" changed to "be made by Network Rail to the"
260-261	Change	"to the other," changed to "to the Train Operator,"
262	Deletion	(b) The aggregate...the end of that Period.
263	Deletion	Relevant Year <sup>9</sup>
264	Style change	<sup>11</sup>
265-266	Change	" <sup>9</sup> To be defined" changed to " <sup>11</sup> To be defined"
267-268	Change	"Prices Index <sup>10</sup> " changed to "Prices Index <sup>12</sup> "
269-270	Change	" <sup>10</sup> Ibid." changed to " <sup>12</sup> Ibid."
271-272	Change	"April 2009] <sup>11</sup> " changed to "April 2009] <sup>13</sup> "
273-274	Change	" <sup>11</sup> To be confirmed." changed to " <sup>13</sup> To be confirmed."
275	Deletion	Name of Service Group
276	Deletion	Service Group
277	Deletion	NFMRE
278	Deletion	A
279	Deletion	B
280	Deletion	C
281	Deletion	D
282	Deletion	E
283	Deletion	to FWT
284	Deletion	FWT to ITWTT
285	Deletion	from ITWTT
286	Deletion	Anglia
287	Deletion	Anglia InterCity (off peak)
288	Deletion	hs01op
289	Deletion	Anglia InterCity (peak)
290	Deletion	hs01p
291	Deletion	Anglia Locals

292	Deletion	hs02
293	Deletion	Arriva Trains Northern
294	Deletion	North East PTE
295	Deletion	hc02
296	Deletion	North East Urban & Long Distance
297	Deletion	hc01
298	Deletion	North Yorkshire Urban & L Dist
299	Deletion	hc03
300	Deletion	Rural
301	Deletion	hc04
302	Deletion	South Yorkshire PTE
303	Deletion	hc05
304	Deletion	Transpennine Express North
305	Deletion	hc08
306	Deletion	Transpennine Express South
307	Deletion	hc09
308	Deletion	West Yorkshire PTE Long
309	Deletion	hc06
310	Deletion	West Yorkshire PTE Short
311	Deletion	hc07
312	Deletion	Yorkshire Inter PTE
313	Deletion	hc10
314	Deletion	c2c
315	Deletion	c2c (off-peak)
316	Deletion	ht02op
317	Deletion	c2c (peak)
318	Deletion	ht01p
319	Deletion	Cardiff
320	Deletion	South, West and Central Wales
321	Deletion	HL02
322	Deletion	Wales to England
323	Deletion	HL03
324	Deletion	Cambrian
325	Deletion	HL04
326	Deletion	Cardiff Valleys (off peak) <sup>12</sup>
327	Deletion	<sup>12</sup> And Cardiff Valleys (peak)?
328	Deletion	HL05
329	Deletion	Marches
330	Deletion	HL06
331	Deletion	North Wales Rural
332	Deletion	HL07
333	Deletion	Inter-Urban N Wales
334	Deletion	HL08
335	Deletion	Central
336	Deletion	Core Inter Urban
337	Deletion	hg05
338	Deletion	East Midlands

339	Deletion	hg03
340	Deletion	Liverpool – Norwich
341	Deletion	hg07
342	Deletion	Other Inter Urban
343	Deletion	hg06
344	Deletion	Robin Hood
345	Deletion	hg12
346	Deletion	West Midlands - New Street (off-peak)
347	Deletion	hg02op
348	Deletion	West Midlands - New Street (peak)
349	Deletion	hg02p
350	Deletion	West Midlands - Snow Hill (off-peak)
351	Deletion	hg01op
352	Deletion	West Midlands - Snow Hill (peak)
353	Deletion	hg01p
354	Deletion	Chiltern
355	Deletion	Birmingham (off peak)
356	Deletion	ho02op
357	Deletion	Birmingham (peak)
358	Deletion	ho02p
359	Deletion	Joint (off peak)
360	Deletion	ho03op
361	Deletion	Joint (peak)
362	Deletion	ho03p
363	Deletion	Met (off peak)
364	Deletion	ho01op
365	Deletion	Met (peak)
366	Deletion	ho01p
367	Deletion	First Great Western Link
368	Deletion	Inner Charter (off peak)
369	Deletion	hn02op
370	Deletion	Inner Charter (peak)
371	Deletion	hn02p
372	Deletion	Inner Other
373	Deletion	hn04
374	Deletion	Outer Charter (off peak)
375	Deletion	hn01op
376	Deletion	Outer Charter (peak)
377	Deletion	hn01p
378	Deletion	Outer Other
379	Deletion	hn03
380	Deletion	Reading - Gatwick - Three Bridges
381	Deletion	hn05
382	Deletion	Gatwick Express
383	Deletion	Gatwick Express (off peak)
384	Deletion	hv01op
385	Deletion	Gatwick Express (peak)

386	Deletion	hv01p
387	Deletion	Great Eastern
388	Deletion	Great Eastern Inners (off peak)
389	Deletion	hr01op
390	Deletion	Great Eastern Inners (peak)
391	Deletion	hr01p
392	Deletion	Great Eastern Outers (off peak)
393	Deletion	hr03op
394	Deletion	Great Eastern Outers (peak)
395	Deletion	hr03p
396	Deletion	Southend and Southminster (off peak)
397	Deletion	hr02op
398	Deletion	Southend and Southminster (peak)
399	Deletion	hr02p
400	Deletion	Great North Eastern
401	Deletion	Anglo Scottish Aberdeen/Inverness
402	Deletion	hb05
403	Deletion	Anglo-Scottish Core
404	Deletion	hb01
405	Deletion	West Yorkshire Core
406	Deletion	hb02
407	Deletion	West Yorkshire Extensions
408	Deletion	hb04
409	Deletion	Great Western
410	Deletion	Avon
411	Deletion	hj01
412	Deletion	Bristol-Didcot-Oxford
413	Deletion	hj99
414	Deletion	Cotswolds
415	Deletion	hj03
416	Deletion	South Wales
417	Deletion	hj02
418	Deletion	West of England
419	Deletion	hj04
420	Deletion	Merseyrail
421	Deletion	Northern Lines
422	Deletion	he01
423	Deletion	Wirral Lines
424	Deletion	he02
425	Deletion	Midland Mainline
426	Deletion	Midland Mainline - Class 170s
427	Deletion	hi02
428	Deletion	Midland Mainline - HST
429	Deletion	hi01
430	Deletion	North West Trains
431	Deletion	Inter Urban NW Express
432	Deletion	hd01



433	Deletion	Lancashire & Cumbria Rural
434	Deletion	hd09
435	Deletion	Long Distance
436	Deletion	hd02
437	Deletion	Manchester North (off peak)
438	Deletion	hd04op
439	Deletion	Manchester North (peak)
440	Deletion	hd04p
441	Deletion	Manchester South (off peak)
442	Deletion	hd03op
443	Deletion	Manchester South (peak)
444	Deletion	hd03p
445	Deletion	Merseyside City Lines
446	Deletion	hd06
447	Deletion	ScotRail
448	Deletion	East Coast Suburban
449	Deletion	ha02
450	Deletion	Express
451	Deletion	ha01
452	Deletion	Highland Rural
453	Deletion	ha04
454	Deletion	Qualifying Sleepers
455	Deletion	ha11
456	Deletion	South West Rural
457	Deletion	ha03
458	Deletion	Strathclyde Electric (off peak)
459	Deletion	ha06op
460	Deletion	Strathclyde Electric (peak)
461	Deletion	ha06p
462	Deletion	Strathclyde PTE Diesel
463	Deletion	ha07
464	Deletion	Silverlink
465	Deletion	Express (off peak)
466	Deletion	hp03op
467	Deletion	Express (peak)
468	Deletion	hp03p
469	Deletion	Orbitals (off peak)
470	Deletion	hp01op
471	Deletion	Orbitals (peak)
472	Deletion	hp01p
473	Deletion	Rural
474	Deletion	hp04
475	Deletion	Watford (off peak)
476	Deletion	hp06op
477	Deletion	Watford (peak)
478	Deletion	hp06p
479	Deletion	South Eastern

480	Deletion	Kent Coast (off peak)
481	Deletion	hu01op
482	Deletion	Kent Coast (peak)
483	Deletion	hu04p
484	Deletion	Kent Link (off peak)
485	Deletion	hu02op
486	Deletion	Kent Link (peak)
487	Deletion	hu05p
488	Deletion	Kent Rural
489	Deletion	hu03
490	Deletion	Southern
491	Deletion	Gatwick - Rugby
492	Deletion	hw06
493	Deletion	Rural
494	Deletion	hw01
495	Deletion	South London Lines (off peak)
496	Deletion	hw04op
497	Deletion	South London Lines (peak)
498	Deletion	hw05p
499	Deletion	Sussex Coast (off peak)
500	Deletion	hw03op
501	Deletion	Sussex Coast (peak)
502	Deletion	hw02p
503	Deletion	South West Trains
504	Deletion	Main Suburban (off peak)
505	Deletion	hy01op
506	Deletion	Main Suburban (peak)
507	Deletion	hy01p
508	Deletion	Portsmouth - Reading & Weymouth
509	Deletion	hy02
510	Deletion	Waterloo - Farnham/Alton (off peak)
511	Deletion	hy04op
512	Deletion	Waterloo - Farnham/Alton (peak)
513	Deletion	hy04p
514	Deletion	Waterloo - Portsmouth (off peak)
515	Deletion	hy07op
516	Deletion	Waterloo - Portsmouth (peak)
517	Deletion	hy07p
518	Deletion	Waterloo - West England (off peak)
519	Deletion	hy03op
520	Deletion	Waterloo - West England (peak)
521	Deletion	hy03p
522	Deletion	Waterloo - Weymouth (off peak)
523	Deletion	hy08op
524	Deletion	Waterloo - Weymouth (peak)
525	Deletion	hy08p
526	Deletion	Windsor Inners (off peak)

527	Deletion	hy05op
528	Deletion	Windsor Inners (peak)
529	Deletion	hy05p
530	Deletion	Windsor Outers (off peak)
531	Deletion	hy06op
532	Deletion	Windsor Outers (peak)
533	Deletion	hy06p
534	Deletion	Thameslink
535	Deletion	Bedford Mainline (off peak)
536	Deletion	hx01op
537	Deletion	Bedford Mainline (peak)
538	Deletion	hx01p
539	Deletion	Brighton Mainline (off peak)
540	Deletion	hx02op
541	Deletion	Brighton Mainline (peak)
542	Deletion	hx02p
543	Deletion	South London (off peak)
544	Deletion	hx03op
545	Deletion	South London (peak)
546	Deletion	hx03p
547	Deletion	TransPennine Express
548	Deletion	North Trans Pennine
549	Deletion	EA01
550	Deletion	South Trans Pennine
551	Deletion	EA02
552	Deletion	North West
553	Deletion	EA03
554	Deletion	Yorkshire (Traded)
555	Deletion	EA04
556	Deletion	Leeds-Blackpool (Traded)
557	Deletion	EA05
558	Deletion	Virgin Cross Country
559	Deletion	Cross Country All Services
560	Deletion	hh01
561	Deletion	WAGN
562	Deletion	Anglia Inners (off peak)
563	Deletion	hq01op
564	Deletion	Anglia Inners (peak)
565	Deletion	hq01p
566	Deletion	Anglia Outers (off peak)
567	Deletion	hq03op
568	Deletion	Anglia Outers (peak)
569	Deletion	hq03p
570	Deletion	Northern Inners (off peak)
571	Deletion	hq04op
572	Deletion	Northern Inners (peak)
573	Deletion	hq04p

574	Deletion	Northern Outers (off peak)
575	Deletion	hq05op
576	Deletion	Northern Outers (peak)
577	Deletion	hq05p
578	Deletion	Wales and West
579	Deletion	Bristol Commuter
580	Deletion	hk11
581	Deletion	Devon
582	Deletion	hk12
583	Deletion	Wessex Mainline
584	Deletion	hk14
585	Deletion	Plymouth and Cornwall
586	Deletion	hk15
587	Insertion	Name of Service Group
588	Insertion	Service Group
589	Insertion	NFMRE
590	Insertion	A
591	Insertion	B
592	Insertion	C
593	Insertion	D
594	Insertion	E
595	Insertion	to FWT
596	Insertion	FWT to ITWTT
597	Insertion	from ITWTT
598	Deletion	Franchise TOC
599	Deletion	Payment Rate per train mile £
600	Deletion	Chiltern
601	Deletion	East Coast Mainline
602	Deletion	East Midlands
603	Deletion	Great Western
604	Deletion	Greater Anglia
605	Deletion	London Rail Concession
606	Deletion	Merseyrail
607	Deletion	New Cross Country
608	Deletion	Northern
609	Deletion	Scotrail
610	Deletion	South Central
611	Deletion	South West Trains
612	Deletion	Southeastern First
613	Deletion	Thameslink/GN First
614	Deletion	TPE
615	Deletion	Wales
616	Deletion	West Coast Main Line
617	Deletion	West Midlands
618	Insertion	Train Operator
619	Insertion	Payment Rate per train mile £
620-621	Change	"PART 4: CTRL AND THAMESLINK" changed

		to "PART 4: [NOT USED]"
622	Deletion	[Customised arrangements...submitted for approval]

<b>Statistics:</b>	
	Count
Insertions	116
Deletions	505
Moved from	0
Moved to	0
Style change	1
Format changed	0
Total changes	622