

Consultation on implementing PR13 – Network Rail's response

4 September 2013



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EXECUTIVE SUMMARY

We welcome the opportunity to respond to ORR's PR13 implementation consultation, published on 12 July. Because of the highly contractualised nature of the industry, it is important that ORR's Final Determination is accurately transposed into track and station access contracts and our network licence.

This submission forms part of our response to ORR's PR13 Draft Determination. In the main part, we do not seek to repeat our response to ORR's PR13 Draft Determination. Instead, we have made key policy observations / comments for any aspects that were not addressed in the Draft Determination or where further detail has been provided by ORR as part of this consultation.

In relation to the proposed changes to track access contracts, the majority of our comments are minor relating to detailed drafting points. We request further clarity in a few instances, particularly with regards to ORR's proposals on the indexation of charges. We also have some concerns with the proposed route-level efficiency benefit share (REBS) drafting and its interaction with alliance agreements that we may enter into with train operators.

However, we are very concerned by some of the proposed licence modifications and we wish to discuss these with ORR at a senior level, before conclusions on PR13 are reached. Our primary concerns are focussed on the changes that ORR has proposed to make to Conditions 3 and 4 of our network licence. These concerns are described below and explained in more detail in Chapter 8 of this document.

Licence Condition 3 – financial indebtedness

We are concerned that there should be sufficient headroom allowed by the debt/RAB limit for CP5. As Network Rail will not be provided with an *ex ante* or 'in year' risk buffer, the balance sheet buffer limit set in the debt/RAB limit will become particularly important. As we have set out in our main response to the Draft Determination, we consider that the debt/RAB limit should be set at five per cent above the level described in the CP5 draft delivery plan, which Network Rail will publish in December 2013. In that document we will set out what borrowing in CP5 will be necessary, which will determine the forecast debt/RAB ratio from 2014 to 2019. Given that it is currently envisaged that the debt/RAB limit will be prescribed within Condition 3 of our network licence, it will be important that ORR does not conclude on the CP5 limit until after we have published our draft CP5 delivery plan.

We would emphasise that we have a strong desire to avoid unnecessary increases in debt (and the RAB). However, in the context of the adjusted Weighted Average Cost of Capital (WACC) approach that ORR will apply in CP5, we continue to believe that there is a need for a useable risk buffer. In the absence of such a facility, there would be no real basis for describing the framework as an output-based regime, given the lack of flexibility that would be available.

In addition, where the regulatory framework provides for efficient spend to be added to the RAB (for example to achieve longer term benefits) there **should not** be an additional requirement to avoid breaching the debt-to-RAB limit. We consider that, if such a requirement was in place, the framework arrangements would discourage driving value for users and taxpayers.

In addition, we strongly consider that Network Rail should be regulated as a single entity in line with its corporate structure and our network licence. We have significant concerns with ORR's proposals to include separate debt/RAB limits in the network licence for England & Wales; and Scotland, which we consider are unnecessary and inappropriate.

Licence Condition 4 – financial ring-fence

In order to generate greater value from railway assets we will need a more flexible regulatory regime in CP5. We urge ORR to carry out a more fundamental review of Network Rail's permitted business and licence conditions in 2014 and consider that the current regulatory obligations concerning 'de minimis activities' are unduly restrictive.

We strongly consider that ORR's proposed reform of our existing obligations regarding dividend payments are unnecessary and inappropriate, and we request further clarity on the risk that these proposals are seeking to address.

As we have discussed in our response to the Draft Determination, we strongly disagree with ORR's proposal to restrict our use of financial outperformance solely to pay down debt or to fund research and development activities. It is not clear to us what problem ORR is seeking to solve with this proposal. We assume that the purpose would *not* be around financial sustainability since the adjusted WACC approach that ORR will apply in CP5 means that Network Rail is likely to want to use funds to reduce debt at least in the first instance, and regardless of this, it also has a strong incentive to avoid unnecessary increases in debt which is reinforced by the specific licence condition (and by our wider network stewardship obligations). In addition, we would only want to invest, rather than use funds to reduce debt, where it is efficient to do so and delivers value for users and taxpayers consistent with our stated purpose to "*generate outstanding value for customers and users*".

The proposal also appears to be inconsistent with incentive-based regulation and we are concerned that it would have unintended consequences. We strongly consider that the potential for outperformance and Network Rail's ability to have discretion in determining how best to use such outperformance is important. We are very concerned that by removing this, there will be less likelihood of such outperformance being created in the first place or indeed a greater chance of underperformance.

We consider, therefore, that Network Rail is best placed to determine best use of any financial outperformance and ORR's proposed restriction on exactly how any outperformance must be used is unnecessary and inappropriate.

Summary

The rationale for many of the proposed changes to our network licence are not fully explained or justified. Given the significant nature of some of the changes, we would expect ORR to have undertaken a Regulatory Impact Assessment before consulting on many of these proposed changes.

As we have highlighted in our response to the Draft Determination, we are concerned that the proposed regulatory regime for CP5 is more intrusive and complex than is regarded as appropriate in other sectors. We consider that it is counter to our proposed principles for regulation in CP5. It is important that the regime provides the right balance between regulatory oversight and the discretion for Network Rail to operate with the necessary flexibility to deliver our purpose.

As stated earlier, it is important that ORR's Final Determination is accurately reflected in track access contracts and our network licence. This response is publicly available and we encourage train operators and other interested parties to review our positions on each area carefully, particularly in relation to track access contracts.

We would welcome further engagement and discussion with ORR on any of the issues raised in this response, and in particular on the significant concerns we have raised in relation to the proposed network licence modifications.

1. INTRODUCTION

- 1.1 Network Rail welcomes the opportunity to respond to ORR's consultation on the implementation of PR13, in particular on the proposed changes to track and station access contracts and the network licence in order to implement PR13. We do not consider any part of this response to be confidential.

Structure of this response

- 1.2 There is a considerable amount of documentation relating to ORR's implementation consultation, including the mark-ups of the model track access contracts for Schedules 4; 7; and 8 (for each type of operator) and the Traction Electricity Rules.
- 1.3 In responding to this consultation, we have focused on key policy areas / concerns in the main body of the response (which are not already addressed in our response to ORR's PR13 Draft Determination). We have set out proposed mark-ups to the network licence, consistent with the comments we make in Chapter 8, below, in [Annex 1](#) to this document. We have also proposed detailed track access contract drafting suggestions in [Annex 2 \(Section A\)](#) to this document, ([Annex 2 \(Section B\)](#) reflects suggested changes to Schedule 7 of the freight and passenger track access contracts and Traction Electricity Rules to reflect suggested changes to terminology).

Other implementation activities

- 1.4 On 12 July 2013 we published updated draft price lists for CP5, consistent with ORR's Draft Determination¹. In so doing, however, we noted that we did not necessarily agree with all of ORR's policy proposals set out in its Draft Determination.
- 1.5 We are grateful to operators that have provided comments on the draft price lists for CP5. This feedback is important and Network Rail will consider it carefully, especially since once the price lists have been finalised as part of the PR13 implementation process, there will not be an opportunity to re-open the price lists until the next access charges review.
- 1.6 ORR also, on 12 July 2013, wrote to each freight and passenger operator and Network Rail, setting out a list of bespoke provisions (if any) in each track access contract and its view on whether or not they should be retained in CP5. We have been working closely with our customers to form a joint position (where possible), and are in the process of responding to ORR's letters.

¹ Available at: <http://www.networkrail.co.uk/publications/delivery-plans/control-period-5/periodic-review-2013/>

- 1.7 In addition, we note the recent publication of ORR's letter to all franchised and open access passenger operators² on contingency arrangements in the event that the implementation of PR13 is delayed, and the addition of a provision in passenger track access contracts to provide for this. We are in the process of engaging with our customers to make the necessary changes to contracts, and will conclude this process by 15 October 2013 in line with ORR's requirements.
- 1.8 Following ORR's recent publication of its draft conclusions on the structure of charges and Schedule 8 performance regime for charter operators published on 23 August 2013³, we note that ORR intends to consult on implementing these changes to the charter access contract in September 2013. We look forward to further engagement with ORR and charter operators in this regard.

Track access billing system

- 1.9 While not directly related to ORR's consultation, it is important to note that we have started the necessary development work to facilitate the required changes to our track access billing system (TABS), such that we will be able to bill in accordance with the updated provisions set out in freight and passenger operators' track access contracts, with effect from 1 April 2014.

² ORR did not write to freight and charter operators because their contracts would not 'time out' at the end of CP4, and would be uplifted by inflation in the event of a delay.

³ Available at: <http://www.rail-reg.gov.uk/pr13/PDF/charter-operators.pdf>

2. ACCESS CHARGES

Summary of ORR proposals

- 2.1 *ORR sets out the proposed changes to Schedule 7 of passenger and freight operator track access contracts that are required to implement the relevant proposals on track access charges in Chapter 16 of ORR's Draft Determination. The key changes that ORR has proposed in its consultation in relation to track access charges are summarised below.*

General

- 2.2 *ORR refers to the terminology currently used in Schedule 7 noting, in particular, that the current terminology is out-of-date and can be quite confusing. It has sought views on whether and the extent to which changes to particular terminology could have unintended consequences, for example with respect to freight operators' contracts with their customers.*
- 2.3 *ORR also highlights that in relation to the capacity charge, its Draft Determination sought views on the Rail Freight Operators' Association's (RFOA) proposals for an alternative approach for calculating the capacity charge for freight operators, and whether this approach should also apply to other operators. It notes that if implemented it would require changes to the relevant section of Schedule 7 and it would consult on this in due course.*

Freight operator track access contracts

- 2.4 *In addition to providing for the decisions on freight charges that ORR sets out in Chapter 16 of its Draft Determination, the consultation refers to the incremental costs provision in paragraph 2.8 of Schedule 7 and requests clarification from Network Rail on how it thinks the process should work in the future. The provision currently provides for train operators to pay Network Rail incremental costs of up to £300,000 if they were to run a service that would exceed the operating constraints of the network as at 1 April 2001.*

Passenger track access contracts

- 2.5 *Other than the changes that affect all operators' track access contracts (with the exception of the removal of the 'manifest errors' provision which is discussed, below), there are no specific changes proposed to franchised passenger track access contracts.*
- 2.6 *ORR notes that currently some open access operators have their access charges set out within their contracts rather than on the relevant price lists for CP5. ORR has set out its expectation that the access charges for their services should be included on the CP5 price lists which would be consistent with the provisions for other train operators.*

New or amended charges during the control period

- 2.7 *ORR clarifies the proposed process for agreeing new or amended charges (for all operators) during the control period and proposes a more consistent approach between the freight and passenger access contracts, where this is appropriate. This includes the contractual provisions for the default rate that will be applied until a supplement is made to the Track Usage Charge Price List. ORR also includes a new provision to require Network Rail to maintain on its website a list of all supplements to the price lists that have been made.*
- 2.8 *ORR proposes to remove the ‘manifest error’ provision in passenger access contracts, which currently allows some track access charges to be corrected during the control period.*

Traction electricity charges

- 2.9 *In relation to changes to the traction electricity provisions, ORR has published revised versions of Schedule 7 for freight and franchised passenger operators reflecting its decisions as set out in the Draft Determination, and the incorporation of the Traction Electricity Rules (TERs) into track access contracts.*
- 2.10 *ORR has proposed that a number of provisions are moved from the track access contracts to the TERs, including the volume and cost reconciliations and the definitions of geographic areas (ESTAs). ORR has also questioned whether there would be merit in moving the provisions regarding the procurement of traction electricity in freight and passenger contracts to the TERs.*
- 2.11 *In relation to the volume reconciliation (referred to in this document as the “volume wash-up”), ORR has proposed changes to the contractual drafting so that metered operators do not participate in the volume wash-up and so that a portion of the volume wash-up is allocated to Network Rail to reflect its “ability to manage transmission losses”.*
- 2.12 *ORR has also proposed new values for the Distribution System Loss Factors (DSLFF) and proposes levying these on gross metered consumption rather than metered consumption net of regenerated energy.*
- 2.13 *ORR is proposing that the Schedule 7s for both passenger and freight operators include contractual drafting to accommodate EC4T charges calculated using metered consumption data. Further to this, ORR proposes that freight EC4T charges are calculated consistent with passenger EC4T charges, with freight operators being charged electricity tariffs set by Network Rail’s electricity suppliers instead of by an indexed tariff.*
- 2.14 *In relation to regenerative braking discounts, ORR has proposed streamlining the process, including a requirement on Network Rail to maintain a list of those train operators receiving the discount and the introduction of auditing arrangements. ORR also proposes provisions to allow operators to opt-in or out for the regenerative braking discounts and provisions to audit regenerative braking systems used.*

- 2.15 *In relation to the cost reconciliation (referred to in this document as the “cost wash-up”), ORR notes that it has not yet consulted on the corresponding contractual wording that it proposes including in the TERs, stating that this will happen in due course through a separate letter, following the publication of a joint ORR/Network Rail note providing more detail on the proposed cost wash-up arrangements for CP5.*

Network Rail response

- 2.16 We have made detailed drafting comments and observations on this chapter which are set out in [Annex 2 \(Section A\)](#) to this document. In the main part, these are minor in nature, however, where we have substantive policy views / concerns, or are responding to a specific question asked by ORR in its consultation, our views are discussed below.

General

- 2.17 We strongly support reviewing the current terminology used in Schedule 7 of track access contracts so that it reflects how charges are commonly referred to and avoids unnecessary confusion. On this basis we support ORR’s proposals to change references to the “*Variable Track Usage Charge*” in passenger track access contracts and “*Variable Rate*” in freight track access contracts to “*Variable Usage Charge*” (VUC), as this is consistent with how it is commonly referred.
- 2.18 We note that ORR is particularly interested in views on whether and the extent to which changes to particular terminology would have unintended consequences. We consider that our customers are best placed to respond to this, although based on our extensive VUC consultation process during PR13 we are not aware of any issues that could arise as a result of making this change.
- 2.19 We also consider that there would be merit in reviewing the terminology used for traction electricity charging. We believe that some of the current terms used can be confusing and could be brought into line, more effectively, with the price lists. For example, the use of the defined term “*train category i*” is inconsistent, and we suggest some amendments to the legal drafting in [Annex 2 \(Section B\)](#). The suggested amendments to the terminology are marked-up against the contractual drafting published alongside ORR’s implementation consultation document.
- 2.20 In the preparation of our final price lists for CP5, which we will publish on or around 20 December 2013, we will continue to work with ORR on reviewing the terminology in the price lists and making sure that it is consistent with the track access contracts.
- 2.21 We note ORR’s comments in relation to the capacity charge proposals for CP5. Following the publication of ORR’s Draft Determination, there has been extensive industry engagement on this, and our response to the Draft Determination sets out the Rail Delivery Group’s (RDG) agreed proposal on Schedule 8, the capacity charge and the volume incentive for CP5. As identified by ORR, implementation of wash-up arrangements would require a significant review of the current capacity charge drafting in Schedule 7, on which we would engage accordingly.

Freight operator track access contracts

- 2.22 In relation to the incremental costs provision which is included in Schedule 7 of freight operators' track access contracts, it is important to note that Network Rail and freight operators have regularly used this provision, which in the main part, covers the 'after hours' operation of signal boxes on the network. It enables us to recover the incremental costs associated with opening parts of the network outside published operational hours. We consider that the workings of the mechanism are well understood by our freight customers.
- 2.23 We do agree that there would be merit in updating the date that is applied to the operating constraints, to reflect that the baseline capability of the network has changed since 1 April 2001. We therefore consider that this should be changed to "1 April 2014". Otherwise we consider that the provision is working as intended and that no further change is required.
- 2.24 We note that ORR has amended the drafting in relation to the coal spillage reduction investment charge such that we are only required to consult operators in relation to rolling-forward the coal spillage reduction fund at the end of the 2013/14 financial year, rather than annually. Whilst we acknowledge that it may be unlikely, if there continued to be money in the investment fund at the end of the 2014/15 financial year it appears we would no longer be required to consult the industry on whether the investment fund should be rolled-forward, which we do not consider to be quite right. To be prudent we suggest retaining the existing drafting which refers to "each financial year" rather than the year ending "1 April 2014".

Passenger track access contracts

- 2.25 We note ORR's comments regarding its proposals for open access operators that currently have their access charges set out in their track access contracts rather than on the relevant price lists. Unless there is a reasonable case to justify the continuation of this approach, we agree that it would be preferable to include these operators' charges on the relevant CP5 price lists. We have been discussing the practicalities of this with the relevant operators, in response to ORR's 12 July 2013 letters on bespoke provisions in track access contracts.

New or amended charges during the control period

- 2.26 We welcome ORR's proposals to clarify the process for agreeing new or amended charges during the control period and we have some detailed drafting comments regarding the revised provisions for supplementing the price lists. In relation to the appropriate timescale for agreeing a supplement, we consider that 45 days should be an achievable timeframe in which to reach agreement, provided the time period starts to run from the point at which we have all the information we need to calculate the rate.

- 2.27 We welcome ORR's decision to remove the 'manifest errors' provision in franchised passenger access contracts, particularly since during PR13 Network Rail has carried out an extensive stakeholder engagement process, and the publication of draft price lists for CP5 (both in April and July 2013) has given interested parties ample opportunity to provide input and feedback. We consider that the removal of this provision will help to avoid undue administration costs for all parties during CP5. We also note that this proposal is consistent with our VUC conclusions where we proposed 'locking down' VUC rates in CP5.
- 2.28 We also welcome ORR's Draft Determination on temporary default rates, and consider that the contractual amendments that ORR has proposed are appropriate. We consider that this will provide a strong incentive to operators to get the 'right' VUC rates agreed, improving cost reflectivity.
- 2.29 In relation to the indexation of the default charge, it is important that the approach is consistent between freight and passenger track access contracts. We note that as currently drafted, the indexation formulae are different, and that the correct one to apply to the default charge is set out in paragraph 2.7 of Schedule 7 in freight track access contracts.

Traction electricity charges

- 2.30 We note that ORR proposes to make substantial changes to Schedule 7 and to the newly named TERs to reflect the changes that have been made during CP4, primarily to accommodate on-train metering. Electric train operators can opt to have some of their electricity consumption charged based on modelled consumption rates, and some on metered consumption delivered from on-train meters, this results in a complex set of contractual provisions.
- 2.31 ORR has proposed that the volume wash-up drafting is changed significantly to reflect the fact that metered operators would no longer participate in it, and that Network Rail would be allocated a share of the volume wash-up to reflect "*its ability to manage transmission losses*". We would, however, like to query the volume wash-up formula set out in the TERs. The formula appears to work so that Network Rail's exposure is set to the percentage of losses (as a mark-up), however, we consider this should be imputed so that the percentage exposure is set to losses as a percentage of the total consumption in that ESTA i.e. $DSL/(1 + DSL)$. We suggest that the legal drafting in the TERs is updated to reflect this. We would welcome further discussion with ORR on this point.
- 2.32 Also in relation to the volume wash-up drafting, ORR proposes that the kWh consumption allocated to Network Rail, to reflect its ability to manage transmission losses, is left 'unallocated' in the wash-up i.e. a separate invoice is not raised against itself. This is likely to require a corresponding adjustment in the cost wash-up provisions so that the costs associated with this 'unallocated' consumption are not passed through to other operators. We are discussing this issue with ORR separately.

- 2.33 In relation to regenerative braking, we note that ORR has suggested provisions to allow modelled operators to opt-in/out for the regenerative braking discount. We would like to clarify that regenerative braking discounts are applicable to modelled operators only because metered operators have separate billing arrangements to cater for their return of power to the network from regenerative braking. We suggest that this is clearly set out in the drafting. Further to this, we would suggest that freight operators also have similar provisions to opt-in/out for the regenerative braking discount.
- 2.34 In relation to ESTA definitions, we support ORR's proposal to move these to the TERS. We are committed to communicating and consulting on potential changes to ESTA boundaries in CP5 in an open and transparent way. We would, however, like to point out that there may be changes to the definitions set out in Appendix 5 of the TERS, between now and the start of CP5. We therefore suggest that these are reviewed again before ORR serves the PR13 review notices in December 2013.
- 2.35 We support ORR's proposal to move the provisions relating to the procurement of traction electricity to the new TERS. We consider that this is a sensible proposal as the arrangements are typically multilateral in nature. We also support ORR's proposal for the industry to lead on any changes it wishes to make to these provisions. We consider that ATOC is best placed to lead on any potential changes, given its role in managing the EC4T Scheme Council meetings.
- 2.36 We are working with ORR to consult on specific changes to the cost wash-up drafting in the TERS.

3. CONTRACTUAL RE-OPENERS AND OTHER PROVISIONS

Summary of ORR proposals

Interim re-openers

- 3.1 *In this chapter, ORR sets out its proposed changes to track access contracts that would enable it to re-open the price control during CP5 (re-openers), following its proposal in the Draft Determination to retain the following re-openers:*
- i. if there is a material change in the circumstances of Network Rail or in relevant financial markets. This re-opener applies to events in England & Wales and Scotland; and*
 - ii. for Scotland, if Network Rail's expenditure in Scotland is forecast to be more than 15% higher than our determination for Scotland over a forward looking period of three years.*
- 3.2 *In relation to (i), above, ORR has proposed a slight change in the contractual drafting so that it can be applied on a forward looking basis as well as applied to events that have already happened.*
- 3.3 *It also sets out the process that it would follow if it decided to re-open the PR13 determination during CP5.*

Grant dilution

- 3.4 *ORR also sets out the required changes to the grant dilution provision in part 3A of Schedule 7 of passenger track access contracts. The provision has been updated to reflect ORR's Draft Determination on Network Rail's real vanilla weighted average cost of capital (WACC) of 4.31%.*

Rebates

- 3.5 *In relation to rebates, ORR has amended the relevant provision in paragraph 7, Part 2 of Schedule 7 so that a rebate in respect of one year would be paid the following year (rather than rebates being paid during the year to which they relate). In addition, ORR has proposed an amendment to reflect its Draft Determination that financial outperformance should be used to pay down debt or fund research and development (R&D) to a value specified in its Final Determination, unless it is satisfied that there are exceptional circumstances.*

Network Rail response

Interim re-openers

- 3.6 Consistent with our response to ORR's Draft Determination on re-openers, we are content with ORR's proposals in this regard. We support the amendment to the contractual drafting on re-openers to provide for material changes in Network Rail's circumstances or in the relevant financial markets that may be likely in the future, in addition to material changes that have already occurred. The clarity on the process for re-opening the price control, as set out in Annex B of ORR's consultation, is helpful.

Grant dilution

- 3.7 We agree that the grant compensation formula as set out in part 3A of Schedule 7 of passenger track access contracts needs to be updated to reflect the real vanilla WACC that is to be determined by ORR as part of its Final Determination on CP5, in October 2013. It should be noted that as part of our response to ORR's Draft Determination, we have set out our analysis and views on the appropriate value of the WACC in CP5.

Rebates

- 3.8 Given the changes in the financial framework for CP5, we would expect to focus outperformance primarily on reducing debt or longer term investment in R&D. However, we do not consider that other uses of outperformance should be excluded as a matter of principle by ORR at this stage. Other areas of outperformance could include, for example, reinvestment of civils outperformance in further civils activity and additional expenditure at level crossings. We discuss this in greater detail in our response to changes to Network Rail's network licence, in paragraphs 8.47 to 8.56 of Chapter 8, later in this response.
- 3.9 As discussed in our response to ORR's Draft Determination, we propose to publish an update of our policy for use of outperformance. We intend doing this before the beginning of CP5.
- 3.10 We consider, therefore, that ORR's proposed amendment to Part 2 of Schedule 7 (in paragraph 7.3 (c)) to require Network Rail to "*have regard to whether it would be more appropriate to use any available financial resources to repay and financial indebtedness or fund [R&D] to the value specified in the 2013 Final Determinations*" is neither necessary nor appropriate and should be removed.

4. ROUTE-LEVEL EFFICIENCY BENEFIT SHARING

Summary of ORR proposals

- 4.1 *ORR proposes amendments to freight and passenger access contracts to give effect to the introduction in CP5 of the route-level efficiency benefit share (REBS) mechanism, which will replace the CP4 efficiency benefit share (EBS) mechanism.*
- 4.2 *ORR sets out the changes it intends to make to the EBS provision (which needs to be retained to reflect the fact that ORR will determine any EBS payments for 2013/14 (i.e. the last year of CP4) during the first year of CP5), as part of its annual efficiency and finance assessment.*
- 4.3 *ORR sets out how its proposed policy decisions on REBS will be reflected in the Schedule 7 drafting of track access contracts. It also confirms that the route baseline figures for REBS will be published by Network Rail as part of its CP5 Delivery Plan, consistent with the overall England & Wales; and Scotland baselines in ORR's Final Determination.*
- 4.4 *While the proposed drafting does not make specific reference to the inclusion of alliance performance within REBS payments, ORR confirms that in its annual efficiency and finance assessment of Network Rail, it will set out the effect on REBS payments from Network Rail's material alliance arrangements i.e. 'alliance before REBS'.*
- 4.5 *ORR also sets out the conditions under which operators are able to opt-out of REBS. ORR proposes that train operators will be able to opt-out of REBS within 2 months of the start of CP5 (i.e. 1 June 2014). In addition, ORR sets out two further situations when train operators will be able to opt-out of REBS during CP5:*
 - i. *within 2 months of operating services on a route on which the train operator did not previously operate whether as a result of entering into a new franchised passenger track access agreement or open access agreement; or*
 - ii. *where Network Rail enters into an alliance agreement with another train operator on a route, and ORR determines that this alliance agreement is likely to have a material direct financial impact on other train operators through the potential impact on any future REBS payments.*
- 4.6 *The proposed drafting stipulates that cash payments between Network Rail and operators must be made within 28 days of the publication of ORR's annual efficiency and finance assessment of Network Rail. It also sets out ORR's understanding of the VAT treatment of EBS and REBS payments, in particular to reflect HMRC's November 2012 ruling that any payments under EBS are effectively a standard rated supply by the operators against Network Rail.*

Network Rail position

- 4.7 We have made a number of drafting comments which are set out in [Annex 2 \(Section A\)](#) to this document. In the main part, these are minor in nature, however, where we have substantive views / concerns on policy (which are not covered by our response to the proposals set out in ORR's Draft Determination) we have discussed these, below.

Schedule 7 definition of Alliance Agreements

- 4.8 We are very concerned by the proposed definition of an “*Alliance Agreement*” in Schedule 7. As currently drafted the definition is very broad⁴. It would include any type of alliance agreement that we enter into with a train operator, regardless of whether or not it directly financially impacts the elements of costs and income that fall within the scope of REBS.
- 4.9 The implications of the proposed definition of an “*Alliance Agreement*” would be that where we enter into *any* alliance agreement with one or more train operator(s) on (part of) a route, we would be required to notify other train operators participating in REBS⁵ on that route. We strongly consider that this would not be proportionate. We enter into a number of alliance agreements and the proposed drafting means that we would be contractually required to notify train operators, although these agreements may have no direct financial impact on REBS, in particular in cases where they include elements of costs and / or income that are not included in the REBS baselines.
- 4.10 We are strongly of the view, therefore, that the definition of an “*Alliance Agreement*” needs to be revised for the purposes of the REBS drafting in Schedule 7, so that it only captures the type of arrangement that would be likely to have a material direct financial impact on REBS baselines. We propose that the definition should be changed to:

“Material Alliance Agreement” means a legally binding agreement between Network Rail and one or more train operators establishing an alliance under which the parties agree to share risk and / or reward in respect of activities on a part of the Network and which is likely to have a material direct financial impact on one or more elements of Network Rail's costs or income included within the Route Baseline.”

Notification requirements of entering into a Material Alliance Agreement

- 4.11 We also consider that the notification provisions for entering into a “*Material Alliance Agreement*” (as defined, above) need to be clarified. We note that on entering into such an arrangement, ORR's proposals would require us to notify secondary train operators on that route and ORR within 14 days. If ORR were then to confirm, in writing, to secondary train operators participating in REBS on the relevant route that the “*Material Alliance Agreement*” would be likely to have a material direct financial impact on Network Rail's performance on that route, those operators would be able to serve an opt-out notice within 2 months of this written communication.

⁴ The proposed Schedule 7 definition of Alliance Agreement is “*an agreement between Network Rail and one or more train operators establishing an alliance in which those parties work jointly to carry out or otherwise share the risk of activities on a part of the network.*”

⁵ Under paragraph 4.4b of Part 4 (for freight) and paragraph 1.4(b) of Part 3 (for franchised passenger operators) of Schedule 7.

- 4.12 We would welcome further clarity and guidance from ORR on the information that it would require to perform this assessment. We also consider that it would be helpful for ORR to set out the timescales in which it would expect to conduct this assessment.
- 4.13 Given that ORR has proposed to provide written confirmation on whether the “*Material Alliance Agreement*” would be likely to have a material direct financial impact on that route in respect of REBS, we do not agree that the requirement on Network Rail to provide “*such information to the Train Operator as the Train operator may reasonably request in order to determine whether to serve an Opt-out Notice, and such information shall be provided within 14 days of the request*” is necessary or consistent with regulatory best practice of proportionality.
- 4.14 Furthermore, we have significant concerns regarding the confidentiality implications resulting from this provision. As currently drafted, this could place a contractual requirement on Network Rail to disclose details of a “*Material Alliance Agreement*”, parts of which may be confidential or otherwise subject to restrictions on disclosure relating to the timing, content and method of disclosure. If this provision is to be retained, at a minimum, it must not put Network Rail under an obligation to disclose details that are subject to legally binding confidentiality obligations, and must not prevent Network Rail from complying with any other restrictions on disclosure in its alliance agreements.

Opt-out provisions

- 4.15 We consider that the scope of the proposed provisions under which train operators may opt-out of REBS *during* CP5 need to be widened, to provide for a situation in which a train operator who has entered into a “*Material Alliance Agreement*” with Network Rail during CP5 is contractually able to opt-out of the mechanism. This would be consistent with ORR’s statement in paragraph 19.9 of the Draft Determination in which it states “*We see REBS as a stepping stone to the development of more commercial relationships within the industry. As our preference is for more commercial relationships, we would be content to see train operators opting out of REBS to pursue their own commercially negotiated risk and reward sharing agreements with Network Rail, provided such agreements were transparent and non-discriminatory*”. It is important that track access contracts allow for this.

REBS payment terms

- 4.16 We are concerned by the proposed requirement for either party to make payments in respect of REBS within 28 days after the date of publication of ORR’s annual efficiency and finance assessment, as we do not consider that this is an achievable timescale.

- 4.17 There are a number of activities that would need to take place in order to issue payments in respect of REBS, following ORR's annual assessment. These include:
- calculating the proportions payable to / by each operator based on their share of variable usage charge income on the route;
 - (where payments are due to operators) seeking board approval to make the payments;
 - writing to operators to advise them of payments and agreeing bank account details for making the payments;
 - issuing invoices in respect of any payments; and
 - where an amount is payable by Network Rail, to make the actual bank transfer, we would normally only make one payment run each month.
- 4.18 On this basis, we strongly consider that the current drafting (in relation to REBS payments) should be amended to "*within 2 months*" which would allow both parties sufficient time to process the payments. At a minimum, we consider that the REBS drafting should reflect the current EBS payment requirements as set out in track access contracts (which stipulates that the payment must be made within 28 days of the end of the period in which it is determined by ORR that such payment should be made). This would also be consistent with ORR's proposed amendment to the payment terms of any rebates payable to train operators, as set out in paragraph 7.6 of Part 2 of Schedule 7.

5. POSSESSIONS AND PERFORMANCE REGIMES

Summary of ORR proposals

- 5.1 *ORR is proposing changes to Schedules 4 and 8 of the track access contracts, to give effect to its proposals set out in its Draft Determination on the possessions and performance regimes.*
- 5.2 *In respect of the model Schedule 4 in freight operators' contracts, ORR is proposing to remove the modification provisions which are no longer required. It is also proposing to make a minor amendment to the definition of actual costs that can be claimed for Category 3 disruption.*
- 5.3 *In relation to the model Schedule 4 in franchised passenger operators' contracts, ORR is proposing to increase the protection provided to franchised passenger operators by paragraph 2.9. Consistent with ORR's Draft Determination, this would allow franchised operators to recover costs incurred in relation to Type 1 possessions cancelled at short notice by Network Rail, where these costs are £5,000 or more.*
- 5.4 *ORR is also proposing to make some minor changes to the definition of Sustained Planned Disruption (SPD) and some minor corrections to terms contained within the cost compensation and revenue loss formulae – these changes also apply to the model Schedule 4 for open access operators.*
- 5.5 *ORR is proposing changes to the freight performance regime set out in Schedule 8, in particular to reflect that the bonus payments in CP5 will be set at the same rate as compensation payment rates and that Network Rail will be required to update the freight operator benchmark every year to reflect changes in traffic levels. In addition ORR is proposing to update the dates relating to the baselines to be applied in the calculation of adjustments to the freight operator benchmark and annual caps, so they relate to the appropriate points in time for use during CP5.*
- 5.6 *In relation to the model Schedule 8 for franchised passenger operators, the main change that ORR is proposing to make is the removal of passenger charter provisions to give effect to the proposal in its Draft Determination. In addition, it is proposing revisions to clarify the process relating to disagreements between Network Rail and the train operator, and some other minor drafting amendments.*
- 5.7 *ORR notes that in the case of the model Schedule 8 for open access passenger operators, most of the minor differences (compared with the model Schedule 8 for franchised passenger operators) are unnecessary and it proposes, therefore, that open access operators should have substantively the same contractual performance regime as franchised passenger operators (with the exception of the sustained poor performance provisions, which do not apply).*

- 5.8 *ORR sets out the next steps relating to Schedules 4 and 8 for PR13, in particular finalising the amounts which will be input into the relevant annexes and appendices of the track access contracts.*
- 5.9 *Finally, in the Schedule 8 provisions for all operators, ORR has included a reopener relating to the introduction of the European Train Control System (ETCS).*

Network Rail position

- 5.10 In the event that ORR does determine as part of PR13 to provide for compensation for cancelled Type 1 possessions on a claims basis, we consider that ORR's proposed contractual drafting requires amendment. Currently it provides for train operators being entitled to recover "*the costs to which it is committed or which it has already incurred prior to cancellation*". We consider that the term "costs" need to be clarified, on the basis that, at a minimum, such costs must be reasonable and evidenced. We set out our proposed drafting amendments in [Annex 2 \(Section A\)](#).
- 5.11 In relation to changes proposed to the freight Schedule 8 contract, we are unclear as to why ORR has proposed replacing "2010" with "2014" (rather than '2015') in paragraph 10.2.1⁶. Under ORR's proposal, we believe that the contractual wording would imply that an update to caps could take place immediately following the start of CP5 i.e. in April 2014. We do not believe that this is as ORR or the industry intends, nor do we believe this would be appropriate. Rather, we consider that adjustments to caps should be possible from the second year of CP5, and as such that "2010" should be replaced by "2015" in paragraph 10.2.1. We also make a small suggestion around the contractual wording of paragraph 10.2.2, which is set out in [Annex 2 \(Section A\)](#).
- 5.12 We note the other changes proposed by ORR to Schedules 4 and 8 of the track access contracts and have proposed some further minor drafting amendments in [Annex 2 \(Section A\)](#).

⁶ We understand why ORR proposes changing 2009 to 2013 in paragraph 10.2.3 (a), and support the change to the base year.

6. STATION ACCESS AGREEMENTS

Summary of ORR proposals

- 6.1 *ORR sets out the required changes to the National Station Access Conditions (NSACs) and Independent Station Access Conditions (ISACs) for franchised and managed stations respectively, to give effect to ORR's Draft Determination on station long term charges (LTC).*
- 6.2 *ORR has proposed to update the indexation formulae relating to the LTC in both sets of station access conditions, consistent with its proposals on indexation in general, which are further discussed in Chapter 7 of this document.*
- 6.3 *The only other substantive change required is to the equipment inventory in Annex 1 to the ISACs, to reflect ORR's Draft Determination that Stations Information Security Systems (SISS) maintenance; renewals; and repair expenditure will be recovered by the LTC in CP5. To date, the maintenance element of SISS expenditure at managed stations has been recovered through the Qualifying Expenditure (QX) charge which is reflected in the equipment inventory for each managed station.*

Network Rail position

- 6.4 We agree with ORR's proposed changes to the relevant parts of the equipment inventory and have no further comment to make in this regard.
- 6.5 We address ORR's indexation proposals for access charges and incentive rates, in Chapter 7, below. While ORR references the parts of the NSACs and ISACs that would require amendment to give effect to ORR's indexation proposals in CP5, it would be helpful for ORR to clarify the exact changes that would be required to both documents to enable this change, consistent with its approach for proposing amendments to track access contracts.
- 6.6 We have reviewed the indexation provisions relating to other station charges (qualifying expenditure; stations lease and facility charges) and do not consider that ORR's proposals for LTC indexation impact these, although we would welcome confirmation from ORR on this matter.

7. INDEXATION

Summary of ORR proposals

- 7.1 *In its consultation ORR proposes two key changes to the current approach to uplifting access charges and incentive rates:*
- i. Using a consistent approach, based on the change in calendar year annual average RPI (i.e. the methodology currently used to uplift freight access charges), for all operators; and*
 - ii. Introducing a 'true-up' mechanism. A 'true-up' mechanism would adjust for any variance between the RPI uplift applied to charges and incentive rates in a given year (which ORR proposes is based on the change in annual average RPI in the previous year) and outturn RPI in that year. It would do this by making an adjustment to the RPI uplift factor applied to charges in the following year.*
- 7.2 *ORR will also decide, when it publishes its Regulatory Accounting Guidelines in December 2013, whether for consistency it should also use the change in calendar year annual average RPI to adjust values in our Regulatory Accounts.*

Network Rail response

- 7.3 We welcome the fresh thinking from ORR in relation to the indexation methodology for CP5.
- 7.4 How we uplift price lists from the price base in the Final Determination (2012/13 prices) to the price base in year one of CP5 (2014/15 prices), and annually in CP5, is important as it will have a material impact on the income that we receive during the control period. Assuming an annual gross revenue requirement of £6.7bn, a 1% 'mismatch' between forecast and outturn inflation would result in a difference of £67m per annum, or £335m over CP5.
- 7.5 As set out in ORR's consultation, a weakness of the current approach is that inflation in the year preceding the start of the control period is used twice. As ORR will be aware, in PR08 the 2008/09 RPI value that would have been used twice was forecast to be, and turned out to be, very low – outturn RPI was 0.28%. However, as part of PR08, it was agreed that it would unduly penalise Network Rail if this very low RPI value was applied twice when uplifting charges. Therefore, instead of double counting this low RPI value, a forecast of average RPI over CP4 (2.43%) was used when uplifting the price base in the Final Determination. We estimate that this amendment resulted in approximately £650m (cash prices) additional income in CP4 relative to what we would have received under the approach applied historically. However, we also estimate that this is approximately £140m less than we should have received looking back now with 'perfect information'⁷.

⁷ In the 'perfect information' scenario we have used a forecast of 2013/14 inflation because an outturn figure is not available.

- 7.6 We respond to ORR's proposals to (i) use a consistent approach to index charges and (ii) introduce a 'true-up' mechanism for CP5 in turn, below.
- 7.7 The detail of these proposals is important. Therefore, if ORR were to proceed with them we would welcome further discussion on the detail of these methodologies prior to its Final Determination. We consider that this is particularly important given the materiality of the issues.

Using a consistent approach

- 7.8 We support ORR's proposal to use a consistent approach based on the change in calendar year annual average RPI (i.e. the methodology currently used to uplift freight access charges) for all operators when adjusting charges and incentive rates.
- 7.9 We agree with ORR that moving to an annual average approach should result in less volatile RPI values, therefore, reducing our exposure to exogenous inflation risk and potential windfall gains / losses. It should also be less volatile for our customers in terms of the charges they pay for use of our infrastructure. It should also be more cost reflective resulting in closer alignment between our nominal costs and nominal revenue. In addition, it would be simpler to understand and administer and eliminate the current inconsistency between how passenger and freight track access charges; station long term charges; and incentive rates are uplifted each year.
- 7.10 Although it is not clear from ORR's consultation document, we understand that ORR's intention is that its proposal would also apply to the Network Grant income received in lieu of the Fixed Track Access Charges (FTAC). We ask that ORR confirms that this is the case as soon as possible.
- 7.11 Network Grant income constitutes our largest revenue stream and if the proposed approach were to exclude this we consider that it would seriously undermine ORR's proposals and not appropriately reduce our exposure to exogenous inflation risk.
- 7.12 We agree with ORR that for the purposes of our Regulatory Accounts, in order to ensure consistency, there would be merit in using an annual average approach instead of using a November to November adjustment.
- 7.13 If this proposal were to be implemented, we would welcome further discussion with ORR, prior to its Final Determination, to confirm how it intends to 'switch' from using a November to November RPI adjustment to using an annual average one. This is not explicitly set out in ORR's consultation document and we would not want to be unduly penalised in any transition from one methodology to another.

Introducing a 'true-up' mechanism

- 7.14 We welcome the fresh thinking from ORR in relation to introducing a 'true-up' mechanism for CP5. As noted above, how we uplift charges and incentive rates is important and has a material impact on the income that we receive during the control period.

- 7.15 Following analysis of various inflation scenarios, we consider that the ‘true-up’ mechanism proposed by ORR would typically result in closer alignment between our nominal costs and nominal revenue, over a control period. It follows, therefore, that it would also reduce our exposure to exogenous inflation risk and potential windfall gains / losses from the current ‘approximate’ approach. This improvement in cost reflectivity is intuitive given that under the approach applied historically, if the inflation forecast that ORR uses to uplift prices from the Final Determination, and then each year during the control period, turns out to be materially wrong there would be no retrospective adjustment / ‘true-up’.
- 7.16 On the basis that the proposed ‘true-up’ methodology would be more cost reflective and better mitigate exogenous inflation risk, we support it being introduced for CP5. We consider introducing a ‘true-up’ for CP5 would be particularly appropriate given the current uncertainty in relation to future inflation levels, because of the recent turbulence in financial markets and the use of quantitative easing.
- 7.17 There are, however, some elements of the proposed ‘true-up’ methodology where we require further clarification from ORR because these are not explicitly addressed in the consultation. In particular, we request clarification, prior to the Final Determination, in relation to the following:
- how the ‘true-up’ for the last year of the control period will be reflected in the next control period;
 - the methodology for uplifting from the price base in the Final Determination to that in the first year of the control period (the example provided in the consultation document does not start with the price base in the PR08 Final Determination); and
 - the methodology for forecasting the December 2013 RPI value which will not be available in time for the publication of the CP5 price list.
- 7.18 Recognising the fact that the proposed ‘true-up’ approach is not perfect (e.g. because our revenue requirement is not constant over time and thus the ‘true-up’ in the following year would not apply to the same level of charges), we consider that there would be merit in adopting a simple and pragmatic approach, where it is reasonable to do so, in respect of these issues.
- 7.19 Moreover, although we understand why it is necessary for ORR to forecast December 2013 RPI for the purposes of uplifting values in its Final Determination, we do not consider that it would be necessary, or appropriate, to forecast December RPI values when uplifting charges and incentive rates during the control period. We consider that a better approach would be to uplift rates in CP5 based on the outturn December RPI value, which is published in mid-January, well in advance of the new access charge rates coming into effect in April. This approach is currently adopted in relation to freight charges. From a theoretical perspective, if a forecast December RPI value were to be used during the control period, this would be contrary to the aim of the ‘true-up’ which is designed to correct for actual outturn values.

- 7.20 As noted above, although it is not clear from the consultation document, we understand that ORR's intention is that the 'true-up' methodology would also apply to Network Grant income that we receive in lieu of FTAC. We ask that ORR confirms that this is the case as soon as possible. Network Grant income constitutes our largest revenue stream and if the 'true-up' methodology were to exclude this, it would seriously undermine ORR's proposals and not appropriately reduce our exposure to exogenous inflation risk.
- 7.21 When ORR presented its indexation proposals to industry, at the regular Variable Track Access Charges meeting, we note that operators expressed concern in relation to the complexity of the 'true-up' mechanism and the potential for it to result in more volatile annual indexation factors. Whilst we have sympathy for the concerns expressed by operators, we consider that the benefits of increased cost reflectivity and reduced exposure to inflation risk outweigh any increase in complexity, which we consider to be small. We also note that RPI in CP4 has been particularly volatile, including a period of deflation, and typically one would expect RPI to be more 'steady' and thus annual indexation factors to be less volatile than would be the case if the 'true-up' methodology was applied in CP4.
- 7.22 We also believe that the illustrative example provided in ORR's consultation document setting out how the indexation factor for 2015/16 would be calculated is incorrect, specifically the indexation factor of 1.34. This is because ORR has used the percentage change in RPI values as inputs, rather than the 'raw numbers' published by the Office of National Statistics (ONS). This is a good example of the potential 'pitfalls' associated with specifying the details of the revised indexation methodology. We reiterate that we would welcome further discussion with ORR, prior to the Final Determination, in relation to the clarification points set out, above, and the detail of these proposed changes more generally. We consider that further discussion is particularly appropriate given the materiality of the issue.
- 7.23 If ORR is minded not to proceed with its proposal to introduce a 'true-up' mechanism, we strongly consider that it would be appropriate for ORR and Network Rail to have an early discussion in relation to how prices are uplifted from the price base in the Final Determination to the price base in the first year of the control period. We note that this was a material issue in PR08 and we consider that there would be considerable merit in discussing the methodology for uplifting prices at the earliest possible opportunity.
- 7.24 Finally, we note that paragraph 2.7.2 in Schedule 7 of the freight track access contract specifies that the adjustment factor applied each year should be rounded to three decimals. We consider that clarity in the contract in relation to this detailed point would be very helpful and should avoid charges and incentive rates being uplifted on an inconsistent basis due to different rounding assumptions. We propose, therefore, that ORR clarifies in both the passenger and freight track access contracts that all adjustment factors should be "rounded to three decimal places.

8. CHANGES TO NETWORK RAIL'S LICENCE

Summary of ORR proposals

- 8.1 *ORR sets out the changes it would need to make to Network Rail's network licence to give effect to its Draft Determination. It also proposes making some other amendments to update and improve the network licence's effectiveness. In both cases, it sets out the ways in which it is able to make the proposed licence changes.*
- 8.2 *A number of changes are proposed to various licence conditions (LC). These are summarised below:*
- **LC1 Network management:** *ORR proposes changes to make this LC more flexible and allow ORR and Network Rail to respond to different conditions over time. This includes the proposal to replace references to "Route Utilisation Strategies" to "long term plans" throughout the licence.*
 - **LC2 Information for passengers:** *In relation to the obligations on Network Rail to publish or procure publication of the National Rail Timetable (NRT), while noting Network Rail's current consideration of the changes to this process that it wishes to make, ORR states that as matters stand, it does not propose to make any changes to this LC at this time.*
 - **LC3 Financial indebtedness:** *ORR has proposed changes to this LC to give effect to the relevant aspects of its Draft Determination on the financial framework, in particular separate terms for England & Wales and Scotland; and the level of financial indebtedness and the financial indemnity mechanism (FIM) fee in CP5, that are both specified in LC3.*
 - **LC4 Financial ring-fence:** *ORR has proposed revising the section on payment of dividends to clarify the circumstances under which we must issue a certificate to ORR and seek its consent. It has also clarified the timescales under which the licence holder must satisfy itself that it will not be in breach of its licence obligations (previously the LC had stated "future" which could imply an indefinite amount of time). Consistent with the changes it has proposed to track access contracts (discussed in paragraph 3.5 of Chapter 3, above), ORR is also proposing to include a specific section in LC4 restricting Network Rail from making payments to the governments that are not made in the ordinary course of business or in order to comply with a legal situation.*
 - **LC5 Interests in rolling stock and train operators:** *ORR has proposed introducing a general consent to allow Network Rail to enter into certain types of arrangements with other parties that would otherwise require specific ORR consent. ORR has also suggested that the LC is renamed to "interests in railway vehicles".*
 - **LC7 Land disposal:** *ORR is proposing to reduce the current time limits under which we must provide prior notice of an intended disposal of land from "3 months" to "2 months".*

- **LC8 Stakeholder relationships:** ORR is proposing to update references to stakeholder groups so that they are up-to-date.
- **LC12 Annual and periodic returns:** ORR has proposed clarifying arrangements for Network Rail's preparation and provision of annual and periodic returns to ORR, as well as the publication requirements.
- **LC15 Governance:** ORR has proposed clarifying what 'good' corporate governance means for Network Rail, consistent with wider developments in this field.
- **LC17 Financial Information:** On the basis that LC15 is modified in line with ORR's proposals, ORR considers that it should delete LC17 to avoid duplication.
- **LC24 Systems code:** ORR has proposed deleting this condition.
- **Schedule: revocation:** ORR proposes to delete this clause after consultation with the Department for Transport and Network Rail.

Network Rail response

- 8.3 For clarity we have set out our comments by licence condition. [Annex 1](#) is also provided which contains a more detailed mark-up of ORR's proposed network licence modifications.

Interpretation

- 8.4 At paragraphs 8.10 – 8.11 of its consultation, ORR sets out a proposal to simplify the wording around consents making it clearer that any consent may be 'general' or 'specific'. ORR also proposes to amend LC20 to make clear that ORR's general approval for third party liability arrangements is itself a 'consent'.
- 8.5 We welcome the proposal to clarify that consent can be issued by ORR on a specific case by case basis or by way of a general consent and we support ORR's proposal to amend LC20.

Licence Condition 1 (LC1) Network management

- 8.6 At paragraphs 8.12 – 8.18 of its consultation, ORR proposes changes to LC1 concerning Network Rail's accountabilities in terms of planning the future of the railway.
- 8.7 As noted by ORR, RUSs have been the industry's main planning tool for several years and have been one of the key ways in which Network Rail has discharged its obligation to plan the future capability of the national rail network. RUSs have also been successful in showing the value of investment in rail improvement schemes to funders and customers.
- 8.8 Many of the RUSs that have been produced to date have focused on taking a ten year view on how to make the best use of existing capacity, with some incremental changes and some longer term scenario planning. More recently we have developed the process to take a longer term view (up to 30 years)

about the likely future demand to use Britain's railways. This reflects the long 'gestation period' of some railway projects.

- 8.9 We recognise that the changes ORR has proposed to LC1 of our network licence are designed to reflect the long-term planning process that Network Rail has now adopted which consists of market studies, route studies and cross-boundary analysis. We welcome ORR's confirmation that it does not intend to 'micromanage' Network Rail's development of a long-term plan or governance of the process.
- 8.10 We therefore have no objections to the modifications that ORR has proposed to LC1. However, in order to help external stakeholders understand that Network Rail's role is to plan the future capability of the national rail network, we believe that it would be helpful to clarify that references to the "*long term planning process*" include the production of RUSs, which is now a well understood industry term. This would clarify that the changes that ORR is proposing to make to our network licence do not represent a change to our role or the scope of regulation. With this in mind we would suggest that LC1.6(b) is reworded to read "*those associated with or arising from the long term plans (including Route Utilisation Strategies) referred to in condition 1.14*".

Licence Condition 2 (LC2) Information for passengers

- 8.11 At paragraphs 8.19 – 8.22 of its consultation, ORR sets out our previous discussions regarding publication of the National Rail Timetable (NRT).
- 8.12 We have been monitoring public demand for the printed NRT over the last few years. It is evident that an overwhelming majority of passengers now use real time journey planning information to plan their journeys as opposed to printed information which can be subject to change. Readership of the printed NRT has, therefore, fallen dramatically in recent years.
- 8.13 In contrast there has been an increasing demand to make timetable information available in 'raw data' format to train operators and to other parties (including electronic application developers) on a daily basis, to facilitate the development and innovation of electronic journey planning applications. Network Rail is very supportive of providing such 'raw data' to interested parties. These applications provide consumers with free, real time travel information which can be accessed on a number of portable electronic devices including smart phones and tablets.
- 8.14 In light of the changes to the way in which consumers access and use information, we plan to cease production of the electronic NRT in its current form (which is then used by publishers to produce the hard copy version of the NRT). Instead we propose, subject to stakeholder consultation, to trial the provision of national rail timetable data in a spreadsheet format on our website. We also intend to continue making 'raw data' available to relevant interested parties.
- 8.15 We agree, therefore, that no changes to LC2 are required at this time.

Licence Condition 3 (LC3) – financial indebtedness

- 8.16 At paragraphs 8.23 – 8.27 of its consultation ORR sets out its proposal to amend LC3 to include separate permitted levels of financial indebtedness for England & Wales and Scotland. We further note that ORR proposes a debt/RAB limit set between 70 – 75 per cent, with the precise levels of the limits to be concluded in the Final Determination.
- 8.17 As we have set out in our main response to the Draft Determination, we consider that the debt/RAB limit should be set at five per cent above the level described in the CP5 draft delivery plan, which Network Rail will publish in December 2013. In this document we will set out what borrowing in CP5 will be necessary, which will determine the forecast debt/RAB ratio from 2014 to 2019. Given that it is currently envisaged that the debt/RAB limit will be prescribed within Condition 3 of our network licence, it will be important that ORR does not conclude on the CP5 limit until after we have published our draft CP5 delivery plan.
- 8.18 We would emphasise that we have a strong desire to avoid unnecessary increases to our total level of debt. However, in the context of the adjusted WACC approach that ORR will apply in CP5, we continue to believe that there is a need for a useable risk buffer. In the absence of such a facility, there would be no real basis for describing the framework as an output-based regime, given the lack of flexibility that would be available.
- 8.19 In addition, where the regulatory framework provides for efficient spend to be added to the RAB (for example to achieve longer term benefits) there should not be an additional requirement to avoid breaching the debt-to-RAB limit. We consider that, if such a requirement was in place, the framework arrangements would discourage driving value for users and taxpayers.
- 8.20 Whilst we note ORR's aim to improve the disaggregation of the price control, we believe that Network Rail should be regulated as a single entity in line with its corporate structure and our network licence – which is granted to Network Rail Infrastructure Limited as a single organisation.
- 8.21 We consider it could be seriously detrimental to Network Rail to have to manage our financial risk profile based on devolved government administrations, the ongoing nature of which is beyond Network Rail's control. This is particularly the case given that a referendum of the Scottish electorate, on the issue of independence from the United Kingdom will be held in September 2014, the outcome of which is unknown.
- 8.22 Network Rail uses its FIM to raise debt as a single entity. We do not raise debt based on devolved government administrations. The proposed changes to our network licence suggest that ORR's current thinking is that the debt/RAB limits for England & Wales and Scotland will be set at the same level. Therefore, the actual regulatory benefit of ORR's proposed changes is unclear.

- 8.23 Whilst we note ORR's comment that the proposed change seeks to "*improve the disaggregation of Network Rail's price control*" we do not understand what risk ORR is seeking to remedy through this proposed modification. This is particularly the case given that during CP4 Network Rail has, and will continue to report our debt/RAB ratios based on devolved government administrations. We therefore consider that it is unnecessary and inappropriate to establish separate debt/RAB limits for England & Wales and Scotland and that a single national limit should be maintained in CP5.
- 8.24 Notwithstanding the above comments, we agree that there is a necessity to amend the existing wording of LC3.1 (and particularly Table 3.1) which currently only applies to CP4 and is silent about what happens after the conclusion of the current control period.
- 8.25 ORR has proposed to amend LC3.1 such that the upper maximum of Network Rail's debt/RAB limit in the final year of CP5 should apply to 'each subsequent year'.
- 8.26 We suggest that it would be more appropriate to amend this wording so that the debt/RAB limit will remain at (X) per cent "*in 2018/19 and each subsequent year unless ORR determines a different limit following consultation with the licence holder*". Whilst this represents a small modification we believe that this would give ORR greater flexibility to propose different debt/RAB limits in the future without having to formally agree amendments to our network licence which can take considerable time.
- 8.27 At paragraph 8.26 of the consultation, ORR refers to the planned changes to the fee that Network Rail pays for the financial indemnity provided by the UK government as set out in its Draft Determination, and proposes to update LC3.5 to reflect this change. Network Rail is content with this modification.

Licence Condition 4 (LC4) – Financial ring-fence

- 8.28 At paragraphs 8.28 – 8.35, ORR sets out its proposed reforms to LC4 of our network licence including changes to the existing arrangements for payments of dividends and proposed new arrangements regarding outperformance payments to governments. For clarity, we have set out our response to each of these matters under separate headings below. We also comment on the 'permitted business' obligations more generally.

Permitted Business

- 8.29 At paragraph 8.29 of its consultation, ORR concludes that it does not need to make any changes to the financial ring-fence except where drafting can be improved or simplified.
- 8.30 To date, the financial ring fence has not prevented Network Rail from fulfilling its purpose, role and vision. However, in order to both exploit opportunities that benefit taxpayers and respond effectively to the agenda of our principal funders, we believe that the regulatory regime must be open to evolution as Network Rail demonstrates greater responsibility, transparency and accountability. We believe that a more fundamental review of Network Rail's permitted business and '*de minimis*' licence conditions should be undertaken. As a starting point we consider that certain 'core' Network Rail activities should be reclassified.

- 8.31 By way of example, in order to achieve the very challenging property income targets that are set out in ORR's Draft Determination (as well as maximising revenues from our existing property portfolio), significant investment will be required in order to grow our long-term single till income. We are also considering how our telecoms and energy business activities might be commercialised so as to grow our revenue streams and in turn reduce our reliance on taxpayer subsidy. We recognise that we will need to ensure that any such activities do not overly distract Network Rail from its core business functions and present an acceptable level of risk and reward to Network Rail and our funders.
- 8.32 We believe that our current regulatory obligations concerning '*de minimis*' activities are also unduly prescriptive, difficult to understand and give ORR unnecessary powers of 'veto'. We consider that ORR should commit to undertaking a more detailed review of our existing ring-fence obligation early in CP5. We would be very happy to work with ORR on such a review.

LC4 Payment of dividends

- 8.33 At paragraphs 8.30 – 8.33 of its consultation ORR sets out its proposals to reform our existing obligations regarding dividend payments. The need to obtain ORR's consent is now proposed in addition, rather than (as previously) as an alternative, to the requirement for a compliance certificate.
- 8.34 We consider many of ORR's proposed changes to this aspect of our network licence to be unnecessary and inappropriate, particularly in light of previous discussions with ORR pertaining to the Network Rail Infrastructure Limited dividend payment to Network Rail (Holdco) Limited earlier this year. We consider the changes proposed by ORR to be disproportionate, particularly as it has not in any way described the risk that the proposed changes are seeking to address.
- 8.35 As ORR will be aware, Network Rail considered that it was unable to sign the certificate in the form that is currently prescribed in LC4.30 as it contains an open ended statement (which is not time limited) requiring Network Rail to confirm that making the dividend will not impair Network Rail's ability to finance its permitted business. As a result we had to seek ORR's agreement to amend the prescribed form of wording as set out in the certificate, which in turn meant that ORR's consent was required in order to make the dividend payment.
- 8.36 However, if an acceptable form of wording of any compliance certificate can be agreed (as was the case earlier this year) and implemented into our licence, we do not understand why a further consent requirement (bolstered by the addition of a new element giving ORR discretion to require Network Rail to provide any further information that it may reasonably require) should be imposed on the process. The 'double-lock' requirement of certification and consent implies that even if a certificate were to be compliant, consent might still be withheld. However, neither criteria nor factors have been specified for ORR to consider when assessing whether to grant consent.

- 8.37 We suggest that the double-lock requirement is deleted as this seems to be unnecessary. However, if it is to be retained, either the basis for withholding consent should be spelt out, or the consent linked directly to the provision of a compliant certificate.
- 8.38 Within the specific drafting of the revised LC4 obligation, ORR has, at LC4.33(a)(ii), proposed a time limitation that making the dividend will not cause the licence holder to breach its obligations, as set out under LC4 and LC11 for the remainder of the control period or for the next three financial years (whichever is the longer). We do not consider that it is practically possible to confirm satisfaction to these extended timeframes. Thus, the drafting that has been proposed by ORR seems to be practically unworkable.
- 8.39 The directors of Network Rail are, like all directors of companies, under a duty to act in the best interests of the organisation. They have to act prudently and with due regard to the company's future revenue requirements and to the present and future solvency of Network Rail. This requirement does not have a fixed time horizon. It is not disputed that Network Rail's Board should consider the organisation's future financial position having regard to budget and business plans when deciding whether it is appropriate to propose a dividend. Provided that they act with reasonable care and diligence they should discharge their duties in this regard. However, it would be reasonable and customary for any certification in relation to such financial matters to have a fixed time horizon (and one that is reasonably foreseeable).
- 8.40 ORR's proposed regime for the approval of distributions goes beyond what a conventional public limited company would have to take into account, in particular the requirement to consider the effect of the distribution on Network Rail's position for the remainder of the relevant control period or for the next three full financial years (whichever is the longer). By way of comparison, in the water industry, it has been acceptable to Ofwat since at least 2003 for distributions to be conditioned on a 12 month forward looking basis.
- 8.41 The balance of a control period could be up to five years, and three years could straddle two control periods. In these circumstances, it would be impossible for Network Rail's Board to 'second-guess' a future regulatory settlement, and if this remained the relevant criterion, the Network Rail Board would be incapable of compliant certification, and therefore of making a distribution. This is not an acceptable position in that it would impose an obligation on the licence holder with which it would be impossible for it to comply. We consider this to be inappropriate.
- 8.42 In paragraph 8.33 of the consultation, ORR recognises the need to achieve a viable regime. We consider that twelve months from the date of declaration is more appropriate than ORR's current proposal as this provides a more reasonable indication of market expectation and would be consistent with conventional regulatory best practice. Twelve months is also consistent with the mandatory period for the statement of sufficiency of resources pursuant to LC11.6. It is also the period required for the statement required in prospectuses concerning the sufficiency of the issuer's working capital and for solvency declarations under the Companies Act 2006 for the reduction of capital of private companies without sanction of the court. Furthermore, we believe twelve months should be sufficient for ORR in the context of Network Rail's general obligations under Licence Condition 15.1.

- 8.43 In addition, as under the existing LC4, ORR proposes to retain the drafting in LC4.33(iii) that “*such payment of dividend or making of distribution, redemption or repurchase will **not** [emphasis added] impair the ability of the licence holder to finance the Permitted Business*”. As was highlighted to ORR earlier in the year, the directors of the licence holder are unable to sign a certificate that requires confirmation of satisfaction to such a high and open ended degree.
- 8.44 As ORR acknowledges “*the future could imply an indefinite period of time*” with respect to the effect of the distribution on the efficiency of Network Rail’s Permitted Business. Therefore, there is no obvious logic for retaining this indefinite reference period with respect to the effect of the distribution on Network Rail’s financing of such Permitted Business. Accordingly, we suggest the same twelve month reference period as outlined, above, should apply.
- 8.45 The current wording of LC4 stipulates that provided a recommended distribution is made within 6 months of the date of certification, no fresh certification is required at the point in time the distribution is actually made. The proposed new condition removes this provision without any obvious rationale. Therefore, we suggest the existing wording should be retained.
- 8.46 In the certificate that was issued to ORR in February 2013 concerning the Network Rail Holdco Limited dividend payment, we included an additional paragraph of text which confirmed that in approving the making of the dividend, the directors of the licence holder had regard to ORR’s duties as set out in the Railways Act 1993 and in particular ORR’s duty not to render it unduly difficult for persons who are holders of network licences to finance any activities or proposed activities of theirs in relation to which ORR has functions. The certificate also stated that the statement was made on the basis that the outcome of the current access charges review would not render it unduly difficult for the licence holder to carry on the activities authorised by its network licence. We believe that it may be appropriate for ORR to assess whether this form of wording would be more acceptable. However, we recognise that Network Rail cannot, in general terms, condition its compliance with its own obligations, upon compliance by third parties, with their statutory obligations. As such, this matter is likely to require more detailed consideration.

Payment of financial outperformance to the governments

- 8.47 At paragraphs 8.34 – 8.35 of its consultation, ORR outlines its belief that financial outperformance should be used to pay down debt or fund research and development before payments to governments are considered.
- 8.48 ORR had previously indicated that it intended to review the regulatory arrangements regarding the payment of financial outperformance to governments. We note that ORR is also proposing similar changes to the track access contract to make discretionary rebates to train operators possible only in exceptional circumstances after we have first considered using any financial outperformance to pay down debt or fund research and development.

- 8.49 As we have discussed in our response to the Draft Determination, we strongly disagree with ORR's proposal to restrict our use of financial outperformance solely to pay down debt or to fund research and development activities. It is not clear to us what problem ORR is seeking to solve with this proposal. We assume that the purpose would *not* be around financial sustainability since the adjusted WACC approach that ORR will apply in CP5 means that Network Rail is likely to want to use funds to reduce debt at least in the first instance, and regardless of this, it also has a strong incentive to avoid unnecessary increases in debt which is reinforced by the specific licence condition. In addition, we would only want to invest, rather than use funds to reduce debt, where it is efficient to do so and delivers value for users and taxpayers consistent with our stated purpose to "*generate outstanding value for customers and users*".
- 8.50 The proposal also appears to be inconsistent with incentive-based regulation and we are concerned that it would have unintended consequences. We strongly consider that the potential for outperformance and the ability of the company to have discretion in determining how best to use such outperformance is important. We are very concerned that by removing this, there will be less likelihood of such outperformance being created in the first place or indeed a greater chance of underperformance.
- 8.51 As highlighted at paragraph 3.9 of this response, we propose to publish an update of our policy for use of outperformance before the beginning of CP5. Given the changes in the financial framework for CP5 we might expect to focus outperformance primarily on reducing debt or longer term investment in R&D. However, we do not believe that other uses of outperformance should be excluded as a matter of principle by ORR at this stage and that it is inappropriate to constrain the use of any financial outperformance in this way.
- 8.52 By way of example, other areas where it could be appropriate to reinvest any financial outperformance include civils activity, additional expenditure at level crossings or the delivery of additional enhancements that fall outside those defined in the periodic review.
- 8.53 Consistent with our overall network stewardship obligation in LC1, we believe that it is for Network Rail to determine how best to reinvest any financial outperformance. ORR's proposed restriction on exactly how any outperformance must be used is disproportionate, particularly as ORR has not fully explained the rationale for its proposal.
- 8.54 Notwithstanding that it appears to be ORR's view that such payments should be limited to exceptional circumstances, the model track access contract currently entitles Network Rail (subject to the approval of ORR) to rebate charges to operators in circumstances where Network Rail has achieved efficiency savings. Given that the track access contract is Network Rail's key customer contract and constitutes ORR's approved instrument for contracting Network Rail's core business, it appears to provide an established and legally sound basis for payment of future efficiency rebates. To this extent, the existing contractual rebate mechanism appears adequate and the proposed new condition regarding payments direct to funders is unnecessary.

- 8.55 Separately, it is noted that the term "*funders*" in ORR's proposed LC4 drafting is not specified and could be misinterpreted given that "*funder*" is a defined term in Part II of the licence. For the avoidance of doubt and notwithstanding the comments raised above, we believe that the proposed drafting in LC4 should be reworked such that it is made clear that "*funders*", in this context, is referring to the Department for Transport and Transport Scotland.
- 8.56 In relation to the specific wording of the certificate that ORR has proposed, we would make the same point as raised above regarding dividend payments. We do not consider that it is practically possible to confirm satisfaction to the extended timeframes that the draft licence condition proposes. It is unlikely that Network Rail as licence holder could ever issue a certificate in the form that ORR's drafting requires. We consider, therefore, that a twelve month certification period should be used.

Licence Condition 5 (LC5) Interests in rolling stock and train operators

- 8.57 At paragraphs 8.36 – 8.41 ORR sets out its proposal to modify LC5 which concerns interests in rolling stock and train operators. ORR specifically outlines its proposal to introduce a general consent to allow Network Rail to enter into certain types of arrangements with other parties that would otherwise require specific ORR consent. We welcome ORR's proposals in this regard.
- 8.58 During the course of CP4 Network Rail has sought a number of consents from ORR to enable the hiring out of Network Rail owned railway vehicles in response to requests from third parties, where these vehicles were not required for a period of time, to carry out our Permitted Business activities. We agree that these arrangements do not raise vertical integration issues and do not affect Network Rail's core business and focus.
- 8.59 Due to the unpredictable nature of third party activities, these requests have often been received at short notice. As a consequence, we have frequently had to turn down such requests given the need to first secure ORR's prior consent even though we might have otherwise been able to satisfy these requests without detriment to our business activities.
- 8.60 In circumstances where we have sought ORR's specific consent, we agree that the administration relating to each application is burdensome and disproportionate. We have been working with ORR to develop the terms of an appropriate general consent which should enable a positive reduction in the overall burden of regulation.

Licence Condition 7 (LC7) Land disposal

- 8.61 At paragraphs 8.42 – 8.45 of its consultation, ORR sets out its proposed amendments to LC7, in particular the proposal to reduce the time that ORR is afforded to consider applications to dispose of land from three months to two months. We consider this to be a positive step for the disposal process and welcome ORR's proposal to make this change to our licence. We recognise that this reduction will mean that the onus will be on Network Rail to produce applications of an appropriate quality such that ORR can reach its conclusion in a shorter time period.

- 8.62 At paragraph 8.45 of its consultation, ORR states that it will discuss with Network Rail whether land potentially subject to a compulsory purchase order should be included within the general consent, rather than on the face of the licence. The existing provision covers disposals under the 'shadow' of an enactment where Network Rail does not agree the terms of a disposal but accepts the acquiring party would be able to obtain powers and would be prepared to use these if Network Rail did not dispose. Providing that an appropriate mechanism is included within the general consent which would not remove our ability to dispose of land in this instance, then we have no objections to this proposal.

Licence Condition 8 (LC8) Stakeholder relationships

- 8.63 At paragraph 8.46 of its consultation, ORR outlines some minor drafting changes reflecting updated references to industry stakeholders.
- 8.64 We agree with the proposal to change "PRC" references to "Passenger Focus" and "LTUC" references to "London TravelWatch". We also agree that the definitions in Part II of the licence should be changed accordingly.

Licence Condition 12 (LC12) Annual and periodic returns

- 8.65 At paragraphs 8.47 – 8.50 of its consultation, ORR proposes a number of amendments to LC12.
- 8.66 We note ORR's proposed redrafting of LC12.3(b) which would reduce the period in which ORR notifies Network Rail of its annual return requirements. The proposal to notify Network Rail of reporting requirements six months in advance of submission of the annual return is both problematic and impractical, as Network Rail could be asked to report on information six months into a relevant reporting year.
- 8.67 We note that any such request will always be subject to a test of 'reasonableness' but we believe that it would be more appropriate to retain the current LC12.3 which requires ORR, when it stipulates the inclusion of statistical and other data, to issue a notice on or before 31 December in the year which is two years before that in which the Annual Return is to be published, or such shorter period as may be agreed with Network Rail. This existing obligation gives Network Rail a more appropriate period of time to prepare for future information requirements. This is particularly important in circumstances where we are asked to collect and report on new requirements.
- 8.68 The new drafting that ORR has proposed for LC12.4 is welcome and addresses an existing anomaly. This year we were in a position to deliver the Annual Return in advance of the stipulated date of 1 July. However, to have published the Annual Return on the planned date of 1 August could have left us in technical breach, had we delivered the Annual Return earlier than 1 July (given the obligation to publish within one calendar month).
- 8.69 We note that ORR is proposing to retain the current drafting as set out at LC12.5. This requires Network Rail to publish the Annual Return within 'one calendar month of delivery to ORR subject to any modification (including deletions on the grounds of confidentiality) approved by ORR.'

- 8.70 We note that this obligation has never been applied and is unworkable, from a practical point of view. Historically, we have always delivered the Annual Return to ORR on 1 July and published it on 1 August. In the period between sending the Annual Return to ORR and its publication date, ORR has reviewed the submission and provided comments. Network Rail then addresses these comments (to the extent that it is reasonable to do so) and subsequently publishes the document. We then write to ORR to confirm the amendments that were made to the Annual Return in light of ORR's comments.
- 8.71 ORR's has never 'approved' changes in advance of publication. We, therefore, believe that the words: "*subject to any modification (including deletions on the grounds of confidentiality) approved by ORR*" should be deleted from LC12.5. It would be more appropriate to replace this with an obligation which requires Network Rail to publish the Annual Return within one calendar month of the return date having taken into account any comments raised by ORR (to the extent that it is reasonable to do so).

Licence Condition 15 (LC15) Corporate governance

- 8.72 At paragraphs 8.51 – 8.57 of its consultation ORR sets out some proposed changes to our existing corporate governance obligations. ORR proposes reformulating the condition so that it is clearer on what good corporate governance means for Network Rail, taking account of most recent developments in this field.
- 8.73 We note ORR's proposal to make explicit reference to compliance with the UK Corporate Governance Code and particularly the drafting that Network Rail must adhere to best practice in corporate governance arrangements so far as is reasonably practicable by "*complying with the relevant provisions and principles of the UK Corporate Governance Code*". There is, of course, a principles-based approach in the UK which gives companies the option to 'comply or explain' and we believe this should be reflected in our licence. We consider, therefore, that it would be appropriate to include the words "*or explaining in their next annual report why they have not done so*" at the end of the proposed wording of LC15.1(a).
- 8.74 We would also propose that the wording of LC15.1(c) is amended to read: "*publishing, or procuring the publication of, such relevant information...*", given that some of the rules of the Financial Conduct Authority are less relevant to Network Rail.
- 8.75 The Board of Directors of Network Rail recognises that there is value in having non-executive directors on its board who have substantial relevant experience of working in the railways. Such experience is extremely important in order to effectively hold the executive to account. However, we believe that it is unnecessary to impose a regulatory requirement which obliges the licence holder to ensure that it retains such experience, as even without such an obligation this is something that our board would want. We consider, therefore, this obligation to be superfluous.

- 8.76 Notwithstanding this point, in the situation where a relevant person ceases to be a director of Network Rail, we consider that ORR's proposal to remove the one month timescale for Network Rail to satisfy the requirement to have two non-executive directors with railway experience and replace with a 'reasonably practicable' requirement, is helpful.
- 8.77 We believe the drafting of the revised LC15.2 is extremely broad. The UK Corporate Governance Code is internationally recognised as 'best practice' from a governance perspective. We do not consider it appropriate, therefore, that ORR needs to specify that the licence holder complies with any other arrangements which provide "*at least equivalent standards of best practice corporate governance*". This would appear to suggest that ORR could impose more onerous controls than those required by the UK Corporate Governance Code. In the absence of any evidence as to why this additional regulatory control would be appropriate we propose that LC15.2(a) is deleted.

Licence Condition 17 (LC17) Financial information

- 8.78 At paragraph 8.58 of its consultation, ORR proposes to delete our existing LC17 obligation due to an overlap with our LC15 obligations and the listing rules of the Financial Conduct Authority.
- 8.79 We note that the UK Corporate Governance Code requires the publication of financial information and we agree that as there is explicit reference to the Code in LC15, then the requirement to publish the information contained in LC17 is a duplication of Network Rail's LC15 obligation.

Licence Condition 24 (LC24) Systems code

- 8.80 At paragraph 8.59 of its consultation, ORR proposes to delete LC24 which ceased to have effect on 30 September 2010. We agree with the removal of this condition.

Schedule: revocation

- 8.81 At paragraph 8.60 of its consultation ORR proposes to remove item 2 of the Schedule pertaining to revocation of the network licence which refers specifically to the Railways (Safety Case) Regulations 2000 which no longer apply.
- 8.82 We agree that the Railways and Other Guided Transport Systems (Safety) Regulations 2006 now provide an appropriate mechanism to remove Network Rail's safety authorisation in the event of a serious breach of safety and that the existing provision should be deleted.

ANNEX 1: PROPOSED MARK-UP TO NETWORK LICENCE

This annex sets out Network Rail's suggested changes to Network Rail's network licence. Our suggested changes are marked in **blue** against ORR's changes which are marked in **red**. These are set out below.

Part II – Interpretation

“**LTUC**” means the London Transport Users' Committee and any successor to ~~LTUC~~ **London TravelWatch** body which performs the same functions;

“**RPC**” means the ~~Rail~~ **Passenger** Passengers' Council and any successor or ~~delegated body~~ **Focus** which performs the **same** functions ~~of the RPC~~;

6A Any consent given by ORR under this licence shall be in writing and may be expressed in general or specific terms.

Part III Conditions

Long term planning

Planning

- 1.4 The licence holder shall plan the means by which it will comply with the general duty in condition 1.2 over the short, medium and long term to meet reasonably foreseeable future demand for railway services.
- 1.5 In complying with condition 1.4, the licence holder shall consult, and take into account the views of, persons providing services relating to railways and funders so as to facilitate effective industry-wide planning.
- 1.6 In complying with condition 1.4, the licence holder shall prepare and provide to ORR plans, strategies or other documents demonstrating its compliance and proposed compliance with the general duty in condition 1.2, including:
- (a) the delivery plan referred to in condition 1.10;
 - (b) those **associated with or arising from the** ~~route utilisation strategies~~ **long term plans (including Route Utilisation Strategies)** referred to in condition 1.14;
 - (c) other plans, strategies or documents that ORR may reasonably require from time to time; **and**
 - (d) revisions of the plans, strategies and other documents referred to in condition 1.6 (a) to (c) that ORR may reasonably require from time to time.
- 1.7 Each of the plans, strategies and other documents referred to in condition 1.6 shall demonstrate the position, as appropriate, on a network-wide basis and at a suitably disaggregated level of detail.
- 1.8 Each of the plans, strategies and other documents prepared in compliance with condition 1.6 shall be provided to ORR in respect of such period, in

such format and structure, to such standard and level of detail and in accordance with such requirements (including any requirements as to publication) as ORR may, from time to time, specify by notice or in guidelines to the licence holder.

- 1.9 Any notice or guidelines to the licence holder issued under condition 1.8 may include a procedure under which ORR may object to the contents of a plan, strategy or other document on grounds specified in the notice or guidelines.

Long term planning process ~~Route Utilisation Strategies~~

- 1.14 In complying with condition 1.4, the licence holder shall establish and maintain ~~route utilisation strategies~~ **long term plans** to promote the ~~route utilisation~~ **long term planning** objective in accordance with guidelines issued by ORR under condition 1.8.

- 1.15 The long term planning objective referred to at 1.14 means the effective and efficient use and development of the capacity available on the network, consistent with the funding that is, or may become, available during the period of the long term plans and with the licence.

- 1.156 The licence holder shall have due regard to the ~~route utilisation strategies~~ **long term plans** when carrying out its licensed activities.

- ~~1.16 Each route utilisation strategy shall be established:~~

~~(a) by such dates as are specified in a programme or programmes proposed by the licence holder and approved by ORR or any amendment to such dates which is approved by ORR;~~

~~(b) in accordance with:~~

- ~~(i) the policies and criteria referred to in condition 1.19(a); and
(ii) guidelines issued by ORR under condition 1.8.~~

- 1.17 The licence holder shall from time to time and when so directed by ORR review and, if necessary, amend ~~each route utilisation strategy~~ **each long term plan** to ensure that it

(a) continues to promote the ~~route utilisation~~ **long term planning** objective.
and

~~(b) remains in accordance with the policies and criteria referred to in condition 1.19(a).~~

~~The provisions of condition 1.16 in relation to the establishment of a route utilisation strategy shall apply equally to the amendment of a route utilisation strategy under this condition 1.17.~~

~~Interpretation~~

- ~~1.24....“route utilisation objective” means the effective and efficient use and development of the capacity available on the network, consistent with the funding that is, or is likely to become, available during the period of the route utilisation strategy and with the licence holder’s performance of the duty in condition 1.2;~~

Proposed changes to the guidelines

ORR also proposes to make the following changes to the current RUS guidelines¹ alongside the licence changes:

1. Change title to 'ORR guidelines on the Long term planning process'.
2. Throughout changes 'Route Utilisation Strategies and RUSs' to 'Long Term Plans and LTPs'. Change Route Utilisation Objective to Long Term Planning Objective.
3. At footnote 3 change date to April 2011 and add link <http://www.dft.gov.uk/webtag>.
4. At footnote 6 change 'Stakeholder Management Groups' to 'Working Groups'.
5. At footnote 7 update and amend the reference to the directive to European legislation - footnote Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (recast).
6. At paragraph 26 delete 'for the purposes of the obligation under condition 1.16 of the network licence.

3 Financial indebtedness

3.1 Except with the written consent of ORR, the licence holder shall use reasonable endeavours to ensure that at any time the ~~total~~ amount of financial indebtedness of:

- (a) the licence holder; ~~any subsidiaries of the licence holder,~~
- (b) Network Rail Infrastructure Finance; and
- (c) any subsidiaries of ~~the licence holder~~ or Network Rail Infrastructure Finance

~~shall~~ **does** not exceed the limits ~~applicable at that time that are shown set out~~ in table 3.1. ~~which~~ **These limits** are determined by dividing ~~that the total~~ financial indebtedness ~~of the companies in (a)-(c) above for the relevant area~~ by the Value of the RAB ~~for the relevant area~~ at that time.

¹ <http://www.rail-reg.gov.uk/upload/pdf/rus-guidelines-apr09.pdf>

Table 3.1: Limits to the level of financial indebtedness expressed as a percentage of the Value of the RAB ~~for England & Wales and for Scotland~~

Financial year	Limit	
	England and Wales Limit	Scotland
2009-10 14-15	70.0% [70-75%] ²	[70-75%]
2010-11 15-16	70.0% [70-75%]	[70-75%]
2011-12 16-17	72.5% [70-75%]	[70-75%]
2012-13 17-18	75.0% [70-75%]	[70-75%]
2013-14 18-19 and each subsequent year unless ORR determines a different limit following consultation with the licence holder	75.0% [70-75%]	[70-75%]

3.2 If at any time the total aggregate amount of financial indebtedness of the licence holder, any subsidiaries of the licence holder, Network Rail Infrastructure Finance and any subsidiaries of Network Rail Infrastructure Finance exceeds the limits set out in condition 3.1 applicable to that area in that financial year the licence holder shall, within such time periods as ORR may notify as being appropriate in the circumstances:

- (a) provide to ORR details of the steps it intends to take to reduce the amount to those limits or below;
- (b) take those steps; and
- (c) provide to ORR evidence that it has taken those steps.

3.3 The licence holder shall:

- (a) provide, from time to time as requested by ORR and in any event every year in the regulatory financial statements the licence holder prepares pursuant to condition 11, confirmation that, in respect of the financial year to which the statements relate, it has complied, and, in respect of the following financial year, it is not aware of any circumstances which will prevent it complying and it is likely to comply, with condition 3.1 and (where applicable) condition 3.2 and, if so requested by ORR, evidence in support of that confirmation; and
- (b) notify ORR immediately in writing if at any time the licence holder becomes aware of any circumstance that means it is no longer complying, or that causes it no longer to have the reasonable expectation that it is likely to comply, with condition 3.1 and (where applicable) condition 3.2.

3.4 The licence holder shall pay to the Secretary of State, at least annually, a fee in respect of the state financial indemnity.

² Exact numbers in these tables to be confirmed in the final determination.

3.5 In this condition:

“fee” means the amount equal to ~~0.8~~ 1.10 per cent (on an annual basis) of the daily outstanding amount of financial indebtedness incurred by Network Rail Infrastructure Finance and which is supported by the state financial indemnity;

“Network Rail Infrastructure Finance”

has the meaning given to it by condition 4.33~~39~~

(the other definitions in 3.5 are unchanged)

4 Financial ring-fence

Payment of dividends

4.29 The directors of the licence holder shall not, ~~without ORR’s consent,~~ declare or recommend a dividend **unless the conditions in condition 4.31 have been met.**

4.30 ~~and~~ The licence holder shall not:

- (a) make any other form of distribution, within the meaning of sections 829, 830, 849 or 850 of the Companies Act 2006; **or**
- (b) ~~or~~ redeem or repurchase any share capital of the licence holder ~~unless prior to the declaration, recommendation or making of the distribution, redemption or repurchase (as the case may be) the licence holder shall have issued to ORR a certificate complying with the following requirements in conditions 4.30 and 4.31.~~

unless the conditions in condition 4.31 have been met.

Conditions for the payment of dividends, distributions, redemptions and repurchases

~~4.30 The certificate shall be in the following form:~~

4.31 The conditions referred to in conditions 4.29 and 4.30 are:

- (a) The licence holder has issued to ORR a certificate in the form specified at condition 4.33 concerning the proposed dividend, distribution, redemption or repurchase; and
- (b) ORR has consented in writing to the dividend, distribution, redemption or repurchase no more than 6 months prior to it being recommended, declared, or made.

~~4.32 The licence holder shall provide to ORR any information it reasonably requires in order to decide whether to consent to the payment of a dividend or making of a distribution, redemption or repurchase for the purposes of condition 4.31(b).~~

4.32 A certificate issued under condition 4.31(a) shall:

- (a) be in the following form:

“After making enquiries, the directors of the licence holder ~~are satisfied~~ **have a reasonable expectation**:

- (i) that the licence holder is ~~in compliance~~ **complying** in all material respects with all obligations imposed on it by ~~this~~ **condition 4 and condition 11** of its network licence;
- (ii) that the payment of a dividend or making of a distribution, redemption or repurchase of [] on [] will not, either alone or when taken together with other circumstances reasonably foreseeable at the date of this certificate, cause the licence holder to be in breach to a material extent of any of these obligations ~~in the future~~ **for the remainder of the current control period or for the next three full financial years (whichever is the longer)** during the next 12 months; and
- (iii) that such payment of dividend or making of distribution, redemption or repurchase will not ~~either alone or when taken together with other circumstances reasonably foreseeable at the end date of this certificate~~ **impair the ability of the licence holder to finance the Permitted Business and to the intent that in making such statement the directors of the licence holder have made specific enquiries regarding, and taken into account the following:**
 - (1) the requirements of the Companies Act 2006 relating to distributions
 - (2) the existence of distributable profits, as determined by reference to the licence holder’s most recent financial statements delivered in accordance with condition 11 of the licence holder’s licence
 - (3) the availability and sufficiency of funds required for the relevant dividend, distribution, redemption or repurchase.”

- (b) ~~4.31 The certificate shall be signed by a director of the licence holder and approved by a resolution of the board of directors of the licence holder passed not more than 14 days before of declaration of the relevant dividend or the date on which the consent of ORR to the declaration, recommendation or payment will be made under condition 4.31 is requested in writing~~ **relevant repurchase of Shares is made.**

4.33 Where the certificate required by condition 4.29 has been issued in respect of the declaration or recommendation of a dividend or the making of a distribution, redemption or repurchase, the licence holder shall be under no obligation to issue a further certificate prior to payment of that dividend or the making of that distribution, redemption or repurchase provided such payment, distribution, redemption or repurchase is made within six months of the issuing of that certificate.

Relevant payments to funders

~~4.34 For the purposes of this condition a payment to a funder is a relevant payment unless it is a payment made in the ordinary course of business or in order to comply with a legal obligation.~~

Outperformance payments to the Secretary of State for Transport and Transport Scotland

4.34 The licence holder shall not make a relevant an outperformance payment to the Secretary of State for Transport or Transport Scotland unless the conditions in condition 4.36 have 4.34 has been met.

Conditions Condition for relevant outperformance payments

4.35 The conditions condition referred to in condition 4.35 are: (a) The 4.33 is that the licence holder has issued to ORR a certificate in the form specified at condition 4.38 4.35 concerning the relevant outperformance payment; and.

(b) ORR has consented in writing to the relevant payment no more than 6 months prior to it being made.

4.37 The licence holder shall provide to ORR any information it reasonably requires in order to decide whether to consent to a payment for the purposes of condition 4.36(b).

4.36 A certificate issued under condition 4.36 4.34(a) shall:

(a) be in the following form:

“Having had regard to:

(i) the licence holder’s obligations under condition 4 and condition 11 of this licence and any contracts to which it is a party;

(ii) the extent to which its efficiency and economy in discharging the obligations referred to in condition 4.38 4.35(a)(i) exceeds any assumptions which ORR made in its most recent access charges review;

(iii) the licence holder’s current and foreseeable future financial position for the next 12 months including whether it would be more appropriate to use any available financial resources retain some or all of any funds that would otherwise have become available to make an outperformance payment for use in any part of the licence holder’s Permitted Business (in such proportions as the licence holder sees fit), including without limitation, to repay any financial indebtedness of the licence holder and/or fund research and development expenditure up to the value specified in the final determinations of the 2013 access charges review rather than to make a relevant an outperformance payment; and

(iv) [the need for long term investment in the network;] [as identified in the most recent access charges review];

the directors of the licence holder are satisfied have a reasonable expectation that the making of a relevant an outperformance payment will not impair the ability of the licence holder to finance the Permitted Business for the remainder of the current control period or the next three financial years (whichever is the longer) next 12 months.

(b) be signed by a director of the licence holder and approved by a resolution of the board of directors of the licence holder passed not

~~the relevant outperformance payment under condition 4.36(b) is requested in writing will be made.~~

4.37

“ an outperformance payment” means []

“current control period” means the period in respect of which the conclusions of ORR’s most recent access charges review have been implemented.

.....

“access charges review” has the meaning ascribed to it under schedule 4A of the Act.

5 ~~Interests in rolling stock and train operators~~ railway vehicles

5.1 ~~Subject to condition 5.2, t~~The licence holder shall not, ~~except in so far as ORR may otherwise consent,~~ be directly or indirectly interested in the ownership or operation of any railway vehicle in Great Britain.

5.2 For the purposes of condition 5.1 the licence holder is “directly interested” in the ownership or operation of railway vehicles where the licence holder:

(a) has any legal or beneficial interest in any railway vehicle (in whole or in part); or

(b) has the right to manage the affairs of another person who has any such interest in, or operates, any railway vehicle.

5.3 For the purposes of condition 5.1 the licence holder is “indirectly interested” in the ownership or operation of any railway vehicle which is operated by any of its affiliates or in which the licence holder or any of its affiliates has any legal or beneficial interest (in whole or in part).

5.24 Condition 5.1 shall not apply in respect of any railway vehicle where:

(a) it is used wholly or mainly for any such the purposes as is mentioned in sub-paragraph 1(b) or (c) set out in paragraph 1 of Part 1 of the (Scope) of this licence; or

(b) it formsing part of the Royal Train; or

(c) ORR has consented to the licence holder having an interest in the ownership or operation of that railway vehicle.

~~5.3 The licence holder shall, without limitation to the generality of condition 5.1, be regarded as directly interested in the ownership or operation of railway vehicles where the licence holder:~~

~~(a) has any legal or beneficial interest in any railway vehicle (in whole or in part); or~~

~~(b) has the right to manage the affairs of another person who has any such interest in, or operates, any railway vehicle.~~

~~5.4 The licence holder shall, without prejudice to the generality of condition 5.1, be regarded as indirectly interested in the ownership or operation of any railway vehicle which is operated by any of its affiliates or in which the licence holder or any of its affiliates has any legal or beneficial interest (in whole or in part).~~

7 Land disposal

~~7.1 The licence holder shall not dispose of any land otherwise than in accordance with the following paragraphs of this condition-7.~~

7.2 The licence holder may dispose of any land where:

- (a) ORR consents to such disposal; or
- (b) the disposal is required by or under any enactment.

7.3 Where the licence holder seeks ORR's consent it must give a minimum of 2 months' prior written notice specifying the land disposal it intends to make (the notice). A notice under this condition shall be in such form and contain such particulars as ORR specifies.

7.4 Having given such notice, the licence holder shall provide further information as ORR may require.

7.5 Unless otherwise agreed between ORR and the licence holder, if ORR does not inform the licence holder of a consent or refusal of consent within the time specified in the notice, the licence holder will be deemed to have consent and may dispose of land in accordance with the notice.

7.6 If ORR refuses consent to the disposal of land specified in the notice, the licence holder will be informed of any entitlement to appropriate compensation for the loss of value (if any) as a result of not being able to make such disposal.

~~7.2 Save as provided in condition 7.3, the licence holder shall give to ORR not less than 3 months' prior written notice of its intention to dispose of any land. Having given such notice, the licence holder shall supply such further information as ORR may require relating to such land or the circumstances of such intended disposal or where such a disposal to a specific person is in contemplation the known relevant intentions of the person proposing to acquire such land. The licence holder shall supply the required information within seven days of the requirement being made, or such further time as allowed by ORR.~~

~~7.3 Notwithstanding conditions 7.1 and 7.2, the licence holder may dispose of any land:~~

- ~~(a) where:~~

~~(i) — ORR has issued directions for the purposes of this condition containing a general consent (whether or not subject to conditions) to:~~

~~(aa) — transactions of a specified description; and/or~~

~~(bb) — the disposal of land specified in the directions as excluded land;~~

~~and~~

~~which specifies the intervals at which the general consent can be reviewed; and~~

~~(ii) — the disposal of the land in question is effected pursuant to a transaction of a description specified in any directions given under condition 7.3(a)(i) or the land in question is specified in those directions as excluded land and the disposal is in accordance with any conditions to which the general consent under condition 7.3(a)(i) is subject; or~~

~~(b) — where the disposal in question is required by or under an enactment and for these purposes a disposal shall be treated as being under an enactment if:~~

~~(i) — the licence holder agrees to the terms of a disposal which would otherwise be required under an enactment; or~~

~~(ii) — the disposal would have been under an enactment had the acquiring party taken all the steps which were open for it to take providing that the acquiring party has acted with reasonable expedition and diligence.~~

~~7.4 — Notwithstanding condition 7.1, the licence holder may dispose of any land specified in a notice given under condition 7.2 in circumstances where:~~

~~(a) — ORR confirms in writing that it consents to such disposal (which consent may be made subject to the acceptance by the licence holder of such conditions relating to railway use, network business or the carrying out of licensed activities as ORR may specify and the licence holder shall ensure that any such disposal shall be subject to those conditions); or~~

~~(b) — ORR has not, within the notice period referred to in condition 7.2, issued a direction for the purpose of this condition 7 requiring the licence holder not to proceed with such disposal and notifying the licence holder that it is entitled to be compensated appropriately for the loss of value (if any) as a result of ORR issuing a direction under this condition 7.4(b).~~

7.57 In this condition:

“disposal” includes any sale, assignment, gift, lease, licence, the grant of any right of possession, loan, security, mortgage, charge or the grant of any other encumbrance or knowingly permitting any

encumbrance to subsist (other than an encumbrance subsisting on the date when the land was acquired by the licence holder or on 15 November 2001) or any other disposition to a third party, and “dispose” shall be construed accordingly;

~~“excluded land” means any land which is specified as such in directions issued under condition 7.3;~~

“land” includes buildings and other structures, land covered by water, and any estate, interest, easements, servitudes or rights in or over land.

8 Stakeholder relationships

Cooperation with passenger representatives

Whenever reasonably requested to do so by **Passenger Focus** ~~the RPG and LTUG or London TravelWatch~~ (as relevant) in connection with its licensed activities, the licence holder shall cooperate with **Passenger Focus** ~~the RPG and LTUG London TravelWatch~~ (as relevant) in respect of the proper performance of their respective statutory functions, including the provision of relevant information held by the licence holder.

Interpretation

8.1 In this condition:

.....

- (f) **RPG Passenger Focus** and **LTUG London TravelWatch** in respect of their respective statutory functions.

12 Annual and periodic returns

Annual returns

12.1 The licence holder shall prepare and provide to ORR an annual return by ~~4 July each year (or a later date approved by ORR)~~ **a specified return date each year**. ~~The annual return shall be prepared in such format and structure, to such standard and level of detail and in accordance with such requirements as ORR shall specify by notice to the licence holder.~~

12.2 ~~No notice of ORR under condition 12.1 shall be effective unless:~~

- ~~(a) it is given on or before 31 December in the year before that in which the annual return is to be published; and~~
- ~~(b) ORR has consulted the licence holder before 31 October in the year before that in which the annual return is to be published and has taken into consideration any representations duly made.~~

The annual return must comply with the requirements set out by ORR following consultation with the licence holder, including:

- (a) as to its form and content; and
- (b) the dates to which the annual return relates.

12.3 The specified return date must be a date:

- (a) not less than 3 months after the last day to which the annual return relates; and
- (b) at least 6 months after the date on which ORR notifies the licence holder of the annual return requirements unless the licence holder otherwise agrees.

12.4 To the extent that a notice of ORR under condition 12.1 requires the inclusion of statistical and other data, the notice shall not be effective unless it is given on or before 31 December in the year which is two years before that in which the annual return is to be provided, or such shorter period as may be agreed with the licence holder.

~~12.4 If ORR has not given an effective notice under condition 12.1 in respect of any year, the notice last given under that condition shall apply to that year.~~

12.5 If, in any year, ORR has not consulted upon the annual return requirements or specified a return date in accordance with conditions 12.2 and 12.3, the licence holder shall prepare and provide an annual return for that particular year by the day and month previously specified in accordance with condition 12.3 and on the basis of the annual return requirements relevant to that specified return date.

12.6 Within one calendar month of ~~delivery to ORR~~ the return date, ~~subject to any modification (including deletions on the grounds of confidentiality) approved by ORR,~~ having taken into account any comments raised by ORR (to the extent that it is reasonable to do so) the licence holder shall publish the annual return, except to the extent that ORR is satisfied that the information would or might seriously and prejudicially affect the interests of the licence holder or any other person and has so notified the licence holder.

.....

15 Governance

15.1 The licence holder must adhere to best practice corporate governance arrangements, so far as is reasonably practicable, by:

- (a) complying with the relevant provisions and principles of the UK Corporate Governance Code or explaining in their next annual report why they have not done so;

- (b) maintaining a board of directors with an appropriate balance of skills, experience, independence and knowledge, where at least two non-executive directors have substantial experience of working in the rail industry; and
- (c) publishing, or procuring the publication of, such relevant information as is required by the rules of the Financial Conduct Authority of a company whose ordinary shares are for the time being admitted to the Official List of the UK Listing Authority.

15.2 ORR may ~~consent to, or specify that the licence holder complies with, any other arrangements which:~~

- ~~(a) provide at least equivalent standards of best practice corporate governance;~~
- ~~or (b) relieve the licence holder of its obligations under any part of condition 15.1 to such extent, for such period of time, and subject to such conditions as may be specified in the consent or specification.~~

15.3 In this condition:

“the UK Corporate Governance Code” means the code published by the Financial Reporting Council in September 2012, or any successor document having a similar purpose and content;

and

“rules of the Financial Conduct Authority” means the rules made by or under Part VI of Financial Services and Markets Act 2000 and contained in the Financial Conduct Authority Handbook, or equivalent rules of any successor body.

20 Insurance

20.1 The licence holder shall, in respect of licensed activities, maintain insurance against third party liabilities in accordance with any relevant ORR ~~general or specific approval consent, as amended from time to time.~~

ANNEX 2: SECTION A - DRAFTING COMMENTS ON ORR'S PROPOSED AMENDMENTS TO THE TRACK ACCESS CONTRACTS

Section A of this annex sets out Network Rail's detailed comments and suggested changes to ORR's proposed drafting for Schedules 4, 7 and 8 of the track access contracts and the Traction Electricity Rules. Where we have proposed amendments to a section of text, proposed deletions are shown struck-out and proposed additions are shown double underlined. Section B sets out our suggested mark-ups to specific aspects of terminology relating to the traction electricity charge provisions in Schedule 7 of the freight and passenger track access contracts.

Schedule 4

Changes to Restrictions of Use

- Paragraph 2.6(c) (franchised passenger contracts): We do not think it is correct that the cross-reference to paragraph 3 should be changed to a cross-reference to paragraph 4. In the circumstances described in this clause, calculation of payments under paragraph 3 remains relevant.
- Paragraph 2.9 of Part 3 (franchised passenger contracts): As explained in paragraph 5.10 of this response, we consider that further clarification is required as to the costs which a train operator may recover in the event of the cancellation of a Type 1 possession. Our proposed drafting amendments are set out, below:

“(d) Where:

- the notice served by the Train Operator under paragraph 2.9(c) is in respect of a cancellation of a Type 1 Restriction of Use that was notified to the Train Operator less than 12 weeks before the date on which that Type 1 Restriction of Use was scheduled to occur; and*
- the costs to which the Train Operator is committed or which it has already incurred prior to the cancellation of the Type 1 Restriction of Use and any costs associated with responding to that cancellation, amount to £5000 or more,*

the Train Operator shall be entitled to recover those costs, - provided that such costs are reasonable and were properly committed or incurred in the circumstances. For the purposes of this paragraph 2.9(d), references to “costs” shall mean those categories of costs described in the definition of “RoU Direct Costs” (save that references in that definition to “Type 2 Restriction of Use” shall be deemed to refer to “Type 1 Restriction of Use”.)

Dispute Resolution

- Paragraph 10 of Part 3 (Open Access contracts): The cross-reference to paragraph 2.7(c) should be deleted as there is no such paragraph.

Schedule 7

New or amended charges (supplements)

- Paragraph 2.2.3 (freight contracts) / paragraph 9.1 of Part 2 (passenger contracts): The drafting should be amended to clarify that the Train Operator shall inform Network Rail “*in writing*” of the date or likely date from which it intends to use the new equipment.
- Paragraphs 2.2.5 - 2.2.7 (freight contracts): Network Rail’s obligation to calculate the Supplement Rate (in paragraph 2.2.6) and the time period for the parties to agree the Supplement Rate (in paragraph 2.2.7) should only trigger once the Train Operator has provided the relevant information to enable Network Rail to calculate and propose the Supplement Rate. Under the proposed drafting, these obligations are triggered by the giving of a notice under paragraphs 2.2.5(a) or (b), which can happen before Network Rail has all the information it needs to calculate the rate. We suggest that the drafting in paragraph 2.2 is amended accordingly.
- Paragraph 2.2.5(b)(i) (freight contracts): Network Rail’s obligation to provide “*all information*” on which it based the calculation of the Supplement Rate should be subject to a materiality threshold. We suggest this is amended to say “*all material information*”.
- Timescale for agreeing a supplement: As explained in paragraph 2.26 of the main body of this response, we consider that, in the case of both passenger and freight contracts, 45 days is an adequate time period for the parties to agree a supplement, provided that this period runs from the date on which Network Rail has been provided with all the information it needs to calculate and propose a supplement. We propose that appropriate amendments are made to both the passenger and freight contracts to reflect this.

Traction Electricity Charge

- Paragraph 2.1.1 (freight contracts): The references to “ $S1_{tw}$ ” and “ $S2_{tw}$ ” are incorrect here as these supplementary amounts are calculated at the end of each year and in respect of the whole year rather than in respect of each Charging Period. We suggest that the payment and invoicing provisions for these supplementary amounts are dealt with separately, as they are in the passenger contracts.
- Definition of “*tariff band*”: We suggest that the defined term is changed to “*tariff band j*”, because “*j*” is used to denote the tariff band in the formulae for the calculation of the traction electricity charge.
- Paragraph 2.4.1.2 (freight contracts): Regenerative braking discounts are not stated to be taken into account in the calculation of “ C_i ” in the freight contracts. Although no freight operators currently receive this discount, we suggest this is referred to in the definition of “ C_i ” in the freight contracts, to

- Paragraph 2.4.1.2 (freight contracts): The term “*Vehicle Miles*” has been used in place of “*Train Miles*” in the definition of “ UE_{igt} ” in the modelled consumption formula, but there is no definition of Vehicle Miles. The drafting should be amended to include an appropriate definition.
- Reference to “*train category i*”: the term “*train category i*” is used in various sections of the legal drafting relating to EC4T, however, it is not clearly defined. We suggest that a new term “*metered train m*” is included to reflect that metered consumption should be provided for each metered train, and that this new term is used in the metered EC4T charges drafting. Modelled EC4T consumption rates are set out for each vehicle type operating on a particular service code (or a particular service group for freight operators), therefore we have clarified the definition for “*train category i*”, to reflect this. We have marked-up ORR’s proposed versions of Schedule 7 of the passenger and freight track access contracts, and the Traction Electricity Rules, to reflect these suggested changes. These mark-ups are set out in [Annex 2 \(Section B\)](#).

Incremental Costs (freight contracts)

- Paragraph 2.8: As explained in paragraph 2.23 of this response, we propose that the references to operating constraints as at “1 April 2001” are updated to “1 April 2014.”

Capacity Charge (passenger contracts)

- Paragraph 6 of Part 2: in respect of the formula for the calculation of the Capacity Charge:
 - a) The definition of “*Service Coded Group*” should be re-instated (franchised operator and Scotrail contracts) or included (open access contracts), because the term is used in defining the term Pg_{twd} .
 - b) The term “*i*” has been introduced to denote “*Service Coded Group*”, in place of “*g*”. We assume this is to prevent any confusion between the use of “*g*” here and elsewhere in Schedule 7, where it means “*geographic area*”. However, we do not think that “*i*” is appropriate here, because “*i*” is used in other places in Schedule 7 (e.g. in the formula for the calculation of Traction Electricity Charges), where it has a different meaning. We suggest a different term such as “*sc*” or “*scg*” would be more appropriate.

Route-Level Efficiency Benefit Share

- Definition of “Alliance Agreement”: As explained in paragraph 4.10 of the main body of this response, we propose that this definition should be replaced with the following and that all references to “Alliance Agreement” be replaced by references to “Material Alliance Agreement”:

“Material Alliance Agreement” means a legally binding agreement between Network Rail and one or more train operators establishing an alliance under which the parties agree to share risk and / or reward in respect of activities on a part of the Network and which is likely to have a material direct financial impact on one or more elements of Network Rail’s costs or income included within a Route Baseline.”

- Definition of “Route-Level Efficiency Benefit Share”: The definition is not always hyphenated when used in the drafting (see e.g. definition of “Route Level Efficiency Benefit Share Mechanism” and paragraph 4.1 of the freight contracts). We suggest this is updated throughout for consistency.
- Definition of “Route-Level Efficiency Benefit Share Mechanism” (passenger contracts): The cross-reference should be to paragraph 1 of Part 3, rather than paragraph 1.3 of Part 3.

Calculation of the Route-Level Efficiency Benefit Share

- Paragraph 4.1 (freight contracts) / paragraph 1 of Part 3 (passenger contracts): We propose the following drafting amendments:
 - a) We suggest that “ O_t ” and “ U_t ” are defined as payments in respect of REBS Outperformance and REBS Underperformance respectively, as this more accurately describes the nature of the payment, which is made in respect of outperformance or underperformance on a route. Please see suggested amendments marked-up below (the mark-up of the defined term “ U_t ” also corrects a minor typographical error:

“ O_t means the amount that is payable by Network Rail to the Train Operator in respect of the REBS Outperformance Route in Relevant Year t ,”

“ U_t means the amount that is payable ~~or~~ by the Train Operator to Network Rail in respect of the REBS Underperformance Route in Relevant Year t ; and”
 - b) The calculations of “ V_{ct} ” and “ AV_{ct} ” should be based on amounts payable rather than amounts paid. We suggest deleting the word “paid” from both these definitions.
- Paragraph 4.2 (freight contracts) / paragraph 1.2 of Part 3 (passenger contracts): We suggest that the drafting is amended to clarify that, where a Train Operator has opted-out, the Route-Level Efficiency Benefit Share shall not be payable by or to the Train Operator in respect of that REBS Route, as other operators may receive a REBS payment in respect of that REBS Route. We propose the following marked-up drafting amendment:

“The Route-Level Efficiency Benefit Share (if any) calculated under paragraph 1.1 shall be payable for each REBS Route for Relevant Year t, unless the Train Operator has exercised a right to opt out in respect of a particular REBS Route in accordance with paragraph 1.3 or 1.4. Where the Train Operator has exercised such a right, no Route-Level Efficiency Benefit Share shall be payable by or to the Train Operator, in respect of that REBS Route for the Relevant Year in the course of which the notice referred to in paragraph 1.3 was served and all subsequent Relevant Years up to 31 March 2019.”

- Paragraph 4.6 (freight contracts) / paragraph 1.6 of Part 3 (passenger contracts): The reference to “Train operator” should be to “Train Operator”.

Obligation to pay the Route-Level Efficiency Benefit Share

- Paragraph 4.7 (freight contracts) / paragraph 1.7 of Part 3 (passenger contracts): As explained in paragraph 4.16 of the main body of this response, we consider that the obligation to make payment within 28 days after the publication of ORR’s annual efficiency and finance assessment of Network Rail should be amended to “*within 2 months*” or, (at the very minimum) “*within 28 days after the end of the [Charging] Period in which it is determined by the ORR that such payment should be made*”.

Schedule 8

- Paragraph 10.1.5(a) (freight customer specific contracts): Sub-clause (v) should be re-numbered as (iv).
- Paragraph 10.1.9 (freight customer specific contract): Reference to “*expert relevant ADRR Forum*” should be to “*a relevant ADRR Forum*”.
- Paragraph 10.2.2 (c) (freight customer specific contract): We suggest the phrase “*in respect of year t+1*” is inserted following Network Rail Cap and/or Train Operator Cap.
- Paragraph 17.2(h) (passenger contracts): We suggest that the word “*agreed*” is deleted from this sub-paragraph as this provision can also apply where the amendments are determined in accordance with the ADRR, rather than agreed. The amendments can also be determined by ORR (as referred to in paragraph 17.2(i)), so we suggest that this sub-paragraph is amended as follows:
 - “(h) Subject to paragraph 17.2(i), Any any ~~agreed~~ amendment to Appendix 1 in connection with the proposal referred to in paragraph 17.1 which is approved by ORR under section 22 of the Act shall apply with effect from either:
 - (i) *the relevant Principal Change Date or Subsidiary Change Date (where paragraph 17.2(a)(i) applies); or*
 - (ii) *the date proposed ~~agreed~~ by the ~~parties~~ party requesting the change (where in accordance with paragraph 17.2(a)(ii) applies). ~~(unless otherwise agreed by the parties or determined by the relevant ADRR Forum in accordance with paragraph 17.2(f)).~~”*

Traction Electricity Rules

- Paragraph 1.1 (Definition of “Regenerative Braking Audit”): This should also refer to an audit of another train operator’s regenerative braking system, which the Train Operator can request Network Rail to carry out under paragraph 9.20. Currently the definition only refers to an audit of the Train Operator’s own system.
- Paragraph 8.1 - Regenerative braking discount: As explained in the main body of the response, this should be amended so that it is limited to Modelled Train Operators.
- Paragraph 18.2 – Volume reconciliation: as explained in paragraph 2.31 of the main body of this response ORR has proposed that the volume wash-up drafting is changed so that Network Rail would be allocated a share of the volume wash-up to reflect “*its ability to manage transmission losses*”. The $(\lambda_g \times A_{gt})$ portion of the volume wash-up formula reflects the ‘share’ of the wash-up discrepancy that is to be retained by Network Rail. The value associated with the ‘ λ_g ’ term, is set out in Appendix 3 to the TERs. Appendix 3 sets out the DSLFs which are expressed as a mark-up i.e. these values are used to uplift metered consumption to recover the estimated transmission losses associated with that consumption. It is our understanding that ORR’s intention was to expose Network Rail to the proportion of the total consumption, in each ESTA, that is associated with transmission losses (this is discussed in paragraph 16.185 of ORR’s Draft Determination), with the corresponding values set out in Table 16.25 of ORR’s Draft Determination. We would suggest that instead of the term ‘ λ_g ’ the formula could refer to a new term which uses values from a new table which is consistent with Table 16.25 (of the Draft Determination).
- On a related point, and as explained in paragraph 2.32 of the main body of the response, this change to the volume wash-up is likely to require a corresponding adjustment in the cost wash-up provisions so that the costs associated with this ‘unallocated’ consumption are not passed through to other operators. We are discussing this issue with ORR separately.

Consequential changes proposed to the contracts

We are content with ORR’s proposed consequential changes.

**ANNEX 2: SECTION B - IMPLEMENTING PR13:
NETWORK RAIL MARK-UPS TO SCHEDULE 7
(FRANCHISED PASSENGER AND FREIGHT)
AND THE TRACTION ELECTRICITY RULES**

ANNEX 2: SECTION B1

IMPLEMENTING PR13: NETWORK RAIL MARK-UP TO SCHEDULE 7 (FRANCHISED PASSENGER)

SCHEDULE 7: TRACK CHARGES

PART 1: INTERPRETATION

1 Definitions

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

“2008 Final Determinations”	means the document entitled “Periodic Review 2008: Determination of Network Rail’s outputs and funding for 2009-14” and published by ORR on 30 October 2008;
“2013 Final Determinations”	means the document entitled [“Periodic Review 2013: Determination of Network Rail’s outputs and funding for 2014-19”] and published by ORR on ● 2013;
“access charges review”	has the meaning ascribed to it by Schedule 4A to the Act;
“AC System”	means the alternating current system of electricity traction supply on the Network;
“Alliance Agreement”	means an agreement between Network Rail and one or more train operators establishing an alliance in which those parties work jointly to carry out or otherwise share the risk of activities on a part of the Network;
“Aggregate Fixed Charges”	means, in any Relevant Year t , the sum of the values of F_t under paragraph 1 of Part 2 and the corresponding provisions of each other relevant access agreement;
“Basic Value”	has the meaning ascribed to it in paragraph 1.1(a) of Part 3A;
“Capacity Charge”	means a variable charge, calculated in accordance with paragraph 6 of Part 2;
“DC System”	means the direct current system of electricity traction supply on the Network;
“Deed of Grant”	means the Deed of Grant made on or about 20 December 2013 between the Secretary of State and Network Rail;
“Default Charge”	means the charge calculated in accordance with paragraph 3.3 of Part 2;

“Default Period”	<p>means the period from the later of:</p> <p>(a) the date on which the New Specified Equipment is first used on the Network by the Train Operator; or</p> <p>(b) 1 April 2014,</p> <p>until the date on which ORR consents to or determines the supplement to the Track Usage Price List for that vehicle under paragraph 9.11 of Part 2;</p>
“Default Rate”	<p>means, in respect of any New Specified Equipment used on the Network, the corresponding passenger default rate for that type of vehicle set out in the Track Usage Price List;</p>
“Default Train Consist Data”	<p>means the data listed in Appendix 7C as amended from time to time in accordance with paragraph 10.4 of Part 2;</p>
“Delivery Plan”	<p>means the document entitled [<i>insert title</i>], including its supporting documentation, published by Network Rail on or about 31 March 2014;</p>
“Efficiency Benefit Share”	<p>means the amount determined in accordance with paragraph 5.1 of Part 2;</p>
“Electricity Type (AC/DC)”	<p>means either the alternating current (AC), or the direct current (DC) system of electricity supplied through the electrification system;</p>
“Electrification Asset Usage Charge”	<p>means a charge for electrification asset usage, calculated in accordance with paragraph 8 of Part 2;</p>
“English & Welsh Grant Compensation Amount”	<p>has the meaning ascribed to it in paragraph 3.2 of Part 3A;</p>
“English & Welsh Grant Dilution”	<p>has the meaning ascribed to it in paragraph 2.1 of Part 3A;</p>
“English & Welsh Grant Dilution Date”	<p>has the meaning ascribed to it in paragraph 2.2 of Part 3A;</p>
“excluded change”	<p>means, in relation to paragraph 2.1.1 of Part 7, a change to the arrangements established between Network Rail and any other person in respect of the payment of any amount under sections 6 or 8 of the Railways Act 2005;</p>
“Fixed Track Charge”	<p>means a fixed annual charge, calculated in accordance with paragraph 1 of Part 2;</p>
“Fixed Track Charge Indexation”	<p>has the meaning ascribed to it in paragraph 2 of Part 2;</p>

“Geographic Area g”	means, for the purposes of performing the calculations set out in paragraph 4 of Part 2 and paragraph 18 of the Traction Electricity Rules, the relevant geographic section of the Network, as set out in Appendix 5 of the Traction Electricity Rules;
“Grant Amount”	has the meaning ascribed to it in paragraph 1.2 of Part 3A;
“Gross Tonne Mile”	in relation to a train, means a mile travelled on the Network, multiplied by each tonne of the aggregate weight of the train in question;
“kWh”	means kilowatt hours;
“List of Capacity Charge Rates”	means the document entitled “List of Capacity Charge Rates” published by Network Rail on or about 20 December 2013;
<u>“metered train m”</u>	<u>means a railway vehicle of a particular vehicle type and having the vehicle ID and using the relevant Electricity Type AC/DC as identified in Appendix 7D;</u>
“Network Rail Distribution System Loss Factor”	means the relevant factor that represents the electrical losses between the On-Train Meter and Network Rail’s meter through which it purchases traction electricity for the AC System or the DC System in Geographic Area g, as set out in appendix 3 of the Traction Electricity Rules;
“Network Rail Rebate”	has the meaning ascribed to it in paragraph 7.1 of Part 2;
“New Specified Equipment”	means a type of railway vehicle not included in the Track Usage Price List.
“On-Train Meter” and “On-Train Metering”	have the meanings ascribed to them in paragraph 1.2 of the Traction Electricity Rules;
“Payment Date”	has the meaning ascribed to it in paragraph 1.1(b) of Part 3A;
“Outperformance Sum”	shall be the amount, in the case of a REBS Outperformance, by which Network Rail’s performance on a REBS Route in Relevant Year t has exceeded the performance set in the Route Baseline, as determined by ORR’s annual efficiency and finance assessment of Network Rail;
“Period”	has the meaning ascribed to it in Schedule 8;
“Power Factor Correction”	means the relevant power factor correction as set out in appendix 2 of the Traction Electricity Rules;

“Rebatable Amount”	has the meaning ascribed to it in paragraph 7.2 of Part 2;
“REBS Outperformance”	means the situation where ORR’s annual efficiency and finance assessment of Network Rail in respect of the REBS Route in Relevant Year t has identified, in accordance with the methodology and principles set out in [<i>insert reference</i>] of the 2013 Final Determinations, that Network Rail’s performance has exceeded the performance set in the Route Baseline;
“REBS Route”	means a route specified in the table in Appendix 7A for the purposes of the Route-Level Efficiency Benefit Share Mechanism;
“REBS Underperformance”	means the situation where ORR’s annual efficiency and finance assessment of Network Rail in respect of the REBS Route in Relevant Year t has identified, in accordance with the methodology and principles set out in [<i>insert reference</i>] of the 2013 Final Determinations, that Network Rail’s performance has not achieved the performance set in the Route Baseline;
“relevant access agreement”	<p>means an access agreement under which any of the following persons obtains permission from Network Rail to use the Network:</p> <ul style="list-style-type: none"> (a) a franchise operator; or (b) a concession operator within the meaning of the Merseyrail Electrics Network Order 2003; or (c) a TfL concessionaire within the meaning of the Railways (North and West London Lines) Exemption Order 2007; or (d) any other person who benefits from a franchise exemption (within the meaning of section 24(13) of the Act) in relation to services for the carriage of passengers by railway; or (e) a relevant franchising authority (as defined in section 30(3B) of the Act) or a person providing services for the carriage of passengers by railway on behalf of a relevant franchising authority under section 30 of the Act;
“Relevant Year”	<p>means a year commencing at 0000 hours on 1 April and ending at 2359 hours on the following 31 March; “Relevant Year t” means the Relevant Year for the purposes of which any calculation falls to be made; “Relevant Year t-1” means the Relevant Year preceding Relevant Year t; and similar expressions shall be construed accordingly;</p>

"Route Baseline"	means the baseline value in respect of a REBS Route in Relevant Year t that is published by Network Rail in its Delivery Plan, as adjusted for inflation in accordance with the methodology and principles set out in [<i>insert reference</i>] of the 2013 Final Determinations, and that ORR will use in its annual efficiency and finance assessment of Network Rail for the purposes of the Route Level Efficiency Benefit Share Mechanism;
"Route-Level Efficiency Benefit Share"	has the meaning ascribed to it in paragraph 1.1 of Part 3;
"Route Level Efficiency Benefit Share Mechanism"	means the provisions for the calculation and payment of the Route Level Efficiency Benefit Share in respect of one or more REBS Routes as described in paragraph 1.3 of Part 3.
"route type k"	means route type k as identified by type of electrification (OLE or DC) in the Track Usage Price List;
"RPI"	means the General Index of Retail Prices All Items measured by CHAW and published each month, or: <ul style="list-style-type: none"> (a) if the index for any month in any year shall not have been published on or before the last day of the third month after such month, such index for such month or months as ORR may (after consultation with the parties and such other persons as it considers appropriate) determine to be appropriate in the circumstances; or (b) if there is a material change in the basis of the index, such other index as ORR may (after consultation with the parties and such other persons as it considers appropriate) determine to be appropriate in the circumstances;
"tariff band"	means the tariff zone and time band in which the train in question is operated;
"Tolerance Factor"	means the relevant Tolerance Factor as set out in appendix 4 of the Traction Electricity Rules;
"Track Usage Price List"	means the document entitled "Track Usage Price List" published by Network Rail on or about 20 December 2013;
"Traction Electricity Charge"	means a variable charge for traction current calculated in accordance with paragraph 4 of Part 2;
"Traction Electricity Consumption Rates List"	means the document entitled "Traction Electricity Consumption Rates List" published by Network Rail on or about 20 December 2013 and specifying freight and passenger traction electricity consumption rates by train category i;

“train category <u>i</u>”	means <u>a particular train-vehicle type i</u> using <u>the a particular relevant Train Service Code Electricity Type (AC/DC)</u> ;
“Train Consist Data”	means the information relating to the number(s) and type(s) of railway vehicle comprised in a train movement;
“Train Mile”	in relation to a train, means a mile travelled by that train on the Network;
“Underperformance Sum”	shall be the amount, in the case of a REBS Underperformance, by which Network Rail’s performance on a REBS Route in Relevant Year t has not achieved the performance set out in the Route Baseline, as determined by ORR’s annual efficiency and finance assessment of Network Rail;
“Variable Charge”	means the Variable Usage Charges and, where the context admits, Traction Electricity Charges;
“Variable Usage Charge”	means a variable charge, calculated in accordance with paragraph 3 of Part 2;
“Vehicle Mile”	in relation to a railway vehicle, means a mile travelled by that vehicle on the Network;
“Volume Reconciliation”	has the meaning ascribed to it in the Traction Electricity Rules; and
“Weekday”	has the meaning ascribed to it in paragraph 1.1 of Schedule 5.

2 Interpretation

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

PART 2: TRACK CHARGES

1 Principal formula

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

$$T_t = F_t + V_t + D_t + E_t + K_t + EAV_t - BS_t - W_t$$

where:

- T_t means Track Charges in Relevant Year t ;
- F_t means an amount in respect of the Fixed Track Charge in Relevant Year t , which shall be:
- (a) in respect of the Relevant Year commencing on 1 April 2014, the total of the amounts set out in the row relating to the Train Operator and the column relating to that year in the Schedule of Fixed Charges; and
 - (b) in respect of any other Relevant Year t , the total of the amounts set out in the row relating to the Train Operator and the column relating to that year in the Schedule of Fixed Charges, multiplied by the Fixed Track Charge Indexation for that year calculated in accordance with paragraph 2;
- V_t means an amount in respect of the Variable Usage Charge in Relevant Year t which is derived from the formula in paragraph 3.1;
- D_t means an amount (if any) in respect of the Default Charge in Relevant Year t which is calculated in accordance with paragraph 3.3;
- E_t means an amount in respect of the Traction Electricity Charge in Relevant Year t which is derived from the formula in paragraph 4;
- K_t means an amount in respect of the Capacity Charge in Relevant Year t which is derived from the formula in paragraph 6;
- EAV_t means an amount in respect of the Electrification Asset Usage Charge, calculated in accordance with the formula in paragraph 8;
- BS_t means an amount (which shall not be a negative value) in respect of the Efficiency Benefit Share in Relevant Year t which is determined in accordance with paragraph 5.1; and
- W_t means an amount (which shall not be a negative value) in respect of the Network Rail Rebate in Relevant Year t , calculated in accordance with the provisions of paragraph 7.1.

2 Fixed Track Charge Indexation

The Fixed Track Charge Indexation in Relevant Year t shall be derived from the following formula:

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

where:

- FTCI_t means the Fixed Track Charge Indexation in Relevant Year t;
- RPI_{t-1} means the average value of the monthly figures of RPI for the 12 months up to and including the month of December immediately preceding the relevant 1 April; and
- RPI₂₀₁₃ means the average value of the monthly figures of RPI for the 12 months up to and including December 2013; and

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

where:

- RPI_{t-2} means the average value of the monthly figures of RPI for the 12 months up to and including the month of December which is 16 months before the relevant 1 April; and
- RPI_{t-3} means the average value of the monthly figures of RPI for the 12 months up to and including the month of December which is 28 months before the relevant 1 April.

3 Variable usage charge

3.1 Variable usage charge

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

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

where:

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

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

where:

RPI_{t-1} has the meaning set out in paragraph 2 above;

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

$TRUEUP_{t-1}$ has the meaning set out in paragraph 2 above,

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

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

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

3.2 *Not used.*

3.3 *Default Charge*

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

$$\Sigma D_{nt} \bullet UD_{nt}$$

where:

D_{nt} means:

- (a) in respect of the Relevant Year commencing on 1 April 2014 the Default Rate for that New Specified Equipment; and

- (b) in respect of any other Relevant Year t the total of the Default Rate for that New Specified Equipment multiplied by the following formula:

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

where:

RPI_{t-1} has the meaning set out in paragraph 2 above;

RPI_{2013} has the meaning set out in paragraph 2 above; and

$TRUEUP_{t-1}$ has the meaning set out in paragraph 2 above;

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

Σ means the summation across all relevant New Specified Equipment.

4 Traction Electricity Charge

- 4.1 For the purposes of paragraph 1, the term E_t means an amount in respect of the Traction Electricity Charge in Relevant Year t, which is derived from the following formula:

$$E_t = E_{tmo} + E_{tme} + E_{tmuAC} + E_{tmuDC}$$

where:

E_{tmo} means an amount calculated in accordance with paragraph 4.1.2 below;

E_{tme} means an amount calculated in accordance with paragraph 4.1.3 below;

E_{tmuAC} means an amount calculated in accordance with paragraph 4.1.4(a) below; and

E_{tmuDC} means an amount calculated in accordance with paragraph 4.1.4(b) below.

Circumstances in which calculation to be based on modelled data and circumstances in which calculation to be based on metered data

- 4.1.1 E_{tmo} shall be calculated in respect of all trains other than those identified in the table at Appendix 7D, and E_{tme} , E_{tmuAC} and E_{tmuDC} shall be calculated in respect of the trains identified in the table at Appendix 7D.

Calculation of modelled consumption

4.1.2 E_{tmo} is derived from the following formula:

$$E_{tmo} = \sum E_{tmog}$$

where:

Σ means the summation across all Geographic Areas g , as appropriate;

E_{tmog} is derived from the following formula:

$$E_{tmog} = \sum C_i \bullet EF_{gjt} \bullet UE_{igjt}$$

where:

Σ means the summation across all relevant train categories i (~~determined in accordance with paragraph 4.1.1 above~~) and tariff bands j , as appropriate;

C_i means the calibrated modelled consumption rate (in kWh per Train Mile in relation to passenger electric multiple units and kWh per Gross Tonne Mile in relation to locomotive-hauled units and all freight traffic) for train category i shown in the Traction Electricity Consumption Rates List, taking into account any Regenerative Braking Discount applied in accordance with the Traction Electricity Rules;

EF_{gjt} means an amount for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g , in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 4.2; and

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

Calculation of consumption using metered consumption data

4.1.3 E_{tme} is derived from the following formula:

$$E_{tme} = \sum E_{tmeg}$$

where:

Σ means the summation across all Geographic Areas g , as appropriate;

E_{tmeg} is derived from the following formula:

$$E_{tmeg} = \sum [((CME_{imgt} \bullet PF_{im} \bullet EF_{gjt}) - (RGB_{imgt} \bullet PF_{im} \bullet EF_{gjt})) \bullet (1 + \delta_{mi})]$$

where:

Σ means the summation across all relevant metered trains m categories i (~~determined in accordance with paragraph 4.1.1 above~~) and tariff bands j , as appropriate;

CME_{imgt} means the consumption of electricity (in kWh) by metered trains m , operated by or on behalf of the Train Operator ~~in train category i~~ , as measured by the On-Train Meters or as otherwise determined in

accordance with the Traction Electricity Rules, in Geographic Area g and in Relevant Year t;

PF_{im} means the Power Factor Correction for [the relevant vehicle type for metered train m-category-i](#);

EF_{gjt} means an amount for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g, in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 4.2;

RGB_{imgt} means the electricity (in kWh) generated by braking by [railway metered train m vehicles](#) operated by or on behalf of the Train Operator ~~in train category i~~, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g and in Relevant Year t; and

δ_{im} means the Tolerance Factor for [the relevant vehicle type for metered train m-category-i](#).

4.1.4

(a) E_{tmuAC} is derived from the following formula:

$$E_{tmuAC} = \Sigma E_{tmugAC}$$

where:

Σ means the summation across all Geographic Areas g, as appropriate;

E_{tmugAC} is derived from the following formula:

$$E_{tmugAC} = \Sigma [(CME_{imgtAC} \bullet PF_{mi} \bullet EF_{gjt}) \bullet (1 + \delta_{mi})] \bullet \lambda_{ACg}$$

where:

Σ means the summation across all relevant [metered trains m categories i](#) (~~determined in accordance with paragraph 4.1.1 above~~) and tariff bands j, as appropriate;

CME_{imgtAC} means the consumption of electricity (in kWh) from the AC System by [metered trains m](#) operated by or on behalf of the Train Operator ~~in train category i~~, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g and in Relevant Year t;

PF_{im} means the Power Factor Correction for [the relevant vehicle type for metered train m-category-i](#);

EF_{gjt} means an amount for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g, in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 4.2;

δ_{im} means the Tolerance Factor for [the relevant vehicle type for metered train m-category-i](#); and

λ_{ACg} means the Network Rail Distribution System Loss Factor for the AC System in Geographic Area g.

(b) E_{tmuDC} is derived from the following formula:

$$E_{tmuDC} = \Sigma E_{tmugDC}$$

where:

Σ means the summation across all Geographic Areas g , as appropriate;

E_{tmugDC} is derived from the following formula:

$$E_{tmugDC} = \Sigma[(CME_{imgtDC} \bullet EF_{gjt}) \bullet (1 + \delta_{im})] \bullet \lambda_{DCg}$$

where:

Σ means the summation across all relevant [metered trains \$m\$ categories \$i\$](#) (~~determined in accordance with paragraph 4.1.1 above~~) and tariff bands j , as appropriate;

CME_{imgtDC} means the consumption of electricity (in kWh) from the DC System by [metered trains \$m\$](#) operated by or on behalf of the Train Operator ~~in train category i~~ , as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g and in Relevant Year t ;

EF_{gjt} means an amount for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g , in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 4.2;

δ_{im} means the Tolerance Factor for [the relevant vehicle type for metered train category \$im\$](#) ; and

λ_{DCg} means the Network Rail Distribution System Loss Factor for the DC System in Geographic Area g .

Strategy for the procurement of traction electricity

4.2 At least three months prior to the start of each Relevant Year commencing on or after 1 April 2014, Network Rail shall consult with the Train Operator regarding a strategy for the procurement of traction electricity for the Train Operator in respect of that Relevant Year, and:

- (a) if Network Rail and the Train Operator agree on a strategy for the procurement of traction electricity, Network Rail will procure traction electricity for the Train Operator in accordance with that agreed strategy; or
- (b) if Network Rail and the Train Operator do not agree on a strategy for the procurement of traction electricity and the Train Operator has, during its consultation with Network Rail under this paragraph 4.2, notified Network Rail of the Train Operator's preferred strategy for the procurement of traction electricity and it is possible for Network Rail, acting reasonably, to implement that strategy, Network Rail will procure traction electricity for the Train Operator in accordance with the traction electricity procurement strategy so notified to Network Rail by the Train Operator; or
- (c) if Network Rail and the Train Operator do not agree on a strategy for the procurement of traction electricity and either (A) the Train Operator has not notified Network Rail of the Train Operator's preferred strategy for the

procurement of traction electricity during its consultation with Network Rail in accordance with this paragraph 4.2, or (B) it is not possible for Network Rail, acting reasonably, to implement the Train Operator's preferred strategy for the procurement of traction electricity as notified to Network Rail during its consultation in accordance with this paragraph 4.2, Network Rail will:

- (i) acting reasonably, determine the procurement strategy for traction electricity for the Train Operator, having regard to whatever information, if any, the Train Operator has supplied to Network Rail during its consultation under this paragraph 4.2; and
- (ii) procure traction electricity for the Train Operator in accordance with that traction electricity procurement strategy.

Actual cost of traction electricity

4.3 Network Rail shall provide to the Train Operator within 30 days of the end of each Period in each Relevant Year, the actual cost of traction electricity consumed by railway vehicles operated by or on behalf of the Train Operator in the relevant Period against the budgeted amounts. Network Rail shall also provide to the Train Operator a provisional six month Volume Reconciliation by Geographic Area g before 30 October of each Relevant Year and a provisional nine month Volume Reconciliation by Geographic Area g before 30 January of each Relevant Year.

Election to introduce On-Train Metering for a vehicle or vehicle type

- 4.4 (a) If the Train Operator wishes to propose the introduction of On-Train Metering to measure traction electricity consumption for a vehicle or vehicles of a vehicle type that the Train Operator operates for the purposes of being invoiced by Network Rail for traction electricity, it shall notify Network Rail of any required changes to the contract in connection with that proposal.
- (b) Any notice under sub-paragraph 4.4(a) shall be accompanied by information and evidence in reasonable detail supporting the changes proposed and setting out the reasons for those changes, and Network Rail shall respond in writing within 56 days of service of any such notice.
- (c) Promptly following any response served by Network Rail under sub-paragraph 4.4(b), the parties shall endeavour to agree whether the contract should be amended in connection with that proposal and, if so, the amendments.
- (d) If the parties agree an amendment to the contract in connection with the proposal referred to in sub-paragraph 4.4(a), that amendment 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, the parties shall ensure that ORR is furnished with such amendment and such information and evidence as it shall require to determine whether or not to approve the amendment.
- (e) Any agreed amendment to the contract in connection with the proposal referred to in sub-paragraph 4.4(a) which is approved by ORR under section 22 of the Act shall apply with effect from the date agreed by the parties.

- (f) If the parties fail to reach agreement within 90 days after service of a notice under sub-paragraph 4.4(a), or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, either party may notify ORR and request that ORR determines the matter. The parties shall, within such timescales as ORR may specify, furnish ORR with such information and evidence as ORR shall require to determine the matter. If a party fails to furnish such information and evidence within the specified timescale, ORR shall be entitled to determine the matter without that information and evidence and the party in default shall have no grounds for complaint in that respect.
- (g) Where ORR determines the matter pursuant to sub-paragraph (f), it may issue a notice to the parties setting out the amendments to be made to the contract and the date, which may be retrospective, from which they shall take effect.

5 Efficiency benefit share

5.1 The Efficiency Benefit Share:

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

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

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

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

where:

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

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

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

provided that, in each case:

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

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

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

6 Capacity Charge

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

where:

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

Σ means the sum across all Service Coded Groups i;

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

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

where:

RPI_{t-1} has the meaning set out in paragraph 2 above;

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

$TRUEUP_{t-1}$ has the meaning set out in paragraph 2 above,

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

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

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

where:

RPI_{t-1} has the meaning set out in paragraph 2 above;

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

$TRUEUP_{t-1}$ has the meaning set out in paragraph 2 above,

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

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

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

7 Network Rail Rebate

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

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

where:

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

F_t has the meaning ascribed to it in paragraph 1; and

AF_t means the Aggregate Fixed Charge in Relevant Year t

- 7.2 The Rebatable Amount shall be the amount, if any:
- (a) which represents such proportion of Network Rail's total income for Relevant Year t as it reasonably considers that it does not require in order to discharge its obligations under its network licence and any contracts to which it is a party;
 - (b) which Network Rail, in its discretion, considers it appropriate, having regard to the matters specified in paragraph 7.3, to rebate as an amount representing a return of Track Charges payable by persons who provide services for the carriage of passengers by railway under the relevant access agreements to which they are parties; and
 - (c) which Network Rail notifies as such to ORR within 9 months after the end of each Relevant Year t.
- 7.3 In considering the amount of the Rebatable Amount in any Relevant Year, Network Rail shall have regard to:
- (a) its obligations under its network licence and any contracts to which it is a party;
 - (b) the extent to which its efficiency and economy in discharging the obligations referred to in paragraph 7.3(a) exceeds any assumption which ORR made in the 2013 Final Determinations;
 - (c) its current and foreseeable future financial position including whether it would be more appropriate to use any available financial resources to repay any financial indebtedness or fund research and development expenditure up to the value specified in the 2013 Final Determinations rather than to pay a rebate; and
 - (d) the need for long term investment in the Network.
- 7.4 No amount of Track Charges shall be rebated under this paragraph 7 unless ORR, having regard to the matters:
- (a) to which Network Rail is to have regard under paragraph 7.3; and
 - (b) in respect of which duties are imposed on it under section 4 of the Act,
- has consented to such rebate.
- 7.5 Paragraph 5.4 shall apply to a payment of Network Rail Rebate in the same way as it applies in relation to a payment of an Efficiency Benefit Share, as if references in paragraph 5.4 to "Efficiency Benefit Share" and "EBS payment" were instead references to, respectively, "Network Rail Rebate" and "Network Rail Rebate payment".
- 7.6 If, pursuant to paragraph 7.1, the Train Operator is entitled to payment of a Network Rail Rebate in respect of Relevant Year t, then such payment shall be made by

Network Rail to the Train Operator as a lump sum payment within 28 days after the end of the Period in which ORR gives its consent under paragraph 7.4.

- 7.7 If Network Rail has, prior to 31 March 2014 and pursuant to the provisions of this agreement in force as at that date, notified ORR of a Rebatable Amount for the Relevant Year ending on that date, then such provisions shall continue to apply to the extent (and only to the extent) necessary to enable determination and payment (where applicable) of a Network Rail Rebate based on that Rebatable Amount.

8 Electrification Asset Usage Charge

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

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

where:

\sum means the summation across all route types;

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

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

where:

RPI_{t-1} has the meaning set out in paragraph 2 above;

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

$TRUEUP_{t-1}$ has the meaning set out in paragraph 2 above,

but so that in relation to the Relevant Year commencing on 1 April 2014, EV_{tk} shall have, in respect of each electrified Vehicle Mile on route type k, the value per electrified Vehicle Mile for the Electrification Asset Usage Charge set out in the Track Usage Price List; and in relation to the next following Relevant Year EV_{tk-1} shall have the same value; and

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

9 Bilateral supplements to the List of Capacity Charge Rates, Traction Electricity Consumption Rates List and Track Usage Price List

- 9.1 Where the Train Operator intends to use New Specified Equipment on the Network, it shall inform Network Rail of the date or likely date from which it intends to do so.
- 9.2 Where the Train Operator uses New Specified Equipment on the Network, the Default Rate shall apply to it during the Default Period.
- 9.3 No supplement to the Traction Electricity Consumption Rates List, Track Usage Price List or List of Capacity Charge Rates, shall have effect unless it has been:
- (a) agreed between the parties and ORR has consented to it; or
 - (b) determined by a relevant ADRR Forum and ORR has consented to it; or
 - (c) determined by ORR, following consultation with the parties.
- 9.4 Either the Train Operator or Network Rail shall be entitled to propose that:
- (a) the Traction Electricity Consumption Rates List be supplemented to include a new Train sService eCode, ~~new service group~~ or new vehicle typetrain category;
 - (b) the Track Usage Price List shall be supplemented to include a vehicle category which is not included in the list; or
 - (c) the List of Capacity Charge Rates shall be supplemented to take account of changes in the pattern and number of Services
- 9.5 Any proposal of a kind referred to in paragraph 9.4 shall be made by notice to the other party and shall be accompanied by a specification in reasonable detail of the proposal and the reasons for it. The parties shall thereafter negotiate in good faith the necessary supplement to the list in question.
- 9.6 Either party may request from the other such information that it reasonably requires in connection with the proposal and the party from whom the information was requested shall use reasonable endeavours to provide this information promptly.
- 9.7 Where the parties agree to a supplement following a proposal under paragraph 9.4, they shall request ORR's consent to it and provide such information as ORR requires in order to decide whether to give its consent.
- 9.8 If the parties fail to reach agreement within 45 days of the date of the notice given under paragraph 9.5, either party shall be entitled to refer the matter for resolution in accordance with the ADRR.
- 9.9 If the matter is referred for resolution under paragraph 9.8, the parties shall agree, in a Procedure Agreement, as defined in the ADRR, that the relevant ADRR Forum shall reach a decision which is fair and reasonable to them, having regard to:
- (a) the matters in respect of which duties are imposed on ORR by section 4 of the Act; and
 - (b) the criteria which ORR shall have most recently published (and identified as such) in relation to charging for permission to use track.
- 9.10 The parties shall procure that any determination by a relevant ADRR Forum shall be delivered to ORR within seven days after the date of the determination

- 9.11 Following notification under paragraph 9.7 or 9.10 ORR may either consent to the supplement agreed by the parties or determined by the relevant ADRR Forum or may, having consulted the parties, determine a different supplement.
- 9.12 In the case of a supplement to the Traction Electricity Consumption Rates List or List of Capacity Charge Rates, the supplement shall have effect from such date as ORR shall determine by notice to the parties.
- 9.13 In the case of a supplement to the Track Usage Price List, the supplement shall have effect from the first day of the Default Period.
- 9.14 Following ORR's consent or determination under paragraph 9.11 Network Rail shall:
- (a) apply the supplement from the date in accordance with paragraph 9.12 or 9.13 above as applicable; and
 - (b) within 28 days of the date of ORR's consent or determination:
 - (i) issue any adjusting invoice or credit note to the Train Operator; and
 - (ii) publish on its website details of the supplement alongside the details of any other such supplements to which ORR has consented or determined pursuant to this or any other track access contract.

10 Payment of Track Charges and Other Sums Due under the Contract

10.1 Payment of Track Charges and Other Sums Due under the Contract

- (a) Save where the contract provides otherwise, the Train Operator shall pay or procure the payment to Network Rail of:
 - (i) the Variable Usage Charge;
 - (ii) the Traction Electricity Charge;
 - (iii) the Capacity Charge;
 - (iv) the Electrification Asset Usage Charge; and
 - (v) any other sums which have fallen due in accordance with any provision of this contract,

attributable to any Period as invoiced by Network Rail on or after expiry of each such Period within 21 days of the invoice date or 28 days after the end of the Period, whichever is later.
- (b) The Train Operator shall pay or procure the payment to Network Rail of that part of the Fixed Track Charge attributable to any Period as invoiced by Network Rail on or after the expiry of each such Period within seven days of the invoice date or seven days after the end of the Period, whichever is later.
- (c) Any invoice issued by Network Rail under paragraph 18.5 of the Traction Electricity Rules (relating to modelled and actual rates of electricity consumption) shall be payable by the Train Operator within 21 days of the relevant invoice date.

10.2 Train Consist Data

Network Rail shall calculate the Variable Charges payable by the Train Operator in respect of each Period using the Train Consist Data supplied by the Train Operator

and, to the extent such Train Consist Data is not available to Network Rail, the Default Train Consist Data.

10.3 *Invoices and right to object to invoices*

- (a) Network Rail will notify the Train Operator on a weekly basis of the train movements for which Default Train Consist Data has been used to establish the Variable Charges payable by the Train Operator. At either party's request, the parties shall consult with a view to substituting Train Consist Data for Default Train Consist Data but such consultation shall not delay the issue by Network Rail of the invoice for the Variable Charges in respect of the Period concerned.
- (b) For each Period, Network Rail shall be entitled to invoice the Train Operator for Variable Charges in respect of any and all train movements operated by the Train Operator during that Period based on either:
 - (i) Train Consist Data provided by the Train Operator in respect of any train movement at or prior to the time that such train movement is completed; or
 - (ii) Train Consist Data agreed by the parties under paragraph 10.3(a) in respect of any train movement; or
 - (iii) Train Consist Data provided by the Train Operator in respect of any train movement (other than any train movement where the Specified Equipment used in operating the relevant movement is loco hauled) by the end of the day on which such train movement has been completed,or (to the extent that (i) or (ii) or (iii) above do not apply) Default Train Consist Data. Each such invoice will be payable in accordance with the provisions of paragraph 10.1.
- (c) Either party shall be entitled, at any time prior to the later of 2359 hours on the fourteenth day following the expiration of the relevant Period and seven days following receipt by the Train Operator of the relevant invoice, to notify the other that it objects to any Train Consist Data (including, where applicable, the use of Default Train Consist Data) on which the whole or any part of the Variable Charges included in the relevant invoice are based and any such notice shall specify in reasonable detail what that party believes to be the Train Consist Data for the relevant train movement(s) ("notice of objection"). In the absence of any notice of objection being served within such time the Train Consist Data used in the relevant invoice shall be final and binding on the parties.
- (d) The parties shall seek to agree the Train Consist Data specified in any notice of objection and any consequential financial adjustment required to the relevant invoice. If the parties are unable to agree such Train Consist Data within 14 days following receipt of a notice of objection, either party may refer the matter for resolution in accordance with the ADRR.
- (e) Within seven days of any Train Consist Data being agreed or determined in accordance with paragraph 10.3(d), Network Rail shall, if any consequential or financial adjustment of the relevant invoice is required, issue a further invoice to, or (as the case may be) a credit note in favour of, the Train Operator in the amount of the relevant adjustment. The invoice or credit note shall be payable at the same time as the invoice for Variable Charges for the relevant Period or, if issued later than 21 days after the end of the relevant Period, within seven days after the date of its issue.

- (f) The actual volume of usage used to calculate any supplementary amount payable under paragraph 18 of the Traction Electricity Rules shall be established on the basis of the Train Consist Data and the Default Train Consist Data applied in calculating the Variable Charges for each of the Periods in Relevant Year t as adjusted in accordance with paragraph 10.3(d) on or before 90 days after the end of Relevant Year t.
- (g) Where, as a result of any invoice or credit note issued pursuant to paragraph 10.3, any sum of money which has been paid shall become repayable or any sum of money which has been unpaid shall become payable the party to whom such sum shall be paid shall be paid or allowed interest at the Default Interest Rate on such sum from the date when it (if repayable) was paid or the date when such sum (if payable) ought to have been paid until the date of payment or repayment.

10.4 Unrepresentative Train Consist Data

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

10.5 Disputed amounts repayment and interest rate

- (a) Where a party wishes to contest any invoice issued to it under this Schedule 7 (including any invoice in respect of Track Charges) it shall, within 14 days of receipt of the invoice, notify the other party in writing of the amount which is in dispute but shall pay the full amount of the invoice, including the disputed amount, in accordance with the terms of the invoice.
- (b) Where a party has given notice under paragraph 10.5(a) that it disputes part of any invoiced amount:

- (i) payment of such sum shall be without prejudice to the determination of whether such sum is properly due or not; and
 - (ii) if it is subsequently determined that the disputed sum, or part of it, was not properly due the payee shall repay the disputed sum, or relevant part, to the payer together with interest (to accrue daily and be compounded monthly) at the Default Interest Rate from the date of payment until the actual date of repayment.
- (c) For the avoidance of doubt, nothing in this paragraph 10.5 shall apply to any sums which have fallen due in accordance with Part 3A of this Schedule 7.

PART 3: ROUTE-LEVEL EFFICIENCY BENEFIT SHARE MECHANISM

1. Route-Level Efficiency Benefit Share Mechanism

Calculation of the Route-Level Efficiency Benefit Share

1.1 The Route Level Efficiency Benefit Share for Relevant Year t (“ O_t ” or “ U_t ” as the case may be) is the amount (if any) that is payable by Network Rail to the Train Operator or by the Train Operator to Network Rail, as the case may be, in respect of a REBS Route, derived from the following formula:

- (a) in the case of a REBS Outperformance:

$$O_t = \frac{V_t}{AV_t} \cdot \left[\frac{25 \cdot ORB_t}{100} \right]$$

and

- (b) in the case of a REBS Underperformance:

$$U_t = \frac{V_t}{AV_t} \cdot \left[\frac{10 \cdot URB_t}{100} \right]$$

where:

- O_t means the amount that is payable by Network Rail to the Train Operator in respect of the REBS Route in Relevant Year t
- V_t means the Variable Usage Charge paid by the Train Operator in respect of the REBS Route for Relevant Year t;

AV_t means the aggregate Variable Usage Charge paid by all train operators providing services for the carriage of passengers in respect of the REBS Route in Relevant Year t (and calculated by summing the values of V_t under paragraph 1 of Part 2 and the corresponding provisions of each relevant train operator's access agreement) and the aggregate amounts payable under items 1 to 4 of the Variable Charge paid by all train operators providing services for the carriage of freight in respect of the REBS Route in Relevant Year t (and calculated by summing items 1 to 4 of the Variable Charge under paragraph 2.2.1 of Schedule 7 of each relevant train operator's access agreement); and

ORB_t means the lower of:

- (i) the Outperformance Sum; and
- (ii) an amount equal to 10% of the Route Baseline in respect of the REBS Route in Relevant Year t ;

U_t means the amount that is payable by the Train Operator to Network Rail in respect of the REBS Route in Relevant Year t ; and

URB_t means the lower of:

- (i) the Underperformance Sum; and
- (ii) an amount equal to 10% of the Route Baseline in respect of the REBS Route in Relevant Year t .

- 1.2 The Route-Level Efficiency Benefit Share (if any) calculated under paragraph 1.1 shall be payable for each REBS Route for Relevant Year t , unless the Train Operator has exercised a right to opt out in respect of a particular REBS Route in accordance with paragraph 1.3 or 1.4. Where the Train Operator has exercised such a right, no Route-Level Efficiency Benefit Share shall be payable, in respect of that REBS Route for the Relevant Year in the course of which the notice referred to in paragraph 1.3 was served and all subsequent Relevant Years up to 31 March 2019.

Train Operator right to opt out of the Route-Level Efficiency Benefit Share Mechanism

- 1.3 The Train Operator may serve a notice, in the form set out in Appendix 7B, on Network Rail (and shall provide a copy to ORR) informing Network Rail that the Route-Level Efficiency Benefit Share Mechanism shall not apply to the Train Operator in respect of one or more REBS Routes specified in the notice for the Relevant Year in the course of which the notice was served and all subsequent Relevant Years up to 31 March 2019 (an "**Opt-out Notice**"). Unless paragraph 1.4 applies, an Opt-out Notice may be served only before 1 June 2014.
- 1.4 If either of the following circumstances apply, the Train Operator may serve an Opt-out Notice at any time until 31 March 2019:
- (a) the Train Operator commences operating services for the carriage of passengers or freight by railway on one or more REBS Routes on which it did not previously operate such services, whether as a result of entering into a new franchise agreement or a new access agreement or otherwise, and such Opt-out Notice may be served only in respect of the REBS Routes on which the Train Operator commences operating those services; or

- (b) Network Rail notifies the Train Operator that it has entered into an Alliance Agreement with another train operator in respect of a REBS Route or part thereof on which the Train Operator operates Services, and the Train Operator has obtained written confirmation from ORR that the Alliance Agreement is likely to have a material direct financial impact on Network Rail's performance on that REBS Route as assessed by ORR in its annual efficiency and financial assessment of Network Rail, and such Opt-out Notice may only be served in respect of the REBS Route to which the Alliance Agreement applies,

and in either circumstance, the Opt-out Notice must be served within two months after:

- (i) the date on which the Train Operator commences operating the services described in paragraph 1.4(a); or
- (ii) the date of receipt of written confirmation from ORR under paragraph 1.4(b),

as the case may be.

- 1.5 Network Rail shall serve notice on the Train Operator (copied to ORR) that it has entered into an Alliance Agreement with another train operator in respect of a REBS Route or part thereof on which the Train Operator operates Services within 14 days after entering into that Alliance Agreement.
- 1.6 Network Rail shall provide such information to the Train Operator as the Train operator may reasonably request in order to determine whether to serve an Opt-out Notice, and such information shall be provided within 14 days of the request.

Obligation to pay Route-Level Efficiency Benefit Share

- 1.7 If, pursuant to paragraph 1.1, a party is entitled to payment from the other of a Route-Level Efficiency Benefit Share in Relevant Year t, then, subject to paragraph 1.8, such payment shall be made to the party entitled to the payment by the other party as a lump sum payment within 28 days after the date of publication of ORR's annual efficiency and finance assessment of Network Rail for Relevant Year t.
- 1.8 If, in respect of any Relevant Year t, a Route-Level Efficiency Benefit Share is payable in accordance with paragraph 1.7 and this contract has either commenced or expired or otherwise been terminated during the course of that Relevant Year t, the party entitled to payment shall be entitled to a pro rata payment of the Route-Level Efficiency Benefit Share payable in respect of that REBS Route for Relevant Year t. Such pro rata payment (which shall be payable in accordance with paragraph 1.9) shall be calculated as follows:

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

where:

REBS means either O_t or U_t as the case may be; and

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

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

provided that, in each case:

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

1.9 Without prejudice to the generality of Clause 16.3.1, any payment of a Route-Level Efficiency Benefit Share (a "**REBS payment**") shall be made on the basis that it is to be treated as exclusive of VAT, so that where and to the extent that the REBS payment is consideration for a supply for VAT purposes the party making that REBS payment shall in addition pay to the party receiving the REBS payment an amount equal to the amount of VAT due in respect of that REBS payment and either:

- (a) the party receiving the REBS Payment shall issue a VAT invoice to the party making such REBS payment in respect of the relevant amount; or
- (b) if the parties so agree and have entered into an applicable self-billing agreement (within the meaning of regulation 13(3A) of the Value Added Tax Regulations 1995 (the "**VAT Regulations**")) that continues in force then the party making the REBS payment shall produce for itself a self-billed invoice (within the meaning of regulation 13(3) of the VAT Regulations) in respect of the relevant amount.

PART 3A: ENGLISH & WELSH GRANT DILUTION

1 Grant Amounts

1.1 Basic Values and Payment Dates

For the purposes of this Part 3A:

- (a) the Basic Values are the amounts by way of grant under section 6 of the Railways Act 2005 specified in the Deed of Grant as payable by the Secretary of State to Network Rail; and
- (b) the Payment Dates are the dates set out in the Deed of Grant for the payment of grant by the Secretary of State in each of the years 2014, 2015, 2016, 2017, 2018 and 2019, or such other dates for the payment of such grants as may be stipulated in the Deed of Grant.

1.2 *Indexation*

For the purposes of this Part 3A, the Grant Amount for each Payment Date is the Basic Value specified in the Deed of Grant as payable on that date, adjusted in accordance with any applicable indexation provisions of the Deed of Grant.

2 **English & Welsh Grant Dilution**

2.1 *Meaning of English & Welsh Grant Dilution*

For the purposes of this Part 3A, there shall be an “**English & Welsh Grant Dilution**” in respect of a Payment Date if:

- (a) the Secretary of State fails, for any reason, to pay the whole or any part of the Grant Amount on or before that Payment Date; or
- (b) the payment of the whole or any part of the Grant Amount in respect of that Payment Date is:
 - (i) subject to the performance by Network Rail or any other person of any obligation;
 - (ii) subject to the exercise by the Secretary of State or any other person of any discretion; or
 - (iii) contingent upon the happening of any event or circumstance, or any act or omission of any person.

2.2 *Meaning of English & Welsh Grant Dilution Date*

In respect of any English & Welsh Grant Dilution:

- (a) if the English & Welsh Grant Dilution is of the kind referred to in paragraph 2.1(a), the English & Welsh Grant Dilution Date shall be the Payment Date in respect of which the Secretary of State fails to pay the whole or any part of the Grant Amount due on that date; and
- (b) if the English & Welsh Grant Dilution is of the kind referred to in paragraph 2.1(b), each Payment Date which falls during any period during which the payment of the whole or any part of a Grant Amount is:
 - (i) subject to any of the matters specified in paragraph 2.1(b)(i) or (ii); or
 - (ii) contingent upon any of the matters specified in paragraph 2.1(b)(iii), shall be an English & Welsh Grant Dilution Date.

3. **English & Welsh Grant Compensation Amount**

3.1 *Payment obligation*

If an English & Welsh Grant Dilution occurs:

- (a) Network Rail shall notify the Train Operator and ORR that an English & Welsh Grant Dilution has occurred, and the circumstances in which it has occurred; and
- (b) the Train Operator shall:
 - (i) send a copy of the notification it has received from Network Rail under paragraph 3.1(a) to any Passenger Transport Executive within whose area it provides services for the carriages of passengers by railway;

- (ii) if the English & Welsh Grant Dilution is of the kind described in paragraph 2.1(a), pay Network Rail an English & Welsh Grant Compensation Amount calculated in accordance with paragraph 3.2 three months after the English & Welsh Grant Dilution Date; and
- (iii) if the English & Welsh Grant Dilution is of the kind described in paragraph 2.1(b), pay Network Rail an English & Welsh Grant Compensation Amount calculated in accordance with paragraph 3.2 three months after each English & Welsh Grant Dilution Date.

3.2 Calculation

Any English & Welsh Grant Compensation Amount payable under paragraph 3.1 is an amount calculated in accordance with the following formula:

$$GC = (GA_p - P) \cdot \frac{E_t}{AF_t} \cdot (1.0431^{0.25})$$

where:

GC means the English & Welsh Grant Compensation Amount;

GA_p means the Grant Amount for the Payment Date which is the same date as the English & Welsh Grant Dilution Date;

P means:

- (a) if the English & Welsh Grant Dilution is of the kind described in paragraph 2.1(a), the amount of any whole or part payment of the Grant Amount which Network Rail certifies to the Train Operator, within seven days after the English & Welsh Grant Dilution Date, that it has received from the Secretary of State; and
- (b) if the English & Welsh Grant Dilution is of the kind described in paragraph 2.1(b), zero;

F_t has the meaning ascribed to it in paragraph 1 of Part 2; and

AF_t means the Aggregate Fixed Charge in Relevant Year t.

PART 4: NOT USED

PART 5:

[To be used for additional items where payments due, e.g. signal boxes, additional opening hours.]

PART 6: SUPPLEMENTAL PROVISIONS

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

- (a) the daily amount of the Fixed Track Charge and the number of days covered by the invoice;

- (b) the rate of Variable Usage Charge and the relevant number of Vehicle Miles applicable to vehicles for each service so charged;
- (c) the rate of Traction Electricity Charge and the number of Vehicle Miles applicable to vehicles for each service or Gross Tonne Miles applicable to units for each service so charged, for the purposes of calculating E_{tmo} in accordance with paragraph 4.1.2 of Part 2;
- (d) the amount of the Electrification Asset Usage Charge and the number of days covered by the invoice;
- (e) not used;
- (f) not used;
- (g) the amount of any Efficiency Benefit Share in respect of Relevant Years ending on or before 31 March 2014;
- (h) the amount of any sum W_t payable as provided in paragraph 7 of Part 2;
- (i) the amount of any sum $S1_{tw}$ and/or $S2_{tw}$ payable as provided in paragraph 18 of the Traction Electricity Rules;
- (j) the amount of any sum K_t payable as provided in paragraph 6 of Part 2; and
- (k) in respect of any other sums which have fallen due in accordance with any provisions of this contract other than Part 3A, separately the amount payable in respect of each head of charge.

PART 7: FUTURE ACCESS CHARGES REVIEWS

1 General

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

- (a) an access charges review such that amendments to this contract to give effect to the conclusions of such an access charges review come into operation on and from 1 April 2019 or such later date as may be specified in that review; and
- (b) as provided in paragraph 2 (and only as provided in paragraph 2), an access charges review such that amendments to this contract to give effect to the conclusions of such an access charges review come into operation before 1 April 2019.

2 Access charges reviews capable of coming into operation before 1 April 2019

ORR may carry out an access charges review in relation to any relevant part or parts of this contract at any time where it considers :

- (a) that there has been, or is likely to be, a material change, other than an excluded change, in the circumstances of Network Rail or in relevant financial markets or any part of such markets; and
- (b) that there are compelling reasons to initiate an access charges review, having due regard to its duties under section 4 of the Act, including in particular the duty to act in a manner which it considers will not render it unduly difficult for persons who are holders of network licences to finance any activities or proposed activities of theirs in relation to which ORR has functions under or by virtue of Part I of the Act.

3. Interpretation

In this Part 7 references to ORR carrying out an access charges review shall be construed as including references to its initiating implementation of that review.

APPENDIX 7A – REBS ROUTES TABLE

Route	Route definition
Anglia	As defined in Network Rail's Delivery Plan supporting information
East Midlands	
Kent	
London North East	
London North West	
Scotland	
Sussex	
Wales	
Wessex	
Western	

APPENDIX 7B – ROUTE-LEVEL EFFICIENCY BENEFIT SHARE OPT-OUT NOTICE

[Name of train operator representative]

[Position]

Telephone: [xxx]

E-mail: [xxx]

[Date]

Head of Regulatory Policy

Network Rail

Kings Place

90 York Way

London

N1 9AG

Dear Head of Regulatory Policy,

Opt-out from the CP5 route-level efficiency benefit sharing (REBS) mechanism

Following the publication by Network Rail of the REBS baselines for CP5, Table 1 sets out the operating routes in relation to which *[enter train operator name here]* will not be participating in REBS for CP5 (2014-15 to 2018-19). *[Enter train operator name here]* hereby exercises its right to opt-out of REBS under its track access contract and accordingly no sums will be payable to or from Network Rail arising from REBS in CP5 for the routes identified in Table 1.

Table 1: REBS opt-out matrix

Route	Route definition	Opt-out (please mark with an 'x')
Anglia	As defined in Network Rail's Delivery Plan supporting information	
East Midlands		
Kent		
London North East		
London North West		
Scotland		
Sussex		
Wales		
Wessex		
Western		

I understand that unless [*enter train operator name here*] has provided a notification to ORR to opt-out of REBS in CP5 within two months of [the start of the control period] [the start of new operations on the network] [the date of receipt of written confirmation from ORR that Network Rail has entered into a material alliance agreement], [*enter train operator name here*] will be eligible to make and receive payments under REBS for the remainder of CP5.

I have also sent a copy of this notice to the Director of Railway Markets and Economics at ORR.

Yours sincerely

[Name of train operator representative]

APPENDIX 7C – DEFAULT TRAIN CONSIST DATA

APPENDIX 7D – ~~CATEGORIES OF~~ METERED TRAINS “M” FOR THE PURPOSES
OF PARAGRAPH 4.1.1 OF PART 2

<u>Vehicle Type</u>	<u>Vehicle ID</u>	<u>Traction Type</u>

ANNEX 2: SECTION B2

IMPLEMENTING PR13: NETWORK RAIL MARK-UP TO SCHEDULE 7 (FREIGHT)

SCHEDULE 7: TRACK CHARGES AND OTHER PAYMENTS

1. Definitions

In this Schedule 7 unless the context otherwise requires:

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

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

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

“AC System” means the alternating current system of electricity traction supply on the Network;

“Adjustment Factor” means the factor calculated in accordance with paragraph 2.7.2;

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

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

“Coaching Stock Weight” means, in relation to coaching stock, the gross weight of that coaching stock, measured in tonnes;

“Coal Spillage Charge” means the amount payable in respect of item 6 in the formula specified in paragraph 2.2.1;

“Coal Spillage Charge Rate” means, in respect of each Coal Vehicle used in a Service, the coal spillage charge rate per KGTM for that Coal Vehicle, as set out in the Track Usage Price List and adjusted in accordance with paragraph 2.7.2;

“Coal Spillage Investment” has the meaning attributed to it in paragraph 2.12.3(b);

“Coal Spillage Reduction Investment Charge” means the amount payable in respect of item 7 in the formula specified in paragraph 2.2.1;

“Coal Spillage Reduction Investment Charge Rate” means, in respect of each Coal Vehicle used in a Service, the coal spillage charge rate per KGTM set out in the Track Usage Price List;

“Coal Vehicle” means any vehicle in respect of which the applicable Commodity is coal;

“Commodity” means the commodity applying to each Service as shall be agreed between the Train Operator and Network Rail by reference to the classes of commodity in the Track Usage Price List;

“Contract Miles” means, in relation to a train, or a portion of a train, the actual distance in miles travelled by that train, or that portion of a train, on the Network as specified in the Rights Table or as otherwise agreed by the Train Operator and Network Rail;

“Contributing Train Operator” means, in relation to any Qualifying Modification, the train operator which:

- (a) has requested that Network Rail make the modification to the Operating Constraints; and
- (b) continues to utilise the modification;

“CSR Deductions” means any amounts applied by Network Rail from the amounts received by Network Rail from all freight train operators in respect of the Coal Spillage Investment Charge for the purpose described in paragraph 2.12.2;

“CSR Rebate” has the meaning attributed to it in paragraph 2.12.6;

“CSR Variation Notice” means a notice given by ORR to the parties which sets out whether the Total CSR Fund Balance (if any) shall be carried forward or whether a CSR Rebate shall be made;

“DC System” means the direct current system of electricity traction supply on the Network;

“Default Period” means the period from the later of:

- (a) the date on which the New Registered Equipment is first used on the Network by the Train Operator; or
- (b) 1 April 2014,

until the date on which ORR consents to or determines the supplement to the Track Usage Price List under paragraph 2.2.8(b) or paragraph 2.2.11;

“Default Rate” means, in respect of any New Registered Equipment used on the Network by the Train Operator, the corresponding freight default rate for

that type of vehicle (locomotive, empty wagon or loaded wagon) set out in the Track Usage Price List;

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

“Efficiency Benefit Share” means the amount determined in accordance with paragraph 2.10;

“Electricity Type (AC/DC)” means either the alternating current (AC), or the direct current (DC) system of electricity supplied through the electrification system;

“Electrification Asset Usage Charge” means the electrification asset usage charge calculated in accordance with paragraph 2.4.12, and adjusted in accordance with paragraph 2.7.2;

“Empty Wagon Miles” means, in relation to an empty wagon, the Contract Miles travelled by that empty wagon;

“Empty Wagon Weight” means, in relation to an empty wagon, the tare weight of that wagon, measured in tonnes;

“ESI Vehicle” means any vehicle in respect of which the applicable Commodity is electricity supply industry coal;

“Freight Capacity Charge” means the charge calculated in accordance with paragraph 2.3;

“Freight Capacity Rate” means, in respect of each Service, the freight capacity rate corresponding to the day (or days) of the week on which that Service is operated, as set out in the List of Capacity Charge Rates and adjusted in accordance with paragraph 2.7.2;

“Freight Only Line Charge Rate” means, in respect of each ESI Vehicle, IO Vehicle and/or SNF Vehicle used in a Service, the rate per KGTM for that ESI Vehicle, IO Vehicle and/or SNF Vehicle (as applicable) which shall be:

- (a) in respect of the Relevant Year commencing on 1 April 2014 the amount set out in the Track Usage Price List relating to the freight only line charge rate for an ESI Vehicle, IO Vehicle or SNF Vehicle for that year; and
- (b) in respect of any other Relevant Year t, the total of the amount set out in the Track Usage Price List relating to the freight only line charge rate for an ESI Vehicle, IO Vehicle or SNF Vehicle for that year multiplied by the Phased in Charges Indexation Adjustment for that year calculated in accordance with paragraph 2.7.3;

“Freight Services” means the services for the carriage of goods by railway on the Network;

“Freight Specific Charge Rate” means, in respect of each ESI Vehicle, IO Vehicle and/or SNF Vehicle used in a Service the rate per KGTM for that ESI Vehicle, IO Vehicle and/or SNF Vehicle (as applicable) which shall be:

- (a) in respect of the Relevant Year commencing on 1 April 2014 the amount set out in the Track Usage Price List relating to the freight specific charge rate for an ESI Vehicle, IO Vehicle or SNF Vehicle for that year; and
- (b) in respect of any other Relevant Year t, the total of the amount set out in the Track Usage Price List relating to the freight specific charge rate for an ESI Vehicle, IO Vehicle or SNF Vehicle for that year multiplied by the Phased in Charges Indexation Adjustment for that year calculated in accordance with paragraph 2.7.3;

“FY CSR Fund” has the meaning attributed to it in paragraph 2.12.3;

“Geographic Area g” means, for the purposes of performing the calculations set out in paragraph 2.4 and paragraph 18 of the Traction Electricity Rules, the relevant geographic section of the Network as set out in Appendix 5 of the Traction Electricity Rules;

“Gross Tonne Miles” or **“GTM”** means, in respect of each locomotive, loaded wagon, empty wagon or coaching stock, the Locomotive Miles, Loaded Wagon Miles, Empty Wagon Miles or Coaching Stock Miles multiplied by the relevant Locomotive Weight, Loaded Wagon Weight, Empty Wagon Weight or Coaching Stock Weight respectively;

“Incremental Costs” means all reasonable additional costs properly and reasonably incurred by Network Rail in respect of any modification referred to in paragraph 2.8, being the additional reasonable costs (if any) to Network Rail in respect of its obligation to maintain and operate the Network, but excluding:

- (a) any loss of income on the part of Network Rail; and
- (b) freight-specific fixed and common costs for which Network Rail has already received funding from the Secretary of State, or any other body or person;

“Indexed Figures” means the Default Rate, the Electrification Asset Usage Charge, the Freight Capacity Rate, the Incident Cap Access Charge Supplement Rate, the Train Operator Payment Rate, the Network Rail Payment Rate, the Service Variation Sum, the Train Operator Cap, the Disruption Sum, the Normal Planned Disruption Sum, the Enhanced Planned Disruption Sum, the Network Rail Cap, the Cancellation Sum, the Late Notice Cancellation Sum, the Prolonged Disruption Amount and the Coal Spillage Charge Rate;

“IO Vehicle” means any vehicle in respect of which the applicable Commodity is iron ore;

“KGTM” means 1000 Gross Tonne Miles;

“**kWh**” means kilowatt hours;

“**List of Capacity Charge Rates**” means the document entitled “List of Capacity Charge Rates” published by Network Rail on or about 20 December 2013;

“**Loaded Wagon Miles**” means, in relation to a loaded wagon, the Contract Miles travelled by that loaded wagon;

“**Loaded Wagon Weight**” means, in relation to a loaded wagon, the gross weight of that loaded wagon, measured in tonnes;

“**Locomotive Miles**” means, in relation to a locomotive, the Contract Miles travelled by that locomotive;

“**Locomotive Weight**” means, in relation to a locomotive, the gross weight of that locomotive, measured in tonnes;

[“metered train m” means a railway vehicle of a particular vehicle type and having the vehicle ID and using the relevant Electricity Type AC/DC as identified in Appendix 3;](#)

“**Network Rail Distribution System Loss Factor**” means the relevant factor that represents the electrical losses between the On-Train Meter and Network Rail’s meter through which it purchases traction electricity for the AC System or the DC System in Geographic Area g, as set out in appendix 3 of the Traction Electricity Rules;

“**New Registered Equipment**” means a type of railway vehicle or vehicle commodity combination not incorporated in the Track Usage Price List;

“**On-Train Meter**” and “**On-Train Metering**” have the meanings ascribed to them in paragraph 1.2 of the Traction Electricity Rules;

“**ORR’s Qualifying Modification Criteria**” means the criteria issued by ORR as described in paragraph 2.9.1;

“**Outperformance Sum**” shall be the amount, in the case of a REBS Outperformance, by which Network Rail’s performance on a REBS Route in Relevant Year t has exceeded the performance set in the Route Baseline, as determined by ORR’s annual efficiency and finance assessment of Network Rail;

“**Phased in Charges Indexation Adjustment**” has the meaning ascribed to it in paragraph 2.7.3;

“**Power Factor Correction**” means the relevant power factor correction as set out in appendix 2 of the Traction Electricity Rules;

“**QM Threshold**” means a level of costs in relation to a modification to the Operating Constraints determined in accordance with ORR’s Qualifying Modification Criteria;

“Qualifying Modification” means a modification to the Operating Constraints in excess of their level as at 1 April 2001, which:

- (a) exceeds the QM Threshold; and
- (b) in respect of which a Contributing Train Operator has paid Network Rail Incremental Costs under paragraph 2.8 or its equivalent in the relevant access agreement;

“Qualifying Modification Benefit Charge” means, in relation to any Qualifying Modification, a charge which shall:

- (a) take account of:
 - (i) the use made or to be made of the Qualifying Modification, where such modification increased the capacity of the Network; or
 - (ii) in any other case, the benefit which is likely to be derived from the Qualifying Modification by the Train Operator compared to the benefit derived from such modification by the Contributing Train Operator; and
- (b) reflect any relevant guidance in relation to the funding of modifications to the Operating Constraints published in ORR’s Qualifying Modification Criteria;

“REBS Outperformance” means the situation where ORR’s annual efficiency and finance assessment of Network Rail in respect of the REBS Route in Relevant Year t has identified, in accordance with the methodology and principles set out in [*insert reference*] of the 2013 Final Determinations, that Network Rail’s performance has exceeded the performance set in the Route Baseline;

“REBS Route” means a route specified in the table in Appendix 1 for the purposes of the Route-Level Efficiency Benefit Share Mechanism;

“REBS Underperformance” means the situation where ORR’s annual efficiency and finance assessment of Network Rail in respect of the REBS Route in Relevant Year t has identified, in accordance with the methodology and principles set out in [*insert reference*] of the 2013 Final Determinations, that Network Rail’s performance has not achieved the performance set in the Route Baseline;

“Relevant Year t” means the Financial Year for the purposes of which any calculation falls to be made;

“Relevant Year t-1” means the Financial Year preceding Relevant Year t, and similar expressions shall be construed accordingly;

“Route Baseline” means the baseline value in respect of a REBS Route in Relevant Year t that is published by Network Rail in its Delivery Plan, as adjusted for inflation in accordance with the methodology and principles set out in [*insert reference*] of the 2013 Final Determinations, and that ORR will

use in its annual efficiency and finance assessment of Network Rail for the purposes of the Route Level Efficiency Benefit Share Mechanism;

“Route-Level Efficiency Benefit Share” has the meaning ascribed to it in paragraph 4.1;

“Route Level Efficiency Benefit Share Mechanism” means the provisions for the calculation and payment of the Route Level Efficiency Benefit Share in respect of one or more REBS Routes as described in paragraph 4;

“route type k” means route type k as identified by type of electrification (OLE or DC) in the Track Usage Price List;

“RPI” means the General Index of Retail Prices All Items measured by CHAW and published each month but where RPI for any month is not published on or before the last day of the third month after such month or there is a material change in the base composition of RPI, then ORR may, after consultation with the parties and such other persons as it considers appropriate, determine the use of such other index as it deems appropriate in the circumstances;

“SNF Vehicle” means any vehicle in respect of which the applicable Commodity is spent nuclear fuel;

“tariff band” means the tariff zone and time band in which the train in question is operated;

“Tolerance Factor” means the relevant Tolerance Factor as set out in appendix 4 of the Traction Electricity Rules;

“Total CSR Fund” means, at any given time, the aggregate of all amounts received by Network Rail from all freight train operators in respect of the Coal Spillage Investment Charge, less any CSR Deductions;

“Total CSR Fund Balance” has the meaning attributed to it in paragraph 2.12.3(c);

“Track Usage Price List” means the document entitled “Track Usage Price List” published by Network Rail on or about 20 December 2013;

“Traction Electricity Charge” means the charge calculated in accordance with paragraph 2.4;

“Traction Electricity Consumption Rates List” means the document entitled “Traction Electricity Consumption Rates List” published by Network Rail on or about 20 December 2013 and specifying freight and passenger traction electricity consumption rates by train category i;

“Traction Electricity Rate” means, for each Service, such amount as Network Rail shall specify for the purpose of each Financial Year as reflecting, so far as reasonably practicable, the actual cost to Network Rail of providing traction electricity to the Train Operator, calculated using the consumption rates set out in the Traction Electricity Consumption Rates List and subject to:

- (a) the agreement of the Train Operator to those amounts, such agreement not to be unreasonably withheld or delayed; and
- (b) the consent of ORR;

“**train category i**” means a particular service group train type i using the relevant Electricity Type (AC/DC);

“**Train Mile**” means, in relation to a train, or a portion of a train, a mile travelled by that train, or that portion of a train, on the Network;

“**Underperformance Sum**” shall be the amount, in the case of a REBS Underperformance, by which Network Rail’s performance on a REBS Route in Relevant Year t has not achieved the performance set out in the Route Baseline, as determined by ORR’s annual efficiency and finance assessment of Network Rail;

“**Variable Charge**” means the charge that varies according to KGTM and is calculated in accordance with the formula set out in paragraph 2.2.1, summed across all Services;

“**VUC Rate**” means, in respect of each locomotive type, empty wagon type, loaded wagon type and coaching stock type used in respect of each Service, the rate per KGTM which shall be:

- (a) in respect of the Relevant Year commencing on 1 April 2014 the amount set out in the Track Usage Price List relating to the variable usage charge rate for the corresponding vehicle type and commodity for that year; and
- (b) in respect of any other Relevant Year t, the total of the amount set out in the Track Usage Price List relating to the variable usage charge rate for the corresponding vehicle type and commodity for that year multiplied by the Phased in Charges Indexation Adjustment for that year calculated in accordance with paragraph 2.7.3; and

“**Volume Reconciliation**” has the meaning ascribed to it in the Traction Electricity Rules.

2. Track Charges and Invoices

2.1 Obligation on Train Operator to pay

2.1.1 In respect of each Charging Period, the Train Operator shall pay or procure payment of the Variable Charge, the Freight Capacity Charge, the Traction Electricity Charge, the Electrification Asset Usage Charge, the Incremental Costs, the Incident Cap Access Charge Supplement, the Qualifying Modification Benefit Charge and any amount of $S1_{tw}$ or $S2_{tw}$ payable in accordance with the Traction Electricity Rules. The charges will be rounded to the nearest penny. Where a calculation ends up exactly half way between whole numbers it will be adjusted upward.

- 2.1.2 No Track Charges shall be payable by the Train Operator in respect of a Train Slot when the train has not reached its Planned Destination for a reason which is Attributable to Network Rail.
- 2.1.3 Network Rail shall issue to the Train Operator an invoice as soon as practicable, or as otherwise agreed, following the expiry of each Charging Period in respect of the Variable Charge, the Freight Capacity Charge, the Traction Electricity Charge, the Electrification Asset Usage Charge, the Incident Cap Access Charge Supplement and any Incremental Costs or Qualifying Modification Benefit Charge which is or are payable in respect of that Charging Period.
- 2.1.4 If, at the time that Network Rail issues any invoice pursuant to paragraph 2.1.3, any Efficiency Benefit Share is payable by Network Rail to the Train Operator, or any Route-Level Efficiency Benefit Share or any amount under the Traction Electricity Rules is payable by either party to the other, that invoice shall also reflect that Efficiency Benefit Share payable by Network Rail and the Route-Level Efficiency Benefit Share or any amount under the Traction Electricity Rules payable by either party to the other.

2.2 *Variable Charges*

- 2.2.1 The Variable Charge in respect of each Service in each Charging Period shall be calculated in accordance with the following formula:

$$\text{Variable Charge} = 1 + 2 + 3 + 4 + 5 + 6 + 7 + 8 + 9$$

where:

- 1 means, in respect of each locomotive, the VUC Rate for the relevant locomotive type multiplied by the KGTM for that locomotive type relating to the relevant Service;
- 2 means, in respect of each empty wagon, the VUC Rate for the relevant empty wagon type multiplied by the KGTM for that empty wagon type relating to the relevant Service;
- 3 means, in respect of each loaded wagon, the VUC Rate for the relevant loaded wagon type multiplied by the KGTM for that loaded wagon type relating to the relevant Service;
- 4 means, in respect of each unit of coaching stock, the VUC Rate for the relevant coaching stock type multiplied by the KGTM for that coaching stock type relating to the relevant Service;
- 5 means, in respect of each ESI Vehicle, IO Vehicle and each SNF Vehicle, the Freight Only Line Charge Rate for that ESI Vehicle, IO Vehicle or SNF Vehicle (as the case may be) multiplied by the KGTM for that ESI Vehicle, IO Vehicle or SNF Vehicle (as the case may be) relating to the relevant Service;

- 6 means, in respect of each Coal Vehicle, the Coal Spillage Charge Rate multiplied by the KGTM for that Coal Vehicle relating to the relevant Service;
- 7 means, in respect of each Coal Vehicle, the Coal Spillage Reduction Investment Charge Rate multiplied by the KGTM for that Coal Vehicle relating to the relevant Service;
- 8 means, in respect of each ESI Vehicle, IO Vehicle and each SNF Vehicle, the Freight Specific Charge Rate for that ESI Vehicle, IO Vehicle or SNF Vehicle (as the case may be) multiplied by the KGTM for that ESI Vehicle, IO Vehicle or SNF Vehicle (as the case may be) relating to the relevant Service; and
- 9 means, in respect of New Registered Equipment during the Default Period, the Default Rate multiplied by the KGTM for that New Registered Equipment relating to the relevant Service.

Supplementing the Track Usage Price List to include rates for New Registered Equipment

- 2.2.2 A supplement to the Track Usage Price List to include a rate for New Registered Equipment shall have effect only if the supplement has been:
- (a) agreed between the parties and ORR has consented to it;
 - (b) determined by a relevant ADRR Forum and ORR has consented to it; or
 - (c) determined by ORR,
- pursuant to paragraph 2.2.8(b) or paragraph 2.2.11 below.
- 2.2.3 The Train Operator shall inform Network Rail of the date or likely date from which it intends to use the New Registered Equipment on the Network.
- 2.2.4 The Default Rate shall have effect in respect of the New Registered Equipment during the Default Period.
- 2.2.5 Where the Train Operator begins to use or informs Network Rail that it intends to use New Registered Equipment on the Network:
- (a) the Train Operator may give notice to Network Rail requesting that it propose a rate to apply as the VUC Rate for the New Registered Equipment ("**Supplement Rate**"). The Train Operator shall provide such information as Network Rail reasonably requires to do this; or
 - (b) Network Rail may give notice to the Train Operator proposing:
 - (i) a Supplement Rate for the New Registered Equipment in which case Network Rail must provide all information on which it based the calculation of the Supplement Rate; or

- (ii) that the Train Operator provides it with information to enable it to calculate the Supplement Rate in which case the Train Operator shall use reasonable endeavours to provide this information promptly.
- 2.2.6 If the Train Operator gives notice to Network Rail under paragraph 2.2.5(a) or provides Network Rail with information under paragraph 2.2.5(b)(ii) Network Rail shall calculate and notify the Train Operator promptly of the Supplement Rate.
- 2.2.7 Following receipt of a notice given under paragraph 2.2.5(a) or (b) (the "**Notice**"):
 - (a) the parties shall seek to agree a Supplement Rate and where they do agree shall request ORR's consent to it providing ORR with information and evidence in support of the agreed Supplement Rate; and
 - (b) where the parties are unable to agree a Supplement Rate within 90 days of receipt of the Notice, either party may refer the matter for resolution in accordance with the ADRR.
- 2.2.8 Following a request to ORR under paragraph 2.2.7(a):
 - (a) the parties shall, within such timescales as ORR may specify, furnish ORR with such further information as ORR may request in order to consider whether to issue its consent; and
 - (b) ORR may consent to the Supplement Rate agreed by the parties or may, having consulted the parties, determine that a different Supplement Rate shall apply.
- 2.2.9 If the matter is referred for resolution under paragraph 2.2.7(b) the parties shall agree in a Procedure Agreement, as defined in the ADRR, that the remit of the relevant ADRR Forum shall be to determine the Supplement Rate and that the relevant ADRR Forum shall reach a decision which is fair and reasonable to them, having regard to:
 - (a) the matters in respect of which duties are imposed on ORR by section 4 of the Act; and
 - (b) the criteria which ORR shall have most recently published (and identified as such) in relation to charging for permission to use track.
- 2.2.10 The parties shall procure that all details of any determination by a relevant ADRR Forum shall be notified to ORR within seven days after the date of the determination.
- 2.2.11 Following notification under paragraph 2.2.10 ORR may either consent to the determination or may, having consulted the parties, determine that a different Supplement Rate shall apply.
- 2.2.12 Following ORR's consent or determination under paragraph 2.2.8(b) or 2.2.11 Network Rail shall:

- (a) apply the Supplement Rate which ORR either consented to or determined as the VUC Rate in respect of the New Registered Equipment from the date which was the first day of the Default Period; and
- (b) within 28 days of the date of ORR's consent or determination under paragraph 2.2.8(b) or 2.2.11:
 - (i) issue an adjusting invoice or credit note to the Train Operator; and
 - (ii) publish on its website details of the VUC Rate for the New Registered Equipment, alongside the details of any other such Supplement Rates to which ORR has consented or determined pursuant to this or any other track access contract.

2.3 *Freight Capacity Charge*

The Freight Capacity Charge shall be calculated in accordance with the following formula or such other method that the parties may agree with the object of calculating a Freight Capacity Charge that is not materially different from that calculated in accordance with the following formula:

$$\text{Freight Capacity Charge} = \sum (\text{FCR}_{\text{mf}} \times \text{CM}_{\text{mf}}) + (\text{FCR}_{\text{w}} \times \text{CM}_{\text{w}})$$

where:

FCR_{mf} means the Freight Capacity Rate in respect of Services operated during the period from Monday to Friday (both inclusive) as set out in the List of Capacity Charge Rates;

CM_{mf} means Contract Miles in respect of Services operated during the period from Monday to Friday (both inclusive);

FCR_{w} means the Freight Capacity Rate in respect of Services operated on Saturday and/or Sunday, as set out in the List of Capacity Charge Rates;

CM_{w} means Contract Miles in respect of Services operated on Saturday and/or Sunday; and

\sum means the summation across all Services.

2.4 *Traction Electricity Charge*

2.4.1 If the Train Operator procures the supply of electricity from or through Network Rail (whether as its agent or otherwise) for the purpose of running trains under this contract, the Traction Electricity Charge in Relevant Year t shall be calculated in accordance with the following formula:

$$E_t = E_{\text{tmo}} + E_{\text{tme}} + E_{\text{tmuAC}} + E_{\text{tmuDC}}$$

where:

E_{tmo} means an amount calculated in accordance with paragraph 2.4.1.2 below;

E_{tme} means an amount calculated in accordance with paragraph 2.4.1.3 below;

E_{tmuAC} means an amount calculated in accordance with paragraph 2.4.1.4(a) below; and

E_{tmuDC} means an amount calculated in accordance with paragraph 2.4.1.4(b) below;

Circumstances in which calculation to be based on modelled data and circumstances in which calculation to be based on metered data

2.4.1.1 E_{tmo} shall be calculated in respect of all trains other than those identified in the table at Appendix 3, and E_{tme} , E_{tmuAC} and E_{tmuDC} shall be calculated in respect of the trains identified in the table at Appendix 3.

Calculation of modelled consumption

2.4.1.2 E_{tmo} is derived from the following formula:

$$E_{tmo} = \sum E_{tmog}$$

where:

Σ means the summation across all Geographic Areas g, as appropriate;

E_{tmog} is derived from the following formula:

$$E_{tmog} = \sum C_i \bullet EF_{gjt} \bullet UE_{igt}$$

where:

Σ means the summation across all relevant train categories i ~~(determined in accordance with paragraph 2.4.1.1 above)~~ and tariff bands j, as appropriate;

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

EF_{gjt} means an amount for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g, in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 2.4.11; and

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

Calculation of consumption using metered consumption data

2.4.1.3 E_{tme} is derived from the following formula:

$$E_{tme} = \sum E_{tmeg}$$

where:

\sum means the summation across all Geographic Areas g, as appropriate;

E_{tmeg} is derived from the following formula:

$$E_{tmeg} = \sum [((CME_{imgt} \bullet PF_{mi} \bullet EF_{gjt}) - (RGB_{imgt} \bullet PF_{im} \bullet EF_{gjt})) \bullet (1 + \delta_{im})]$$

where:

\sum means the summation across all relevant [metered trains m categories i \(determined in accordance with paragraph 2.4.1.1 above\)](#) and tariff bands j, as appropriate;

CME_{imgt} means the consumption of electricity (in kWh) by [metered trains m](#) operated by or on behalf of the Train Operator ~~in train category i~~, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g and in Relevant Year t;

————— PF_{im} means the Power Factor Correction for [the relevant vehicle type for train category metered train m-i](#);

EF_{gjt} means an amount for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g, in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 2.4.11;

RGB_{imgt} means the electricity (in kWh) generated by braking [by metered train m by railway vehicles](#) operated by or on behalf of

the Train Operator ~~in train category i~~, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g and in Relevant Year t; and

δ_{im} means the Tolerance Factor for the relevant vehicle type for train category i metered train m.

2.4.1.4

(a) E_{tmuAC} is derived from the following formula:

$$E_{tmuAC} = \Sigma E_{tmugAC}$$

where:

Σ means the summation across all Geographic Areas g, as appropriate;

E_{tmugAC} is derived from the following formula:

$$E_{tmugAC} = \Sigma [(CME_{imgtAC} \bullet PF_{im} \bullet EF_{gjt}) \bullet (1 + \delta_{im})] \bullet \lambda_{ACg}$$

where:

Σ means the summation across all relevant metered trains categories im (determined in accordance with paragraph 2.4.1.1 above) and tariff bands j, as appropriate;

CME_{imgtAC} means the consumption of electricity (in kWh) from the AC System by metered trains m operated by or on behalf of the Train Operator ~~in train category i~~, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g and in Relevant Year t;

PF_{im} means the Power Factor Correction for the relevant vehicle type for metered train category im;

EF_{gjt} means an amount for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g, in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 2.4.11;

δ_{im} means the Tolerance Factor for the relevant vehicle type for metered train m category i; and

λ_{ACg} means the Network Rail Distribution System Loss Factor for the AC System in Geographic Area g.

(b) E_{tmuDC} is derived from the following formula:

$$E_{tmuDC} = \Sigma E_{tmugDC}$$

where:

Σ means the summation across all Geographic Areas g, as appropriate;

E_{tmugDC} is derived from the following formula:

$$E_{tmugDC} = \Sigma[(CME_{imgtDC} \bullet EF_{gjt}) \bullet (1 + \delta_{im})] \bullet \lambda_{DCg}$$

where:

Σ means the summation across all relevant [metered trains categories im](#) (~~determined in accordance with paragraph 2.4.1.1 above~~) and tariff bands j, as appropriate;

CME_{imgtDC} means the consumption of electricity (in kWh) from the DC System by [metered trains m](#) operated by or on behalf of the Train Operator ~~in train category i~~, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g and in Relevant Year t;

EF_{gjt} means an amount for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g, in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 2.4.11;

δ_i means the Tolerance Factor for [the relevant vehicle type for metered train m category i](#); and

λ_{DCg} means the Network Rail Distribution System Loss Factor for the DC System in Geographic Area g.

2.4.2 Not used.

2.4.3 Not used.

2.4.4 Not used.

Election to introduce On-Train Metering for a vehicle or vehicle type

2.4.5 If the Train Operator wishes to propose the introduction of On-Train Metering to measure traction electricity consumption for a vehicle or vehicles of a vehicle type that the Train Operator operates for the purposes of being invoiced by Network Rail for traction electricity, it shall notify Network Rail of any required changes to the contract in connection with that proposal.

2.4.6 Any notice under paragraph 2.4.5 shall be accompanied by information and evidence in reasonable detail supporting the changes proposed and setting

out the reasons for those changes, and Network Rail shall respond in writing within 56 days of service of any such notice.

- 2.4.7 Promptly following any response served by Network Rail under paragraph 2.4.6, the parties shall endeavour to agree whether the contract should be amended in connection with that proposal and, if so, the amendments.
- 2.4.8 If the parties agree an amendment to the contract in connection with the proposal referred to in paragraph 2.4.5, that amendment 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, the parties shall ensure that ORR is furnished with such amendment and such information and evidence as it shall require to determine whether or not to approve the amendment.
- 2.4.9 Any agreed amendment to the contract in connection with the proposal referred to in paragraph 2.4.5, which is approved by ORR under section 22 of the Act, shall apply with effect from the date agreed by the parties.
- 2.4.10 If the parties fail to reach agreement within 90 days after service of a notice under paragraph 2.4.5, or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, either party may notify ORR and request that ORR determines the matter. The parties shall, within such timescales as ORR may specify, furnish ORR with such information and evidence as ORR shall require to determine the matter. If a party fails to furnish such information and evidence within the specified timescale, ORR shall be entitled to determine the matter without that information and evidence and the party in default shall have no grounds for complaint in that respect.
- 2.4.10A Where ORR determines the matter pursuant to paragraph 2.4.10, it may issue a notice to the parties setting out the amendments to be made to the contract and the date, which may be retrospective, from which they shall take effect.
- 2.4.11 **Strategy for the Procurement of Traction Electricity**

At least three months prior to the start of each Financial Year, Network Rail shall consult with the Train Operator regarding a strategy for the procurement of traction electricity for the Train Operator in respect of that Financial Year, and:

- (a) if Network Rail and the Train Operator agree on a strategy for the procurement of traction electricity, Network Rail will procure traction electricity for the Train Operator in accordance with that agreed strategy; or
- (b) if Network Rail and the Train Operator do not agree on a strategy for the procurement of traction electricity and the Train Operator has, during its consultation with Network Rail under this paragraph 2.4.11, notified Network Rail of the Train Operator's preferred strategy for the procurement of traction electricity and it is possible for Network Rail, acting reasonably, to implement that strategy, Network Rail will procure

traction electricity for the Train Operator in accordance with the traction electricity procurement strategy so notified to Network Rail by the Train Operator; or

- (c) if Network Rail and the Train Operator do not agree on a strategy for the procurement of traction electricity and either (A) the Train Operator has not notified Network Rail of the Train Operator's preferred strategy for the procurement of traction electricity during its consultation with Network Rail in accordance with this paragraph 2.4.11, or (B) it is not possible for Network Rail, acting reasonably, to implement the Train Operator's preferred strategy for the procurement of traction electricity as notified to Network Rail during its consultation in accordance with this paragraph 2.4.11, Network Rail will:
- (i) acting reasonably, determine the procurement strategy for traction electricity for the Train Operator, having regard to whatever information, if any, the Train Operator has supplied to Network Rail during its consultation under this paragraph 2.4.11; and
 - (ii) procure traction electricity for the Train Operator in accordance with that traction electricity procurement strategy.

2.4.11A Actual cost of traction electricity

Network Rail shall provide to the Train Operator within 30 days of the end of each Charging Period in each Financial Year, the actual cost of traction electricity consumed by railway vehicles operated by or on behalf of the Train Operator in the relevant Charging Period against the budgeted amounts. Network Rail shall also provide to the Train Operator a provisional six month Volume Reconciliation by Geographic Area g before 30 October of each Financial Year and a provisional nine month Volume Reconciliation by Geographic Area g before 30 January of each Financial Year.

2.4.12 Electrification Asset Usage Charge

The Electrification Asset Usage Charge is an amount for electrification asset usage which is derived from the following formula:

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

where:

\sum means the summation across all Services using electric traction;

EV_{tk} means an amount in respect of the Electrification Asset Usage Charge per electrified KGTM on route type k for a Charging Period in Relevant Year t, where, in relation to the Relevant Year commencing on 1 April 2014, EV_{tk} shall have, in respect of each electrified KGTM on each route type k, the value per electrified KGTM on route type k for the Electrification Asset Usage Charge set out in the Track Usage Price List; and

UV_{tk} means the actual number of electrified KGTM on route type k in the relevant Charging Period in Relevant Year t operated by or on behalf of the Train Operator.

2.5 Not used.

2.6 Incident Cap Access Charge Supplement

The Incident Cap Access Charge Supplement shall be calculated in accordance with the following formula:

$$\text{Incident Cap Access Charge Supplement} = \text{CMCP} \times \text{ICACSR}$$

where:

CMCP means the sum of the Contract Miles operated in a Charging Period; and

ICACSR means the Incident Cap Access Charge Supplement Rate.

2.7 Price Variation

2.7.1 The Indexed Figures shall remain in force until the day preceding 1 April 2015.

2.7.2 On 1 April in each Financial Year, commencing 1 April 2015, the Indexed Figures from the previous Financial Year shall each be adjusted by multiplying them by the Adjustment Factor (rounded to three decimal places) which shall have been calculated in accordance with the following formula:

$$\left(1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}}\right) \cdot (1 + TRUEUP_{t-1})$$

Adjustment Factor =

where:

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

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

$$\text{TRUEUP}_{t-1} = \frac{(\text{RPI}_{t-1} - \text{RPI}_{t-2})}{\text{RPI}_{t-2}} - \frac{(\text{RPI}_{t-2} - \text{RPI}_{t-3})}{\text{RPI}_{t-3}}$$

where:

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

2.7.3 The Phased in Charges Indexation Adjustment in Relevant Year t shall be derived from the following formula:

$$\left(1 + \frac{(\text{RPI}_{t-1} - \text{RPI}_{2013})}{\text{RPI}_{2013}}\right) \bullet (1 + \text{TRUEUP}_{t-1})$$

where:

RPI_{t-1} has the same meaning as set out in paragraph 2.7.2 above;

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

TRUEUP_{t-1} has the same meaning as set out in paragraph 2.7.2 above; and

RPI_{t-2} has the same meaning as set out in paragraph 2.7.2 above.

2.8 Incremental Costs

2.8.1 Where:

- (a) the Train Operator makes an Access Proposal, Rolled Over Access Proposal or Train Operator Variation Request;
- (b) the operation of the Service requested would exceed the Operating Constraints applying as at 1 April 2001;
- (c) the Train Operator notifies Network Rail at the time of requesting the Service that it wishes Network Rail to modify the Operating Constraints

applying as at 1 April 2001 in a manner so as to permit the operation of the Service requested under this contract;

- (d) Network Rail is reasonably able to effect such modifications in a timescale that meets the Train Operator's requirements; and
- (e) the Incremental Costs of any such modifications are not estimated by Network Rail to exceed £300,000 in any Financial Year,

then paragraph 2.8.2 shall apply.

2.8.2 Network Rail shall, as soon as reasonably practicable following receipt of the Train Operator's notification under paragraph 2.8.1, notify the Train Operator that:

- (a) it shall effect the modification to the Operating Constraints requested by the Train Operator under paragraph 2.8.1(c); or
- (b) it shall not effect the modification to the Operating Constraints requested by the Train Operator under paragraph 2.8.1(c) for one of the following reasons:
 - (i) it is not reasonably able to effect such modification in a timescale that meets the Train Operator's requirements; or
 - (ii) the Incremental Costs of such modification are estimated by Network Rail to exceed £300,000 in any Financial Year.

2.8.3 If Network Rail fails to notify the Train Operator under paragraph 2.8.2, it shall be deemed to have accepted the Train Operator's request under paragraph 2.8.1(c).

2.8.4 Where Network Rail notifies the Train Operator under paragraph 2.8.2(a), paragraph 2.8.6 shall apply.

2.8.5 Where Network Rail notifies the Train Operator under paragraph 2.8.2(b), if the Train Operator disputes Network Rail's reasons under paragraphs 2.8.2(b)(i) or (ii), it shall be entitled to refer the matter for resolution in accordance with the ADRR.

2.8.6 Where Network Rail incurs Incremental Costs pursuant to paragraph 2.8.1, then such Incremental Costs shall be payable to Network Rail by the Train Operator in such amounts as are either:

- (a) agreed between the parties prior to operation of the relevant Service; or
- (b) if not so agreed between the parties, reasonable in the circumstances.

2.8.7 Where:

- (a) the Train Operator makes an Access Proposal, Rolled Over Access Proposal or Train Operator Variation Request; and

- (b) the operation of the Service requested:
 - (i) would exceed the Operating Constraints applying as at 1 April 2001; and
 - (ii) is permitted under the Operating Constraints applying as at the date of the request by reason of a Qualifying Modification,

then paragraph 2.8.8 shall apply.

2.8.8 The Train Operator shall, if it wishes to operate the Service requested under paragraph 2.8.7, pay to Network Rail a Qualifying Modification Benefit Charge of such amount as shall be determined to be reasonable by Network Rail using the criteria and guidance that are applicable to the Qualifying Modification Benefit Charge.

2.8.9 Where:

- (a) the Train Operator pays for Incremental Costs under paragraph 2.8.6 in respect of any modification (in its capacity as a Contributing Train Operator); and
- (b) another freight train operator pays a Qualifying Modification Benefit Charge to Network Rail in respect of such modification,

then Network Rail shall notify the Train Operator of the sum which it proposes to rebate to it and subject to paragraph 2.8.11, make a rebate to the Train Operator in respect of such Incremental Costs equal to the Qualifying Modification Benefit Charge so paid.

2.8.10 If the parties have failed to agree the Incremental Costs in accordance with paragraph 2.8.6 within 20 Working Days of the date of the relevant request under paragraph 2.8.1(a) either party shall be entitled to refer the determination of the Incremental Costs for resolution in accordance with the ADRR.

2.8.11 If the Train Operator disputes:

- (a) the amount of any Qualifying Modification Benefit Charge payable by it under paragraph 2.8.8; or
- (b) the amount of any rebate payable to it under paragraph 2.8.9,

within 20 Working Days of the date of its receipt from Network Rail of details of the amount of the charge or rebate respectively, it shall be entitled to refer the matter for resolution in accordance with the ADRR.

2.8.12 If a reference for resolution is made under paragraph 2.8.11, the parties shall serve a written notice on the freight train operator benefiting from the Qualifying Modification:

- (a) notifying such freight train operator of the referral for resolution; and

- (b) giving to such freight train operator the opportunity to become a party to the proceedings in respect of such resolution.

2.8.13 If a reference for resolution is made under paragraphs 2.8.5, 2.8.10 or 2.8.11, the parties shall agree in a Procedure Agreement, as defined in the ADRR, that the relevant ADRR Forum shall:

- (a) reach a decision which is fair and reasonable;
- (b) have regard to:
 - (i) the matters in respect of which duties are imposed on ORR by virtue of section 4 of the Act; and
 - (ii) the policy which ORR has most recently published in relation to track access charges for freight train operators and the funding of enhancements to the Network;
- (c) not make a determination which is inconsistent with any provisions of the Network Code; and
- (d) give its reasons.

2.8.14 Network Rail undertakes to the Train Operator that, subject to the approval of ORR, in any regulated access agreement granting access rights which are subject to the Operating Constraints and entered into by Network Rail with a freight train operator after the date of signature of this contract, it will insert provisions that are, with only the necessary changes, the same as the terms set out in this paragraph 2.8.

2.8.15 Where, in relation to any Qualifying Modification, the determination of any Qualifying Modification Benefit Charge, or corresponding rebate of Incremental Costs, is referred to expert determination by any person under the provisions of any regulated access agreement (other than this contract):

- (a) such determination shall be binding on Network Rail and the Train Operator; and
- (b) Network Rail and the Train Operator shall make any necessary adjustments of payments between them under this contract to give effect to such determination.

2.8.16 Network Rail shall be the legal and beneficial owner of all modifications to Operating Constraints effected by or on behalf of Network Rail under this paragraph 2.8.

2.9 *Office of Rail Regulation's Qualifying Modification Criteria*

2.9.1 ORR may at any time issue criteria:

- (a) specifying how the QM Threshold for any Qualifying Modification shall be determined, which may vary for different types of Qualifying Modification; and

- (b) setting out any guidance in relation to the funding of modifications to the Operating Constraints.

2.9.2 ORR's criteria under paragraph 2.9.1(a) above shall not have effect unless ORR has:

- (a) consulted the parties in relation to the issues to be dealt with in such criteria;
- (b) taken into account any representations made by the parties in response to the consultation under paragraph 2.9.2(a); and
- (c) notified the parties as to its conclusions in relation to the issues to be dealt with in such criteria and the reasons for those conclusions.

2.10 *Efficiency Benefit Share*

2.10.1 The Efficiency Benefit Share:

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

2.10.2 If, pursuant to paragraph 2.10.1, the Train Operator is entitled to payment of an Efficiency Benefit Share in respect of Relevant Year t, then, subject to paragraph 2.10.3, such payment shall be made by Network Rail to the Train Operator as a lump sum payment within 28 days after the end of the Charging Period in which it is determined by the ORR that such payment should be made.

2.10.3 If, in respect of any Relevant Year t, an Efficiency Benefit Share is payable in accordance with paragraph 2.10.2 and this contract has either commenced or expired or otherwise been terminated during the course of that Relevant Year t, the Train Operator shall be entitled to a pro rata payment of the Efficiency Benefit Share payable in respect of that Relevant Year t. Such pro rata payment (which shall be payable in accordance with paragraph 2.10.2) shall be calculated as follows:

$$\text{Pro rata Efficiency Benefit Share} = \left(\frac{\text{EBS}}{13} \right) \times \text{CP}$$

where:

EBS means the total amount of the Efficiency Benefit Share that would have been payable to the Train Operator in respect of the whole of the

Relevant Year t in question had this contract been in force for the entire Relevant Year t; and

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

(a) where this contract commences during the course of that Relevant Year t, following commencement of this contract; or

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

provided that, in each case:

(i) if this contract expires or is otherwise terminated on or before the fourteenth day of a Charging Period, such Charging Period shall not be included in the calculation of 'CP';

(ii) if this contract expires or is otherwise terminated on or after the fifteenth day of a Charging Period, such Charging Period shall be included in the calculation of 'CP';

(iii) if this contract commences on or before the fourteenth day of a Charging Period, such Charging Period shall be included in the calculation of 'CP'; and

(iv) if this contract commences on or after the fifteenth day of a Charging Period, such Charging Period shall not be included in the calculation of 'CP'.

2.10.4 Without prejudice to the generality of Clause 16.4.1, any payment of an Efficiency Benefit Share (an "**EBS payment**") shall be made on the basis that it is to be treated as exclusive of VAT, so that where and to the extent that the EBS payment is consideration for a supply for VAT purposes Network Rail shall in addition pay to the Train Operator an amount equal to the amount of VAT due in respect of that EBS payment and either:

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

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

- 2.11 Not used.
- 2.12 *Coal Spillage Reduction Investment Charge for Financial Year ending 31 March 2014*
- 2.12.1 Not used.
- 2.12.2 The purpose of the Coal Spillage Reduction Investment Charge was to enable Network Rail to fund capital investments to reduce coal spillage on the Network, and Network Rail shall only be entitled to apply amounts received in respect of the Coal Spillage Reduction Investment Charge for such purpose.
- 2.12.3 Within 28 days of the end of the Financial Year ending immediately before 00:00 hours on 1 April 2014, Network Rail shall provide the Train Operator and ORR with details of:
- (a) the total amount received by Network Rail from all freight train operators during that Financial Year in respect of the Coal Spillage Reduction Investment Charge (the “FY CSR Fund”);
 - (b) the aggregate amount of funding distributed by Network Rail during that Financial Year to reduce coal spillage on the Network (each a “Coal Spillage Investment”); and
 - (c) the balance (if any) of the FY CSR Fund after:
 - (i) adding the Total CSR Fund Balance for the previous Financial Year if such Total CSR Fund Balance for the previous Financial Year has been carried forward; and
 - (ii) deducting the capital cost of any Coal Spillage Investments made during that Financial Year, (the “**Total CSR Fund Balance**”).
- 2.12.4 Within 56 days of the last day of the Financial Year ending immediately before 00:00 hours on 1 April 2014, Network Rail shall, following consultation with the Train Operator and all other freight train operators whose access agreement in respect of track includes a provision similar to this paragraph 2.12, notify the Train Operator and ORR in writing whether it wishes to carry forward the Total CSR Fund Balance for application to Coal Spillage Investments in the then current Financial Year.
- 2.12.5 Network Rail’s notice pursuant to paragraph 2.12.4 shall be accompanied by such information and supporting evidence (including any freight train operators’ representations and details of any Coal Spillage Investments proposed for the then current Financial Year) as ORR may require to determine whether or not the Total CSR Fund Balance should be carried forward for application in the then current Financial Year.
- 2.12.6 If ORR determines that the Total CSR Fund Balance should not be carried forward and ORR issues a CSR Variation Notice to that effect, the Train Operator shall be entitled to a rebate of amounts paid by the Train Operator in respect of the Coal Spillage Reduction Investment Charge (a “CSR Rebate”). The amount of the CSR Rebate payable to the Train Operator shall be an

amount which, when expressed as a percentage of the Total CSR Fund Balance, is equal to the proportion borne by the Train Operator's total contribution to the Total CSR Fund.

2.12.7 If ORR determines that the Total CSR Fund Balance should be carried forward and ORR issues a CSR Variation Notice to that effect, Network Rail shall retain the Total CSR Fund Balance for application for Coal Spillage Investments in the then current Financial Year.

2.12.8 Promptly following service of a CSR Variation Notice under this paragraph 2.12, and in order to give effect to any CSR Rebate specified in that CSR Variation Notice, Network Rail shall issue to the Train Operator a statement showing the necessary adjustments to:

- (a) any invoices and credit notes already issued; and
- (b) any payments already made,

in each case in respect of the Coal Spillage Reduction Investment Charge-paid during the Financial Year ending immediately before 00:00 hours on 1 April 2014.

2.12.9 Any statement issued by Network Rail pursuant to paragraph 2.12.8 shall be accompanied by an adjusting invoice (which shall be payable by the Train Operator within 28 days) or credit note.

3. Freight Charging Review

3.1 ORR may carry out one or more access charges reviews of all or part of this contract such that amendments to this contract to give effect to the conclusions of such an access charges review come into operation on and from 1 April 2019 or such later date as may be specified in that review.

3.2 In this paragraph 3, references to ORR carrying out an access charges review shall be construed as including references to its initiating implementation of that review.

4. Route-Level Efficiency Benefit Share Mechanism

Calculation of the Route-Level Efficiency Benefit Share

4.1 The Route Level Efficiency Benefit Share for Relevant Year t (" O_t " or " U_t " as the case may be) is the amount (if any) that is payable by Network Rail to the Train Operator or by the Train Operator to Network Rail, as the case may be, in respect of a REBS Route, derived from the following formula:

- (a) in the case of a REBS Outperformance:

$$O_t = \frac{V_{ct}}{AV_{ct}} \cdot \left[\frac{25 \cdot ORB_t}{100} \right]$$

and

(b) in the case of a REBS Underperformance:

$$U_t = \frac{V_{ct}}{AV_{ct}} \cdot \left[\frac{10 \cdot URB_t}{100} \right]$$

where:

O_t means the amount that is payable by Network Rail to the Train Operator in respect of the REBS Route in Relevant Year t;

V_{ct} means the amounts payable under items 1 to 4 of the Variable Charge paid by the Train Operator in respect of the REBS Route for Relevant Year t;

AV_{ct} means the aggregate amounts payable under items 1 to 4 of the Variable Charge paid by all train operators providing services for the carriage of freight in respect of the REBS Route in Relevant Year t (and calculated by summing the amounts payable under items 1 to 4 of the Variable Charge under paragraph 2.2.1 and the corresponding provisions of each relevant train operator's access agreement) and the aggregate Variable Usage Charge paid by all train operators providing services for the carriage of passengers in respect of the REBS Route in Relevant Year t (and calculated by summing the amount V_t under paragraph 3 of Part 2 of Schedule 7 of each relevant train operator's access agreement); and

ORB_t means the lower of:

- (i) the Outperformance Sum; and
- (ii) an amount equal to 10% of the Route Baseline in respect of the REBS Route in Relevant Year t;

U_t means the amount that is payable or by the Train Operator to Network Rail in respect of the REBS Route in Relevant Year t; and

URB_t means the lower of:

- (i) the Underperformance Sum; and
- (ii) an amount equal to 10% of the Route Baseline in respect of the REBS Route in Relevant Year t.

4.2 The Route-Level Efficiency Benefit Share (if any) calculated under paragraph 4.1 shall be payable for each REBS Route for Relevant Year t, unless the Train Operator has exercised a right to opt out in respect of a particular REBS Route in accordance with paragraph 4.3 or 4.4. Where the Train Operator has exercised such a right, no Route-Level

Efficiency Benefit Share shall be payable in respect of that REBS Route for the Relevant Year in the course of which the notice referred to in paragraph 4.3 was served and all subsequent Relevant Years up to 31 March 2019.

Train Operator right to opt out of the Route-Level Efficiency Benefit Share Mechanism

4.3 The Train Operator may serve a notice, in the form set out in Appendix 2, on Network Rail (and shall provide a copy to ORR) informing Network Rail that the Route-Level Efficiency Benefit Share Mechanism shall not apply to the Train Operator in respect of one or more REBS Routes specified in the notice for the Relevant Year in the course of which the notice was served and all subsequent Relevant Years up to 31 March 2019 (an "**Opt-out Notice**"). Unless paragraph 4.4 applies, an Opt-out Notice may be served only before 1 June 2014.

4.4 If either of the following circumstances apply, the Train Operator may serve an Opt-out Notice at any time until 31 March 2019:

(a) the Train Operator commences operating services for the carriage of passengers or freight by railway on one or more REBS Routes on which it did not previously operate such services, whether as a result of entering into a new franchise agreement or a new access agreement or otherwise, and such Opt-out Notice may be served only in respect of the REBS Routes on which the Train Operator commences operating those services; or

(b) Network Rail notifies the Train Operator that it has entered into an Alliance Agreement with another train operator in respect of a REBS Route or part thereof on which the Train Operator operates Services, and the Train Operator has obtained written confirmation from ORR that the Alliance Agreement is likely to have a material direct financial impact on Network Rail's performance on that REBS Route as assessed by ORR in its annual efficiency and financial assessment of Network Rail, and such Opt-out Notice may only be served in respect of the REBS Route to which the Alliance Agreement applies,

and in either circumstance, the Opt-out Notice must be served within two months after:

(i) the date on which the Train Operator commences operating the services described in paragraph 4.4(a); or

- (ii) the date of receipt of written confirmation from ORR under paragraph 4.4(b),

as the case may be.

- 4.5 Network Rail shall serve notice on the Train Operator (copied to ORR) that it has entered into an Alliance Agreement with another train operator in respect of a REBS Route or part thereof on which the Train Operator operates Services within 14 days after entering into that Alliance Agreement.
- 4.6 Network Rail shall provide such information to the Train Operator as the Train operator may reasonably request in order to determine whether to serve an Opt-out Notice, and such information shall be provided within 14 days of the request.

Obligation to pay the Route-Level Efficiency Benefit Share

- 4.7 If, pursuant to paragraph 4.1, a party is entitled to payment from the other of a Route-Level Efficiency Benefit Share in Relevant Year t, then, subject to paragraph 4.8, such payment shall be made to the party entitled to the payment by the other party as a lump sum payment within 28 days after the date of publication of ORR's annual efficiency and finance assessment of Network Rail for Relevant Year t.
- 4.8 If, in respect of any Relevant Year t, a Route-Level Efficiency Benefit Share is payable in accordance with paragraph 4.7 and this contract has either commenced or expired or otherwise been terminated during the course of that Relevant Year t, the party entitled to payment shall be entitled to a pro rata payment of the Route-Level Efficiency Benefit Share payable in respect of that REBS Route for Relevant Year t. Such pro rata payment (which shall be payable in accordance with paragraph 4.9) shall be calculated as follows:

$$\text{Pro rata REBS}_t = \left(\frac{\text{REBS}}{13} \right) \times \text{CP} \text{ where:}$$

REBS means either O_t or U_t as the case may be; and

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

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

provided that, in each case:

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

4.9

Without prejudice to the generality of Clause 16.4.1, any payment of a Route-Level Efficiency Benefit Share (a "**REBS payment**") shall be made on the basis that it is to be treated as exclusive of VAT, so that where and to the extent that the REBS payment is consideration for a supply for VAT purposes the party making that REBS payment shall in addition pay to the party receiving the REBS payment an amount equal to the amount of VAT due in respect of that REBS payment and either:

- (a) the party receiving the REBS Payment shall issue a VAT invoice to the party making such REBS payment in respect of the relevant amount; or
- (b) if the parties so agree and have entered into an applicable self-billing agreement (within the meaning of regulation 13(3A) of the Value Added Tax Regulations 1995 (the "**VAT Regulations**")) that continues in force then the party making the REBS payment shall produce for itself a self-billed invoice (within the meaning of regulation 13(3) of the VAT Regulations) in respect of the relevant amount.

APPENDIX 1 – REBS ROUTES TABLE

Route	Route definition
Anglia	As defined in Network Rail's Delivery Plan supporting information
East Midlands	
Kent	
London North East	
London North West	
Scotland	
Sussex	
Wales	
Wessex	
Western	

APPENDIX 2 – ROUTE-LEVEL EFFICIENCY BENEFIT SHARE OPT-OUT NOTICE

[Name of train operator representative]

[Position]

Telephone: [xxx]

E-mail: [xxx]

[Date]

Head of Regulatory Policy

Network Rail

Kings Place

90 York Way

London

N1 9AG

Dear Head of Regulatory Policy,

Opt-out from the CP5 route-level efficiency benefit sharing (REBS) mechanism

Following the publication by Network Rail of the REBS baselines for CP5, Table 1 sets out the operating routes in relation to which [*enter train operator name here*] will not be participating in REBS for CP5 (2014-15 to 2018-19). [*Enter train operator name here*] hereby exercises its right to opt-out of REBS under its track access contract and accordingly no sums will be payable to or from Network Rail arising from REBS in CP5 for the routes identified in Table 1.

Table 1: REBS opt-out matrix

Route	Route definition	Opt-out (please mark with an 'x')
Anglia	As defined in Network Rail's Delivery Plan supporting information	
East Midlands		
Kent		
London North East		
London North West		
Scotland		
Sussex		
Wales		
Wessex		
Western		

I understand that unless [*enter train operator name here*] has provided a notification to ORR to opt-out of REBS in CP5 within two months of [the start of the control period] [the start of new operations on the network] [the date of receipt of written confirmation from ORR that Network Rail has entered into a material alliance agreement], [*enter train operator name here*] will be eligible to make and receive payments under REBS for the remainder of CP5.

I have also sent a copy of this notice to the Director of Railway Markets and Economics at ORR.

Yours sincerely

[Name of train operator representative]

APPENDIX 3 – ~~CATEGORIES OF~~ METERED TRAINS “M” FOR THE PURPOSES OF PARAGRAPH 2.4.1.1

<u>Vehicle Type</u>	<u>Vehicle ID</u>	<u>Traction Type</u>

ANNEX 2: SECTION B3

IMPLEMENTING PR13: NETWORK RAIL MARK-UP TO THE TRACTION ELECTRICITY RULES

Traction Electricity Rules

Explanatory Note

- (A) These Traction Electricity Rules set out, for the purposes of calculating the Traction Electricity Charge:
 - (i) the process for collecting electricity consumption data and other related data from metering equipment installed on trains and supplying it to Network Rail;
 - (ii) the rules which apply where metered data is missing or not supplied to Network Rail within the prescribed time; and
- (B) the volume and cost reconciliation provisions that apply to train operators using electric traction.

This Explanatory Note does not form part of the Traction Electricity Rules.

1. **Definitions and Interpretation**

1.1 Unless otherwise defined in these Traction Electricity Rules or the context requires otherwise, words and expressions used in these Traction Electricity Rules shall have the meanings, constructions and interpretation ascribed to them in the relevant track access contract.

1.2 In these Traction Electricity Rules, unless the context otherwise requires:

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

“**AC System**” means the alternating current system of electricity traction supply on the Network;

“**Appendix Amendment Notice**” means a notice given by ORR to Network Rail under either paragraph 17.6 or paragraph 17.7 which specifies amendments to Appendix 2 and/or Appendix 4 of these Traction Electricity Rules for any of the purposes set out in paragraphs 17.2(A) to 17.2(D) (inclusive);

“**Consist Tonnage**” means, in respect of a Journey, the weight (in tonnes) of the Specified Equipment for that Journey divided by the number of operating locomotives forming part of such Specified Equipment;

“**Consultees**” means all Metered Train Operators, all freight or regular scheduled passenger operators of trains using electric traction, and freight or regular scheduled passenger operators of trains that do not use electric traction who give notice to Network Rail that they are seeking either new track access contracts or amendments to existing track access contracts which will involve them using trains using electric traction;

“**Consumption Data**” means data in respect of the amount of electricity consumed (in kWh);

“**Cost Reconciliation**” means, for each train operator ω , the process for the calculation and payment of the supplementary amount $S2_{\omega}$ set out in paragraph 18 of these Traction Electricity Rules;

“**Data Record**” means a record of either: (a) Consumption Data; (b) Regenerative Braking Data; or (c) GPS Data, as the case may be, in respect of each 5-minute period during a Journey or Non-Journey;

“**DC System**” means the direct current system of electricity traction supply on the Network;

“**Electricity Data**” means Consumption Data and (where relevant) Regenerative Braking Data;

“**Electricity Type (AC/DC)**” means either the alternating current (AC), or the direct current system (DC) of electricity supplied through the electrification system;

“EMU Length” means the number of individual vehicles in the electric multiple unit;

“Geographic Area g” means the relevant geographic section of the Network as set out in Appendix 5;

“GPS Data” means data in respect of geographical location;

“Gross Tonne Mile” or **“GTM”** means:

(i) for passenger operators, in relation to a train, a mile travelled on the Network, multiplied by each tonne of the aggregate weight of the train in question; and

(ii) for freight operators, in respect of each locomotive, loaded wagon, empty wagon or coaching stock, the Locomotive Miles, Loaded Wagon Miles, Empty Wagon Miles or Coaching Stock Miles multiplied by the relevant Locomotive Weight, Loaded Wagon Weight, Empty Wagon Weight or Coaching Stock Weight respectively;

“Infill Value” means the relevant value in respect of Consumption Data or Regenerative Braking Data, as the case may be, set out in the Journey Look-Up Tables or the value in respect of Consumption Data set out in the Non-Journey Look-Up Table, as the case may be;

“Journey” means a movement of Specified Equipment which has a designated headcode;

“Journey Look-Up Tables” means the tables containing Data Records in respect of Consumption Data and Regenerative Braking Data calculated or otherwise determined in accordance with paragraph 3, the templates for which are set out in Tables 1.1 and 1.2 respectively (in the case of passenger journeys) or Tables 1.3 and 1.4 respectively (in the case of freight and locomotive-hauled passenger journeys) in appendix 1;

“KGTM” means 1000 Gross Tonne Miles;

“Look-Up Tables” means the Journey Look-Up Tables and the Non-Journey Look-Up Table;

“Metered Charges” means the amounts E_{tme} , E_{tmuAC} and E_{tmuDC} which are calculated using metered consumption data in accordance with Schedule 7 of the relevant track access contract;

“Metered Data” means Electricity Data and GPS Data in respect of a train which has been collected from the train's On-Train Meter;

“Metered Train Operator” means a train operator whose Traction Electricity Charge is calculated (either wholly or partly) based on metered consumption data, and/or a train operator who has notified Network Rail that it intends to amend its track access contract to calculate its Traction Electricity Charge based (either wholly or partly) on metered consumption data from the start of the next financial year;

“metered train m” means a railway vehicle of a particular vehicle type and having the vehicle ID and using the relevant Electricity Type AC/DC as identified in Appendix 7D to Schedule 7 (in the case of passenger train operators) and Appendix 3 to Schedule 7 (in the case of freight train operators) of the relevant track access contract;

“**Metering Audit**” means the exercise by Network Rail, the Metered Train Operator or any other train operator of any of the rights set out in paragraph 9.2, 9.10 or 9.19 respectively, as the case may be;

“**Modelled Train Operator**” means a train operator that, in respect of Geographic Area g, is charged by Network Rail for traction electricity based on calibrated modelled consumption rates, and which is not a Metered Train Operator;

“**Net Infilled Electricity Data Value**” means, in respect of a particular Period, the total value (in kWh) of Data Records for Consumption Data which have been substituted with Infill Values, less the total value (in kWh) of Data Records for Regenerative Braking Data which have been substituted with Infill Values;

“**Network Rail Distribution System Loss Factor**” means the relevant factor that represents the electrical losses between the On-Train Meter and Network Rail's meter through which it purchases traction electricity for the AC System or the DC System in Geographic Area g, as set out in Appendix 3 of these Traction Electricity Rules;

“**Network Rail Metering Data Interface Specification**” means a document which shall be updated by Network Rail from time to time, in which Network Rail shall specify, in accordance with any applicable standards, the manner and format in which Metered Data shall be provided to it;

“**Non-Journey**” means a period during which the Specified Equipment is parked or laid up for maintenance or other purposes and is consuming electricity, in relation to which there is no designated headcode;

“**Non-Journey Look-Up Table**” means a table containing Consumption Data calculated or otherwise determined in accordance with paragraph 3, a template for which is set out in Table 2.1 in appendix 1;

“**On-Train Meter**” means a meter or other device or technology which measures a train's actual consumption of electricity, geographic location and, where relevant, electricity generated by braking and “**On-Train Metering**” shall be construed accordingly;

“**On-Train Metering Commencement Date**” means the date from which Metered Data is first used to calculate all or part of the Train Operator's Traction Electricity Charge;

“**Office of Rail Regulation**” has the meaning ascribed to it in Section 15 of the Railways and Transport Safety Act 2003, and “**ORR**” shall be construed accordingly;

“OTM Incentive Charge” means the additional amount payable by the Metered Train Operator to Network Rail as a consequence of paragraph 7.1 **Error! Reference source not found.** of these Traction Electricity Rules;

“OTM Incentive Year” means the period of 13 consecutive Periods including and immediately preceding the relevant Trigger Period;

“Period” means each consecutive period of 28 days commencing at 0000 hours on 1 April in each year, provided that the length of the first and last such Period in any year may be varied by up to seven days on reasonable prior notice from Network Rail to the train operator;

“Power Factor Correction” means the relevant power factor correction as set out in Appendix 2 of these Traction Electricity Rules;

“Prospective Metered Train Operator” means any train operator that has an application pending with ORR for approval of amendments to its track access contract by which its traction electricity charge would be based on metered consumption data;

“Regenerative Braking Audit” means the exercise by Network Rail, or a train operator of any of its rights set out in paragraph 9 in relation to the review of any Regenerative Braking System operated by the train operator;

“Regenerative Braking Data” means data in respect of the amount of electricity (in kWh) generated by braking;

“Regenerative Braking Discount” means the discount provided in return for the train operator operating a Regenerative Braking System, which discount is applied by Network Rail in calculating the train operator’s Traction Electricity Charges. Network Rail, acting reasonably, will decide which discount rate shall apply to each of the train operator’s service codes in a manner that, overall, best reflects the distances between the Scheduled Calls of the Journeys within that service code. The level of the discount available is as specified below:

Type of infrastructure / service frequency	Discount (%)
AC, long distance (more than 10 miles between stations)	16%
AC, regional and outer suburban (less than or equal to 10 miles between stations)	18%
AC, local and commuter (less than or equal to 2.1 miles between stations)	20%
DC	15%

“Regenerative Braking System” means a system used to generate electricity by braking.

“Relevant Complaint” means a complaint by a Consultee about the consultation process, or a complaint by a Metered Train Operator or a Modelled Train Operator about any part of the change procedure set out in paragraphs 11.1 to 11.16;

“Relevant Vehicle Categories” means the classes or sub-classes, as appropriate, of vehicle operated by the Modelled Train Operator within a particular service code or service group, as applicable;

“Relevant Year” means a year commencing at 0000 hours on 1 April and ending at 2359 hours on the following 31 March; **“Relevant Year t”** means the Relevant Year for the purposes of which any calculation falls to be made; **“Relevant Year t-1”** means the Relevant Year preceding Relevant Year t; and similar expressions shall be construed accordingly;

“Scheduled Call” in relation to the definition of Regenerative Braking Discount above, means a scheduled stop at a station for the purpose of allowing passengers to join or leave the service or train (including the stops where the service or journey starts and ends);

“Specified Equipment” has the meaning ascribed to it in Clause 1.1 of the relevant track access contract;

“tariff band” means the tariff zone and time band in which the train in question is operated;

“Tolerance Factor” means the relevant tolerance factor as set out in Appendix 4 of these Traction Electricity Rules;

“Total Net Electricity Data Value” means, in respect of a particular Period, the total value (in kWh) of Data Records for Consumption Data (derived from both Metered Data and Infill Values) less the total value (in kWh) of Data Records for Regenerative Braking Data (derived from both Metered Data and Infill Values);

“Traction Electricity Charge” has the meaning ascribed to it in Schedule 7 of the relevant track access contract;

“Traction Electricity Consumption Rates List” means the document entitled “Traction Electricity Consumption Rates List” published by Network Rail on or about 20 December 2013 and specifying freight and passenger traction electricity consumption rates by train category i;

“train category i” means [a particular vehicle type using a particular Train Service Code \(in the case of passenger operators\) and service group \(in the case of freight operators\)](#)~~train type i using the relevant Electricity Type (AC/DC);~~

“Train Mile” means in relation to a train, or a portion of a train, a mile travelled by that train, or that portion of a train, on the Network.

“Train Service Code” in the case of passenger operators has the meaning ascribed to it in paragraph 1.1 of Schedule 5 of the relevant track access contract, and in the case of freight operators means the eight character code used to identify Services (“Services” is defined in Clause 1.1 of the relevant track access contract);

“Trigger Period” has the meaning given to it in paragraph 7.1 of these Traction Electricity Rules;

“**Vehicle Mile**” (in the case of passenger operators) in relation to a railway vehicle means a mile travelled by that vehicle on the Network;

“**Volume Reconciliation**” means, for each train operator ω , the process for the calculation and payment of the supplementary amount $S1_{\omega}$ set out in paragraph 18 of these Traction Electricity Rules;

“**Working Day**” has the meaning ascribed to it in Clause 1.1 of the relevant track access contract.

1.3 In these Traction Electricity Rules, unless the context otherwise requires:

(A) These Traction Electricity Rules

References to these Traction Electricity Rules mean these Traction Electricity Rules as modified from time to time.

(B) Appendices and paragraphs

References to appendices and paragraphs are to appendices and paragraphs of these Traction Electricity Rules.

(C) Definitions in the Act

Terms and expressions defined in the Act shall, unless the contrary intention appears, have the same meaning in these Traction Electricity Rules.

(D) Statutory provisions

References to statutory provisions shall be construed as references to those provisions as amended or re-enacted or as their application is modified by other statutory provisions from time to time and shall include references to any statutory provisions of which they are re-enactments (whether with or without modification).

(E) Interpretation Act

Words and expressions defined in the Interpretation Act 1978 shall have the same meaning in these Traction Electricity Rules and the rules of interpretation contained in that Act shall apply to the interpretation of these Traction Electricity Rules.

(F) Include

The words “include” and “including” are to be construed without limitation.

(G) Other documents etc.

Any agreement, instrument, licence, standard, timetable, code or other document referred to in these Traction Electricity Rules or entered into, approved, authorised, accepted or issued by a person pursuant to these Traction Electricity Rules shall be construed, at the particular time, as a

reference to that agreement, instrument, licence, standard, timetable, code or other document, as it may then have been amended, varied, supplemented or novated.

(H) Conflict

In the event of any conflict of interpretation between these Traction Electricity Rules and an Access Agreement (not including these Traction Electricity Rules) the following order of precedence shall apply:

- (1) these Traction Electricity Rules; and
- (2) the Access Agreement.

(I) Time limits

Where in these Traction Electricity Rules any obligation of a party is required to be performed within a specified time limit that obligation shall continue after that time limit if the party fails to comply with that obligation within the time limit.

(J) Headings

The headings and references to headings shall be disregarded in construing these Traction Electricity Rules.

(K) Ruling language

All notices served under these Traction Electricity Rules shall be in the English language.

2. Application of these Traction Electricity Rules

- 2.1 The Metered Train Operator shall ensure that its On-Train Meters comply with all relevant industry standards (to the extent that such standards are applicable to the Metered Train Operator).
- 2.2 The Metered Train Operator shall collect Metered Data from all of its On-Train Meters and shall provide such data to Network Rail in accordance with the Network Rail Metering Data Interface Specification (or as otherwise agreed between that Metered Train Operator and Network Rail), within 7 (seven) days of the day on which such data was generated.
- 2.3 In the event that any Data Records are missing from the Metered Data collected by the Metered Train Operator, Network Rail shall provide data calculated in accordance with paragraphs 4, 5 or 6 (as the case may be) in place of such missing Data Records.
- 2.4 In the event that the Metered Train Operator fails to provide any Metered Data to Network Rail within the 7 (seven) day period referred to in paragraph 2.2, the provisions of paragraphs 4.2 and 5.2 as applicable, shall apply for the purposes of calculating that part of the Traction Electricity Charge relating to such data.

- 2.5 The Metered Train Operator shall use reasonable endeavours to notify Network Rail as soon as reasonably practicable of any changes to information relating to its vehicles (including but not limited to vehicle IDs) which Network Rail requires for the purposes of calculating that part of the Traction Electricity Charge based on Metered Data (or Infill Values).
- 2.6 Not used.
- 2.7 Each Metered Train Operator acknowledges that, for the purposes of calculating the Traction Electricity Charge, it shall only be charged based on Metered Data in respect of those categories of metered trains specified in Appendix 7D of Part 2 of Schedule 7 (in the case of passenger operators) or Appendix 2 of Schedule 7 (in the case of freight operators) of its track access contract, in accordance with the provisions of that contract once Network Rail confirms that data-flow and billing system tests have been completed successfully.

3. Look-Up Tables

Journeys

- 3.1 Network Rail shall create and maintain Journey Look-Up Tables for each Metered Train Operator.
- 3.2 Subject to paragraphs 3.3 and 3.9:
- (A) in the case of non locomotive-hauled passenger journeys, in relation to each Journey for a particular Train Service Code, Specified Equipment, Geographic Area, Electricity Type (AC/DC), EMU Length and number of units, the Journey Look-Up Tables shall include the mean value of:
- (1) Consumption Data per 5-minute period; and
 - (2) where relevant, Regenerative Braking Data per 5-minute period,
- which shall be calculated using Metered Data for the previous Period; or
- (B) in the case of freight and locomotive-hauled passenger journeys, in relation to each Journey for a particular Train Service Group, Specified Equipment, Geographic Area, Electricity Type (AC/DC) and number of units, the Journey Look-Up Tables shall include the mean value of:
- (1) Consumption Data per 5-minute period per tonne; and
 - (2) where relevant, Regenerative Braking Data per 5-minute period per tonne,
- which shall be calculated using Metered Data for the previous Period.
- 3.3 If, in Network Rail's reasonable opinion, there is insufficient Metered Data for a particular Period to update the Journey Look-Up Table in accordance with paragraph 3.2, then Network Rail and the Metered Train Operator shall seek to agree the values to be included in the Journey Look-Up Table. If the parties are unable to agree within 7 (seven) days after the start of the relevant Period

then Network Rail shall determine (acting reasonably) the values to be included in the Journey Look-Up Table for that Period.

Non-Journeys

- 3.4 Network Rail shall create and maintain a Non-Journey Look-Up Table for each Metered Train Operator.
- 3.5 Subject to paragraphs 3.6 and 3.9, in relation to Non-Journeys in each Geographic Area for particular Specified Equipment and Electricity Type (AC/DC), the Non-Journey Look-Up Table shall include the mean value of Consumption Data per 5-minute period of each relevant Non-Journey, which shall be calculated using Metered Data for the previous Period.
- 3.6 If, in Network Rail's reasonable opinion, there is insufficient Metered Data for a particular Period to update the Non-Journey Look-Up Table in accordance with paragraph 3.5, then Network Rail and the Metered Train Operator shall seek to agree the values to be included in the Non-Journey Look-Up Table. If the parties are unable to agree within 7 (seven) days after the start of the relevant Period then Network Rail shall determine (acting reasonably) the values to be included in the Non-Journey Look-Up Table for that Period.

General

- 3.7 Network Rail shall update the Look-Up Tables as soon as reasonably practicable after the start of each Period. The form of the Look-Up Tables shall be as set out in appendix 1, unless otherwise agreed between the parties.
- 3.8 ORR approval shall not be required for the creation or updating of the Look-Up Tables.
- 3.9 Unless sufficient relevant Metered Data is available in Network Rail's reasonable opinion, the Journey Look-Up Tables and the Non-Journey Look-Up Tables for the first Period and any subsequent consecutive Period following the On-Train Metering Commencement Date for a particular train category shall be created using the calibrated modelled consumption rates shown in the Traction Electricity Consumption Rates List and, where relevant, the appropriate Regenerative Braking Discount.
- 3.10 In addition to any other rights of the Metered Train Operator, whether contained in its track access contract or otherwise, copies of the Metered Train Operator's current Look-Up Tables shall be made available by Network Rail to such Metered Train Operator upon request by the Metered Train Operator at all reasonable times.

4. Missing Data Records (Electricity Data) for Journeys

- 4.1 If, in respect of a Journey, any Data Record in relation to either Consumption Data or Regenerative Braking Data is missing from the Metered Data, the missing Data Record shall be substituted with the relevant Infill Value contained in the Journey Look-Up Tables and (in the case of freight and locomotive-hauled passenger journeys only) multiplied by the Consist Tonnage.

4.2 If, in respect of a Journey, Metered Data in respect of Electricity Data is not provided by the Metered Train Operator to Network Rail within 7 days (pursuant to paragraph 2.2 above), the missing Data Records for Consumption Data and Regenerative Braking Data shall be substituted with the relevant Infill Values contained in the Journey Look-Up Tables and (in the case of freight and locomotive-hauled passenger journeys only) multiplied by the Consist Tonnage.

5. Missing Data Records (Electricity Data) for Non-Journeys

5.1 If, in respect of a Non-Journey, any Data Record in relation to either Consumption Data or Regenerative Braking Data is missing from the Metered Data, the missing Data Record shall be substituted with the relevant Infill Value contained in the Non-Journey Look-Up Table.

5.2 If, in respect of a Non-Journey, Metered Data in respect of Consumption Data and Regenerative Braking Data is not provided by the Metered Train Operator to Network Rail within 7 days (pursuant to paragraph 2.2 above), the missing Data Records shall be substituted with the relevant Infill Values contained in the Non-Journey Look-Up Table.

6. Missing GPS Data

6.1 If, in respect of a Journey, any Data Record is missing from the GPS Data, the missing Data Record shall be interpolated as appropriate using the actual recorded GPS Data.

7. Consequences of use of Infill Values above threshold

7.1 If, in any Period following the On-Train Metering Commencement Date, the Net Infilled Electricity Data Value expressed as a percentage of the Total Net Electricity Data Value is greater than the percentage shown in Table 7.1: Threshold Percentage table, the OTM Incentive Charge for such Period (the “**Trigger Period**”) shall be as follows:

(1) in the first Trigger Period in any OTM Incentive Year, the OTM Incentive Charge shall be 5% of the Metered Charges for Infilled Values; and

(2) in the second or any further Trigger Period in any OTM Incentive Year, the OTM Incentive Charge shall be 10% of the Metered Charges for Infilled Values.

Table 7.1: Threshold percentage table

Period Since On-Train Metering Commencement Date				
Periods 1-3	Periods 4-6	Periods 7-9	Periods 10-13	All later Periods
30%	25%	20%	15%	10%

7.2 Network Rail shall pay to each Metered Train Operator which consumes traction electricity a portion of the total amount of all OTM Incentive Charges received by Network Rail from Metered Train Operators pursuant to paragraph

7.1 in each Relevant Year for such train operator for that Relevant Year, calculated in accordance with the following formula:

$$PTO_t = \frac{A_t \times TIC_t}{B_t}$$

where:

- “P_{TOt}” means the proportional amount of OTM Incentive Charges payable to the train operator for Relevant Year t;
- “A_t” means the amount of the train operator’s metered Traction Electricity Charge (where relevant, following the Cost Reconciliation) in Relevant Year t;
- “B_t” means the total amount of metered Traction Electricity Charges (where relevant, following the Cost Reconciliation) for all train operators in Relevant Year t;
- “TIC_t” means the total OTM Incentive Charges received by Network Rail from all Metered Train Operators pursuant to paragraph 7.1 in Relevant Year t.

8. Regenerative Braking

- 8.1 A train operator who operates a Regenerative Braking System for any of its Relevant Vehicle Categories is entitled to receive a Regenerative Braking Discount in respect of each such Relevant Vehicle Category, subject to the provisions of this paragraph 8.

Opting-in process

- 8.2 A train operator who, as at 31 March 2014, was already receiving a Regenerative Braking Discount in respect of a Relevant Vehicle Category shall continue to receive such discount unless otherwise provided for by this paragraph 8. In respect of other Relevant Vehicle Categories, a train operator who wishes to receive a Regenerative Braking Discount shall follow the opting-in process in accordance with 8.2(A) to 8.2(C) below.

- (A) The train operator shall notify Network Rail in writing to request that a Regenerative Braking Discount should be applied. The notification given by the train operator shall set out:
- (i) the Relevant Vehicle Categories in respect of which the train operator wishes to receive the Regenerative Braking Discount; and
 - (ii) any other information that the train operator considers Network Rail would require in reviewing its request,

together with any other information which Network Rail, acting reasonably, considers that it requires in connection with the train operator’s request.

- (B) Within 28 days of receipt of the notification given by the train operator in accordance with paragraph 8.2(A) above, Network Rail shall determine (acting reasonably) whether a Regenerative Braking Discount should be applied to the notified Relevant Vehicle Categories. Network Rail shall notify the train operator in writing of its decision and, if it determines that a Regenerative Braking Discount should be applied, of the date when the Regenerative Braking Discount shall start to be applied, which shall be the beginning of the next Period unless the train operator and Network Rail agree otherwise.
- (C) Any dispute arising out of the above opting-in process shall be resolved in accordance with paragraph 19 below.

Train operator's obligation to maintain its Regenerative Braking Systems

- 8.3 The train operator shall use reasonable endeavours to ensure that the Regenerative Braking System for each vehicle in respect of which it receives a Regenerative Braking Discount continues to function effectively, such that the Regenerative Braking Discount continues to be appropriate.

Opting-out process

- 8.4 The train operator shall notify Network Rail promptly in writing if it ceases to be entitled to receive a Regenerative Braking Discount in respect of any Relevant Vehicle Category. Such a notification shall take effect from the start of the next Period following the date of the notice, or such other time as the train operator and Network Rail may agree.

Disapplication of a Regenerative Braking Discount

- 8.5 Network Rail shall cease applying a Regenerative Braking Discount in respect of any of the train operator's Relevant Vehicle Category in the following circumstances only:
- (A) to give effect to the train operator's notification to cease to receive such a discount in accordance with paragraph 8.4 above;
 - (B) where any of the train operator's Relevant Vehicle Categories cease to be billed on the basis of modelled consumption rates, in which case the discount shall cease to apply in respect of such Relevant Vehicle Categories; or
 - (C) where following a Regenerative Braking Audit conducted in accordance with paragraph 9 below, Network Rail (acting reasonably) identifies that the train operator is no longer entitled to a Regenerative Braking Discount in relation to any or all of the train operator's Relevant Vehicle Categories.

List of train operators receiving a Regenerative Braking Discount

- 8.6 Network Rail shall maintain, and make available on its website, a list of the Relevant Vehicle Categories which receive a Regenerative Braking Discount for each train operator. Network Rail shall update this list within 28 days of any change taking effect.

9. Metering and Regenerative Braking Audits

Network Rail Metering Audit and Regenerative Braking Audit

9.1 The Metered Train Operator shall, for a period of not less than two years, keep all data supplied by or on behalf of that Metered Train Operator to Network Rail in connection with On-Train Metering and all data used in or relating to the collection or creation of such data, and all material information relating to the supply, collection or creation of such data.

9.2 In addition to any other rights of Network Rail, including without limitation any rights set out in these Traction Electricity Rules or in any other provisions of the track access contract and subject to paragraph **Error! Reference source not found.**, Network Rail may, at Network Rail's cost and expense upon giving not less than 5 (five) Working Days prior notice to the train operator, but no more than once in any Relevant Year:

- (A) audit and inspect and take copies of such books, documents, data and other information (whether stored electronically or otherwise);
- (B) question such employees of the train operator and any of its agents, contractors, sub-contractors and consultants; and
- (C) inspect and/or test any On-Train Meters,

as Network Rail may reasonably require to verify either: (i) the accuracy of the data supplied to it by the Metered Train Operator pursuant to these Traction Electricity Rules; or (ii) the entitlement to the Regenerative Braking Discount claimed by the train operator. Where the train operator is party to more than one track access contract, Network Rail shall, if it wishes to exercise its rights to carry out a Metering Audit or a Regenerative Braking Audit, as the case may be, in respect of more than one of those contracts, exercise such rights simultaneously and not separately during any Relevant Year.

9.3 The train operator shall, at Network Rail's cost and expense (subject to paragraph **Error! Reference source not found.**), procure that its agents, contractors, sub-contractors and consultants shall provide such access to Network Rail as is reasonably necessary for the purposes of the Metering Audit or the Regenerative Braking Audit, as the case may be.

- 9.4 If,
- (A) following a Metering Audit carried out by Network Rail, any data is found by Network Rail to be materially inaccurate; or
 - (B) following a Regenerative Braking Audit carried out by Network Rail, Network Rail finds that the train operator was not entitled to receive any or all of the Regenerative Braking Discount it has claimed,

Network Rail shall notify the train operator in writing and shall provide evidence (in a reasonable level of detail) of such inaccuracy or in support of its findings, and details of any consequential financial adjustment which is required to be made to any amount paid or payable by any train operator.

- 9.5 The train operator shall be entitled, within 14 days following receipt of notice from Network Rail pursuant to paragraph 9.4, to notify Network Rail in writing that it objects to the findings of Network Rail's Metering Audit or Regenerative Braking Audit, as the case may be. Any such notice shall specify in reasonable detail the reasons for such objection (and, in the case of a Metered Train Operator objecting to the findings of a Metering Audit, what that Metered Train Operator believes to be the accurate data) ("**notice of objection**"). In the absence of any notice of objection being served within such time the findings of Network Rail's Metering Audit or Regenerative Braking Audit, as the case may be, shall be deemed to be accepted by the train operator and shall be final and binding on the parties.

- 9.6 The parties shall seek to agree the details specified in any notice of objection and any consequential financial adjustment required. If the parties are unable to agree within 28 days following receipt of a notice of objection, the matter shall be determined at the request of either party in accordance with the ADRR, and where the dispute is allocated in accordance with the ADRR to arbitration under Chapter F of the ADRR:

- (A) the parties shall use their respective endeavours to ensure a joint paper setting out their respective positions on the matter in dispute is agreed for delivery to the arbitrator no later than 14 days following the expiration of a period of 28 days following receipt of a notice of objection;
- (B) the parties shall each request that the arbitrator's decision in writing (following any discussions or meetings between or with the parties that the arbitrator considers necessary) is delivered to the parties within 56 days of his appointment and that the arbitrator establish such rules and procedures for the conduct of the arbitration as he sees fit having regard to such timescale; and
- (C) each of the parties shall accept and abide by the rules and procedures established by the arbitrator under paragraph 9.6(B).

- 9.7 Any consequential financial adjustment which is required to be made to any amounts paid or payable by any train operator pursuant to paragraph 9.4 or 9.5 shall be made through the Volume Reconciliation carried out in respect of the Relevant Year in which such amounts were paid or payable.

9.8 Where:

- (A) as a result of a Metering Audit carried out by Network Rail, any data supplied by the Metered Train Operator to Network Rail pursuant to these Traction Electricity Rules is shown to be inaccurate in any material respect; or
- (B) as a result of a Regenerative Braking Audit carried out by Network Rail, it is found that a train operator is not entitled to any or all of the Regenerative Braking Discount it has claimed,

that train operator shall bear the reasonable costs of the Metering Audit or the Regenerative Braking Audit, as the case may be.

Metered Train Operator Metering Audit

9.9 Network Rail shall, for a period of not less than two years, keep all data used in or relating to the calculation of the Metered Charges.

9.10 In addition to any other rights of the Metered Train Operator, including without limitation any rights set out in these Traction Electricity Rules or in any other provisions of its track access contract and subject to paragraph 9.16, the Metered Train Operator may, at that Metered Train Operator's cost and expense, upon giving not less than 5 (five) Working Days prior notice to Network Rail, but no more than once in any Relevant Year:

- (A) audit and inspect and take copies of such books, documents, data and other information (whether stored electronically or otherwise);
- (B) question such employees of Network Rail and any of its agents, contractors, sub-contractors and consultants; and
- (C) inspect and/or test any model or other application used by Network Rail in the calculation of the Metered Charges,

as the Metered Train Operator may reasonably require to verify the accuracy of the Metered Charges. Where the Metered Train Operator is party to more than one track access contract, the Metered Train Operator shall, if it wishes to exercise its rights to carry out a Metering Audit in respect of more than one of those contracts, exercise such rights simultaneously and not separately during any Relevant Year.

9.11 Network Rail shall, at the Metered Train Operator's cost and expense (subject to paragraph 9.16), procure that its agents, contractors, sub-contractors and consultants shall provide such access to the Metered Train Operator as is reasonable for the purposes of the Metering Audit.

- 9.12 If following a Metering Audit carried out by the Metered Train Operator any Metered Charges are found by the Metered Train Operator to be materially inaccurate, the Metered Train Operator shall notify Network Rail in writing and shall provide evidence (in a reasonable level of detail) of such inaccuracy and details of any consequential financial adjustment which is required to be made to any amounts paid or payable by the Metered Train Operator or any other train operator.
- 9.13 Network Rail shall be entitled within 14 days following receipt by Network Rail of notice from the Metered Train Operator pursuant to paragraph 9.12, to notify the Metered Train Operator in writing that it objects to the findings of the Metered Train Operator's Metering Audit. Any such notice shall specify in reasonable detail the reasons for such objection and what Network Rail believes to be the relevant charges for the purposes of such Metering Audit ("**notice of objection**"). In the absence of any notice of objection being served within such time the findings of the Metered Train Operator's Metering Audit shall be deemed to be accepted by Network Rail and shall be final and binding on the parties.
- 9.14 The parties shall seek to agree the details specified in any notice of objection and any consequential financial adjustment required. If the parties are unable to agree such charges within 28 days following receipt of a notice of objection, the matter shall be determined at the request of either party in accordance with the ADRR, and where the dispute is allocated in accordance with the ADRR to arbitration under Chapter F of the ADRR:
- (A) the parties shall use their respective endeavours to ensure a joint paper setting out their respective positions on the matter in dispute is agreed for delivery to the arbitrator no later than 14 days following the expiration of a period of 28 days following receipt of a notice of objection;
 - (B) the parties shall each request that the arbitrator's decision in writing (following any discussions or meetings between or with the parties that the arbitrator considers necessary) is delivered to the parties within 56 days of his appointment and that the arbitrator establish such rules and procedures for the conduct of the arbitration as he sees fit having regard to such timescale; and
 - (C) each of the parties shall accept and abide by the rules and procedures established by the arbitrator under paragraph 9.14(B).
- 9.15 Any consequential financial adjustment which is required to be made to any amounts paid or payable by the Metered Train Operator or any other train operator pursuant to paragraph 9.12 or 9.14 shall be made through the Volume Reconciliation carried out within 90 days after the end of the Relevant Year in which such amounts were paid or payable.
- 9.16 Where any Metered Charges are shown as a result of a Metering Audit carried out by the Metered Train Operator to be inaccurate in any material respect, Network Rail shall bear the reasonable costs of the Metering Audit and the Metered Train Operator shall issue an invoice to Network Rail in the amount of those costs.

Additional Metering Audits or Regenerative Braking Audits by Network Rail or the

Metered Train Operator

- 9.17 Neither Network Rail nor the Metered Train Operator shall be entitled to carry out more than one Metering Audit of one another in any Relevant Year, without the prior written consent of ORR. If either party wishes to carry out more than one Metering Audit of one another in any Relevant Year, such party shall notify ORR in writing, providing reasons why it considers that an additional Metering Audit is required.
- 9.18 Network Rail shall not be entitled to carry out more than one Regenerative Braking Audit of the train operator in any Relevant Year, without the prior written consent of ORR. If Network Rail wishes to carry out more than one such audit in any Relevant Year, it shall notify ORR in writing, providing reasons why it considers that an additional Regenerative Braking Audit is required.
- 9.19 If ORR consents to either party carrying out more than one Metering Audit, or to Network Rail carrying out more than one Regenerative Braking Audit, as the case may be, in any Relevant Year, any such additional audit shall be carried out by either Network Rail in accordance with the procedure set out in paragraphs 9.2 to 9.8 (inclusive) or by the Metered Train Operator in accordance with the procedure set out in paragraphs 9.9 to 9.16 (inclusive) (as the case may be), with such provisions being deemed to apply with such changes as are necessary in order to give effect to this paragraph 9.19.

Metering Audit and Regenerative Braking Audit requests by third party train operators

- 9.20 Any train operator may submit a request to ORR for a Metering Audit or Regenerative Braking Audit to be carried out in respect of any other train operator as appropriate. Such request shall be in writing and shall specify the reasons why the train operator considers that a Metering Audit or a Regenerative Braking Audit, as the case may be, is necessary.
- 9.21 If ORR consents to such request, such Metering Audit or Regenerative Braking Audit, as the case may be, shall be carried out by Network Rail on behalf of such train operator in accordance with the procedure set out in paragraphs 9.2 to 9.7 (inclusive), with such provisions being deemed to apply with such changes as are necessary in order to give effect to this paragraph 9.21.
- 9.22 Where:
- (A) as a result of a Metering Audit carried out pursuant to paragraph 9.21, any data supplied by the Metered Train Operator to Network Rail pursuant to these Traction Electricity Rules is shown to be inaccurate in any material respect; or
 - (B) as a result of a Regenerative Braking Audit carried out pursuant to paragraph 9.21, it is found that the train operator was not entitled to any or all the Regenerative Braking Discount it has claimed,

the train operator who was the subject of the audit shall bear the reasonable costs of the Metering Audit or Regenerative Braking Audit, as the case may be, and in all other cases such costs shall be borne by the train operator who requested the audit.

Time for completion of a Metering Audit

- 9.23 Any Metering Audit or Regenerative Braking Audit (including the resolution of any dispute arising out of such audit in accordance with paragraph 9.5 or 9.14, as the case may be) shall be concluded no later than 28 days after the end of the Relevant Year in which the Metering Audit was commenced. If any dispute arising out of such Metering Audit or Regenerative Braking Audit is not resolved within such time the findings of such Metering Audit or Regenerative Braking Audit, as the case may be, shall be final and binding on the parties.

10. Data to be published by Network Rail

- 10.1 Within 14 (fourteen) days following the end of each Period, Network Rail shall publish the following data in respect of each Metered Train Operator:
- (A) the Total Net Electricity Data Value for such Period; and
 - (B) the Net Infilled Electricity Data Value for such Period expressed as a percentage of the Total Net Electricity Data Value for such Period.

11. Changes to these Traction Electricity Rules

Entitlement to make Proposed Rules Change

- 11.1 A proposal to change these Traction Electricity Rules (a "**Proposed Rules Change**") may be made by:

- (A) a Metered Train Operator, a Modelled Train Operator or Network Rail, save in respect of a proposal to change Appendix 3 (Network Rail Distribution System Loss Factors); or
 - (B) ORR,
- (in each case a "**Proposing Party**").

11.2 Any such proposal shall:

- (A) be sent to Network Rail (except where Network Rail is the Proposing Party);
- (B) be in writing;
- (C) specify the wording of the Proposed Rules Change and the date or series of dates on which it is proposed that it come into effect, if other than the period of 14 days after any approval notified by ORR pursuant to paragraph 11.16 below; and
- (D) be supported by an explanation in reasonable detail of the reasons for the Proposed Rules Change.

Notice of Proposed Rules Change

11.3 Network Rail shall, when making a Proposed Rules Change, or, within 7 days following receipt of a Proposed Rules Change, or, if later, within 7 days following receipt of any clarification that Network Rail may reasonably request from the Proposing Party:

- (A) give notice of that Proposed Rules Change to the Consultees and ORR, as applicable, unless any such person has notified Network Rail that it does not wish to receive notice of a Proposed Rules Change; and
- (B) invite the submission to Network Rail of written representations in respect of that proposal within such period as is reasonable in all the circumstances (the "**Consultation Period**"), being a period of not less than 28 days from the date of notification under paragraph (A) above. Network Rail may make a written representation if it considers it appropriate to do so.

11.4 A Proposing Party shall promptly comply with all reasonable written requests of Network Rail for further clarification of the Proposed Rules Change.

11.5 Network Rail shall, within 7 days of the end of the Consultation Period, publish all written representations received in accordance with paragraph 11.3(B) above on its website, and shall send copies of the same to the Proposing Party.

11.6 The Proposing Party shall consider all written representations received from Network Rail in accordance with paragraph 11.5 above. If and to the extent the Proposing Party considers it appropriate, it shall modify its Proposed Rules Change to take account of such representations in accordance with paragraph 11.7 below. If the Proposing Party considers that no modification is required,

the Proposed Rules Change shall be put to a vote in accordance with paragraph 11.9 below.

- 11.7 If the Proposing Party makes any modifications to its original Proposed Rules Change, together with Network Rail it shall take appropriate action as follows:
- (A) if either of the Proposing Party or Network Rail consider that the modification is material, the Proposing Party shall provide Network Rail with the modified Proposed Rules Change in writing, and the provisions of paragraphs 11.1 to 11.6 inclusive shall apply as if set out again in full, save that the Consultation Period in respect of the modified Proposed Rules Change (the “**Re-Consultation Period**”) shall be 21 days (or longer if the Proposing Party so elects); or
 - (B) if both the Proposing Party and Network Rail consider that the modification is immaterial, the modified proposal shall be put to a vote in accordance with paragraph 11.9 below.
- 11.8 If the Proposing Party considers it appropriate to make further modifications to the Proposed Rules Change after the Re-Consultation Period, paragraph 11.7 shall apply again, and this process shall continue until no further material modifications are made, at which point the modified Proposed Rules Change shall be put to a vote in accordance with paragraph 11.9 below.

Voting on a Proposed Rules Change

- 11.9 Network Rail shall promptly arrange for a vote to take place on whether the Proposed Rules Change is accepted or not, as follows:
- (A) the vote shall be open to Metered Train Operators, Modelled Train Operators and Network Rail, who shall each cast one vote either for or against each Proposed Rules Change, as they consider appropriate;
 - (B) Network Rail shall specify a period for casting a vote, which shall be open for voting for not less than 7 days; and
 - (C) the vote shall be conducted by e-mail.
- 11.10 A Proposed Rules Change shall have been endorsed only if a majority of the votes cast are in favour of the relevant Proposed Rules Change, provided that the failure of a party timeously to vote or a party intimating its abstention shall be treated as abstentions and not be included in the counting of votes to ascertain whether the Proposed Rules Change has been endorsed or rejected.
- 11.11 If the vote taken in accordance with paragraph 11.9 above endorses the Proposed Rules Change, Network Rail shall as soon as reasonably practicable submit the proposal to ORR in accordance with paragraph 11.13 below.
- 11.12 If the vote taken in accordance with paragraph 11.9 above rejects the Proposed Rules Change, Network Rail shall as soon as reasonably practicable notify the Proposing Party of that decision.

ORR consent

- 11.13 When submitting an endorsed proposal to ORR in accordance with paragraph 11.11 above, Network Rail shall include a written memorandum:
- (A) containing details of the results of the consultation process (including copies of all representations made pursuant to paragraph 11.3(B) above, and any responses the Proposing Party may have made to the same);
 - (B) stating the results of the vote conducted pursuant to paragraph 11.9 above (including identifying how each relevant party voted); and
 - (C) stating the date or series of dates upon which it is considered that the proposal is to take effect, the first date being no earlier than 14 days after the date on which ORR consents to the proposal.
- 11.14 The Consultees and Network Rail shall use their respective reasonable endeavours to provide any further information required in relation to the consideration of a Proposed Rules Change by ORR.
- 11.15 No Proposed Rules Change shall have effect unless ORR gives notice to Network Rail in writing that it consents to the proposal. As part of its consent process, ORR may have regard to whether modifications made to the Proposed Rules Change and classed as immaterial in accordance with paragraph 11.7(B) above should in fact have been classed as material (and therefore should have been subject to a re-consultation).
- 11.16 If ORR consents to the proposed change Network Rail shall ensure that all Consultees shall be notified within 7 days of ORR's consent of the change and its effective date. Unless ORR otherwise determines, the effective date shall be 14 days from the date of the notification given by Network Rail pursuant to this paragraph 11.16.

Procedural Irregularities

- 11.17 If before the effective date or dates of any change (as notified under paragraph 11.16 above) a Relevant Complaint is made to ORR concerning a failure to comply with any part of the procedure relating to the relevant Proposed Rules Change, paragraph 11.18 shall apply.
- 11.18 In considering any Relevant Complaint, it shall be open to ORR to determine either that:
- (A) the change should become effective on the date notified under paragraph 11.16 above or any alternative date ORR considers appropriate in the circumstances; or
 - (B) the change should not become effective on the date notified under paragraph 11.16 above and to the extent ORR considers appropriate the rules change process in paragraphs 11.1 to 11.12 above shall be re-run.
- 11.19 A change in respect of which a complaint has been made under paragraph 11.17 above shall not become effective unless ORR makes a determination under paragraph 11.18(A) above.

11.20 If a complaint is made to ORR concerning a failure to comply with any part of the procedure relating to a Proposed Rules Change after the effective date or dates of any change, such change will remain in full force and effect as though no complaint had been made.

Modification of the Traction Electricity Rules by ORR

11.21 A modification made by ORR in accordance with paragraphs 11.22 to 11.27 below, does not need to be proposed in accordance with paragraphs 11.1 to 11.4 above.

11.22 The Traction Electricity Rules shall have effect with the modifications specified in any notice given by ORR for the purposes of these paragraphs 11.22 to 11.27 ("**modification notice**"), provided that:

- (A) ORR shall be satisfied as to the need for the modification as provided in paragraph 11.23 below;
- (B) the procedural requirements of paragraph 11.25 below shall have been satisfied; and
- (C) the modification shall not have effect until the date provided for in paragraph 11.26 below.

11.23 Subject to paragraph 11.24 below, a notice given by ORR under paragraph 11.22 above shall have effect if it is satisfied on reasonable grounds that either or both of the following conditions has been satisfied:

- (A) the modification in question is or is likely to be reasonably required in order to promote or achieve the objectives specified in section 4 of the Act; and/or
- (B) the interests of any relevant person would be unfairly prejudiced if the modification in question were not made, and the need to avoid or remedy such unfair prejudice outweighs or is likely to outweigh any prejudice which will or is likely to be sustained by any other relevant person or persons if the modification is made, having due regard to the need to enable relevant persons to plan the future of their businesses with a reasonable degree of assurance.

11.24 ORR may give a notice under paragraph 11.22 above without the conditions in paragraph 11.23 being satisfied where the modification which is the subject of ORR's notice relates to an amendment to paragraphs 11.1 to 11.20 above and is necessary, in the opinion of ORR, to remedy an inefficiency in the change process contained within those paragraphs.

11.25 The procedural requirements which require to have been followed for the purposes of paragraph 11.22 above are:

- (A) in its consideration of the matters referred to in paragraph 11.23 above, ORR shall have consulted Network Rail and the Consultees together with any other persons which ORR considers ought properly to be consulted, in relation to the modification which it proposes to make;
 - (B) in the consultations referred to in paragraph 11.25(A) ORR have made available to each person so consulted such drafts of the proposed modification as it shall consider are necessary so as properly to inform such persons of the detail of the proposed modification;
 - (C) ORR shall have given each person so consulted the opportunity to make representations in relation to the proposed modification and shall have taken into account all such representations received within the time specified by ORR for such consultation (other than those which are frivolous or trivial) in making its decision on the modification to be made;
 - (D) ORR shall have notified each person consulted pursuant to paragraph 11.25(A) as to its conclusions in relation to the modification in question (including by providing to each such person a copy of the text of the proposed modification) and its reasons for those conclusions; and
 - (E) in effecting the notifications required by paragraph 11.25(D), ORR may have regard to any representation (including any submission of written material) which (and to the extent that) the person making the representation shall, by notice in writing to ORR or by endorsement on the representation of words indicating the confidential nature of such representation, have specified as confidential information.
- 11.26 A notice under paragraph 11.22 above shall have effect upon such date, or the happening of such event, as shall be specified in the notice, provided that it shall in no circumstances have effect earlier than 90 days after the date upon which it shall have been given, with the exception of a notice to which paragraph 11.24 above applies, in which case the notice shall have effect 28 days after the date upon which it shall have been given.
- 11.27 A notice under paragraph 11.22 above shall not have effect in relation to any proposed modification of paragraphs 11.22 to 11.26 (inclusive) or this paragraph 11.27.

Network Rail's role as secretariat

- 11.28 Network Rail shall establish, maintain and update, as necessary, a website containing:

- (A) the current version of the Traction Electricity Rules (which for the avoidance of doubt includes the appendices);
- (B) all previous versions of the Traction Electricity Rules (which for the avoidance of doubt includes the appendices) (together with a statement of the dates between which each respective version was in force);
- (C) any current Proposed Rules Changes together with any representations received in response to the same;
- (D) a fully searchable archive containing details of consultations held, representations received and votes held (including identifying how each party voted) in relation to all previous Proposed Rules Changes; and
- (E) the data referred to in paragraph 10 above.

11.29 Network Rail shall, as soon as reasonably practicable following issue of a notice under paragraph 11.22 above or following consent to a Proposed Rules Change by the Office of Rail Regulation, supply to all Metered Train Operators and all Modelled Train Operators a revised version of the Traction Electricity Rules (which for the avoidance of doubt includes the appendices) incorporating the change.

12. List of Metered Train Operators

12.1 Network Rail shall maintain an up-to-date list of Modelled Train Operators and Metered Train Operators make it available, on request, to train operators at all reasonable times.

13. Power Factor Correction

13.1 Appendix 2 to these Traction Electricity Rules sets out the Power Factor Correction (PF) for each train category (i) for the purposes of calculating the Traction Electricity Charge.

14. Network Rail Distribution System Loss Factor

14.1 Appendix 3 to these Traction Electricity Rules sets out the Network Rail Distribution System Loss Factor for each Traction electricity Geographic Area (g) the AC System (λ_{ACg}) and the DC System (λ_{DCg}) for the purposes of calculating the Traction Electricity Charge.

15. Tolerance Factors

15.1 Appendix 4 to these Traction Electricity Rules sets out the Tolerance Factors for each train category (i) for the purposes of calculating the Traction Electricity Charge.

16. Changes to Power Factor Correction or Tolerance Factors

16.1 If at any time after the On-Train Metering Commencement Date there is a material change to any relevant Specified Equipment or On-Train Meters used by the Metered Train Operator which would or might result in:

- (A) the Power Factor Correction of that Specified Equipment decreasing or otherwise ceasing to correct to unity; and/or
- (B) a reduction in the accuracy of the On-Train Meters (unless the accuracy remains within the bounds required by the relevant industry standards),

the Metered Train Operator shall as soon as reasonably practicable notify Network Rail and discuss whether any amendments need to be made to the corresponding values in Appendix 2 and/or Appendix 4 to ensure that the Traction Electricity Charge is calculated accurately.

17. Changes to Appendix 2 (Power Factor Correction) and Appendix 4 (Tolerance Factors)

17.1 No amendment to Appendices 2 or 4 of these Traction Electricity Rules shall have effect unless ORR has given its consent to the amendment under either paragraph 11 or this paragraph 17.

17.2 Network Rail, a Metered Train Operator or a Prospective Metered Train Operator may propose to ORR that the tables in Appendices 2 and/or 4 be amended to:

- (A) include new entries to facilitate the billing of traction electricity using On-Train Meters;
- (B) improve the accuracy of the Traction Electricity Charge payable by the Metered Train Operator;
- (C) remove redundant entries or increase clarity; and/or
- (D) make any other modifications which it believes would be necessary or desirable as a consequence of any changes under paragraphs 17.2(A) to 17.2(C) (inclusive) above.

17.3 Any proposition of a kind referred to in paragraph 17.2 shall detail:

- (A) the reasons for the proposal and, where appropriate, include supporting technical data to justify any value to be inserted into the table; and
- (B) the extent to which Network Rail and any Metered Train Operators whose Traction Electricity Charges would be affected by the proposed amendment support the proposal.

Co-operation and information

17.4 ORR may request further information from the party that is proposing a change under paragraph 17.2 and/or any party that would be affected by the change.

17.5 Any party of whom a request for further information is made in accordance with 17.4 shall provide the requested information promptly and to the standard required by ORR, and if it fails to do so, ORR shall be entitled to proceed with its consideration of the matter in question and to reach a decision in relation to it without the information in question and the party in default shall have no grounds for complaint in that respect.

ORR consent to a proposed change to Appendices 2 and 4

- 17.6 If ORR is satisfied with a proposal submitted to it under paragraph 17.2 to amend Appendices 2 and/or 4, it may issue an Appendix Amendment Notice to Network Rail consenting to those amendments.
- 17.7 If ORR gives notice that it is not satisfied with the proposal submitted to it under paragraph 17.2, it may:
- (A) reject the proposal; or
 - (B) following consultation with those parties it considers would be directly affected by the change, determine the changes to Appendix 2 and/or Appendix 4 and give an Appendix Amendment Notice to Network Rail specifying those changes.
- 17.8 Appendices 2 and/or 4 (as the case may be) shall have effect with the changes specified by ORR in an Appendix Amendment Notice from the date specified in that notice for this purpose.

18. Volume and Cost Reconciliation for all train operators

Timing and scope of volume and cost reconciliation

- 18.1 Within 90 days after the end of Relevant Year t, Network Rail shall calculate, for each train operator ω , two supplementary amounts (“ $S1_{t\omega}$ ” and “ $S2_{t\omega}$ ”) which shall be payable by or to the train operator in accordance with this paragraph 18. The calculations of $S1_{t\omega}$ and $S2_{t\omega}$ shall be made for all train operators using electric traction.

Volume reconciliation

- 18.2 For each train operator ω , $S1_{t\omega}$ is derived from the following formula:

$$S1_{t\omega} = \sum S1_{tg\omega}, \text{ summed over } g$$

where, for each Geographic Area g, $S1_{tg\omega}$ is derived from the following formula:

$$S1_{tg\omega} = E_{tmog\omega} \bullet (A_{gt} - L_{tmog} - L_{tmeg} - L_{tmug} - L_{tmng}) / (L_{tmog} + L_{tmng} + \lambda_g \bullet A_{gt})$$

where:

$E_{tmog\omega}$ means the amount E_{tmog} calculated for each train operator ω in accordance with paragraph 4.1.2 of Part 2 (in the case of passenger operators) and paragraph 2.4.1.2 (in the case of freight operators) of Schedule 7 of the relevant train operator's track access contract;

A_{gt} means the total actual electricity consumption (in kWh), if any, in Geographic Area g in Relevant Year t billed to Network Rail by its electricity suppliers in that Geographic Area for traction electricity consumed in accordance with the terms for the purchase of traction electricity entered into by Network Rail;

L_{tmog} means the total modelled traction electricity consumption charged to all train operators in Geographic Area g and in Relevant Year t which is derived from the following formula:

$$L_{tmog} = \sum C_i \bullet UE_{igt}$$

where:

Σ means the summation across all train categories i and tariff bands j for Relevant Year t for all train operators, as appropriate;

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

UE_{igt} means the actual volume of usage (in electrified Vehicle Miles in relation to passenger electric multiple units or Gross Tonne Miles in relation to locomotive hauled units and all freight traffic), if any, of trains operated in Relevant Year t by or on behalf of all train operators in train category i, in Geographic Area g, where relevant, in tariff band j and in Relevant Year t in respect of which charges for traction electricity consumption are payable based on modelled consumption rates pursuant to paragraph 4.1 or 4.1.2 (in the case of passenger operators) or paragraph 2.4.1 or 2.4.1.2 (in the case of freight operators) of Schedule 7 of each relevant train operator's track access contract;

L_{tmeg} means the total metered traction electricity consumption charged to all train operators in Geographic Area g and Relevant Year t which is derived from the following formula:

$$L_{tmeg} = \sum [((CME_{imgt} \bullet PF_{im}) - (RGB_{imgt} \bullet PF_{im})) \bullet (1 + \delta_{mi})]$$

where:

Σ means the summation across all relevant [metered trains m categories i](#) for Relevant Year t for all train operators, as appropriate;

CME_{imgt} means the consumption of electricity (in kWh) by [metered trains m](#) operated by or on behalf of ~~the all~~-train operators ~~in train category i~~, as measured by the On-Train Meters or as otherwise determined in accordance with these Traction Electricity Rules, in Geographic Area g and in Relevant Year t;

PF_{im} means the Power Factor Correction for [the relevant vehicle type for metered train category im](#);

RGB_{imgt} means the electricity (in kWh) generated by braking by [metered train m railway vehicles](#) operated by or on behalf of ~~all the~~ train operators ~~in train category i~~, as measured by the On-Train Meters or as otherwise determined in

accordance with these Traction Electricity Rules, in Geographic Area g and in Relevant Year t; and

δ_{im} means the Tolerance Factor for [the relevant vehicle type for metered train m-category-i](#);

L_{tmug} means the total amounts in respect of the Network Rail Distribution System Loss Factor, adjusted, where appropriate, for Power Factor Correction and Tolerance Factor, charged to all train operators in Geographic Area g and Relevant Year t which is derived from the following formula:

$$L_{tmug} = L_{tmugAC} + L_{tmugDC}$$

where:

L_{tmugAC} is derived from the following formula:

$$L_{tmugAC} = \sum [(CME_{imgtAC} \bullet PF_{im} \bullet EF_{gjt}) \bullet (1 + \delta_{im})] \bullet \lambda_{ACg}$$

where:

Σ means the summation across all [metered trains m categories-i](#) for Relevant Year t for all train operators, as appropriate;

CME_{imgtAC} means the consumption of electricity (in kWh) from the AC System by [metered trains m](#) operated by or on behalf of [all the train operators in train category-i](#), as measured by the On-Train Meters or as otherwise determined in accordance with these Traction Electricity Rules, in Geographic Area g and in Relevant Year t;

PF_{im} means the Power Factor Correction for [the relevant vehicle type for metered train m category-i](#);

EF_{gjt} means an amount for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the train operator in Geographic Area g, in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 4.2 of Schedule 7 of a passenger train operator's track access contract or paragraph 2.4.11 of Schedule 7 of a freight train operator's track access contract, as the case may be;

δ_{im} means the Tolerance Factor for [the relevant vehicle type for metered train m-category-i](#); and

λ_{ACg} means the Network Rail Distribution System Loss Factor for the AC System in Geographic Area g;

L_{tmugDC} is derived from the following formula:

$$L_{tmugDC} = \sum [(CME_{imgtDC} \bullet EF_{gjt}) \bullet (1 + \delta_{im})] \bullet \lambda_{DCg}$$

where:

Σ means the summation across all [metered trains categories— \$m_i\$](#) for Relevant Year t for all train operators, as appropriate;

CME_{imgtDC} means the consumption of electricity (in kWh) from the DC System by [metered trains \$m\$](#) operated by or on behalf of [all the train operators in train category \$i\$](#) , as measured by the On-Train Meters or as otherwise determined in accordance with these Traction Electricity Rules, in Geographic Area g and in Relevant Year t;

EF_{gjt} means an amount for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the train operator in Geographic Area g, in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 4.2 of Schedule 7 of a passenger train operator's track access contract or paragraph 2.4.11 of Schedule 7 of a freight train operator's track access contract, as the case may be;

δ_{im} means the Tolerance Factor for [the relevant vehicle type for metered train category \$im\$](#) ; and

λ_{DCg} means the Network Rail Distribution System Loss Factor for the DC System in Geographic Area g;

L_{tmng} means the total traction electricity consumption in Geographic Area g and in Relevant Year t by: (a) Network Rail, and (b) all entities whose consumption is not modelled or metered in a track access contract subject to regulation by ORR in accordance with the Act; and

λ_g means, in any Geographic Area g which only uses the DC System, the Network Rail Distribution System Loss Factor for the DC System in Geographic Area g (λ_{DCg}), and, in any other Geographic Area g, means the Network Rail Distribution System Loss Factor for the AC System in Geographic Area g (λ_{ACg}).

Cost reconciliation

18.3 [See Chapter 2 of ORR's *Consultation on Implementing PR13*]

Payment of reconciliation sums

- 18.4 Network Rail shall, within 90 days after the end of Relevant Year t , provide to each train operator ω :
- (a) a statement of the amounts $S1_{t\omega}$ and $S2_{t\omega}$ (whether of a positive or negative amount);
 - (b) such background workings as may reasonably be required for a proper understanding of the calculation; and
 - (c) a certificate of the auditors of Network Rail confirming the accuracy of the calculation.
- 18.5 Within 30 days after the date upon which Network Rail shall have provided to the train operator the information referred to in paragraph 18.4, the amounts $S1_{t\omega}$ and $S2_{t\omega}$ shall be invoiced for payment as provided under the relevant track access contract. If the aggregate of the amounts $S1_{t\omega}$ and $S2_{t\omega}$ is positive, the invoice shall be issued by Network Rail and payable by the train operator. If the aggregate of the amounts $S1_{t\omega}$ and $S2_{t\omega}$ is negative, Network Rail shall issue a credit note to the train operator.

19. Dispute Resolution

- 19.1 The dispute resolution processes set out in clause 13 of the relevant track access contract into which these Traction Electricity Rules are incorporated shall apply in respect of any dispute arising out of or in relation to these Traction Electricity Rules.

APPENDIX 1: TEMPLATE LOOK-UP TABLES

1. Journey Look-Up Tables

Table 1.1: Journey Look-Up Table for non locomotive-hauled passenger journeys – Consumption Data

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.
						Consumption rate (kWhr/5 minute interval)				
Train Operator	Train Service Code	Specified Equipment	Geographic Area	Electricity Type (AC/DC)	EMU Length	1 Unit	2x Unit	3x Unit	4x Unit	Other

Table 1.2: Journey Look-Up Table for non locomotive-hauled passenger journeys – Regenerative Braking Data

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.
						Consumption rate (kWhr/5 minute interval)				
Train Operator	Train Service Code	Specified Equipment	Geographic Area	Electricity Type (AC/DC)	EMU Length	1 Unit	2x Unit	3x Unit	4x Unit	Other

Table 1.3: Journey Look-Up Table for freight and locomotive-hauled passenger journeys – Consumption Data

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.
					Consumption rate (kWhr/5 minute interval/tonne)				
Train Operator	Train Service Code	locomotive class	Geographic Area	Electricity Type (AC/DC)	1 Unit	2x Unit	3x Unit	4x Unit	Other

Table 1.4: Journey Look-Up Table for freight and locomotive-hauled passenger journeys – Regenerative Braking Data

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.
					Consumption rate (kWhr/5 minute interval/tonne)				
Train Operator	Train Service Code	locomotive class	Geographic Area	Electricity Type (AC/DC)	1 Unit	2x Unit	3x Unit	4x Unit	Other

2. **Non-Journey Look-Up Table**

Table 2.1: Non-Journey Look-Up Table

1.	2.	3.	4.	5.
Train Operator	Specified Equipment	Geographic Area	Electricity Type (AC/DC)	Consumption rate (kWhr/5 minute interval)

APPENDIX 2: POWER FACTOR CORRECTION

The table below sets out the Power Factor Correction (PF) for each [train-vehicle typecategory \(i\)](#) for the purposes of calculating the Traction Electricity Charge.

Train category (i)vehicle type	Power Factor	Power Factor Correction (PF _{im})
Class 313	N/A	N/A
Class 318	TBC	1
Class 319	0.9	1
Class 320	TBC	1
Class 321	0.85	1
Class 323	1	1
Class 350	1	1
Class 365	0.9	1
Class 377	N/A	N/A
Class 380	1	1
Class 390	1	1
Class 442	N/A	N/A
Class 455	N/A	N/A
All other train categories	N/A	1

APPENDIX 3: NETWORK RAIL DISTRIBUTION SYSTEM LOSS FACTORS

The table below sets out the Network Rail Distribution System Loss Factor for each traction electricity Geographic Area (g) for the AC System (λ_{AC}) and the DC System (λ_{DC}) for the purposes of calculating the Traction Electricity Charge.

ESTA	Traction electricity Geographic Area (g)	Network Rail Distribution System Loss Factor for the AC System (λ_{AC})	Network Rail Distribution System Loss Factor for the DC System (λ_{DC})
M	Merseyside	N/A	0.1156
N	Midland Main Line	0.0423	N/A
O	London Tilbury & Southend	0.0321	N/A
P	Great Eastern	0.0321	0.1701
Q	West Anglia	0.0386	N/A
R	East Coast Main Line South	0.0321	0.1701
A	East Coast Main Line Central	0.0423	N/A
B	East Coast Main Line North	0.0423	N/A
C	East Coast Main Line Leeds	0.0423	N/A
S	Scotland Glasgow	0.0423	N/A
D	Scotland East	0.0489	N/A
E	Scotland North & West	0.0423	N/A
F	Scotland WCML	0.0489	N/A
T	West Coast Main Line South	0.0341	0.1701
G	West Coast Main Line Central	0.0386	N/A
H	West Coast Main Line West Midlands	0.0386	N/A

ESTA	Traction electricity Geographic Area (g)	Network Rail Distribution System Loss Factor for the AC System (λ_{AC})	Network Rail Distribution System Loss Factor for the DC System (λ_{DC})
I	West Coast Main Line Manchester	0.0423	N/A
J	West Coast Main Line North	0.0423	N/A
U	Southern	N/A	0.1701
V	Great Western	0.0386	N/A

APPENDIX 4: TOLERANCE FACTORS

The table below sets out the Tolerance Factor for each [vehicle type](#) ~~train category (i)~~ for the purposes of calculating the Traction Electricity Charge.

Train category (i) vehicle type	On-Train Energy Measurement Function Tolerance	Tolerance Factor (δ_{im})
Class 313	0.87	0.00
Class 318	TBC	0.00
Class 319	N/A	0.03
Class 320	TBC	0.00
Class 321	0.87	0.00
Class 323	0.87	0.00
Class 350	1.2247	0.00
Class 365	N/A	0.03
Class 377	0.87	0.00
Class 380	1.2247	0.00
Class 390	1.4	0.00
Class 442	0.87	0.00
Class 455	0.87	0.00

APPENDIX 5: THE GEOGRAPHIC AREAS

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

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

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

ESTA	Traction electricity Geographic Area / Tariff Zone	Description
T	West Coast Main Line South	Comprises the West Coast Main Line routes from Euston to the neutral sections at Berkswell and Nuneaton; the third rail electrified lines from Euston to Watford Junction; the West London Line to the North Pole junction; the North London Line between South Acton and York Way (north of Kings Cross) and the route between the Primrose Hill tunnels and Camden Road.
G	West Coast Main Line Central	Comprises the West Coast Main Line routes between Nuneaton and Stafford (Whitmore) / Macclesfield (Prestbury) bounded by the neutral sections at Nuneaton, Queensville (Stafford), Whitmore and Prestbury
H	West Coast Main Line West Midlands	Comprises the West Coast Main Line routes around Birmingham between the neutral sections at Berkswell and Queensville (Stafford).
J	West Coast Main Line North	Comprises the West Coast Main Line routes between Stafford (Whitmore) and Penrith (neutral sections) including Crewe / Macclesfield (Prestbury) and Manchester and routes around Manchester. It will also include all new electrification in the Manchester, Liverpool and Blackpool areas and towards Leeds
U	Southern	Comprises all third rail electrified routes south from Farringdon, Cannon Street, Charing Cross, London Bridge, Waterloo and Victoria, covering the international route as far as the Network Rail/Eurotunnel boundary; the West London Line to the south of North Pole junction; and the North London Line between Richmond and Acton Central.
V	Great Western	Comprises the electrified route from Paddington to Heathrow Airport.