

RAILWAYS ACT 1993

2013 PERIODIC REVIEW

**REVIEW NOTICE:
CHARTER OPERATOR TRACK ACCESS AGREEMENTS**

TO:

- (1) the persons whose names are set out in Annex 1 to this Review Notice (the “**Train Operators**”);
 - (2) Network Rail Infrastructure Limited (“**Network Rail**”); and
 - (3) the Secretary of State for Transport, the Scottish Ministers and the Treasury,
- together “the **Addressees**”.

1 GENERAL

- 1.1 This review notice (the “**Review Notice**”) is given in accordance with paragraph 4 of Schedule 4A to the Railways Act 1993 (the “**Act**”).
- 1.2 The Office of Rail Regulation (“**ORR**”) has undertaken a review of:
 - (a) the amounts payable by Network Rail and each of the Train Operators to each other under each of the access agreements listed in Annex 1 to this Review Notice (the “**Track Access Agreements**”); and
 - (b) the times at which, and the manner in which, those amounts are payable,(the “**Review**”).

1.3 ORR's conclusions on the Review, and its reasons for those conclusions, are:

(a) set out in a document entitled "Periodic Review 2013: Final determination of Network Rail's outputs and funding for 2014-19" and published by ORR on 31 October 2013 (the "**Review Document**"); and

(b) hereby incorporated into this Review Notice.

1.4 By publishing this Review Notice and serving it on each of the Addressees, ORR is initiating the implementation of the Review.

2 Proposed Relevant Changes

2.1 For or in connection with giving effect to ORR's conclusions on the Review, ORR proposes to direct the parties to each of the Track Access Agreements to amend their Track Access Agreement on the terms specified in Annex 2 to this Review Notice (the "**proposed relevant changes**").

2.2 ORR proposes that, subject to paragraph 3, the proposed relevant changes will come into operation on and from 1 April 2014.

3 Regulated Amendments

If, before the proposed relevant changes come into operation in relation to any Track Access Agreement, such Track Access Agreement is amended in a manner which is:

(a) approved by ORR under section 22 of the Act; or

(b) directed by ORR under section 22A or section 22C of the Act,

(each a "**regulated amendment**"), then:

- (i) the proposed relevant changes shall come into operation in relation to that Track Access Agreement subject to the regulated amendments; and
- (ii) if there is any conflict between the proposed relevant changes and the regulated amendments, the regulated amendments shall take precedence.

4 Objections

4.1 Subject to paragraph 4.2, any person specified in paragraph 4(4)(a) or (b) of Schedule 4A to the Act may make objections with respect to:

- (a) any of the proposed relevant changes; or
- (b) the date on which it is proposed that any such proposed relevant changes shall come into operation.

4.2 Any objection made under paragraph 4.1 must be:

- (a) made in writing;
- (b) received by ORR on or before 7 February 2014; and
- (c) addressed to ORR as follows:

John Larkinson
Office of Rail Regulation
One Kemble Street
London WC2B 4AN

5 Definitions and Interpretation

5.1 In this Review Notice, unless the context otherwise requires:

- (a) references to “this Review Notice” include the Annexes to this Review Notice;
- (b) references to the singular include the plural and *vice versa*;

(c) words and phrases defined in:

- (i) the Act;
- (ii) the Network Code (formerly known as the Railtrack Track Access Conditions 1995 (as amended)); or
- (iii) each Track Access Agreement,

shall have the same meanings in this Review Notice; and

(d) any general rules of interpretation contained in:

- (i) Condition A1 of the Network Code; or
- (ii) each Track Access Agreement,

shall also apply to this Review Notice.



Richard Price

Chief Executive

FOR AND ON BEHALF OF

THE OFFICE OF RAIL REGULATION

Dated 20 December 2013



ANNEX 1

TRAIN OPERATORS AND TRACK ACCESS AGREEMENTS

Train Operator Name	Train Operator Company Number	Original Date of Track Access Agreement
Direct Rail Services Limited	03020822	30 August 2009
First Greater Western Limited	05113733	16 April 2010
GB Railfreight Limited	03707899	30 August 2009
Rail Express Systems Limited	02938991	30 August 2009
West Coast Railway Company Limited	03066109	30 August 2009

ANNEX 2

STANDARD AMENDMENTS

Explanatory Note:

*In order to give effect to the ORR's conclusions on the Review, this Annex 2 sets out the standard form proposed relevant changes to be made to Schedules 7 and 8 and various clauses in each Track Access Agreement (the "**standard amendments**").*

There are no bespoke amendments required in relation to any of the Track Access Agreements.

The following amendments shall be made to the Track Access Agreements:

1 Consequential and other amendments to the clauses of each Track Access Agreement

1.1 At the end of the heading for Clause 7 of each Track Access Agreement, add the words " **AND OTHER PAYMENTS**".

1.2 Delete clause 13.2 of each Track Access Agreement and replace it with the following clause:

"13.2 Unpaid sums

If either party fails to pay:

- (a). any invoice issued to it under this contract in respect of Track Charges; or
- (b). any other sum which has fallen due in accordance with any provision of this contract,

then,

- i) the amount invoiced or sum due, as referred to in Clause 13.2(a) or (b), shall immediately constitute a debt due and owing from the party who has failed to pay the invoice or sum due to the other party (and to any assignee of a party's right to payment in respect of any invoice or other sum due);
- ii) such debt shall be recoverable by any means available under the laws of England and Wales; and

- iii) the dispute resolution procedures in Clauses 13.1 and 13.3 to 13.5 shall not apply to proceedings commenced under this Clause 13.2.”.

2 Schedule 7 to each Track Access Agreement

- 2.1 Delete Schedule 7 to each Track Access Agreement and replace it in its entirety with the Schedule 7 set out in Appendix 1 to this Annex 2.

3 Schedule 8 to each Track Access Agreement

- 3.1 Delete Schedule 8 to each Track Access Agreement and replace it in its entirety by the Schedule 8 set out in Appendix 2 to this Annex 2.

Appendix 1 to Annex 2

Schedule 7

SCHEDULE 7: TRACK CHARGES

PART 1: INTERPRETATION

1 Definitions

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

“Cancellation Charge”	has the meaning given to that term in paragraph 5.1 of Part 2;
“Charter Capacity Charge”	means a variable charge calculated in accordance with paragraph 8.1 of Part 2;
“Charter Capacity Rate”	means, in respect of each Service, the charter 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 8.1 of Part 2;
“Charter Capacity Charge Wash-Up”	means the charge calculated in accordance with paragraph 8.2.2 of Part 2;
“Charter Capacity Charge Wash-Up Rate”	means the rate in the column headed “Wash-Up rate” that applies to Services for charter operators that operate on weekdays, as set out in the List of Capacity Charge Rates, and adjusted in accordance with paragraph 8.2.2 of Part 2;
“Core Operational Period”	in relation to any part of the Network, means the period of the day when that part is generally open to train movements;
“Default Train Consist Data”	means the Train Consist Data for a Class 67/0 locomotive plus 11 Mark 1 coaches;
“ECS”	means empty coaching stock (trains used to bring carriages into or take them out of service);
“Electrification Asset Usage Charge”	means the electrification asset usage charge calculated in accordance with paragraph 7.1 of Part 2, as adjusted in accordance with paragraph 7.2 of Part 2;
“kWh”	means kilowatt hours;

“Initial Indexation Factor” is derived from the following formula:

$$\text{IIF} = \left(1 + \frac{(\text{RPI}_{2013} - \text{RPI}_{2012})}{\text{RPI}_{2012}} \right)^2$$

Where:

IIF means the Initial Indexation Factor;

RPI₂₀₁₂ means the RPI published or determined with respect to the month of November 2012; and

RPI₂₀₁₃ means the RPI published or determined with respect to the month of November 2013;

“light locomotive movement” means the movement of

(a) a single locomotive; or

(b) a single steam locomotive hauling no more than one other item of rolling stock (not being a locomotive),

before working, or after having worked, a Relevant Service;

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

“Non-Core Operational Charge” means the charge calculated in accordance with paragraph 1.1 of Part 5;

“Period” has the meaning ascribed to it in Schedule 8;

“Repeat Business Slot Charge” means the charge payable in respect of a particular Service in accordance with paragraph 4.2 of Part 2;

“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;

“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;
“Route Clearance Charge”	means, in respect of a particular Train Slot a charge payable in respect of works identified in paragraph 1.2 of Part 5 as calculated in accordance with that paragraph;
“route type k”	means route type k as identified by type of electrification (AC (OLE) or DC) in the Track Usage Price List;
“Slot Charge”	means the charge payable for vehicle type i for journey type j as established in accordance with paragraph 4.1 of Part 2;
“Track Charge”	means the Variable Usage Charge, Slot Charge, Cancellation Charge and where the context admits, Charter Capacity Charge, Charter Capacity Charge Wash-up, Traction Electricity Charge and Electrification Asset Usage Charge;
“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 6 of Part 2;
“Traction Electricity Modelled Consumption Rates List”	means the document entitled “Traction Electricity Modelled Consumption Rates List” published by Network Rail on or about 20 December 2013 and specifying freight, passenger and charter traction electricity modelled consumption rates;

“Traction Electricity Rate”	means such amount (in £ per kWh) as Network Rail shall specify for the purpose of each Relevant Year as reflecting, as accurately as reasonably practicable, the actual cost to Network Rail of providing traction electricity to the Train Operator, and subject to the agreement of the Train Operator to those amounts, such agreement not to be unreasonably withheld or delayed;
“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 and includes loaded Train Miles and ECS Train Miles;
“Variable Usage Charge”	means a variable charge, calculated in accordance with paragraph 3.1 of Part 2; and
“Vehicle Mile”	in relation to a railway vehicle, means a mile travelled by that vehicle on the Network.

PART 2: TRACK CHARGES

1 Principal formula

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

$$T_t = V_t + S_t + E_t + EAV_t + C_t + K_t + KW_t$$

where:

- T_t means Track Charges for the Relevant Year t;
- V_t means an amount in respect of the Variable Usage Charge for the Relevant Year t which is derived from the formula in paragraph 3.1;
- S_t means an amount in respect of the Slot Charge for the Relevant Year t which is derived from the formula in paragraph 4.1;
- E_t means an amount in respect of the Traction Electricity Charge for the Relevant Year t which is derived from the formula in paragraph 6.1;

EAV_t means an amount in respect of the Electrification Asset Usage Charge for Relevant Year t which is derived from the formula in paragraph 7.1;

C_t means an amount in respect of the Cancellation Charge (whether of a positive or negative value) for the Relevant Year t calculated in accordance with the provisions in paragraph 5.1;

K_t means an amount in respect of the Capacity Charge for the Relevant Year t which is derived from the formula in paragraph 8.1; and

KW_t means an amount in respect of the Capacity Charge Wash-Up for the Relevant Year t which is derived from the formula in paragraph 8.2.2.

2 Not used

3 Variable Usage Charge

3.1 Variable Usage Charge

For the purposes of paragraph 1, the term V_t means an amount in respect of the Variable Usage Charge for the Relevant Year t (including any light locomotive movements) which is derived from the following formula:

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

where:

V_{it} means an amount for vehicle type i for Relevant Year t which is derived from the following formula:

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

where:

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

RPI_{t-2} means the RPI published or determined with respect to November in Relevant Year t-2,

but so that in relation to the Relevant Year commencing on 1 April 2014, V_{it} shall have, in respect of each Train Mile, the value set out in the section of the Track Usage Price List entitled "Charter Variable Usage Charge rates", multiplied by the Initial Indexation Factor, and in relation to the next following Relevant Year V_{it-1} shall have the same value;

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

Σ means the summation across all relevant vehicle types i.

4 Slot Charge

4.1 For the purposes of paragraph 1, the term S_t means an amount in respect of the Slot Charge for the Relevant Year t which is derived from the following formula:

$$S_t = \Sigma S_{ijt} \cdot US_{ijt}$$

where:

S_{ijt} means an amount in respect of the Slot Charge for vehicle type i for journey type j for Relevant Year t which is derived from the following formula:

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

where:

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

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

but so that in relation to the Relevant Year commencing on 1 April 2014, S_{ijt} shall have the value of the Slot Charge for vehicle type i and journey type j set out in the section of the Track Usage Price List entitled "Charter Slot Charge rates", multiplied by the Initial Indexation Factor, and in relation to the next following Relevant Year S_{ijt-1} shall have the same value;

US_{ijt} means the actual number of journeys for the Relevant Year t for vehicle type i for journey type j (referred to in the Track Usage Price List) operated by or on behalf of the Train Operator under this contract; and

Σ means the summation across all relevant vehicle types i and journey types j.

4.2 When a Train Operator Variation Request indicates a requirement for the Service to operate on more than one date, then, provided that all dates of operation fall within the same Timetable Period, Network Rail may levy and the Train Operator shall pay:

(a) the Slot Charge as defined in paragraph 4.1 in respect of the first such Service; and

(b) for each subsequent Service the Slot Charge shall equal the Repeat Business Slot Charge which is derived from the following formula:

$$RS_t = RS_{t-1} \bullet \left(1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right)$$

where:

RS_t means an amount in respect of the Repeat Business Slot Charge in Relevant Year t ;

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

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

but so that in relation to the Relevant Year commencing on 1 April 2014, RS_t shall have the value set out in the section of the Track Usage Price List entitled "Charter Repeat Business Slot Charge rates", multiplied by the Initial Indexation Factor, and in relation to the next following Relevant Year RS_{t-1} shall have the same value.

- 4.3 When a Train Operator Variation Request is received by Network Rail on or before the Priority Date for the timetable in question, the Slot Charge S_t shall equal zero.

5 Cancellation Charge

- 5.1 In the event of a Network Rail Cancellation or a Train Operator Cancellation the party cancelling the Service (the "**Cancelled Service**") shall pay a cancellation charge, C_t , which shall be equivalent to:

10% of the Slot Charge for the Cancelled Service where notice of such cancellation is given more than 25 Working Days in advance of the Planned date of operation of the Cancelled Service;

50% of the Slot Charge for the Cancelled Service where notice of such cancellation is given at least 20 but less than 26 Working Days in advance of the Planned date of the Cancelled Service;

75% of the Slot Charge for the Cancelled Service where notice of such cancellation is given at least 15 but less than 20 Working Days in advance of the Planned date of the Cancelled Service;

85% of the Slot Charge for the Cancelled Service where notice of such cancellation is given at least 5 but less than 15 Working Days in advance of the Planned date of the Cancelled Service; and

in all other cases the Slot Charge for the Cancelled Service.

6 Traction Electricity Charge

- 6.1 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, E_t , shall be calculated in accordance with the following formula:

$$E_t = TER_t \cdot TM_t \cdot TEC_t$$

where:

- TER_t means the Traction Electricity Rate for Relevant Year t ;
- TM_t means the total electrified Train Miles for all trains operated by or on behalf of the Train Operator under this contract in Relevant Year t ; and
- TEC_t means the modelled consumption rate for all charter operators set out in the section of the Traction Electricity Modelled Consumption Rate List entitled "Charter Traction Electricity Modelled Consumption Rates for CP5".

Election to introduce on-train metering for a vehicle or vehicle type

- 6.2 (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 6.2(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 6.2(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 6.2(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 6.2(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 6.2(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 6.2(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.

7 Electrification Asset Usage Charge

- 7.1 For the purposes of paragraph 1, the term EAV_t means an amount in respect of the Electrification Asset Usage Charge for electrification asset usage which is derived from the following formula:

$$EAV_t = \sum(EV_{tk} \cdot UV_{tk})$$

where:

Σ means the summation across all route types k;

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

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

where:

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

RPI_{t-2} has the meaning set out in paragraph 3.1 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 relevant value per electrified Vehicle Mile on route type k set out in the section of the Track Usage Price List entitled "Charter Electrification Asset Usage Charge rates", multiplied by the Initial Indexation Factor, and in relation to the next following Relevant Year EV_{t-1k} shall have the same value; and

UV_{tk} means the actual number of electrified Vehicle Miles for all railway vehicles operated by or on behalf of the Train Operator under this contract on route type k in Relevant Year t.

8 Charter Capacity Charge and Charter Capacity Charge Wash-Up

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

$$K_t = \sum (CR_{mft} \bullet CM_{mft}) + (CR_{wt} \bullet CM_{wt})$$

where:

\sum means the summation across all Services and Ancillary Movements;

CR_{mft} means the Charter Capacity Rate in Relevant Year t in respect of Services and Ancillary Movements operated during the period from Monday to Friday (both inclusive) and indexed in accordance with the following formula:

$$CR_{mft} = CR_{mft-1} \bullet \left(1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right)$$

where:

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

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

but so that in relation to the Relevant Year commencing on 1 April 2014, CR_{mft} shall be the weekday rate for charter operators set out in the List of Capacity Charge Rates, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year CR_{mft-1} shall have the same value;

CM_{mft} means Train Miles in Relevant Year t in respect of Services and Ancillary Movements operated during the period from Monday to Friday (both inclusive);

CR_{wt} means the Charter Capacity Rate in respect of Services and Ancillary Movements operated on Saturday and/or Sunday, and indexed in accordance with the following formula:

$$CR_{wt} = CR_{wt-1} \bullet \left(1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right)$$

where:

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

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

but so that in relation to the Relevant Year commencing on 1 April 2014, CR_{wt} shall be the weekend rate for charter operators set out in the List of Capacity Charge Rates multiplied by the Initial Indexation Factor, and in relation to the next following Relevant Year CR_{wt-1} shall have the same value; and

CM_{wt} means Train Miles in Relevant Year t in respect of Services and Ancillary Movements operated on Saturday and/or Sunday.

8.2

8.2.1 Within 90 days after the end of Relevant Year t, Network Rail shall calculate any Charter Capacity Charge Wash-Up for the Train Operator (KW_t) in accordance with paragraph 8.2.2 below and provide to the Train Operator such background data and workings as may reasonably be required for a proper understanding of Network Rail's calculations. If KW_t is a positive sum, such sum shall be payable by the Train Operator. If KW_t is a negative sum or equal to zero then no sum shall be payable by the Train Operator or by Network Rail.

8.2.2 KW_t is derived from the following formula:

$$KW_t = (Am_t - Bm_t) \bullet (CWR_{mft} \bullet \{1 - [0.33] \bullet [Aw_t / Am_t]\} - CR_{mft} \bullet \{1 - [0.25] \bullet [Aw_t / Am_t]\}) \bullet (Cm_t / Am_t)$$

Where:

Am_t means the aggregate Train Miles in respect of all Services and Ancillary Movements operated during Relevant Year t under all charter track access agreements with Network Rail;

Bm_t means the baseline train miles for charter operators as set out in Network Rail's List of Capacity Charge Baselines for CP5, approved or determined by ORR and published on or before 10 February 2014;

Cm_t means the aggregate Train Miles in respect of all Services and Ancillary Movements operated during Relevant Year t by the Train Operator who is party to this contract; and

CR_{mft} has the meaning set out in paragraph 8.1 above;

CWR_{mft} means the Charter Capacity Charge Wash-up Rate in Relevant Year t and indexed in accordance with the following formula:

$$CWR_{mft} = CWR_{mft-1} \bullet \left(1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right)$$

where:

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

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

but so that in relation to the Relevant Year commencing on 1 April 2014, CWR_{mft} shall be the weekday wash-up rate for charter operators set out in the List of Capacity Charge Rates, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year CWR_{mft-1} shall have the same value; and

Aw_t means the aggregate Train Miles in respect of all Services and Ancillary Movements operated on Saturday and/or Sunday during Relevant Year t under all charter track access agreements with Network Rail.

9 Not used

10 Not used

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

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

(a) 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
- (v) the Slot Charge;
- (vi) the Cancellation Charge; and
- (vii) 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) Where, in accordance with paragraph 8.2, Network Rail calculates that the Charter Capacity Charge Wash-up is a positive amount then, as soon as practicable, it shall issue to the Train Operator an invoice for that amount and the Train Operator shall pay or procure payment of it.

11.2 Train Consist Data

Network Rail shall calculate the Track 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.

11.3 *Invoices and right to object to invoices*

- (a) Not used.
- (b) For each Period, Network Rail shall be entitled to invoice the Train Operator for Track Charges in respect of any and all train movements operated by the Train Operator during that Period based on:
 - (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;
 - (ii) not used; and
 - (iii) not used.

Each such invoice will be payable in accordance with the provisions of paragraph 11.1.

- (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 on which the whole or any part of the Track 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**"). For the avoidance of doubt, the Train Operator may serve a notice of objection in which it provides the relevant Train Consist Data where the Track Charges in the relevant invoice were based on the Default Train Consist Data. 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 fourteen 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 11.3(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 Track 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) Not used.

- (g) Where, as a result of any invoice or credit note issued pursuant to paragraph 11.3, 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.

11.4 Unrepresentative Train Consist Data

Not used.

11.5 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 11.5(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.

PART 3: NOT USED

PART 3A: NOT USED

PART 4: NOT USED

PART 5: ADDITIONAL CHARGES

1 Specific Additional Charges

1.1 Non-Core Operational Charge

The Train Operator shall, in respect of any Service (and its associated Ancillary Movements) that it wishes to operate wholly or partly outside of the Core Operational Period, or wholly or partly on routes which form part of the Network over which passenger services do not operate, pay to Network Rail a

Non-Core Operational Charge. The Non-Core Operational Charge applicable to any such Service or Ancillary Movement shall consist of such reasonable out-of-pocket costs and expenses (including any costs and expenses in respect of additional staff reasonably required to facilitate that Service or Ancillary Movement) which Network Rail will incur by reason of the operation of that Service or Ancillary Movement, being costs and expenses which Network Rail, but for the operation of that Service or Ancillary Movement, would not have incurred, but only to the extent that, on or prior to accepting the Train Operator Variation Request for the Service or Ancillary Movement, Network Rail provides to the Train Operator:

- (a) details, reasonably satisfactory to the Train Operator, of those items in respect of which Network Rail will, or is likely to, levy the Non-Core Operational Charge; and
- (b) an estimate, prepared in good faith, of the likely amount of such costs and expenses.

1.2 *Route Clearance Charge*

Where any route clearance or investigative work is required as a result of a Train Operator Variation Request which involves in excess of checking the relevant equipment against the relevant sectional appendices for the routes concerned, Network Rail shall be entitled to charge the Train Operator its reasonable costs in carrying out such work (whether or not the Service, the subject of the Train Operator Variation Request, is operated) provided that:

- (a) Network Rail notifies the Train Operator of its intention to carry out such work and obtains the Train Operator's consent (failing receipt of which within a reasonable time Network Rail shall be entitled to reject the Train Operator Variation Request in question) before incurring such costs;
- (b) Network Rail shall not be entitled to charge the Train Operator for its costs in obtaining information which it has already procured or should reasonably have procured to meet the requirements of Network Rail through its Rolling Stock Acceptance Board, whether or not in connection with rolling stock operated or to be operated by the Train Operator; and
- (c) Network Rail shall endeavour to keep the level of its reasonable costs to the minimum reasonably required.

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 amount of the Slot Charge levied in respect of each vehicle type i and journey type j;
- (b) the rate of Variable Usage Charge and the relevant number of Train Miles applicable to vehicle type i;
- (c) the rate of Traction Electricity Charge, if any, and the number of electrified Train Miles;
- (d) the amount of the Cancellation Charge, if any, levied in respect of vehicle type i and journey type j;
- (e) the rate of the Electrification Asset Usage Charge, if any, on route type k and the number of electrified Vehicle Miles on route type k;
- (f) Not used;
- (g) the amount of any sum K_t payable as provided in paragraph 8.1 of Part 2; and
- (h) in respect of any other sums which have fallen due in accordance with any provisions of this contract, 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) not used.

2 Not used

3 Interpretation

- 3.1 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.

PART 8: NOT USED

APPENDIX 7A – NOT USED

APPENDIX 7B – NOT USED

APPENDIX 7C – NOT USED

Appendix 2 to Annex 2

Schedule 8

SCHEDULE 8: PERFORMANCE REGIME

1 Interpretation

1.1 Definitions

In this Schedule 8 and its Appendix 8A, unless the context requires otherwise -

“100 Train Operator Miles”	means the distance travelled by the Services operated by the Train Operator on the Network in any Period as recorded in Network Rail’s billing systems (unless there is a manifest error in such figure), divided by 100;
“Adjusted Train Operator Benchmark”	means the Train Operator Benchmark as adjusted in accordance with paragraph 8.1.7;
“Adjustment Fraction”	means the number of Periods or parts of a Period in the first or final Financial Year, divided by 13;
“Applicable Timetable”	means, in respect of a day, that part of the Working Timetable in respect of that day which is required to be drawn up in accordance with Condition D2.1.1 of the Network Code as at 22.00 hours on the day prior to that day, and which is applicable to the Service or other trains;
“Cancellation”	means, in respect of any Service, the failure to operate at all and “Cancelled” shall be construed accordingly;
“Charter Service Variation Sum”	means, in respect of paragraphs 3.4 and 4.4, the amount specified in Appendix 8A as the Charter Service Variation Sum;
“Diversion”	means a Service which operates but which is diverted off its Planned route and for these purposes, running on different lines on the same route shall not constitute such a Diversion;
“ETCS”	means the European Train Control System;
“Failure to Stop”	means a Service which, whether or not it is the subject of a Diversion, fails to call at one or more of the intermediate stations at which it is Planned to call;
“Financial Year”	means a year commencing at 0000 hours on 1 April and ending immediately before 0000 hours on the next succeeding 1 April save that:

	(a) the first such period shall commence on the date upon which all the provisions of this contract come into effect in accordance with Clause 3; and
	(b) the last such period shall end on the Expiry Date;
“Initial Indexation Factor”	has the meaning ascribed to it in Schedule 7;
“Initial Planned Service Incident Cap Notice”	has the meaning ascribed to it in paragraph 9.1.1;
“Interim Statement”	means a written summary showing, in respect of Network Rail performance, the information required under paragraph 3.5 and, in respect of Train Operator performance, the information required under paragraph 4.5;
“Joint Cancellation Sum”	means, in the event of a Planned Service Cancellation for which Network Rail is allocated joint responsibility under paragraph 6.5, the amount specified in Appendix 8A as the Joint Cancellation Sum for that Planned Service Cancellation;
“Minutes Delay”	means the number of minutes of delay in respect of a Trigger of a Recording Point calculated in accordance with paragraph 5;
“Network Rail Annual Cap”	means the Network Rail Annual Cap specified in Appendix 8A, as adjusted in accordance with paragraph 7 and paragraph 8.2 of this Schedule 8, save that in respect of the first and last Financial Year, the Network Rail Annual Cap shall be that specified in Appendix 8A, multiplied by the Adjustment Fraction;
“Network Rail Benchmark” or “NRB”	means the Network Rail Benchmark in Minutes Delay per 100 Train Operator Miles in relation to each Period, as specified in Appendix 8A;
“Network Rail Cancellation Sum”	means, in the event of a Planned Service Cancellation for which Network Rail is allocated responsibility under paragraphs 2.6(b) and/or 6.3, the amount specified in Appendix 8A as the Network Rail Cancellation Sum for that Planned Service Cancellation;
“Network Rail Payment Rate”	means, in respect of a Planned Service, the rate, expressed as pounds per NR Performance Minute, specified in Appendix 8A as the Network Rail Payment

	Rate for that Planned Service (as adjusted in accordance with paragraph 7);
“NR Performance Minute”	has the meaning set out in paragraph 3.1;
“Performance Sum”	means an amount for which Network Rail or the Train Operator is liable under paragraphs 3 or 4 following a Period in relation to Minutes Delay in that Period and the preceding Periods, as adjusted in accordance with paragraph 8;
“Period”	means each consecutive period of 28 days during the term of this contract 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;
“Planned”	means entered into the Applicable Timetable;
“Planned Incident”	means an incident described as such in paragraph 6.6;
“Planned Service”	means a passenger carrying Service (excluding any Ancillary Movement) of the Train Operator under this contract which is entered in the Applicable Timetable;
“Planned Service Cancellation”	means the Cancellation or Termination of a Planned Service;
“Planned Service Incident Cap”	means, in respect of a Planned Service (and its associated Ancillary Movements) operated by or on behalf of the Train Operator, the Planned Service Incident Cap selected by the Train Operator in accordance with paragraph 9.1;
“Planned Service Incident Cap Notice”	has the meaning ascribed to it in paragraph 9.1.2;
“Recording Point”	means a location at which Network Rail records the times at which trains arrive, pass or depart that location;
“Recovery Time”	means additional time incorporated into the Applicable Timetable to allow a train to regain time lost earlier in its journey as a result of a Restriction of Use;
“Relevant Year”	has the meaning ascribed to it in Schedule 7;
“Restriction of Use”	means any restriction of use of all or any part of the Network for the purposes of, or in connection with,

inspection, maintenance, renewal or repair of the Network or any other works carried out in relation to the Network or any other railway asset or any other works in relation to it;

“RPI”	has the meaning ascribed to it in Schedule 7;
“Service Characteristics”	means, in relation to any Service, the characteristics of that Service specified in any Train Operator Variation Request;
“Service Incident”	means an incident which arises from, is caused by or results from a Planned Service or any of its associated Ancillary Movements;
“Termination”	means, in respect of any Service, the operation of such train in such a way that it – (a) fails to reach its Planned final destination station; or (b) commences at a point other than its Planned station start point and does not call at its Planned station start point and which is not a Cancellation;
“Third Party Train Cancellation”	means the Cancellation or Termination of any train excluding any Ancillary Movements and excluding any Planned Service;
“Third Party User”	means the operator (including the Train Operator) of any train excluding any Ancillary Movements and excluding any Planned Service;
“Third Party User Cancellation Minutes”	means, in respect of a Third Party Train Cancellation, the number of minutes specified in Appendix 8A as the Third Party User Cancellation Minutes;
“TO Performance Minute”	has the meaning set out in paragraph 4.1;
“Train Mile”	has the meaning ascribed to it in Schedule 7;
“Train Operator Annual Cap”	means the Train Operator Annual Cap specified in Appendix 8A, as adjusted in accordance with paragraph 7 and paragraph 8.2 of this Schedule 8, save that in respect of the first and last Financial Year, the Train Operator Annual Cap shall be that specified in Appendix 8A, multiplied by the Adjustment Fraction;
“Train Operator Benchmark” or	means the Train Operator Benchmark in Minutes Delay per 100 Train Operator Miles in relation to each Period, as

“TOB”	specified in Appendix 8A and adjusted in accordance with paragraph 8;
“Train Operator Payment Rate”	means, in relation to delay caused to a Third Party User, the rate, expressed as pounds per TO Performance Minute, specified in Appendix 8A (as adjusted in accordance with paragraph 7);
“Trigger”	means the act of a train arriving at, passing or departing from a Recording Point;
“Week”	<p>means a period of seven days beginning on Sunday and ending on the immediately following Saturday (both days inclusive), save that where that period of seven days would otherwise fall within two Periods (“Period A” and “Period B”) for the purposes of this Schedule each of the following shall constitute a Week –</p> <ul style="list-style-type: none"> (a) Sunday to the last day of Period A (both days inclusive); and (b) the first day of Period B to the immediately following Saturday (both days inclusive).

1.2 For the purposes of Schedule 8 events in respect of a Service shall be treated as occurring on the day on which the Service was Planned to depart from its point of origin.

2 General principles and performance information

- 2.1 In respect of Cancellation, this Schedule 8 shall only apply to any Planned Service Cancellation for which Network Rail is responsible or jointly responsible with the Train Operator and which occurs after 22:00 on the day before such Planned Service is due to run.
- 2.2 Each of the Train Operator and Network Rail shall use all reasonable endeavours to keep the other of them informed of any known or anticipated delay to, or Cancellation, Termination or Diversion of, Planned Services or any Ancillary Movements associated therewith.
- 2.3 Each of Network Rail and the Train Operator shall take reasonable steps to avoid and mitigate the effects of:
 - (a) any incidents upon the Planned Services; and
 - (b) any Service Incident affecting other trains.
- 2.4 Network Rail shall use recordings made using the Performance Monitoring System for the purposes of this Schedule 8 including the times at which the Services and other trains Trigger Recording Points. Where appropriate Network Rail may require the Train Operator, in respect of Services only, to make the relevant entry, to record such times on the Performance Monitoring System. Network Rail and the Train Operator shall each comply with and be bound by the provisions of the Performance Data Accuracy Code referred to in Part B of the Network Code and the provisions of that Code shall apply to this contract. Accordingly, the provisions of this Schedule 8 concerning the recording of train performance information or which refer to information regarding train performance (including references to the time at which a train Triggers a Recording Point), and the rights and remedies of the Train Operator in respect of the same, shall be subject to and interpreted in accordance with the provisions of that Code.
- 2.5 In respect of each Trigger of a Recording Point Network Rail shall use its reasonable endeavours to record separately, as unexplained delay, those minutes of delay of three minutes or more included in Minutes Delay for which it is unable to identify the incident(s) which caused that delay. The Train Operator shall co-operate with Network Rail on request by providing all such information as it has in its possession regarding the identification of the incident(s) which caused that delay.
- 2.6 All unexplained delay recorded in accordance with paragraph 2.5 shall, notwithstanding the provisions of paragraph 6.3(b) be allocated between the parties as follows –
 - (a) any Minutes Delay or Cancellation Minutes in respect of Service Incidents arising either off the Network or at stations at which the Train Operator's Services are Planned to call shall be included in the TO Performance Minutes; and
 - (b) any Minutes Delay to a Service or Planned Service Cancellation arising on the Network and which are not allocated to the Train Operator

under this Schedule (including paragraph 2.6(a)) shall be included in the NR Performance Minutes.

2.7

- (a) Network Rail shall provide to the Train Operator through the Performance Monitoring System as soon as reasonably practicable, and in any event no later than the following Working Day, the information recorded or provided to it under paragraphs 2.4 or 2.5.
- (b) the Train Operator shall be deemed to have agreed the information recorded by Network Rail and Network Rail shall be deemed to have agreed the information recorded by the Train Operator except, in either case, to the extent that it has, within two clear Working Days of the information being provided, notified the other that it disputes the information. Any such notification shall specify the reasons for the dispute, so as to assist resolution of the dispute. The parties shall endeavour to resolve each such dispute within two Working Days of its notification.

2.8 Within 5 Working Days of a Trigger occurring, Network Rail shall be entitled to re-allocate responsibility to the Train Operator for each minute of delay included in Minutes Delay where further information becomes available to Network Rail which would otherwise result in responsibility for the relevant incident being allocated to the Train Operator in accordance with paragraph 6.4. Paragraph 2.7(b) shall apply to the allocation of responsibility under this paragraph 2.8.

2.9 Network Rail shall have no liability to the Train Operator under the terms of this Schedule in respect of Minutes Delay to a Planned Service or a Planned Service Cancellation to the extent that it is caused, in either case, by that Planned Service being presented to Network Rail on the Network after the time Planned for such presentation. In such circumstances, Network Rail shall use its reasonable endeavours to facilitate the movement of the Planned Service as expeditiously as possible subject to

- (a) any access rights which it may have granted to third parties; and
- (b) any Restrictions of Use of the Network in the Applicable Engineering Access Statement or the Applicable Timetable Planning Rules.

3 Network Rail performance

3.1 The performance minutes allocated to Network Rail in respect of any Planned Service (the “**NR Performance Minutes**”) shall be equal to the sum of –

- (a) the number of Minutes Delay caused to that Planned Service by one or more Service Incidents for which Network Rail is allocated responsibility under paragraphs 2.6(b) and 6.3; and/or
- (b) 50% of the number of Minutes Delay caused to that Planned Service by one or more Service Incidents for which Network Rail is allocated joint responsibility with the Train Operator under paragraph 6.5.

3.2.1 The NR Performance Minutes shall be converted into a per 100 Train Operator Miles figure (the “**Adjusted NR Performance Minutes**”) using the formula below:

$$\text{Adjusted NR Performance Minutes} = \frac{\text{NR Performance Minutes}}{100 \text{ Train Operator Miles}}$$

3.2.2 The Adjusted NR Performance Minutes calculated in accordance with paragraph 3.2.1 shall then be compared with the NRB and:

- (a) if the Adjusted NR Performance Minutes figure is less than NRB, the Train Operator shall be liable to Network Rail for a Performance Sum equal to:

$$\left((\text{NRB} - \text{the Adjusted NR Performance Minutes}) \times \text{Network Rail Payment Rate} \right) \times \left(\frac{\text{CPCM}}{100} \right)$$

where:

CPCM means the total number of Train Miles operated by the Train Operator in the relevant Period;

- (b) if the Adjusted NR Performance Minutes figure exceeds NRB, Network Rail shall be liable to the Train Operator for a Performance Sum equal to:

$$\left((\text{the Adjusted NR Performance Minutes} - \text{NRB}) \times \text{Network Rail Payment Rate} \right) \times \left(\frac{\text{CPCM}}{100} \right)$$

where CPCM has the meaning ascribed to it in paragraph 3.2.2(a); and

- (c) if the Adjusted NR Performance Minutes figure is equal to NRB, neither party shall be liable to the other for a Performance Sum under this paragraph 3.2.

- 3.3 In the event of a Planned Service Cancellation for which Network Rail is allocated responsibility under paragraphs 2.6(b) and/or 6.3, Network Rail shall, in respect of that Planned Service be liable to pay to the Train Operator (in substitution for and to the exclusion of any liability under paragraph 3.4) the Network Rail Cancellation Sum. In the event of a Planned Service Cancellation for which Network Rail is allocated joint responsibility under paragraph 6.5, then in respect of that Planned Service Network Rail shall be liable to pay to the Train Operator (in substitution for and to the exclusion of any liability under paragraph 3.4) the Joint Cancellation Sum.
- 3.4 If a Planned Service is the subject of a Diversion or Failure to Stop due to a Service Incident for which Network Rail is allocated responsibility under paragraph 6.3 and, as a result, the Train Operator incurs, in relation to such Planned Service, additional costs which but for the Diversion or Failure to Stop it would not have incurred, Network Rail shall, in addition to any liability under paragraph 3.2, pay the Train Operator the Charter Service Variation Sum in respect of the Planned Service provided that the Train Operator shall have notified to and supplied Network Rail with evidence (to its reasonable satisfaction) of such costs on or before the end of the Period following the Period in which such Service Incident occurred.
- 3.5 Within five Working Days after the end of each Week, Network Rail shall provide the Train Operator with an Interim Statement showing in respect of each Planned Service which was Planned to depart from its point of origin during that Week and for which Network Rail is liable to make payment under this paragraph 3 either –
- (a) the Performance Sum calculated in accordance with paragraph 3.2; or
 - (b) whether it is a Planned Service Cancellation for which Network Rail is liable to the Train Operator under paragraph 3.3.

Any unresolved dispute under paragraph 2.7 in relation to a Planned Service the subject of an Interim Statement shall be indicated as such on the Interim Statement. Within two Working Days of receipt of the Interim Statement the Train Operator shall sign and return a copy thereof to Network Rail and indicate on the copy any aspects of the Interim Statement which it disputes, giving reasons for any dispute. Save to the extent that any disputes are so notified or if the Train Operator fails to sign and return to Network Rail a copy of the Interim Statement, the Train Operator shall be deemed to have agreed the contents of the Interim Statement.

4 Train operator performance

- 4.1 The performance minutes allocated to the Train Operator in respect of any Third Party User (the “**TO Performance Minutes**”) shall be calculated as follows:

$$\text{TO Performance Minutes} = (A + B) + (C + D)$$

where –

- A = the total number of Minutes Delay in respect of all Triggers by each train operated by that Third Party User caused by one or more Service Incidents for which the Train Operator is allocated responsibility under paragraphs 2.6(a) and 6.4; and
- B = 50% of the total number of Minutes Delay in respect of all Triggers by each train operated by that Third Party User caused by one or more Service Incidents for which the Train Operator is allocated joint responsibility with Network Rail under paragraph 6.5;
- C = the Third Party User Cancellation Minutes in respect of each Third Party Train Cancellation due to a Service Incident for which the Train Operator is allocated sole responsibility under paragraphs 2.6(a) and 6.4, provided that there shall be disregarded any Minutes Delay caused as a result of such Service Incident occurring after the time at which the train of the Third Party User arrives at the point on or off the Network where it subsequently becomes a Third Party Train Cancellation; and
- D = 50% of the Third Party User Cancellation Minutes in respect of each Third Party Train Cancellation due to a Service Incident for which the Train Operator is allocated joint responsibility with Network Rail under paragraph 6.5 provided that there shall be disregarded any Minutes Delay caused as a result of such Service Incident occurring after the time at which the train of the Third Party User arrives at the point on or off the Network where it subsequently becomes a Third Party Train Cancellation.
- 4.2 For the avoidance of doubt, in the event of a Planned Service Cancellation for which the Train Operator is allocated sole responsibility under paragraph 6.4, then in respect of that Cancellation the Train Operator shall only be liable to pay Network Rail the applicable charge under paragraph 5.1 of Part 2 of Schedule 7 and in the event of a Planned Service Cancellation for which the Train Operator is allocated joint responsibility with Network Rail under paragraph 6.5, then in respect of that Planned Service the Train Operator shall be liable to pay Network Rail 50% of the applicable charge under Schedule 7.
- 4.3.1 For the purposes of this paragraph 4.3, the TO Performance Minutes arising in respect of a Planned Service (and its associated Ancillary Movements) shall be capped at the Planned Service Incident Cap, so that any such minutes in excess of the Planned Service Incident Cap shall be disregarded.

4.3.2 The TO Performance Minutes shall be converted into a per 100 Train Operator Miles figure (the “**Adjusted TO Performance Minutes**”) using the formula below:

$$\text{Adjusted TO Performance Minutes} = \frac{\text{TO Performance Minutes}}{100 \text{ Train Operator Miles}}$$

4.3.3 The Adjusted TO Performance Minutes calculated in accordance with paragraph 4.3.2 shall then be compared with the TOB and:

- (a) if the Adjusted TO Performance Minutes figure is less than TOB, Network Rail shall be liable to the Train Operator for a Performance Sum equal to:

$$((\text{TOB} - \text{the Adjusted TO Performance Minutes}) \times \text{Train Operator Payment Rate}) \times \left(\frac{\text{CPCM}}{100} \right)$$

where:

CPCM means the total number of Train Miles operated by the Train Operator in the relevant Period;

- (b) if the Adjusted TO Performance Minutes figure exceeds TOB, the Train Operator shall be liable to Network Rail for a Performance Sum equal to:

$$((\text{the Adjusted TO Performance Minutes} - \text{TOB}) \times \text{Train Operator Payment Rate}) \times \left(\frac{\text{CPCM}}{100} \right)$$

where CPCM has the meaning ascribed to it in paragraph 4.3.3(a); and

- (c) if the Adjusted TO Performance Minutes figure is equal to TOB, neither party shall be liable to the other for a Performance Sum under this paragraph 4.3.

4.4 If –

- (a) any service operated by a Third Party User is the subject of a Diversion or Failure to Stop but does not become a Third Party Train Cancellation for which Third Party User Cancellation Minutes are allocated to the Train Operator under paragraph 4.1; or
- (b) Network Rail has to postpone a Restriction of Use or has to keep open any part of the Network beyond the time at which such part of the Network is generally open to passenger carrying movements

due to a Service Incident for which the Train Operator is allocated responsibility under paragraph 6.4 and, as a result, Network Rail incurs additional costs which, but for the Service Incident it would not have incurred, the Train Operator shall, in addition to any liability under paragraph 4.2, pay Network Rail the Charter Service Variation Sum in respect of the Planned Service provided that Network Rail shall have notified to and supplied the Train Operator with evidence (to its reasonable satisfaction) of such costs on or before the end of the Period following the Period in which such Service Incident occurred.

- 4.5 Within five Working Days after the end of each Week, Network Rail shall provide the Train Operator with an Interim Statement listing all Service Incidents during that Week for which the Train Operator is allocated responsibility under paragraph 6.4 or joint responsibility with Network Rail under paragraph 6.5 and showing, for each such Service Incident, the TO Performance Minutes. Any unresolved dispute under paragraph 2.7 in relation to any such Service Incident shall be indicated as such on the Interim Statement. Within two Working Days of receipt of the Interim Statement the Train Operator shall sign and return a copy thereof to Network Rail and indicate on the copy any aspects of the Interim Statement which it disputes, giving reasons for any dispute. Save to the extent that any disputes are so notified or if the Train Operator fails to sign and return to Network Rail a copy of the Interim Statement, the Train Operator shall be deemed to have agreed the contents of the Interim Statement.

5 Calculation of minutes delay

5.1 Subject to paragraph 5.2 the Minutes Delay for a Planned Service in respect of a Trigger of a Recording Point shall be equal to –

- (a) in respect of the first recorded Trigger, the number of minutes (rounded down to the nearest whole minute), if any, by which the time at which the relevant train so Triggers the Recording Point is later than the time at which that train is Planned so to Trigger the Recording Point; and
- (b) in respect of each other recorded Trigger by a train, the lesser of –
 - (i) the number of minutes in respect of the Trigger calculated as in paragraph 5.1(a) above; and
 - (ii) the greater of $((A1-A2) + B)$ and zero

where –

A1 is the number of minutes, between the time at which the relevant train Triggers the Recording Point (rounded down to the nearest whole minute) and the time of that train's last recorded Trigger of a Recording Point (rounded down to the nearest whole minute);

A2 is the Planned time between such Triggers; and

B is any Recovery Time between such Triggers.

5.2 The Minutes Delay calculated in accordance with paragraph 5.1 shall be allocated to the incident(s) causing those Minutes Delay as described in paragraph 6. Any minutes of delay which are included in any Minutes Delay and which are caused by the same incident or series of related incidents and which are less than three minutes in aggregate shall for the purposes of this Schedule 8 be deemed to be zero.

6 Allocation of responsibility

- 6.1 For the purposes of this Schedule 8 responsibility for each minute of delay included in Minutes Delay, each Third Party Train Cancellation, each Diversion, each Failure to Stop and each Planned Service Cancellation shall be allocated according to the responsibility for the incident which caused such Minutes Delay, Third Party Train Cancellation, Diversion, Failure to Stop or Planned Service Cancellation as established in accordance with the following provisions of this paragraph 6.
- 6.2 In assessing the causes of any Minutes Delay, Third Party Train Cancellation, Diversion, Failure to Stop or Planned Service Cancellation there shall be taken into account all incidents contributing thereto including –
- (a) the extent to which each party has taken reasonable steps to avoid and/or mitigate the effects of the incidents contributing thereto;
 - (b) where a train is affected by the cancellation of or delay to an Ancillary Movement, the incident(s) giving rise to that cancellation or delay; and
 - (c) where a Restriction of Use overruns, due to the start of such Restriction of Use being delayed by a late running train (including a Planned Service or an Ancillary Movement associated therewith), the incident(s) giving rise to that late running.
- 6.3 Subject to paragraph 6.5, Network Rail shall be allocated responsibility for an incident other than a Planned Incident if that incident is –
- (a) caused by breach by Network Rail of any of its obligations under this contract or any of its obligations in its safety authorisation which are relevant to the operation of the Services;
 - (b) caused by failures of or delays to Services arising on the Network which are not allocated to the Train Operator under this contract; or
 - (c) caused by acts or omissions of Network Rail's staff or Network Rail's contractors in breach of this contract.
- 6.4 Subject to paragraph 6.5, the Train Operator shall be allocated responsibility for an incident other than a Planned Incident if that incident is –
- (a) caused by breach by the Train Operator of any of its obligations under this contract or any of its obligations in its safety certificate which are relevant to the operation of the Services;
 - (b) caused by circumstances within the control of the Train Operator (whether or not the Train Operator is at fault) in its capacity as an operator of trains under this contract; or
 - (c) caused (whether or not the Train Operator is at fault) by any defect in or other failure by the Specified Equipment to comply with the Service Characteristics of a Service whether or not such Specified Equipment is owned by the Train Operator; or

- (d) caused by acts, or omissions of the Train Operator's staff, customers, contractors (including any associates or associate sub-contractors of the Train Operator) in connection with this contract, or passengers using the Services; or
- (e) caused by circumstances arising –
 - (i) off the Network and which are not caused by Network Rail in breach of its obligations under this contract; or
 - (ii) in connection with the operation of any station, light maintenance depot or other facility to which the Train Operator has been granted access for the purpose of the operation of the relevant Service; or
 - (iii) under a connection agreement to which Network Rail is a party in relation to a light maintenance depot or other facility referred to under (ii) above.

6.5 Network Rail and the Train Operator shall be allocated joint responsibility for –

- (a) any incident caused by or in connection with any incident arising at or in a station which is not within the reasonable control of either party; or
- (b) any identified incident in respect of which Network Rail and the Train Operator are equally responsible and for which neither Network Rail nor the Train Operator is allocated responsibility under paragraph 6.3 or 6.4.

6.6 An incident in connection with a Restriction of Use shall be treated as a Planned Incident to the extent that there is Recovery Time in respect of that Restriction of Use incorporated in the Applicable Timetable.

7 Payment terms and supplementary provisions

- 7.1.1 The aggregate of any and all sums for which each party is liable under this Schedule in relation to Planned Services which were Planned to depart from their point of origin during a Period shall be set off against each other and the balance, if any, shall be invoiced by Network Rail to the Train Operator or, as the case may be, shall be the subject of a credit note issued by Network Rail to the Train Operator within 14 days after the end of the Period and shall be payable within 28 days after the end of the Period.
- 7.1.2 In respect of any Financial Year, the aggregate liability of Network Rail to make balance payments to the Train Operator under paragraph 7.1.1 shall not exceed the Network Rail Annual Cap.
- 7.1.3 In respect of any Financial Year, the aggregate liability of the Train Operator to make balance payments to Network Rail under paragraph 7.1.1 shall not exceed the Train Operator Annual Cap.
- 7.1.4 Where any amount which is the subject of this Schedule is in dispute –
- (a) the undisputed amount shall be accounted for in accordance with paragraph 7.1.1 (and shall be subject to set off accordingly);
 - (b) the disputed balance (“disputed balance”) shall be accounted for in the calculations made under paragraph 7.1.1 for the Period in which the dispute is resolved or otherwise determined (and shall be subject to set off accordingly); and
 - (c) the disputed balance shall carry interest (accruing daily and compounded monthly) at the Default Interest Rate from the date on which the disputed balance would but for such dispute have been due to be so accounted for until the date of such account.
- 7.2 In respect of the Financial Year commencing on 1 April 2014, on 1 April 2014 each of the Network Rail Payment Rate, Train Operator Payment Rate, Network Rail Annual Cap and Train Operator Annual Cap, Network Rail Cancellation Sum, Joint Cancellation Sum and the Charter Service Variation Sum shall be adjusted by multiplying them by the Initial Indexation Factor. In respect of the Financial Year commencing on 1 April 2015, and in respect of each subsequent Financial Year, on 1 April in each Financial Year, each of the Network Rail Payment Rate, Train Operator Payment Rate, Network Rail Annual Cap and Train Operator Annual Cap, Network Rail Cancellation Sum, Joint Cancellation Sum and the Charter Service Variation Sum respectively which in each case applied in the immediately preceding Financial Year shall be further adjusted by multiplying them by the Adjustment Factor (rounded to three decimal places) which shall have been calculated in accordance with the following formula:

$$\text{Adjustment Factor} = 1 + \frac{(\text{RPI}_{t-1} - \text{RPI}_{t-2})}{\text{RPI}_{t-2}}$$

where –

- (a) RPI_{t-1} means the RPI published or determined with respect to the month of November in relevant Year t-1; and;
- (b) RPI_{t-2} means the RPI published or determined with respect to the month of November in Relevant Year t-2..

7.3 Each Service shall be allocated an eight character code in the Performance Monitoring System (being a different code to that which applies to services of the Train Operator operated under any other access agreement) to allow for monitoring of each Planned Service and its associated Ancillary Movements.

8 Reviews of Benchmarks, Network Rail Annual Cap and Train Operator Annual Cap

8.1 Adjustments to the Train Operator Benchmark

8.1.1 In this paragraph 8:

“Baseline Annual Train Mileage” means the amount determined in accordance with paragraph 8.2.3;

“Baseline Network Mileage” means the amount determined in accordance with paragraph 8.1.3;

“Relevant Train Operator Mileage” means, in respect of any Financial Year, the aggregate mileage travelled by all empty coaching stock and freight services operated by the Train Operator under this contract during that Financial Year as recorded in Network Rail’s billing systems (unless there is a manifest error in such figure);

“Third Party Train Mileage” means the aggregate mileage travelled by all passenger services, empty coaching stock and freight services on the Network during the Financial Year in question as recorded in Network Rail’s billing systems (unless there is a manifest error in such figure), excluding the Relevant Train Operator Mileage;

“Total Actual Operated Mileage” means, in respect of any Financial Year, the aggregate of:

- (a) the Relevant Train Operator Mileage for that Financial Year; and
- (b) the Third Party Train Mileage for that Financial Year;

“Traffic Growth” means the amount (if any) by which the Actual Mileage t exceeds the Baseline Network Mileage, expressed as a percentage of the Baseline Network Mileage; and

“Traffic Reduction” means the amount (if any) by which the Actual Mileage t is less than the Baseline Network Mileage, expressed as a percentage of the Baseline Network Mileage.

8.1.2 The Train Operator Benchmark that shall apply from 1 April in each Financial Year in relation to each Period in that Financial Year shall be the Train Operator Benchmark specified in Appendix 8A as adjusted in accordance with this paragraph 8.

8.1.3

- (a) The Baseline Network Mileage that shall apply from 1 April in each Financial Year shall be the Total Actual Operated Mileage for Financial Year 2012/2013, as specified in Appendix 8A, unless it is adjusted in accordance with paragraph 8.1.3(b).

- (b) If, in accordance with paragraph 8.1.6, it is determined or agreed that an Adjusted Train Operator Benchmark is required, then the Baseline Network Mileage for (i) Financial Year t+1 and (ii) each subsequent Financial Year until any further adjustment is made to the Train Operator Benchmark in accordance with paragraph 8, shall be the Actual Mileage t for the Financial Year t in which the Traffic Growth or Traffic Reduction (as the case may be) which gave rise to the requirement for an Adjusted Train Operator Benchmark occurred.

8.1.4 Within 28 days after the last day of each Financial Year (“**Financial Year t**”), Network Rail shall determine:

- (a) the Total Actual Operated Mileage for Financial Year t (the “**Actual Mileage t**”); and
- (b) the difference (whether positive or negative) between the Actual Mileage t and the Baseline Network Mileage, in each case expressed as a percentage of the Baseline Network Mileage.

8.1.5 Promptly (and in any event, within 7 days) following determination, in accordance with paragraph 8.1.4, of the Traffic Growth or Traffic Reduction (as the case may be), Network Rail shall:

- (a) notify the Train Operator (at the same time as notifying any other operators whose access agreement in relation to track includes a similar provision to this paragraph 8) in writing of:
 - (i) the Actual Mileage t;
 - (ii) the Baseline Network Mileage;
 - (iii) Network Rail’s calculation of the Traffic Growth or Traffic Reduction (as the case may be) in accordance with paragraph 8.1.4(b); and
 - (iv) Network Rail’s determination of the Adjusted Train Operator Benchmark;
- (b) provide to the Train Operator (at the same time as providing to any other operators whose access agreement in relation to track includes a similar provision to this paragraph 8) such background data and workings as may reasonably be required for a proper understanding of Network Rail’s calculations and determinations under this paragraph 8; and
- (c) confirm to the Train Operator (at the same time as confirming to any other operators whose access agreement in relation to track includes a similar provision to this paragraph 8) in writing that the same Adjusted

Train Operator Benchmark shall apply to any other operators whose access agreement in relation to track includes a similar provision to this paragraph 8.

8.1.6

- (a) Promptly (and in any event, within 28 days) following receipt by the Train Operator of the information, notification and confirmation from Network Rail required to be provided pursuant to paragraph 8.1.5, the Train Operator shall notify Network Rail in writing whether it agrees or disagrees with Network Rail's determination under paragraph 8.1.5(a)(iv).
- (b) If, within 28 days of despatch by Network Rail of the information, notification and confirmation from Network Rail required to be provided pursuant to paragraph 8.1.5, Network Rail has not received written notification from either (i) the Train Operator and/or (ii) any other train operator whose access agreement in relation to track includes a similar provision to this paragraph 8, informing Network Rail that the Train Operator and/or such other train operator (as the case may be) disagrees with Network Rail's determination pursuant to paragraph 8.1.5(a)(iv), then Network Rail shall notify ORR and the Train Operator, and the Train Operator Benchmark shall be adjusted in accordance with paragraph 8.1.7.
- (c) If, within 28 days of despatch by Network Rail of the information, notification and confirmation from Network Rail required to be provided pursuant to paragraph 8.1.5, Network Rail has received written notification from either (i) the Train Operator and/or (ii) any other operator whose access agreement in relation to track includes a similar provision to this paragraph 8, informing Network Rail that the Train Operator and/or such other train operator (as the case may be) disagrees with Network Rail's determination pursuant to paragraph 8.1.5(a)(iv), then Network Rail shall notify ORR and the Train Operator, and the matter shall be referred for resolution in accordance with the ADRR save that the parties shall agree in a Procedure Agreement, as defined in the ADRR, that the relevant ADRR Forum shall (i) have regard to any relevant criteria and/or policy statement most recently issued by ORR and/or any guidance issued by ORR in relation to the matter referred for resolution and (ii) set out in its determination the reasons for that determination.
- (d) The parties acknowledge and agree that any adjustment to the Train Operator Benchmark under this paragraph 8 must also apply to all other operators whose access agreement in relation to track includes a provision similar to this paragraph 8 and, accordingly, each party agrees to participate in any referral for resolution under paragraph 8.1.6(c), and to be bound by the determination, even if, either:

- (A) pursuant to paragraph 8.1.6(a), the Train Operator has notified Network Rail that it agrees with Network Rail's determination notified pursuant to paragraph 8.1.5(a)(iv); and/or
- (B) the determination of the relevant ADRR Forum differs from Network Rail's determination pursuant to paragraph 8.1.5(a)(iv) with which the Train Operator agreed.

8.1.7 The Train Operator Benchmark in respect of each Period within the Financial Year immediately following Financial Year t ("**Financial Year t+1**") and, subject to paragraph 8.1.8, each subsequent Financial Year, shall be adjusted in accordance with the following formula:

$$ATO B = TO B \times [(T a \times C F) + 1]$$

where:

ATO B means the Adjusted Train Operator Benchmark;

TO B means the current Train Operator Benchmark;

T a means the Traffic Growth or Traffic Reduction (as applicable) for Financial Year t, provided that:

- (i) in the case of Traffic Growth, for the purposes of this formula "T a" shall be a positive figure so that the TO B is increased to reflect the Traffic Growth; and
- (ii) in the case of Traffic Reduction, for the purposes of this formula "T a" shall be a negative figure so that the TO B is decreased to reflect the Traffic Reduction;

CF is 1.044 (being the "congestion factor").

8.1.8 When the Train Operator Benchmark in relation to any Financial Year is adjusted pursuant to paragraph 8.1.7(a) then, subject to paragraph 8.1.9, the Train Operator Benchmark for Financial Year t+1 shall be the Adjusted Train Operator Benchmark determined in accordance with paragraph 8.1.7.

8.1.9 If a reference is made to a relevant ADRR Forum in accordance with paragraph 8.1.6(c), the Train Operator Benchmark for Financial Year t+1 shall be the same Train Operator Benchmark as applied for Financial Year t until such time as the relevant ADRR Forum makes its determination pursuant to paragraph 8.1.6(c). Following the relevant ADRR Forum's determination pursuant to paragraph 8.1.6(c), the Train Operator Benchmark for Financial Year t+1 shall be replaced with effect from 1 April in Financial Year t+1 by the

Adjusted Train Operator Benchmark as determined, as the case may be, by (i) the relevant ADRR Forum or (ii) following the relevant ADRR Forum's determination pursuant to paragraph 8.1.6(c), the parties in accordance with this paragraph 8.

8.1.10 Promptly following any adjustment to the Train Operator Benchmark under this paragraph 8, and in order to give effect to that adjustment, 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 respect of Performance Sums, in each case relating to the Periods in Financial Year t+1.

8.1.11 Any statement issued by Network Rail pursuant to paragraph 8.1.10 shall be accompanied by an adjusting invoice or credit note in accordance with paragraph 7.

8.2 *Adjustments to the Network Rail Annual Cap and Train Operator Annual Cap*

8.2.1 The Network Rail Annual Cap and the Train Operator Annual Cap that shall apply from 1 April in each Financial Year in relation to each Period in that Financial Year shall be the Network Rail Annual Cap and the Train Operator Annual Cap, in each case as specified in Appendix 8A and as adjusted in accordance with paragraph 7.2 and this paragraph 8.2, provided that no adjustment shall be made to the Network Rail Annual Cap or the Train Operator Annual Cap pursuant to this paragraph 8.2:

- (a) prior to 1 April 2015; and
- (b) thereafter only if the total number of Train Miles operated by the Train Operator during Financial Year t or the Baseline Annual Train Mileage is 1,000,000 or greater.

8.2.2 Within 28 days after the last day of Financial Year t, Network Rail shall notify the Train Operator in writing of:

- (a) the total number of Train Miles operated by the Train Operator during Financial Year t (the "Annual Train Mileage");
- (b) Network Rail's determination as to whether or not the Annual Train Mileage for Financial Year t exceeds or is less than the Baseline Annual Train Mileage by, in each case, an amount equal to or greater than 2.5% of the Baseline Annual Train Mileage (the "Annual Train Mileage Variation"); and
- (c) if Network Rail determines that there has been an Annual Train Mileage Variation, Network Rail's proposal for an adjusted Network Rail Annual Cap and/or Train Operator Annual Cap, in each case having regard to any relevant criteria and/or policy statement most recently issued by ORR.

8.2.3

- (a) The Baseline Annual Train Mileage that shall apply from 1 April in each Financial Year shall be the total number of Train Miles operated by the Train Operator during the Financial Year commencing on 1 April 2013 and ending on 31 March 2014, unless it is adjusted in accordance with paragraph 8.2.3(b).
 - (b) If, in accordance with paragraph 8.2.2(b), Network Rail determines that there has been an Annual Train Mileage Variation, then the Baseline Annual Train Mileage for Financial Year t+1 and each subsequent Financial Year until any further adjustment is made to the Baseline Annual Train Mileage pursuant to this paragraph 8.2.3(b) shall be the Annual Train Mileage for the Financial Year t in which the Annual Train Mileage Variation has occurred.
- 8.2.4 Promptly (and in any event, within 28 days) following receipt by the Train Operator of the information and notice from Network Rail required to be provided pursuant to paragraph 8.2.2, the parties shall endeavour to agree whether the Network Rail Annual Cap and/or the Train Operator Annual Cap should be adjusted in accordance with this paragraph 8.2 and, if so, the adjustment (in each case having regard to any relevant criteria and/or policy statement most recently issued by ORR), provided that any adjustment to the Network Rail Annual Cap and/or the Train Operator Annual Cap pursuant to this paragraph 8.2 shall be subject to the prior approval of ORR.
- 8.2.5 If, within 56 days of receipt by the Train Operator of the information and notice from Network Rail required to be provided pursuant to paragraph 8.2.2, the Train Operator and Network Rail reach agreement as to any adjustment to the Network Rail Annual Cap and/or the Train Operator Annual Cap, the parties shall notify ORR and shall provide ORR with such information and evidence as ORR shall require to determine whether or not to approve the proposed adjustment. The parties agree to abide by any determination issued by ORR.
- 8.2.6 If, within 56 days of receipt by the Train Operator of the information and notice from Network Rail required to be provided pursuant to paragraph 8.2.2, either:
- (i) the parties fail to reach agreement; or
 - (ii) prior to the expiry of that 56 day period both parties agree that agreement is unlikely to be reached prior to the expiry of that period,
- the parties shall notify ORR and shall provide ORR with such information and evidence as ORR shall require to determine the matter. The parties agree to abide by any determination issued by ORR.
- 8.2.7 Any adjustment to the Network Rail Annual Cap and/or the Train Operator Annual Cap shall take effect only when it has been approved by ORR and, unless otherwise specified by ORR, any such adjustment shall take effect from 1 April in Financial Year t.
- 8.2.8 Promptly following any adjustment to the Network Rail Annual Cap and/or the Train Operator Annual Cap pursuant to this paragraph 8.2, and in order to

give effect to that adjustment, 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 respect of Performance Sums,
- in each case relating to the Periods in Financial Year t+1.

8.2.9 Any statement issued by Network Rail pursuant to paragraph 8.2.8 shall be accompanied by an adjusting invoice or credit note in accordance with paragraph 7.1.

9 Selection by the Train Operator of the Planned Service Incident Cap

9.1 Selection by the Train Operator of the Planned Service Incident Cap

9.1.1 On or before the date on which this paragraph 9.1 takes effect, the Train Operator shall notify Network Rail in writing of the level of Planned Service Incident Cap it wishes to apply (the “**Initial Planned Service Incident Cap Notice**”), and the Planned Service Incident Cap Access Charge Supplement Rate applicable to the Train Operator under this contract shall be the rate set out in the column adjacent to the Planned Service Incident Cap selected by the Train Operator in the Initial Planned Service Incident Cap Notice until it is replaced by a different level of Planned Service Incident Cap selected by the Train Operator in a Planned Service Incident Cap Notice issued pursuant to paragraph 9.1.2.

9.1.2 The Train Operator may change the level of Planned Service Incident Cap previously selected by it (either in the Initial Planned Service Incident Cap Notice or any subsequent Planned Service Incident Cap Notice issued pursuant to this paragraph 11.1.2) with effect from 1 April in any Financial Year by notifying Network Rail in writing of the level of Planned Service Incident Cap it wishes to apply for that Financial Year (the “**Planned Service Incident Cap Notice**”). Any such Planned Service Incident Cap Notice must be served by the Train Operator on Network Rail by no later than 6 weeks prior to 1 April in the Financial Year from which the Train Operator wishes the new level of Planned Service Incident Cap to apply, and the Planned Service Incident Cap Access Charge Supplement Rate applicable for that and each subsequent Financial Year shall be the rate set out in the column adjacent to the Planned Service Incident Cap selected by the Train Operator in the Planned Service Incident Cap Notice until it is replaced by a different level of Planned Service Incident Cap selected by the Train Operator pursuant to this paragraph 9.1.2.

9.2 Level of Planned Service Incident Cap and Planned Service Incident Cap Access Charge Supplement Rate

For the purposes of paragraph 9.1, the Train Operator shall select one of the following Planned Service Incident Caps:

Planned Service Incident Cap	Planned Service Incident Cap Access Charge Supplement Rate (£ per Train Mile operated in a Period)
93 minutes	1.30
147 minutes	1.03
500 minutes	0.56
1,000 minutes	0.41
5,000 minutes	0.14

No Planned Service Incident Cap	None
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10 ETCS Amendments

10.1

- (a) Either party may by notice to the other propose that amendments are made to this Schedule 8 (and to any other provisions of this contract as a result of those amendments) as a consequence of the introduction of ETCS on any part of the Network that is used by the Train Operator (“**ETCS Amendments**”).
- (b) ORR may make ETCS Amendments, subject to complying with paragraph 10.3.

10.2

- (a) A party that wishes to make ETCS Amendments shall serve a notice on the other party that:
 - (i) specifies as far as possible the proposed ETCS Amendments and the date from which they are to have effect; and
 - (ii) is accompanied by information and evidence in reasonable detail supporting the proposed ETCS Amendments and setting out the reasons for making them.
- (b) The party receiving a notice under paragraph 10.2(a) shall respond in writing, in reasonable detail and with reasons for its response, within 30 Working Days of service of such notice.
- (c) Promptly, (and in any event within 20 Working Days) following service of a response pursuant to paragraph 10.2(b), the parties shall use reasonable endeavours to agree the wording of the proposed ETCS Amendments and the date on which they are to have effect.
- (d) If:
 - (i) the parties agree to make ETCS Amendments pursuant to paragraph 10.2(c); or
 - (ii) the parties fail to reach agreement within 50 Working Days of service of a notice under paragraph 10.2(a), or prior to that date the parties agree that it is unlikely that agreement will be reached within that period,they shall notify ORR.

10.3

- (a) If ORR:
 - (i) receives a notification under paragraph 10.2(d); or
 - (ii) proposes to make ETCS Amendments itself,then in deciding whether to approve, determine or make (as the case may be) the ETCS Amendments it shall:

- (A) give the parties and such other persons, if any, as it considers appropriate, the opportunity to make representations in relation to the proposed ETCS Amendments; and
 - (B) take into account any representations received before making its decision, such decision to specify the date on which the ETCS Amendments shall have effect.
- (b) ORR may require either party to provide such information as it may reasonably require to make a decision pursuant to paragraph 10.3(a), and such information shall be provided in accordance with any timescales and to the standard required by ORR.

APPENDIX 8A

Charter Service Variation Sum: £596

Joint Cancellation Sum: £906.50

Network Rail Cancellation Sum: £1,813

Network Rail Payment Rate: £19.13 per NR Performance Minute

Network Rail Annual Cap: £547,000

Network Rail Benchmark (NRB): the NRB in relation to a Period shall be 4.61 Minutes Delay per 100 Train Operator Miles

Train Operator Payment Rate: £59.35 per TO Performance Minute

Train Operator Annual Cap: £547,000

Train Operator Benchmark (TOB): subject to adjustment in accordance with paragraph 8, the TOB in relation to each Period shall be 5.82 Minutes Delay per 100 Train Operator Miles

Third Party User Cancellation Minutes: 35 minutes

Baseline Network Mileage: shall be 351,602,955.