

# RAILWAYS ACT 1993

## 2013 PERIODIC REVIEW

### REVIEW NOTICE:

#### FRANCHISED PASSENGER TRACK ACCESS AGREEMENTS

TO:

- (1) the persons whose names are set out in Part 1 of Annex 1 to this Review Notice (the “**Train Operators**”);
  - (2) the persons whose names are set out in Part 2 of Annex 1 to this Review Notice;
  - (3) Network Rail Infrastructure Limited (“**Network Rail**”); and
  - (4) 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 Part 1 of 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 Annexes 2 and 3 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**

3.1 Subject to paragraph 3.2 below, 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.

3.2 The following amendments will not be considered regulated amendments for the purpose of this Review Notice:

(a) amendments made to any provision within Schedule 7, other than Appendix 7C, of a Track Access Agreement under the Passenger Access (Short Term Timetable and Miscellaneous Changes) General Approval 2009 issued by ORR on 25 November 2009; and

(b) amendments made to any provision within Schedule 8 of a Track Access Agreement under the Passenger Access (Short Term Timetable and Miscellaneous Changes) General Approval 2009 issued by ORR on 25 November 2009.

#### **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 should 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,

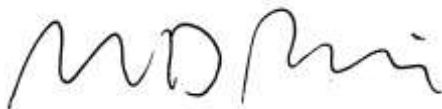
shall have the same meanings in this Review Notice; and

(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

#### Part 1 - Train Operators

| Train Operator<br>(collectively, the “Train Operators”<br>and each a “Train Operator”) | Train Operator<br>Company<br>Number | Original Date of<br>Track Access<br>Agreement |
|--|-------------------------------------|---|
| Abellio Greater Anglia Limited   | 06428369                            | 10 December 2004                              |
| Arriva Trains Wales/Trenau Arriva<br>Cymru Limited                                     | 04337645                            | 5 February 2004                               |
| c2c Rail Limited   | 02938993                            | 23 May 2003                                   |
| The Chiltern Railway Company<br>Limited  | 03007939                            | 5 February 2004                               |
| East Coast Main Line Company<br>Limited  | 04659708                            | 4 February 2005                               |
| East Midlands Trains Limited   | 05340682                            | 11 November 2007                              |
| First Capital Connect Limited  | 05281077                            | 9 February 2006                               |
| First Greater Western Limited  | 05113733                            | 8 December 2006                               |
| First/Keolis Transpennine Limited  | 04113923                            | 28 February 2013                              |
| First ScotRail Limited   | SC185018                            | 10 December 2004                              |
| London & Birmingham Railway<br>Limited   | 05814584                            | 11 November 2007                              |
| London & South Eastern Railway<br>Limited  | 04860660                            | 6 December 2007                               |
| London Overground Rail Operations<br>Ltd   | 05668786                            | 9 November 2007                               |
| Merseyrail Electrics 2002 Limited  | 04356933                            | 17 July 2003                                  |
| Northern Rail Limited  | 04619954                            | 6 January 2010                                |
| Southern Railway Limited   | 06574965                            | 19 May 2010                                   |
| Stagecoach South Western Trains<br>Limited   | 05599788                            | 20 May 2004                                   |
| West Coast Trains Limited  | 03007940                            | 1 September 2011                              |

| <b>Train Operator</b><br>(collectively, the “ <b>Train Operators</b> ”<br>and each a “ <b>Train Operator</b> ”) | <b>Train Operator<br/>Company<br/>Number</b> | <b>Original Date of<br/>Track Access<br/>Agreement</b> |
|---|--|--|
| XC Trains Limited   | 04402048                                     | 11 November 2007                                       |

## Part 2 - Other Addressees

Rail for London Limited

Merseyside Passenger Transport Executive

Welsh Government

## ANNEX 2

### STANDARD AMENDMENTS

***Explanatory Note:***

*In order to give effect to ORR's conclusions on the Review, this Annex 2 sets out the standard form proposed relevant changes to be made to Schedules 4, 7, 8, 10 and various clauses in each Track Access Agreement (the "**standard amendments**").*

*In some Track Access Agreements, some of the provisions which are to be amended are not in standard form. Where this is the case, Part 1 of Annex 3 to this Review Notice sets out how the standard amendments will need to be modified, or certain other bespoke amendments will be required.*

*In certain instances, where it is appropriate because of the nature of the amendments, the standard amendments in the form of a new schedule for a particular Train Operator (e.g. Schedule 7 for First ScotRail Limited ) are set out in this Annex 2.*

*In certain instances, the publication of certain proposed relevant changes would or might, in the opinion of ORR, seriously and prejudicially affect the interests of each Train Operator and/or Network Rail for the purpose of section 71(2) of the Act; they are therefore not being published. Where this is the case, such proposed relevant changes will be attached to Part 2 of Annex 3 to this Review Notice and will be sent only to the parties to the relevant Track Access Agreement, the Secretary of State for Transport, the Scottish Ministers and the Treasury and any relevant addressees listed in Part 2 of Annex 1 to this Review Notice.*

The following amendments shall be made to the Track Access Agreements, subject to any modifications set out in Annex 3:

## **1 Consequential and other amendments to the front end of each Track Access Agreement**

1.1 In clause 1.1 (Definitions) of each Track Access Agreement:

- (a) delete the definition of "contract" and replace it with the following definition:

**"contract"** means this document including all schedules and appendices to it, the Network Code and the Traction Electricity Rules;"

- (b) delete the definition of "Track Charges" and replace it with the following definition:

**"Track Charges"** means the charges payable by or on behalf of the Train Operator to Network Rail, as set out in paragraph 1 of Part 2 of Schedule 7 or under the Traction Electricity Rules;" and

- (c) insert the following new definition in alphabetical order:

**"Traction Electricity Rules"** means the document known as the Traction Electricity Rules published by Network Rail on its website and as may be amended from time to time;"

1.2 In the following Track Access Agreements:

- (i) the Track Access Agreement between Network Rail and First Capital Connect Limited (the "**FCC TAA**");
- (ii) the Track Access Agreement between Network Rail and London & Birmingham Railway Limited (the "**London & Birmingham TAA**");



- (iii) the Track Access Agreement between Network Rail and Southern Railway Limited (the “**Southern TAA**”);
- (iv) the Track Access Agreement between Network Rail and First ScotRail Limited (the “**ScotRail TAA**”); and
- (v) the Track Access Agreement between Network Rail and West Coast Trains Limited (the “**West Coast TAA**”),

in clause 1.1 (Definitions), delete the definition of “EC4T Metering Rules” in its entirety.

1.3 In the Track Access Agreement between Network Rail and First/Keolis Transpennine Limited (the “**FTPE TAA**”), and the Track Access Agreement between Network Rail and Merseyrail Electrics 2002 Limited (the “**Merseyrail TAA**”), in clause 1.2 (Interpretation) of each Track Access Agreement:

- (a) at the end of paragraph (n), delete “and” ;
- (b) at the end of paragraph (o), delete “.”, and replace it with “;”; and
- (c) after paragraph (o), add the following paragraphs:

"(p) words and expressions defined in the Traction Electricity Rules shall have the same meanings in this contract; and

(q) if there is any conflict of interpretation between this contract (not including the Traction Electricity Rules) and the Traction Electricity Rules, the following order of precedence shall apply: (1) the Traction Electricity Rules; and (2) this contract (not including the Traction Electricity Rules).".

1.4 In the following Track Access Agreements:

- (i) the Track Access Agreement between Network Rail and Abellio Greater Anglia Limited (the “**Greater Anglia TAA**”);

- (ii) the Track Access Agreement between Network Rail and Arriva Trains Wales/Trenau Arriva Cymru Limited (the “**ATW TAA**”);
- (iii) the Track Access Agreement between Network Rail and c2c Rail Limited (the “**c2c TAA**”);
- (iv) the Track Access Agreement between Network Rail and The Chiltern Railway Company Limited (the “**Chiltern TAA**”);
- (v) the Track Access Agreement between Network Rail and East Midlands Trains Limited (the “**East Midlands TAA**”);
- (vi) the Track Access Agreement between Network Rail and First Greater Western Limited (the “**FGW TAA**”);
- (vii) the **ScotRail TAA**;
- (viii) the Track Access Agreement between Network Rail and London & South Eastern Railway Limited (the “**South Eastern TAA**”);
- (ix) the Track Access Agreement between Network Rail and London Overground Rail Operations Limited (the “**LOROL TAA**”);
- (x) the Track Access Agreement between Network Rail and Northern Rail Limited (the “**Northern TAA**”);
- (xi) the Track Access Agreement between Network Rail and Stagecoach South Western Trains Limited (the “**South Western TAA**”); and
- (xii) the Track Access Agreement between Network Rail and XC Trains Limited (the “**XC TAA**”),

in clause 1.2 (Interpretation):

- (a) at the end of paragraph (o), delete “and”;

(b) at the end of paragraph (p), delete “.” and replace it with “;”; and

(c) after paragraph (p), add the following paragraphs:

“(q) words and expressions defined in the Traction Electricity Rules shall have the same meanings in this contract; and

(r) if there is any conflict of interpretation between this contract (not including the Traction Electricity Rules) and the Traction Electricity Rules, the following order of precedence shall apply: (1) the Traction Electricity Rules; and (2) this contract (not including the Traction Electricity Rules).”.

1.5 In the Track Access Agreement between Network Rail and East Coast Main Line Company Limited (the “**East Coast TAA**”), in clause 1.2 (Interpretation):

(a) at the end of paragraph (p), delete “and”;

(b) at the end of paragraph (q), delete “.” and replace it with “;”; and

(c) after paragraph (q) add the following paragraphs:

“(r) words and expressions defined in the Traction Electricity Rules shall have the same meanings in this contract; and

(s) if there is any conflict of interpretation between this contract (not including the Traction Electricity Rules) and the Traction Electricity Rules, the following order of precedence shall apply: (1) the Traction Electricity Rules; and (2) this contract (not including the Traction Electricity Rules).”.

1.6 In the **FCC TAA** and in the **London & Birmingham TAA**, in clause 1.2 (Interpretation):

(a) at the end of paragraph (p), delete “and”; and

(b) delete paragraph (q) and replace it with the following two paragraphs:

“(q) words and expressions defined in the Traction Electricity Rules shall have the same meanings in this contract; and

(r) if there is any conflict of interpretation between this contract (not including the Traction Electricity Rules) and the Traction Electricity Rules, the following order of precedence shall apply: (1) the Traction Electricity Rules; and (2) this contract (not including the Traction Electricity Rules).”.

1.7 In the **Southern TAA** and the **West Coast TAA**, in clause 1.2 (Interpretation):

(a) at the end of paragraph (o), delete “and”; and

(b) delete paragraph (p) and replace it with the following two paragraphs:

“(p) words and expressions defined in the Traction Electricity Rules shall have the same meanings in this contract; and

(q) if there is any conflict of interpretation between this contract (not including the Traction Electricity Rules) and the Traction Electricity Rules, the following order of precedence shall apply: (1) the Traction Electricity Rules; and (2) this contract (not including the Traction Electricity Rules).”.

1.8 In clause 2 of each Track Access Agreement, delete the heading and clauses 2.1 and 2.2 and replace them with:

## **"2. NETWORK CODE AND TRACTION ELECTRICITY RULES**

### **2.1 Incorporation**

The Network Code and the Traction Electricity Rules are incorporated in and form part of this contract.

## **2.2 Modifications to the Network Code or the Traction Electricity Rules**

If either the Network Code or the Traction Electricity Rules or both are modified at any time, Schedule 10 shall have effect.”.

1.9 In the following Track Access Agreements:

- (i) the **FCC TAA**;
- (ii) the **London & Birmingham TAA**;
- (iii) the **Southern TAA**;
- (iv) the **ScotRail TAA**; and
- (v) the **West Coast TAA**,

delete clause 2.4 in its entirety.

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

1.11 Delete clause 11.5(a) of each Track Access Agreement and replace it with the following clause:

"(a) does not limit any liability arising under Schedules 4, 5, 7 or 8 (other than under paragraph 18 of Schedule 8) or under the Traction Electricity Rules;".

1.12 Delete clause 13.1(a) of each Track Access Agreement and replace it with the following clause:

"(a) any Part of the Network Code or the Traction Electricity Rules provides for an alternative dispute resolution procedure for the Relevant Dispute, in which case such alternative procedure shall apply;".

1.13 In each Track Access Agreement, other than the **ScotRail TAA**, delete clause 13.2 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.”.

1.14 In the **ScotRail TAA**, delete clause 13.2 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 Scotland; 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."

1.15 Delete clause 14.6 of each Track Access Agreement and replace it with the following clause:

**"Network Code, Traction Electricity Rules and Schedule 7**

Nothing in this Clause 14 restricts the right of Network Rail to disclose information to which this Clause 14 applies to the extent that it is permitted or required to do so under the Network Code, the Traction Electricity Rules or Schedule 7."

1.16 In the **ScotRail TAA**, delete clause 15.2(b) and replace it with the following clause 15.2(b):

"(b) execute such contracts and do such things as the Scottish Ministers are entitled to request to give effect to the novation."

1.17 In each Track Access Agreement, at the end of clause 16.1.1, delete the words "or in the Network Code." and replace them with the following:

“, in the Network Code, or under the Traction Electricity Rules.”.

1.18 In each Track Access Agreement, in clause 16.1.2, delete the words “under Schedules 4, 5 or 8 or the Network Code,” and replace them with the following:

“under Schedules 4, 5 or 8, under the Network Code, or under the Traction Electricity Rules,”.

1.19 Delete clause 17.2(b)(i) of each Track Access Agreement and replace it with the following clause:

"(i) any obligation to pay money under Schedules 4, 5, 7 and 8 or the Traction Electricity Rules; or".

1.20 Delete clause 18.2.3 of each Track Access Agreement and replace it with the following clause:

*“18.2.3 No Office of Rail Regulation approval needed*

Modifications of the following kinds do not require ORR’s approval under section 22 of the Act and so are not subject to Clause 18.2.1(b):

(a) modifications effected by virtue of any of the Schedules to this contract; and

(b) modifications effected by virtue of the Network Code or the Traction Electricity Rules,

unless the relevant provision expressly states that it requires the approval of ORR.

1.21 In the **ScotRail TAA**, in clause 18.7, delete the words “NOT USED” and replace them with the following clause 18.7:

**“18.7 Third Party Rights**

*18.7.1 Application to the Office of Rail Regulation*

Network Rail and the Train Operator agree that ORR shall be entitled to directly enforce such rights as have



been granted to it under this contract. Furthermore, Network Rail and the Train Operator agree that this provision is intended to create a *jus quaesitum tertio*, or third party right, in favour of and for the benefit of ORR and that they shall notify ORR of the creation of this right in accordance with Clause 18.9.

*18.7.2 Application to the Scottish Ministers*

Network Rail and the Train Operator agree that the Scottish Ministers shall be entitled to directly enforce such rights as have been granted to them under this contract. Furthermore, Network Rail and the Train Operator agree that this provision is intended to create a *jus quaesitum tertio*, or third party right, in favour of and for the benefit of the Scottish Ministers and that they shall notify the Scottish Ministers of the creation of this right in accordance with Clause 18.9.”

1.22 Delete clause 18.7.4 in:

- (a) the **FCC TAA**;
- (b) the **London & Birmingham TAA**;
- (c) the **Southern TAA**; and
- (d) the **West Coast TAA**.

1.23 In each Track Access Agreement other than the **ScotRail TAA**, after clause 18.7.3, insert the following new clause 18.7.4:

*“18.7.4 Application of the Traction Electricity Rules to other train operators*

Any Metered Train Operator, Prospective Metered Train Operator or Modelled Train Operator (as defined in the Traction Electricity Rules) shall have the right under the

Contracts (Rights of Third Parties) Act 1999 directly to enforce such rights as have been granted to it under the Traction Electricity Rules."

- 1.24 Delete clause 18.8 in the **ScotRail TAA** and replace it with the following clause:

**"18.8 Application of the Traction Electricity Rules to other train operators**

Network Rail and the Train Operator agree that any Metered Train Operator, Prospective Metered Train Operator or Modelled Train Operator (as defined in the Traction Electricity Rules) shall be entitled to directly enforce such rights as have been granted to it under this contract. Furthermore, Network Rail and the Train Operator agree that this provision is intended to create a *jus quaesitum tertio* or third party right, in favour of and for the benefit of the aforementioned entities and that they shall notify the aforementioned entities of the creation of this right in accordance with Clause 18.9."

- 1.25 In the **ScotRail TAA**, immediately following clause 18.8 insert the following new clause 18.9:

**"18.9 Notification of third party rights**

18.9.1 With reference to Clauses 18.7 and 18.8 above, Network Rail and the Train Operator agree that:

- (i) in relation to Clause 18.7, on or before 30 April 2014, Network Rail shall notify, in writing, ORR and the Scottish Ministers, of the existence of this contract; and
- (ii) in relation to Clause 18.8, on or before 30 April 2014, Network Rail shall notify each third party referred to in Clause 18.8 who is intended to benefit by the creation of a third

party right in its favour (“**third party beneficiary**”) of the existence of this contract. Thereafter, Network Rail shall notify any new third party beneficiary of the existence of this contract within 21 working days of that party becoming a third party beneficiary.

18.9.2 Notification under Clause 18.9.1 shall be effected by the provision of a weblink or an electronic copy (signed or unsigned) of this contract (which may be redacted) to the relevant third party beneficiary.”

## **2 Schedule 4 to each Track Access Agreement**

2.1 With the exception of Annex B to Part 3 of Schedule 4 (which shall not be deleted and which shall continue to remain in full force), delete Schedule 4 to each Track Access Agreement and replace it with the Schedule 4 set out in Appendix 1 to this Annex 2. In Annex C to Part 3 of Schedule 4 (Payment Rate per train mile) of each Track Access Agreement, complete the table using the information relating to Annex C to Part 3 of Schedule 4 specific to that Track Access Agreement, which is attached separately in Part 2 of Annex 3 to this Review Notice.

## **3 Schedule 7 to each Track Access Agreement**

3.1 In each Track Access Agreement, other than the **ScotRail TAA** and the **Chiltern TAA**, with the exception of Appendix 7C to Schedule 7 (which shall not be deleted and which shall continue to remain in full force), delete Schedule 7 and replace it with the Schedule 7 set out in Appendix 2 to this Annex 2.

3.2 With the exception of Appendix 7C to Schedule 7 (which shall not be deleted and which shall continue to remain in full force), delete Schedule 7 to the **ScotRail TAA** and replace it with the Schedule 7 set out in Appendix 3 to this Annex 2.

- 3.3 With the exception of Appendix 7C to Schedule 7 (which shall not be deleted and which shall continue to remain in full force), delete Schedule 7 to the **Chiltern TAA** and replace it with the Schedule 7 set out in Appendix 4 to this Annex 2.

#### **4 Schedule 8 to each Track Access Agreement**

- 4.1 With the exception of Appendix 1 to Schedule 8, which shall not be deleted, delete Schedule 8 to each Track Access Agreement and replace it with the Schedule 8 set out in Appendix 5 to this Annex 2.
- 4.2 In Appendix 3 to Schedule 8 of each Track Access Agreement, complete the table using the information relating to Appendix 3 to Schedule 8 specific to that Track Access Agreement which is attached separately in Part 2 of Annex 3 to this Review Notice.

#### **5 Schedule 10 to each Track Access Agreement**

- 5.1 Delete Schedule 10 to each Track Access Agreement and replace it in its entirety with the Schedule 10 set out in Appendix 6 to this Annex 2.

**Appendix 1 to Annex 2**

**Schedule 4**

**SCHEDULE 4: ENGINEERING ACCESS STATEMENT, TIMETABLE PLANNING  
RULES AND RESTRICTIONS OF USE**

**PART 1: NOT USED**

**PART 2: NOT USED**

## PART 3: COMPENSATION FOR RESTRICTIONS OF USE

### 1 Definitions

#### 1.1 *Defined terms*

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

- “Applicable Timetable”** means, in respect of any day, that part of the Working Timetable in respect of that day which is required to be drawn up in accordance with Condition D2.1.1 of the Network Code as at 22:00 hours on the day prior to that day;
- “Bi-annual Timetable”** means either of the following:
- (a) the Corresponding Day Timetable for all days in the period from and including the Principal Change Date up to but excluding the immediately following Subsidiary Change Date; or
  - (b) the Corresponding Day Timetable for all days from and including the Subsidiary Change Date up to but excluding the immediately following Subsidiary Change Date or Principal Change Date, as the case may be;
- “Cancellation Minutes”** shall have the meaning ascribed to it in Schedule 8;
- “Cap”** shall have the meaning ascribed to it in Schedule 8;
- “Corresponding Day”** means, in respect of any day (the **“first day”**):
- (a) a day which is contained in the same Timetable Period as the first day and on which the Services scheduled in the New Working Timetable are the same as would have been scheduled on the first day but for Restrictions of Use reflected in the New Working Timetable for the first day; or
  - (b) if no day is found under paragraph (a)

above, then a day which is contained in the equivalent Timetable Period for the time of year, in the year immediately preceding the Timetable Period which includes the first day and on which the Services scheduled in the New Working Timetable are the same as would have been scheduled on the first day but for Restrictions of Use reflected in the New Working Timetable for the first day; or

- (c) if no day is found under paragraph (a) or (b) above, such other day as the parties may agree or as may be determined in accordance with paragraph 12.2;

**“Corresponding Day Timetable”**

means, in relation to a Corresponding Day, the New Working Timetable or such other timetable as may be agreed between the parties or otherwise determined in accordance with paragraph 12.2;

**“Day 42 Statement”**

shall have the meaning ascribed to it in paragraph 13.1(a);

**“Disrupted”**

means:

- (a) cancelled;
- (b) diverted off the Route over which it was scheduled to run in the Corresponding Day Timetable; and/or
- (c) starting or finishing short in comparison with the Service as timetabled in the Corresponding Day Timetable;

**“First Restriction”**

shall have the meaning ascribed to it in paragraph 2.12(a)(i);

**“First Restriction Period”**

shall have the meaning ascribed to it in paragraph 2.12(a)(ii);

**“Further Restriction”**

shall have the meaning ascribed to it in paragraph 2.12(a)(ii)(B);



|  |   |
|--|---|
| <b>“High Speed Diversion”</b>            | means a situation in which a Train is diverted between successive Monitoring Points such that it travels a longer distance at a higher average speed than that normally scheduled and arrives at its destination at a time later than that specified in the New Working Timetable;  |
| <b>“Initial Indexation Factor”</b>       | shall have the meaning ascribed to it in Schedule 7;  |
| <b>“Monitoring Point”</b>                | shall have the meaning ascribed to it in Schedule 8;  |
| <b>“Network Rail Restriction of Use”</b> | means any Restriction of Use other than an Operator Restriction of Use;   |
| <b>“Notification Factor” or “NF”</b>     | shall have the meaning ascribed to it in paragraph 9;   |
| <b>“Off-Peak”</b>                        | where applicable, has the meaning ascribed to it in Schedule 5;   |
| <b>“Operator Restriction of Use”</b>     | means a Restriction of Use of the type referred to in paragraph 2.3;  |
| <b>“Over-run”</b>                        | shall have the meaning ascribed to it in paragraph 2.12(a);   |
| <b>“Peak”</b>                            | where applicable, has the meaning ascribed to it in Schedule 5;   |
| <b>“Period”</b>                          | shall have the meaning ascribed to it in Schedule 8;  |
| <b>“Public Holiday”</b>                  | means any day other than Saturday or Sunday on which the banks in the City of London are not open for business;   |
| <b>“Recovery Allowance”</b>              | means an allowance for additional time incorporated in the New Working Timetable or (where the Train Operator requests that the allowance is not incorporated in the New Working Timetable and Network Rail complies with that request) the Applicable Timetable to allow a Train to regain time lost during an earlier part of its |

|                                 |  |
|---------------------------------|--|
|                                 | journey;   |
| <b>“Restriction of Use”</b>     | means, in respect of any day, any restriction of use of all or any part of the Routes (other than one caused by a Recovery Allowance which was contained in the Applicable Timetable Planning Rules relevant to that day notified to each Timetable Participant on or before D-26) which results in: <ul style="list-style-type: none"> <li>(a) a difference between the Applicable Timetable on that day as compared with the New Working Timetable in respect of that day; and/or</li> <li>(b) a difference between the New Working Timetable on that day as compared with the Corresponding Day Timetable in respect of the Corresponding Day;</li> </ul> |
| <b>“Restriction of Use Day”</b> | means a day on which a Network Rail Restriction of Use is taken or deemed to be taken;   |
| <b>“RoU Claim Notice”</b>       | means a notice issued by either party pursuant to paragraph 2.8;   |
| <b>“RoU Direct Costs”</b>       | means the aggregate amount of: <ul style="list-style-type: none"> <li>(a) bus and taxi hire costs;</li> <li>(b) publicity costs;</li> <li>(c) train planning and diagramming costs; and</li> <li>(d) other costs directly related to the organisation and management of the Train Operator’s response to a Type 2 Restriction of Use,</li> </ul> reasonably incurred by the Train Operator as a result of a Type 2 Restriction of Use, adjusted by: <ul style="list-style-type: none"> <li>(i) adding any increase in RoU Variable Costs; and</li> <li>(ii) deducting any decrease in RoU Variable Costs;</li> </ul>   |

|                             |  |
|-----------------------------|--|
| <b>“RoU Liability”</b>      | means any costs, direct losses and expenses (including any loss of revenue) reasonably incurred or reasonably expected to be incurred by the Train Operator (including any increase in RoU Variable Costs but net of any benefit arising from the taking of a Restriction of Use including any decrease in RoU Variable Costs) as a consequence of a Type 3 Restriction of Use or any Restriction(s) of Use covered by an SPD Claim; |
| <b>“RoU Losses”</b>         | means any RoU Direct Costs or RoU Liability (as applicable);   |
| <b>“RoU Trigger Date”</b>   | means, in respect of any Period, the later to occur of the following: <ul style="list-style-type: none"> <li>(a) the date on which Network Rail issues a Day 42 Statement; and</li> <li>(b) in the event of any dispute in respect of Network Rail’s Day 42 Statement, the date on which such dispute is agreed or determined;</li> </ul>  |
| <b>“RoU Variable Costs”</b> | means any Train Operator costs which vary as a result of a Restriction of Use or where applicable an Over-run arising directly from changes in train mileage including maintenance, fuel or the Traction Electricity Charge, the Variable Track Usage Charge and the Capacity Charge (as such terms are defined in Schedule 7);  |
| <b>“RPI”</b>                | shall have the meaning ascribed to it in Schedule 7 of this contract;  |
| <b>“SPD Claim”</b>          | has the meaning specified in paragraph 2.10(d);  |
| <b>“SPD Notice”</b>         | means a notice issued by either party pursuant to paragraph 2.10(a);   |
| <b>“SPD Period”</b>         | means the period of any 3 or 7 (as the case may be) consecutive Periods in which it is agreed or determined that Sustained Planned Disruption has occurred in respect of the Train Operator, together with any subsequent consecutive Period up to but   |

|  |   |
|--|---|
|  | excluding the first Period to occur in respect of which it is agreed or determined that the test for Sustained Planned Disruption is not satisfied in respect of the Train Operator;  |
| <b>“SPD Cost Threshold No.1”</b>               | means £609,500;   |
| <b>“SPD Cost Threshold No.2”</b>               | means £1,219,000;   |
| <b>“SPD Revenue Threshold No.1”</b>            | means 20% of a figure to be determined and published by ORR;  |
| <b>“SPD Revenue Threshold No.2”</b>            | means 15% of a figure to be determined and published by ORR;  |
| <b>“SPD Termination Notice”</b>                | has the meaning specified in paragraph 2.10(c);   |
| <b>“Sustained Planned Disruption” or “SPD”</b> | <p>means a circumstance where:</p> <p>(a) the aggregate of the compensation payable in respect of a Service Group calculated in accordance with paragraph 3 for any one or more Restrictions of Use during:</p> <ul style="list-style-type: none"> <li>(i) 3 consecutive Periods is equal to or exceeds SPD Revenue Threshold No.1; or</li> <li>(ii) 7 consecutive Periods is equal to or exceeds SPD Revenue Threshold No.2,</li> </ul> <p>and that the difference between the RoU Liability calculated in accordance with paragraph 8 and the compensation calculated in accordance with paragraph 3 and paragraph 4 for such Restrictions of Use during that period would be more than £10,000; or</p> <p>(b) in respect of any one or more Restrictions of Use during :</p> <ul style="list-style-type: none"> <li>(i) 3 consecutive Periods the difference between the Train Operator’s RoU Liability (excluding any loss of revenue) calculated in accordance with paragraph 8 and the Train</li> </ul> |

Operator's costs calculated under paragraph 4 would be more than SPD Cost Threshold No. 1; or

- (ii) 7 consecutive Periods the difference between the Train Operator's RoU Liability (excluding any loss of revenue) calculated in accordance with paragraph 8 and the Train Operator's costs calculated under paragraph 4 would be more than SPD Cost Threshold No. 2;

- “Service Code”** shall have the meaning ascribed to it in Schedule 8;
- “Service Group”** shall have the meaning ascribed to it in Schedule 8;
- “Train”** shall have the meaning ascribed to it in Schedule 8;
- “Train–Bus–Train Pattern”** means a situation where:
- (a) a Restriction of Use occurs on any section of track between:
    - (i) successive Monitoring Points; or
    - (ii) the station of origin and the next Monitoring Point; and
  - (b) the Train Operator uses a substitute bus or other alternative road service between any pair of stations situated:
    - (i) between or including such successive Monitoring Points; or
    - (ii) at or between the station of origin and the next Monitoring Point;
- “Type 1 Restriction of Use”** means any single Restriction of Use which does not fall within the definition of Type 2 Restriction of Use or Type 3 Restriction of Use;
- “Type 2 Restriction of Use”** means:
- (a) a single Restriction of Use of more than 60

consecutive hours (excluding any part of that Restriction of Use which occurs during a Public Holiday); and

(b) which results in a Service being Disrupted but excluding any Restriction of Use which falls within the definition of Type 3 Restriction of Use;

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

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

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

**“Viable Transfer Point”** a station normally served by the services operated by the Train Operator, and equipped to enable the efficient and safe transfer of trainloads of passengers to and from alternative modes of transport, and/or services operated by other Train Operators, and which the parties have agreed, and set out in Annex B, shall be used for the purpose of providing bus substitution services, and for calculating the cost of bus substitution services in accordance with the provisions of paragraph 4 "Costs Compensation for Network Rail Restrictions of Use";

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

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

## 1.2 *Suspension Notices*

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

## 1.3 *Possession*

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

## 1.4 *White Period*

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

## **2 Application of this Part**

### 2.1 *Entry into effect*

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

### 2.2 *Applicable Engineering Access Statement and the Network Code*

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

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

### 2.3 *Operator Restriction of Use*

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

- (a) required as a result of any damage to the Network or Environmental Damage which in each case:

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

#### 2.4 *Network Rail payments*

Subject to paragraph 2.3, Network Rail shall make payments to the Train Operator (in accordance with the procedure in paragraph 13) in respect of a Network Rail Restriction of Use calculated in accordance with paragraphs 2.5 to 2.7 and 2.10 where applicable.

#### 2.5 *Type 1 Restriction of Use*

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

#### 2.6 *Type 2 Restriction of Use*

- (a) Except where paragraph 2.6(c) applies, Network Rail shall make payments (in accordance with the procedure in paragraph 13) calculated in accordance with paragraphs 3 and 4 to the Train Operator in respect of any Type 2 Restriction of Use.
- (b) If either party reasonably believes or expects that the difference between RoU Direct Costs calculated in accordance with paragraph 6 and the costs calculated under paragraph 4 would exceed £10,000 then that party will be entitled to require that the costs be calculated in accordance with paragraph 6 by serving an RoU Claim Notice within the time periods set out in paragraph 2.8.
- (c) Following a request in accordance with paragraph 2.6(b), if it is agreed or determined that the difference between RoU Direct Costs calculated in accordance with paragraph 6 and the costs calculated under paragraph 4 exceeds £10,000 then the relevant party shall make payments to the other (in accordance with the procedure in paragraph 13) calculated in accordance with paragraphs 3 and 6.



## 2.7 *Type 3 Restriction of Use*

- (a) Except where paragraph 2.7(c) applies, Network Rail shall make payments (in accordance with the procedure in paragraph 13) calculated in accordance with paragraphs 3 and 4 to the Train Operator in respect of any Type 3 Restriction of Use.
- (b) If either party reasonably believes or expects that the difference between RoU Liability calculated in accordance with paragraph 7 and the costs and losses calculated under paragraphs 3 and 4 would exceed £10,000 then that party will be entitled to require that the costs and losses be calculated in accordance with paragraph 7 instead by serving an RoU Claim Notice within the time periods set out in paragraph 2.8 (a “Type 3 Liability Claim”).
- (c) Following a request in accordance with paragraph 2.7(b), if it is agreed or determined that the difference between RoU Liability calculated in accordance with paragraph 7 and the costs and losses calculated under paragraphs 3 and 4 exceeds £10,000 then the relevant party shall make payments to the other (in accordance with the procedure in paragraph 13) calculated in accordance with paragraph 7.

## 2.8 *RoU Claim Notice*

- (a) Either party wishing to make a request pursuant to Clause 2.6(b) or Clause 2.7(b) must notify the other that a Restriction of Use is a Type 2 Restriction of Use or a Type 3 Restriction of Use and that the circumstances in paragraph 2.6(b) or 2.7(b) (as applicable) apply within 56 days of the RoU Trigger Date relating to the Period in which that Restriction of Use commences.
- (b) The notice referred to in paragraph 2.8(a) must, if provided by the Train Operator, include details of the estimate of the RoU Direct Costs or RoU Liability (as applicable) which the Train Operator has incurred in respect of the relevant Restriction of Use.

## 2.9 *Changes to Restrictions of Use*

- (a) Where a single Restriction of Use falls within the definition of one type of Restriction of Use and there is a change which means that no Restriction of Use occurs or that the Restriction of Use occurs as another type of Restriction of Use, then that Restriction of Use shall be treated, for the purposes of the calculation and payment of compensation, as if it had always been the latter type of Restriction of Use (or, where applicable, as if it had not

been a Restriction of Use).

- (b) For the purposes of paragraph 2.9(c), a Restriction of Use shall be deemed to be taken if and to the extent that it results in any difference between timetables of the type referred to in the definition of “Restriction of Use” when notified, whether or not the restriction giving rise to that Restriction of Use was subsequently cancelled in whole or in part.
- (c) Subject to paragraph 2.9(d), where a change to a Restriction of Use reduces the impact of the Restriction of Use and accordingly changes its type or means that there is no Restriction of Use in accordance with paragraph 2.9(a), the Train Operator may, within 28 days of the date on which the change to the Restriction of Use was notified to the Train Operator by Network Rail, serve a notice on Network Rail which sets out any costs to which the Train Operator is already committed or has already incurred and any costs associated with responding to the Restriction of Use (both before and after the change). The Train Operator shall be entitled to recover such costs provided that such costs are reasonable and were properly committed or incurred in the circumstances. For the purposes of this paragraph 2.9(c), references to “costs” shall mean those categories of costs which the Train Operator would have been entitled to recover under this Schedule 4 for that type of Restriction of Use which the Restriction of Use was classified as prior to its change.
- (d) Notwithstanding paragraph 2.9(c), where:
  - (i) 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
  - (ii) 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”).

## 2.10 *Sustained Planned Disruption*

- (a) If either party reasonably believes that a Sustained Planned Disruption has occurred then that party will be entitled to require that the costs and losses for the Restrictions of Use for the relevant services during the relevant SPD Period be calculated in accordance with paragraph 8 by serving a notice on the other (an “SPD Notice”) in accordance with paragraph 2.10(b).
- (b) Unless otherwise agreed in writing, an SPD Notice must be served no later than the day falling 56 days after the issue of the Day 42 Statement which followed the end of the relevant SPD Period and must include a short explanation of why it reasonably believes a Sustained Planned Disruption has occurred and a statement of when the SPD Period commenced.
- (c) Following the issue of an SPD Notice, either party may serve a notice (an “SPD Termination Notice”) stating that it reasonably believes that the relevant Sustained Planned Disruption is no longer occurring, such notice to include a short explanation of why the party serving it reasonably believes that the Sustained Planned Disruption has ceased and stating the Period in which such cessation has occurred. A party receiving an SPD Termination Notice shall within 30 days of its receipt by notice to the serving party either accept or reject the SPD Termination Notice and where it rejects the notice it shall include with its rejection notice a short explanation of why it reasonably believes the Sustained Planned Disruption is continuing. If the parties fail to reach agreement within 30 days after service of a rejection notice, or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, either party may notify the other that the dispute resolution procedure set out in paragraph 13.3 is to apply (save that references to paragraph 13.2 shall be construed as being references to this paragraph).
- (d) Following the issue of an SPD Notice the party that issued that notice must serve a claim (an “SPD Claim”):
  - (i) no later than the day falling 112 days after the issue of the Day 42 Statement for the last Period in the relevant SPD Period; or
  - (ii) where an SPD Period has exceeded 13 consecutive Periods in length or upon the termination or expiry of this contract, whichever comes first, unless otherwise agreed in writing, no later than the day falling 112 days after the issue of the Day 42 Statement which followed the 13<sup>th</sup> consecutive Period or the termination or expiry of this contract (as applicable),

whichever is the earlier.

- (e) Provided a party has issued an SPD Notice in accordance with paragraph 2.10(b), nothing in paragraph 2.10(d) shall prevent that party from issuing more than one SPD Claim in respect of the same Sustained Planned Disruption, provided that:
  - (i) each such SPD Claim relates to a different period within the said SPD Period (so there is no double-counting); and
  - (ii) no SPD Claim can be issued after the last day for serving notice specified under paragraph 2.10(d).
- (f) An SPD Claim must include details of when and why that party reasonably believes that a Sustained Planned Disruption has occurred and in particular:
  - (i) if the claim is made by the Train Operator, such details as may reasonably be available of the RoU Liability which the Train Operator has incurred or reasonably expects to incur in respect of the relevant Restrictions of Use during the SPD Period; or
  - (ii) if the claim is made by Network Rail, the reasons why Network Rail reasonably believes that the Train Operator has been overcompensated or may be overcompensated by more than the relevant amount.
- (g) Following the service of an SPD Claim, if and to the extent it is agreed or determined that a Sustained Planned Disruption has occurred in the period covered by the claim then the relevant party shall make payments to the other (in accordance with the procedure in paragraph 13) calculated in accordance with paragraph 8 in respect of the SPD Period (or where applicable the part of the SPD Period) covered by the SPD Claim.

#### 2.11 *Early notice of RoU Losses*

The parties may at any time engage in discussions on any matter likely to result in payments in respect of any RoU Losses and shall use reasonable endeavours to agree whether such RoU Losses calculated in accordance with paragraph 6, 7 or 8 are likely to arise and/or what mitigating actions should be contemplated to reduce or avoid such RoU Losses. The party initiating such discussions shall provide to the other reasonable evidence in writing of why it thinks such RoU Losses will arise or mitigating actions should be contemplated. Following any agreement or determination that such RoU Losses are likely to arise in connection with one or more future Restrictions of Use or that mitigating actions should be contemplated, the parties shall where reasonably practicable engage in discussions on any options for mitigating

costs, revenue loss and/or disruption including any advance compensation for such Restriction(s) of Use to the extent such advance compensation would or would reasonably be expected to facilitate the mitigation of the contemplated disruption. Nothing in this contract shall prevent Network Rail and the Train Operator agreeing any options for mitigating costs and disruption in respect of any Restriction(s) of Use. Unless otherwise agreed, the timescales for claiming RoU Losses shall still apply.

## 2.12 *Over-runs*

(a) For the purposes of this paragraph 2.12, an over-run (“Over-run”) occurs where:

- (i) there is a Restriction of Use which is not an Operator Restriction of Use (the "First Restriction");
- (ii) following the end of the relevant period of difference between timetables referred to in sub-paragraphs (a) and (b) of the definition of Restriction of Use which served to establish the existence of that Restriction of Use (the "First Restriction Period"), there is either:
  - (A) a further period of at least one hour during which Services are Disrupted due to (1) any incident attributed under Schedule 8 to circumstances arising from any restriction of operation of the Network which are a consequence of the First Restriction or (2) any act or omission in connection with any activities planned or undertaken which are directly attributable to the First Restriction (including any failure to remove the First Restriction by the time scheduled for its removal in the Applicable Engineering Access Statement) but excluding any act or omission by the Train Operator for which it would be allocated responsibility under this contract (the "Unplanned Over-run Period"); and/or
  - (B) a further Restriction of Use is taken which is at the same location as all or part of the First Restriction and directly connected with or attributable to any activities undertaken or planned to be undertaken under the First Restriction (a “Further Restriction” ),

in each case without there being any intervening period between the First Restriction and the relevant Unplanned Over-run Period or Further Restriction, which is not either a White Period, Unplanned Over-run Period or a Further Restriction.

- (b) Where a Restriction of Use is subject to one or more Over-runs, then the entire duration from the start of the First Restriction to the end of the last Over-run in respect of the Restriction of Use shall be treated as making up a single Restriction of Use.
- (c) Where there is an Over-run which results in a Service being Disrupted which:
  - (i) is not part of either a Type 2 or Type 3 Restriction of Use;
  - (ii) lasts for more than one hour; and
  - (iii) results in the Train Operator incurring costs in the category of RoU Direct Costs in relation to the Over-run in excess of £10,000,

then the Unplanned Over-run Period element of that Over-run (but not the relevant First Restriction Period or the period of any Further Restriction) shall for the purposes only of calculating RoU Direct Costs be deemed to constitute a Type 2 Restriction of Use.

- (d) For the purposes of calculating RoU Liability under paragraph 7 (when it is agreed or determined that the requirements of paragraph 2.7(c) are satisfied) or paragraph 8 when there is agreed or determined to be a Sustained Planned Disruption, the amount of the RoU Liability shall be calculated:
  - (i) including costs, direct losses and expenses (including loss of revenue and any increase in RoU Variable Costs) reasonably incurred or reasonably expected to be incurred by the Train Operator as a consequence of any Unplanned Over-run Period; and
  - (ii) offsetting any benefit as a consequence of the Unplanned Over-run Period including:
    - (A) any reduction in RoU Variable Costs;
    - (B) any payments made as result of paragraph 2.12(c); and
    - (C) any payments received by the Train Operator under Schedule
- (e) This paragraph 2.12 shall not result in any Unplanned Over-run Period being subject to either revenue loss compensation for Network Rail Restrictions of Use under paragraph 3 or costs compensation for Network Rail Restrictions of Use under paragraph 4.

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

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

For each Period and for each Service Group, Network Rail shall calculate the compensation payable in respect of all Network Rail Restrictions of Use on each Restriction of Use Day in that Period by applying, in accordance with paragraphs 3.2 and 3.3, the formulae in paragraphs 3.4, 3.5 and 3.6. For the purposes of determining for this paragraph 3 to which Service Group a particular Train is allocated, a Train (or portion of a Train) shall be treated as allocated to a particular Service Group by reference to its Service Code, provided that where a particular Train (or portion of a Train) is given a different Service Code in the New Working Timetable from the Service Code given to it in the Applicable Timetable or a different Service Code in the Corresponding Day Timetable from the Service Code given to it in the New Working Timetable it shall be treated as part of the Service Group in relation to whichever of those Service Codes most correctly applies to that Train or, where both Service Codes could equally apply to that Train, to the Service Code applied to that Train in the New Working Timetable.

### 3.2 *Separate calculations*

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

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

### 3.3 *Meaning of T1 and T2*

In paragraph 3.4:

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

### 3.4 *Formula*

The formula referred to in paragraph 3.1 is as follows:

$$NRP = \sum((WACM + NREJT) \cdot BF \cdot NRPR \cdot NF)$$

where:

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

$$WACM = (CM - NRPP) \cdot \Sigma \frac{(MPW \cdot CS)}{SS}$$

where:

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

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

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

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

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

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

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

$$NREJT = EJT \cdot (1 - \Sigma \frac{(MPW \cdot CS)}{SS})$$

where:

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



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

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

if otherwise,

EJT is the lesser of:

(i) the number of minutes specified as the Cap for the Service Group in column K of Appendix 1 to Schedule 8; and

(ii)  $AJT \bullet ((u-v)/v)$ ,

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

where:

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

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

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

and for the purposes of this paragraph 3.4:

“Journey”

means the journey of the Train scheduled in the relevant timetable from its station of origin to its destination station; provided that if a Train crosses a Service Group boundary then in respect of each Service Group the Train’s

station of origin and destination station shall respectively mean the station at which the Train commences that part of its journey in that Service Group and the station at which it ends that part of its journey in that Service Group; and that where any Train splits to become more than one Train then that part of the Train's journey up to the station where it splits shall be treated as one journey and each Train into which the Train splits shall be treated as making a separate journey; and

“Journey Time”

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

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

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

where:

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

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

- (e) NRPR is the Network Rail payment rate specified in column E of Appendix 1 to Schedule 8, as indexed according to the relevant provisions of Schedule 8.

### 3.5 *High Speed Diversions*

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

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

where:

ANRP is the additional Network Rail payment;

TDR<sub>SG</sub> is, in respect of each Service Group and each Restriction of Use Day on which a High Speed Diversion applies, the number of

Trains in the Service Group scheduled in T2 to be subject to the High Speed Diversion;

$TDT_{SG}$  is the total number of Trains scheduled to be run in the Service Group in T1;

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

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

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

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

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

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

$$ANRP = \frac{TTS_{SG}}{TTR_{SG}} \bullet (CM - NRPP) \bullet DV \bullet NRPR \bullet BF \bullet NF$$

where:

ANRP is the additional Network Rail payment;

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

$TTR_{SG}$  is the total number of Trains scheduled to be run in the Service Group in T1;

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

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

DV shall have the value of 0.125,

provided that if:

$TTR_{SG}$  is less than  $TTS_{SG}$  then  $\frac{TTS_{SG}}{TTR_{SG}}$  shall be deemed to have the value of one.

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

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

#### **4 Costs compensation for Network Rail Restrictions of Use**

##### **4.1 *Basis for calculations***

For each Period and for each Service Group, Network Rail shall calculate the compensation payable in respect of all Network Rail Restrictions of Use on each Restriction of Use Day in that Period by applying the formulae in paragraph 4.2. For the purposes of determining for this paragraph 4 to which Service Group a particular Train is allocated, a Train (or portion of a Train) shall be treated as allocated to a particular Service Group by reference to its Service Code, provided that where a particular Train (or portion of a Train) is given a different Service Code in the New Working Timetable from the Service Code given to it in the Applicable Timetable or a different Service Code in the Corresponding Day Timetable from the Service Code given to it in the New Working Timetable it shall be treated as part of the Service Group in relation to whichever of those Service Codes most correctly applies to that Train or, where both Service Codes could equally apply to that Train, to the Service Code applied to that Train in the New Working Timetable.

##### **4.2 *Cost compensation formula***

The formula referred to in paragraph 4.1 is as follows:

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

where:

- (a)  $\Sigma$  is the sum across all applicable Network Rail Restrictions of Use and all Restriction of Use Days in the Period;
- (b) RRBC is the rail replacement bus cost, for the Service(s) (or part(s) thereof) in that Service Group as a result of a Network Rail Restriction of Use, calculated according to the following formula:

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

Where:

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

EBMPR is the payment rate per EBM, which is £14.29.

If there is full bus replacement

$$\text{EBM} = \text{EBMW} \times \text{FBRmiles}$$

If there is partial bus replacement

$$\text{EBM} = \text{EBMW} \times 0.5 \times \text{PBRmiles} \times \text{ITS}$$

If there is no bus replacement (as set out in Annex B to this Part 3 of Schedule 4)

$$\text{EBM} = \text{EBMW} \times 0$$

where:

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

FBRmiles is the length of route, in miles, between the applicable pair of Viable Transfer Points over which train services are affected and for which full bus replacement is required as set out in Annex B to this Part 3 of Schedule 4;

PBRmiles is the length of route, in miles, between the applicable pair of Viable Transfer Points over which train services are affected and for which partial bus replacement is required as set out in Annex B to this Part 3 of Schedule 4;

ITS is 1 or the percentage of trains stopping at intermediate stations for those cases where EBMW = 50%; and

- (c) TMC is the cost or saving resulting from train mileage change, for the Service(s) (or part(s) thereof) in that Service Group as a result of a Network Rail Restriction of Use, calculated according to the following formula:

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

where:

TM is the change in train mileage; and

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

## **5 Estimated bus miles change mechanism**

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

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

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

- (a) The party who wishes to amend Annex B shall notify the other party of any such proposed change and the date from which it proposes that such change will have effect:
  - (i) where such change relates to a forthcoming timetable change, on or before the first day of the month which falls 6 months before the relevant Principal Change Date or Subsidiary Change Date on which that timetable change is due to occur; and
  - (ii) in any other case prior to the date from which it proposes such change shall have effect.
- (b) Any notice under sub-paragraph 5.2(a) shall specify as far as possible that party's proposed amendments to Annex B. Promptly following the service of any such notice the parties shall endeavour to agree whether Annex B should be amended in accordance with this paragraph 5 and if so the amendments.
- (c) If the parties fail to reach agreement within 90 days after service of the relevant notice, or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, the matter may be referred for resolution in accordance with the ADRR. In respect of any such dispute which is referred for resolution under the ADRR the parties shall agree in a Procedure Agreement, as defined in the ADRR, that the relevant ADRR Forum shall have regard to any relevant criteria and/or policy statement most recently issued by ORR.
- (d) Any amendment to Annex B shall take effect only when it has been approved by ORR under section 22 of the Act. Accordingly, as soon as reasonably practicable after any such amendment is agreed or determined in accordance with this paragraph 5, the parties shall use all reasonable endeavours to ensure that ORR is furnished with such amendment and sufficient information

and evidence as it shall require to determine whether or not to approve the amendment.

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

### 5.3 *Costs of implementing amendment*

The party proposing the amendment to Annex B shall (subject to any determination of an expert as to costs, where a matter is referred to that expert under paragraph 5.2(c)) pay 90 percent of costs incurred by or on behalf of the other party in assessing and implementing the amendments to Annex B, provided that those costs shall be the minimum reasonably necessary to assess and implement that amendment.

## **6 RoU Direct Costs compensation for Type 2 Restrictions of Use**

### 6.1 *Compensation arrangements*

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

any RoU Direct Costs received by the Train Operator from Network Rail in respect of such Restriction of Use; or

- (ii) an overpayment by Network Rail to the Train Operator, the compensation to be paid by the Train Operator to Network Rail shall be the difference between the amount received by the Train Operator which was calculated under paragraph 4 and the RoU Direct Costs actually incurred by the Train Operator in respect of such Restriction of Use.
- (c) Network Rail shall include in the statement provided by it in respect of each Period under paragraph 13.1(a) details of the compensation agreed or determined under this paragraph 6 and paragraph 10 to be payable in respect of any Type 2 Restriction of Use taken in that Period and that compensation shall be due and payable by the relevant party to the other in accordance with paragraph 13.1.

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

### **7.1 Compensation arrangements**

- (a) Following receipt of an RoU Claim Notice in respect of a Type 3 Restriction of Use, Network Rail and the Train Operator shall (if they have not already done so) commence negotiations in respect of the RoU Liability compensation to be paid by one party to the other in respect of the Type 3 Restriction of Use and, subject to paragraph 10, shall continue such negotiations in good faith until they are concluded.
- (b) Once the compensation referred to in paragraph 7.1(a) has been agreed or determined (and has been compared against the aggregate of any amounts calculated under paragraphs 3 and 4 together with any other amounts paid or due to the Train Operator from Network Rail in relation to such Restriction of Use) then, in the event of:
  - (i) a shortfall for the Train Operator, the compensation to be paid by Network Rail to the Train Operator shall be the full amount of the RoU Liability actually incurred by the Train Operator less any amounts calculated under paragraphs 3 and 4 which have already been paid or are due for such Restriction of Use and any other amounts received by the Train Operator from Network Rail in respect of such Restriction of Use; or
  - (ii) an overpayment by Network Rail to the Train Operator, the compensation to be paid by the Train Operator to Network Rail shall



be the difference between the amount received by the Train Operator which was calculated under paragraphs 3 and 4 and the RoU Liability actually incurred by the Train Operator in respect of such Restriction of Use.

- (c) Network Rail shall include in the statement provided by it in respect of each Period under paragraph 13.1(a) details of the compensation agreed or determined under this paragraph 7 and paragraph 10 to be payable in respect of any Type 3 Restriction of Use taken in that Period and that compensation shall be due and payable by the relevant party to the other in accordance with paragraph 13.1.

## **8 Sustained Planned Disruption payments**

### **8.1 *Payment arrangements***

- (a) Following an agreement or determination that a Sustained Planned Disruption has occurred during an SPD Period, Network Rail and the Train Operator shall (if they have not already done so) commence negotiations in respect of the RoU Liability compensation to be paid by one party to the other in respect of the Restrictions of Use during the relevant SPD Period and, subject to paragraph 10, shall continue such negotiations in good faith until they are concluded.
- (b) Once the compensation referred to in paragraph 8.1(a) has been agreed or determined (and has been compared against the aggregate of any amounts calculated under paragraphs 3 and 4 together with any other amounts paid or due to the Train Operator from Network Rail in respect of such Restriction of Use) then, in the event of:
  - (i) a shortfall for the Train Operator, the compensation to be paid by Network Rail to the Train Operator in respect of the Restrictions of Use during the relevant SPD Period shall be the full amount of the RoU Liability actually incurred by the Train Operator less any amounts calculated under paragraphs 3 and 4 which have already been paid or are due for Restrictions of Use during the relevant SPD Period and any other amounts received by the Train Operator from Network Rail in respect of such Restrictions of Use; or
  - (ii) an overpayment by Network Rail to the Train Operator, the compensation to be paid by the Train Operator to Network Rail shall be the difference between the amount received by the Train Operator for Restrictions of Use during the relevant SPD Period and the RoU

Liability actually incurred by the Train Operator during the same SPD Period.

- (c) Following any agreement or determination of an amount to be paid by one party to the other in respect of a Sustained Planned Disruption that amount shall (subject to the terms of any compensation arrangements agreed in writing between the parties) be due and payable by one party to the other in accordance with paragraph 13.1.
- (d) Where a Sustained Planned Disruption applies due to a circumstance which it is agreed or determined affects a part only of the Train Operator's services (including whether by reference to geographic location or Service Group), then in agreeing or determining the RoU Liability in respect of that SPD the RoU Liability in respect of the part of the Train Operator's services not affected by that circumstance shall (unless otherwise proven) be presumed to be equal to the payments made under paragraphs 3 and 4 of this Schedule 4 in respect of those other services.

## **9 Notification Factors**

### **9.1 *Early notification***

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

- (a) the Network Rail Restriction of Use is reflected in the New Working Timetable;  
or
- (b)
  - (i) details of the Network Rail Restriction of Use are notified to the Train Operator on or before D-26 for the Timetable Period in respect of the Restriction of Use Day but, at the request of the Train Operator (as accepted by Network Rail), are not reflected in the New Working Timetable; and
  - (ii) subject to paragraph 9.1(b)(iii), the Network Rail Restriction of Use is reflected in the Working Timetable as entered into the train service database at 22:00 hours on the day which is 12 Weeks before the Restriction of Use Day; or
  - (iii) where paragraph 9.1(b)(ii) does not apply because the Train Operator has failed to give Network Rail a revised Access Proposal in accordance with Condition D3.4.9, the Network Rail Restriction of Use

is reflected in the Applicable Timetable in respect of the Restriction of Use Day.

## 9.2 *Notification by TW-22*

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

- (a) details of the Network Rail Restriction of Use are notified to the Train Operator by TW -22; and
- (b)
  - (i) the Network Rail Restriction of Use is reflected in the Working Timetable as entered into the train service database at 22:00 hours on the day which is 12 Weeks before the Restriction of Use Day; or
  - (ii) where paragraph 9.2(b)(i) does not apply because the Train Operator has failed to give Network Rail a revised Access Proposal in accordance with Condition D3.4.9, the Network Rail Restriction of Use is reflected in the Applicable Timetable in respect of the Restriction of Use Day.

## 9.3 *Late Notification*

The NF in respect of a Network Rail Restriction of Use in respect of any Service Group shall have the value specified for that Service Group in column E of Annex A to this Part 3 if and to the extent paragraphs 9.1 and 9.2 do not apply but the Network Rail Restriction of Use is reflected in the Applicable Timetable, and includes where paragraph 9.1(b) or paragraph 9.2 would have been applicable but for a failure by Network Rail to fulfil the terms of paragraph 9.1(b)(ii) or paragraph 9.2(b)(i) respectively, notwithstanding the Train Operator having given a revised Access Proposal in accordance with Condition D3.4.9.

## 10 **Dispute resolution**

If the Train Operator and Network Rail fail to reach agreement as required under paragraph 2.6 (c), 2.7 (c), 2.10 (g), 2.11, 6, 7 or 8 within 28 days following provision of the RoU Claim Notice, either party may refer the matter for resolution in accordance with the ADRR.

## **11 Schedule 8 application**

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

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

### **12.1 Information provision**

In respect of any Restriction of Use Day for which compensation may be payable in a Period under paragraphs 3 and 4, Network Rail shall accurately record such information as it uses and as may properly and reasonably be required to make the calculations required under paragraphs 3 and 4 (including the determination of NF and the relevant version of the Working Timetable referred to in paragraph 9.1(b)(ii) or paragraph 9.2(b)(i)). Network Rail shall maintain that information until the compensation payable under paragraphs 3 and 4 in respect of that Period is finally agreed or determined and provide such information to the Train Operator at its reasonable request.

### **12.2 Corresponding Day**

- (a) If, for the purpose of identifying a Corresponding Day, no day is found under paragraph (a), (b) or (c) of the definition “Corresponding Day” and the parties have failed to reach agreement on the Corresponding Day by the date falling eight Weeks before the relevant Timetable Change Date then either party may require that the identification of the Corresponding Day be resolved as a dispute in accordance with the ADRR.
- (b) The parties shall agree in a Procedure Agreement, as defined in the ADRR, that the relevant ADRR Forum’s remit shall be to:
  - (i) reach a decision which is fair and reasonable; and
  - (ii) identify the day in either any version of the Working Timetable or any version of the New Working Timetable on or before D -26 in either case which has been produced in accordance with the Network Code as at the Restriction of Use Day and which most closely reflects the Services which would have been scheduled on the first day (as that term is used in the definition of Corresponding Day save that in respect of any Restriction of Use lasting more than two Timetable Periods, the first day may occur in any year preceding the Timetable

Period) but for Restrictions of Use reflected in the New Working Timetable for the first day; or

- (iii) where a Corresponding Day cannot be identified in accordance with paragraph 12.2(b)(ii) above, determine a notional Corresponding Day. The relevant ADRR Forum may have regard, where appropriate, to any pattern of services which may reasonably be expected to be operated during the relevant period when the Restriction of Use is being taken in the event of the permanent absence of any Corresponding Day.

### **13 Payment procedures**

#### **13.1 *Network Rail Restrictions of Use***

- (a) Within 14 days after the end of each Period, Network Rail shall provide to the Train Operator a statement (the "Day 42 Statement") showing:
  - (i) all Network Rail Restrictions of Use taken during that Period;
  - (ii) any compensation calculated in accordance with paragraphs 3 and/or 4 payable by Network Rail in respect of the Network Rail Restrictions of Use identified; and
  - (iii) following any agreement or determination in the Period referred to in paragraph 13.1(a) of any RoU Losses in respect of a Type 2 Restriction of Use, a Type 3 Restriction of Use or a Sustained Planned Disruption (as applicable), any payment to be made by one party to the other,

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

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

#### **13.2 *Disputes***

Within 10 days of receipt of a statement from Network Rail under paragraph 13.1, the Train Operator shall notify Network Rail of any aspects of the statement which it disputes, giving reasons for any dispute. Save to the extent

that disputes are so notified, the Train Operator shall be deemed to have agreed the contents of the statement.

### 13.3 *Dispute resolution*

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

- (a) within seven days of service of any notice under paragraph 13.2, the parties shall meet to discuss the disputed aspects of the statement with a view to resolving all disputes in good faith;
- (b) if, within seven days of that meeting (the “first meeting”), the parties are for any reason still unable to agree the disputed aspects of the statement, each party shall promptly (and in any event within seven days) prepare a written summary of the disputed aspects of the statement and the reasons for each such dispute and shall submit the summaries to the senior officer of each party;
- (c) within 28 days of the first meeting, the senior officers shall meet with a view to resolving all disputes;
- (d) if no resolution results within 14 days of that meeting, either party may refer the matter for resolution in accordance with the ADRR.

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

Where any amount under paragraph 13.1 is in dispute:

- (a) the undisputed amount shall be paid in accordance with paragraph 13.1;
- (b) the disputed amount shall be paid within 28 days after the dispute is resolved or determined to the extent that the amount in dispute is adjudged or resolved to be payable; and
- (c) the disputed amount shall carry interest (incurred daily and compounded monthly) at the Default Interest Rate from the date on which such amount would but for such dispute have been due to be paid until the date of payment.

## 14 **Indexation**

14.1 The formula applicable to this paragraph 14 is:

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

where:

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

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

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

$RPI_{t-2}$  means the RPI published or determined with respect to the month of November in Relevant Year  $t-2$ .

14.2 Each of the EBMPR and TMPR (respectively defined in paragraph 4.2) shall be adjusted in respect of Periods in Relevant Year  $t$  in accordance with the formula set out in paragraph 14.1 except that in relation to the Relevant Year commencing on 1 April 2014,  $R_t$  shall have the value specified in:

- (a) paragraph 4.2 in respect of the EBMPR, multiplied by the Initial Indexation Factor; and
- (b) in Annex C to this Part 3 of Schedule 4 in respect of TMPR, multiplied by the Initial Indexation Factor,

and in the next following Relevant Year  $R_{t-1}$  shall respectively have the same value.

14.3 Each of the SPD Cost Threshold No.1 and SPD Cost Threshold No.2 shall be adjusted in respect of Periods in Relevant Year  $t$  in accordance with the formula set out in paragraph 14.1 except that in relation to the Relevant Year commencing on 1 April 2014,  $R_t$  shall have the relevant value specified in the definition of "SPD Cost Threshold No.1", multiplied by the Initial Indexation Factor; or "SPD Cost Threshold No. 2" , multiplied by the Initial Indexation Factor; as appropriate, set out in paragraph 1.1 of this Schedule 4 and in the next following Relevant Year  $R_{t-1}$  shall respectively have the same value.

**Annex A to Part 3 of Schedule 4 – Notification Factors**

|  | <b>A</b>                  | <b>B</b>    | <b>C</b>       | <b>D</b>        | <b>E</b>           |
|--|---------------------------|-------------|----------------|-----------------|--------------------|
| <b>Service Group Description</b>         | <b>Service Group Code</b> | <b>Type</b> | <b>By D-26</b> | <b>By TW-22</b> | <b>After TW-22</b> |
| <b>First/Keolis Transpennine Limited</b> |                           |             |                |                 |                    |
| North TransPennine                       | EA01                      | All Trains  | 0.45           | 0.65            | 0.85               |
| South TransPennine                       | EA02                      | All Trains  | 0.45           | 0.65            | 0.85               |
| North West                               | EA03                      | All Trains  | 0.45           | 0.65            | 0.85               |
| Manchester Airport - Blackpool North     | EA06                      | All Trains  | 0.45           | 0.65            | 0.85               |
| Preston - Scotland                       | EA07                      | All Trains  | 0.45           | 0.65            | 0.85               |
| <b>Abellio Greater Anglia Limited</b>    |                           |             |                |                 |                    |
| Great Eastern Inners                     | EB01                      | Off Peak    | 0.55           | 0.7             | 0.85               |
| Great Eastern Inners                     | EB01                      | Peak        | 0.55           | 0.7             | 0.85               |
| Southend & Southminster                  | EB02                      | Off Peak    | 0.55           | 0.7             | 0.85               |
| Southend & Southminster                  | EB02                      | Peak        | 0.55           | 0.7             | 0.85               |
| Great Eastern Outers                     | EB03                      | Off Peak    | 0.55           | 0.7             | 0.85               |
| Great Eastern Outers                     | EB03                      | Peak        | 0.55           | 0.7             | 0.85               |
| Anglia Inter City                        | EB04                      | Off Peak    | 0.5            | 0.68            | 0.85               |
| Anglia Inter City                        | EB04                      | Peak        | 0.5            | 0.68            | 0.85               |
| Anglia Locals                            | EB05                      | All Trains  | 0.5            | 0.68            | 0.85               |
| West Anglia Outers                       | EB06                      | Off Peak    | 0.45           | 0.65            | 0.85               |
| West Anglia Outers                       | EB06                      | Peak        | 0.45           | 0.65            | 0.85               |
| West Anglia Inners                       | EB07                      | Off Peak    | 0.55           | 0.7             | 0.85               |
| West Anglia Inners                       | EB07                      | Peak        | 0.55           | 0.7             | 0.85               |
| <b>Northern Rail Limited</b>             |                           |             |                |                 |                    |
| Tyne, Tees & Wear                        | ED01                      | All Trains  | 0.5            | 0.68            | 0.85               |
| Lancashire & Cumbria                     | ED02                      | All Trains  | 0.5            | 0.68            | 0.85               |
| West & North Yorkshire Inter Urban       | ED04                      | All Trains  | 0.5            | 0.68            | 0.85               |
| West & North Yorkshire Local             | ED05                      | All Trains  | 0.5            | 0.68            | 0.85               |
| South & East Yorkshire Inter Urban       | ED06                      | All Trains  | 0.5            | 0.68            | 0.85               |
| South & East Yorkshire Local             | ED07                      | All Trains  | 0.5            | 0.68            | 0.85               |



|   |      |            |      |      |      |
|---|------|------------|------|------|------|
| North Manchester                                  | ED08 | Off Peak   | 0.5  | 0.68 | 0.85 |
| North Manchester                                  | ED08 | Peak       | 0.5  | 0.68 | 0.85 |
| Merseyrail City Lines                             | ED09 | All Trains | 0.5  | 0.68 | 0.85 |
| South Manchester                                  | ED10 | Off Peak   | 0.5  | 0.68 | 0.85 |
| South Manchester                                  | ED10 | Peak       | 0.5  | 0.68 | 0.85 |
| <b>Heathrow Express Operating Company Limited</b> |      |            |      |      |      |
| Hayes & Harlington Shuttle                        | EE02 | All Trains | 0.55 | 0.7  | 0.85 |
| <b>First Greater Western Limited</b>              |      |            |      |      |      |
| Heathrow Local Service                            | EE01 | Peak       | 0.55 | 0.7  | 0.85 |
| Heathrow Local Service                            | EE01 | Off Peak   | 0.55 | 0.7  | 0.85 |
| London - Bristol                                  | EF01 | All Trains | 0.5  | 0.68 | 0.85 |
| London - South Wales                              | EF02 | All Trains | 0.5  | 0.68 | 0.85 |
| London - Cotswolds                                | EF03 | All Trains | 0.5  | 0.68 | 0.85 |
| London - West Of England                          | EF04 | All Trains | 0.5  | 0.68 | 0.85 |
| Outer Thames Valley - London                      | EF05 | Off Peak   | 0.55 | 0.7  | 0.85 |
| Outer Thames Valley - London                      | EF05 | Peak       | 0.55 | 0.7  | 0.85 |
| Inner Thames Valley - London                      | EF06 | Off Peak   | 0.55 | 0.7  | 0.85 |
| Inner Thames Valley - London                      | EF06 | Peak       | 0.55 | 0.7  | 0.85 |
| Reading & Oxford Suburban                         | EF07 | All Trains | 0.5  | 0.68 | 0.85 |
| Thames Valley Branches                            | EF08 | All Trains | 0.55 | 0.7  | 0.85 |
| North Downs                                       | EF09 | All Trains | 0.45 | 0.65 | 0.85 |
| Bristol Suburban                                  | EF10 | All Trains | 0.5  | 0.68 | 0.85 |
| Devon   | EF11 | All Trains | 0.5  | 0.68 | 0.85 |
| Plymouth & Cornwall                               | EF12 | All Trains | 0.5  | 0.68 | 0.85 |
| South Wales - South Coast                         | EF13 | All Trains | 0.5  | 0.68 | 0.85 |
| <b>First Capital Connect Limited</b>              |      |            |      |      |      |
| Bedford Mainline                                  | EG01 | Off Peak   | 0.5  | 0.68 | 0.85 |
| Bedford Mainline                                  | EG01 | Peak       | 0.55 | 0.70 | 0.85 |
| Brighton Mainline                                 | EG02 | Off Peak   | 0.5  | 0.68 | 0.85 |
| Brighton Mainline                                 | EG02 | Peak       | 0.5  | 0.68 | 0.85 |
| South London                                      | EG03 | Off Peak   | 0.55 | 0.7  | 0.85 |

|  |      |            |      |      |      |
|--|------|------------|------|------|------|
| South London                                     | EG03 | Peak       | 0.55 | 0.7  | 0.85 |
| Northern Inners                                  | EG04 | Off Peak   | 0.55 | 0.7  | 0.85 |
| Northern Inners                                  | EG04 | Peak       | 0.55 | 0.7  | 0.85 |
| Northern Outers                                  | EG05 | Off Peak   | 0.55 | 0.7  | 0.85 |
| Northern Outers                                  | EG05 | Peak       | 0.55 | 0.7  | 0.85 |
| Kentish Town - Blackfriars (Joint)               | EG06 | All Trains | 0.55 | 0.7  | 0.85 |
| <b>XC Trains Limited</b>                         |      |            |      |      |      |
| CrossCountry Inter City                          | EH01 | All Trains | 0.45 | 0.65 | 0.85 |
| CrossCountry Local & Provincial                  | EH02 | All Trains | 0.45 | 0.65 | 0.85 |
| <b>London &amp; Birmingham Railway Limited</b>   |      |            |      |      |      |
| West Midlands - Snow Hill                        | EJ01 | Off Peak   | 0.5  | 0.68 | 0.85 |
| West Midlands - Snow Hill                        | EJ01 | Peak       | 0.5  | 0.68 | 0.85 |
| Trent Valley                                     | EJ02 | All Trains | 0.5  | 0.68 | 0.85 |
| West Midlands - New Street (Local)               | EJ03 | Off Peak   | 0.5  | 0.68 | 0.85 |
| West Midlands - New Street (Local)               | EJ03 | Peak       | 0.5  | 0.68 | 0.85 |
| West Midlands Inter Urban                        | EJ04 | All Trains | 0.45 | 0.65 | 0.85 |
| WCML: London - Northampton                       | EJ05 | Off Peak   | 0.55 | 0.7  | 0.85 |
| WCML: London - Northampton                       | EJ05 | Peak       | 0.55 | 0.7  | 0.85 |
| WCML: Branches                                   | EJ06 | All Trains | 0.55 | 0.7  | 0.85 |
| <b>London Overground Rail Operations Limited</b> |      |            |      |      |      |
| Orbitals   | EK01 | Off Peak   | 0.55 | 0.7  | 0.85 |
| Orbitals   | EK01 | Peak       | 0.55 | 0.7  | 0.85 |
| London - Watford (D.C Lines)                     | EK02 | Off Peak   | 0.55 | 0.7  | 0.85 |
| London - Watford (D.C Lines)                     | EK02 | Peak       | 0.55 | 0.7  | 0.85 |
| East London Lines                                | EK03 | Off Peak   | 0.55 | 0.7  | 0.85 |
| East London Lines                                | EK03 | Peak       | 0.55 | 0.7  | 0.85 |
| <b>East Midlands Trains Limited</b>              |      |            |      |      |      |
| East Midlands Local                              | EM01 | All Trains | 0.5  | 0.68 | 0.85 |
| East Midlands Regional                           | EM02 | All Trains | 0.5  | 0.68 | 0.85 |
| Liverpool - Norwich                              | EM03 | All Trains | 0.45 | 0.65 | 0.85 |
| East Midlands Inter City                         | EM04 | All Trains | 0.5  | 0.68 | 0.85 |

|  |      |            |      |      |      |
|--|------|------------|------|------|------|
| East Midlands Inter Urban                              | EM05 | All Trains | 0.5  | 0.68 | 0.85 |
| <b>First ScotRail Limited</b>                          |      |            |      |      |      |
| Express  | HA01 | All Trains | 0.45 | 0.65 | 0.85 |
| East Coast Suburban                                    | HA02 | All Trains | 0.5  | 0.68 | 0.85 |
| South West Rural                                       | HA03 | All Trains | 0.5  | 0.68 | 0.85 |
| Highland Rural   | HA04 | All Trains | 0.45 | 0.65 | 0.85 |
| Strathclyde Electric                                   | HA06 | Off Peak   | 0.5  | 0.68 | 0.85 |
| Strathclyde Electric                                   | HA06 | Peak       | 0.5  | 0.68 | 0.85 |
| Strathclyde Pte Diesel                                 | HA07 | All Trains | 0.5  | 0.68 | 0.85 |
| Qualifying Sleepers                                    | HA11 | All Trains | 0.5  | 0.68 | 0.85 |
| <b>East Coast Main Line Company Limited</b>            |      |            |      |      |      |
| Anglo-Scottish   | HB01 | All Trains | 0.5  | 0.68 | 0.85 |
| West Yorkshire   | HB02 | All Trains | 0.5  | 0.68 | 0.85 |
| West Yorkshire (Kings X - Bradford / Hull)             | HB04 | All Trains | 0.5  | 0.68 | 0.85 |
| Anglo-Scottish (Aberdeen / Inverness)                  | HB05 | All Trains | 0.5  | 0.68 | 0.85 |
| <b>Merseyrail Electrics 2002 Limited</b>               |      |            |      |      |      |
| Northern Lines   | HE01 | All Trains | 0.5  | 0.68 | 0.85 |
| Wirral Lines   | HE02 | All Trains | 0.55 | 0.7  | 0.85 |
| <b>West Coast Trains Limited</b>                       |      |            |      |      |      |
| London Euston - Birmingham/Wolverhampton               | HF01 | All Trains | 0.5  | 0.68 | 0.85 |
| London Euston - North Wales                            | HF02 | All Trains | 0.5  | 0.68 | 0.85 |
| London Euston - Manchester                             | HF03 | All Trains | 0.5  | 0.68 | 0.85 |
| London Euston - Liverpool                              | HF04 | All Trains | 0.5  | 0.68 | 0.85 |
| London Euston - Carlisle/Scotland                      | HF06 | All Trains | 0.5  | 0.68 | 0.85 |
| Birmingham - Scotland                                  | HF08 | All Trains | 0.45 | 0.65 | 0.85 |
| <b>Arriva Trains Wales/Trenau Arriva Cymru Limited</b> |      |            |      |      |      |
| South, West & Central Wales                            | HL02 | All Trains | 0.5  | 0.68 | 0.85 |
| Wales to England                                       | HL03 | All Trains | 0.5  | 0.68 | 0.85 |
| Cambrian   | HL04 | All Trains | 0.45 | 0.65 | 0.85 |

|   |      |            |      |      |      |
|---|------|------------|------|------|------|
| Cardiff Valleys                                   | HL05 | Off Peak   | 0.5  | 0.68 | 0.85 |
| Cardiff Valleys                                   | HL05 | Peak       | 0.5  | 0.68 | 0.85 |
| Marches   | HL06 | All Trains | 0.45 | 0.65 | 0.85 |
| North Wales Rural                                 | HL07 | All Trains | 0.5  | 0.68 | 0.85 |
| Inter Urban North Wales                           | HL08 | All Trains | 0.45 | 0.65 | 0.85 |
| <b>The Chiltern Railway Company Limited</b>       |      |            |      |      |      |
| Met   | HO01 | Off Peak   | 0.55 | 0.7  | 0.85 |
| Met   | HO01 | Peak       | 0.55 | 0.7  | 0.85 |
| Birmingham  | HO02 | Off Peak   | 0.55 | 0.7  | 0.85 |
| Birmingham  | HO02 | Peak       | 0.55 | 0.7  | 0.85 |
| Joint   | HO03 | Off Peak   | 0.55 | 0.7  | 0.85 |
| Joint   | HO03 | Peak       | 0.55 | 0.7  | 0.85 |
| Oxford  | HO04 | All Trains | 0.55 | 0.7  | 0.85 |
| <b>c2c Rail Limited</b>                           |      |            |      |      |      |
| London-Southend/Shoeburyness (HT02op)             | HT01 | Off Peak   | 0.55 | 0.7  | 0.85 |
| London-Southend/Shoeburyness (HT01p)              | HT01 | Peak       | 0.55 | 0.7  | 0.85 |
| <b>London &amp; South Eastern Railway Limited</b> |      |            |      |      |      |
| Kent Mainline (Off Peak)                          | HU01 | Off Peak   | 0.55 | 0.7  | 0.85 |
| Kent Metro (Off Peak)                             | HU02 | Off Peak   | 0.55 | 0.7  | 0.85 |
| Kent Rural  | HU03 | All Trains | 0.5  | 0.68 | 0.85 |
| Kent Mainline (Peak)                              | HU04 | Peak       | 0.55 | 0.7  | 0.85 |
| Kent Metro (Peak)                                 | HU05 | Peak       | 0.55 | 0.7  | 0.85 |
| Kent High Speed (Peak)                            | HU06 | Peak       | 0.55 | 0.7  | 0.85 |
| Kent High Speed (Off Peak)                        | HU07 | Off Peak   | 0.55 | 0.7  | 0.85 |
| <b>Southern Railway Limited</b>                   |      |            |      |      |      |
| Rural   | HW01 | All Trains | 0.5  | 0.68 | 0.85 |
| London - Sussex Coast (Peak)                      | HW02 | Peak       | 0.5  | 0.68 | 0.85 |
| London - Sussex Coast (Off Peak)                  | HW03 | Off Peak   | 0.5  | 0.68 | 0.85 |
| South London Lines (Off Peak)                     | HW04 | Off Peak   | 0.55 | 0.7  | 0.85 |

|  |      |            |      |      |      |
|--|------|------------|------|------|------|
| South London Lines (Peak)                      | HW05 | Peak       | 0.55 | 0.7  | 0.85 |
| Milton Keynes - East Croydon                   | HW06 | All Trains | 0.55 | 0.7  | 0.85 |
| London - Gatwick Airport                       | HW07 | Off Peak   | 0.4  | 0.63 | 0.85 |
| London - Gatwick Airport/Brighton              | HW07 | Peak       | 0.4  | 0.63 | 0.85 |
| <b>Stagecoach South Western Trains Limited</b> |      |            |      |      |      |
| Main Suburban                                  | HY01 | Off Peak   | 0.55 | 0.7  | 0.85 |
| Main Suburban                                  | HY01 | Peak       | 0.55 | 0.7  | 0.85 |
| South Hampshire Locals                         | HY02 | All Trains | 0.5  | 0.68 | 0.85 |
| Waterloo - West England                        | HY03 | Off Peak   | 0.55 | 0.7  | 0.85 |
| Waterloo - West England                        | HY03 | Peak       | 0.55 | 0.7  | 0.85 |
| Waterloo - Farnham / Alton                     | HY04 | Off Peak   | 0.55 | 0.7  | 0.85 |
| Waterloo - Farnham / Alton                     | HY04 | Peak       | 0.55 | 0.7  | 0.85 |
| Windsor Inners                                 | HY05 | Off Peak   | 0.55 | 0.7  | 0.85 |
| Windsor Inners                                 | HY05 | Peak       | 0.55 | 0.7  | 0.85 |
| Windsor Outers                                 | HY06 | Off Peak   | 0.55 | 0.7  | 0.85 |
| Windsor Outers                                 | HY06 | Peak       | 0.55 | 0.7  | 0.85 |
| Waterloo - Portsmouth                          | HY07 | Off Peak   | 0.55 | 0.7  | 0.85 |
| Waterloo - Portsmouth                          | HY07 | Peak       | 0.55 | 0.7  | 0.85 |
| Waterloo - Weymouth                            | HY08 | Off Peak   | 0.55 | 0.7  | 0.85 |
| Waterloo - Weymouth                            | HY08 | Peak       | 0.55 | 0.7  | 0.85 |
| <b>Hull Trains Company Limited</b>             |      |            |      |      |      |
| Kings Cross - Hull                             | PF01 | All Trains | 0.5  | 0.68 | 0.85 |
| <b>Grand Central Railway Company Limited</b>   |      |            |      |      |      |
| Kings X - Sunderland                           | EC01 | All Trains | 0.5  | 0.68 | 0.85 |
| Kings X - Bradford                             | EC02 | All Trains | 0.5  | 0.68 | 0.85 |
| <b>Nexus</b>                                   |      |            |      |      |      |
| Metro  | PG01 | All Trains | 0.55 | 0.7  | 0.85 |
| <b>Eurostar International Limited</b>          |      |            |      |      |      |
| Eurostar                                       | GA01 | All Trains | 0.5  | 0.68 | 0.85 |

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

| Viable Transfer Point [VTP] | Applicable Infrastructure Rules | Other Operating Rules | S4CS Code | Description of Possession Response | Comments | Service Group | % Applicable | FULL Bus Replacement (100%) |    |       |        | PARTIAL Bus Replacement (50% x X%) |    |       |        |          | No Bus Replacement (0%) | EBMs Total |  |
|-----------------------------|---------------------------------|-----------------------|-----------|------------------------------------|----------|---------------|--------------|-----------------------------|----|-------|--------|------------------------------------|----|-------|--------|----------|-------------------------|------------|--|
|                             |                                 |                       |           |                                    |          |               |              | From                        | To | Miles | Trains | From                               | To | Miles | Trains | % Trains |                         |            |  |
|                             |                                 |                       |           |                                    |          |               |              |                             |    |       |        |                                    |    |       |        |          |                         |            |  |
|                             |                                 |                       |           |                                    |          |               |              |                             |    |       |        |                                    |    |       |        |          |                         |            |  |
|                             |                                 |                       |           |                                    |          |               |              |                             |    |       |        |                                    |    |       |        |          |                         |            |  |
|                             |                                 |                       |           |                                    |          |               |              |                             |    |       |        |                                    |    |       |        |          |                         |            |  |

[Insert map]

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

| <b>Service Group</b> | <b>Description</b> | <b>Compensation Rate</b> | <b>Total Train Cost per Mile (Pence)</b> |
|----------------------|--------------------|--------------------------|--|
|                      |                    |                          |  |

## PART 4: NOT USED

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

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

| Year      | £   |
|-----------|---|
| 2014-2015 | [such amount to be published by ORR on or about 10 February 2014] |
| 2015-2016 | [such amount to be published by ORR on or about 10 February 2014] |
| 2016-2017 | [such amount to be published by ORR on or about 10 February 2014] |
| 2017-2018 | [such amount to be published by ORR on or about 10 February 2014] |
| 2018-2019 | [such amount to be published by ORR on or about 10 February 2014] |

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

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

$$ACSRU_{pt} = ACSRU_t \cdot \left( 1 + \frac{(RPI_{t-1} - RPI_{2013})}{RPI_{2013}} \right) \cdot \text{Initial Indexation Factor}$$

where:

ACSRU<sub>pt</sub> is the actual amount payable in the Relevant Year t;

ACSRU<sub>t</sub> is the relevant amount specified in paragraph 1 of this Part 5 for the Relevant Year t (before indexation);

RPI<sub>t-1</sub> has the meaning set out in paragraph 14.1 of Part 3 of this Schedule 4; and

RPI<sub>2013</sub> means the RPI published or determined with respect to the month of November 2013,



but so that in relation to the Relevant Year commencing on 1 April 2014,  $ACSRU_t$  shall have the relevant value specified in the relevant column of the table in paragraph 1.



**Appendix 2 to Annex 2**

**Schedule 7 for each Track Access Agreement other than the  
ScotRail TAA and the Chiltern TAA**

## SCHEDULE 7: TRACK CHARGES AND OTHER PAYMENTS

### PART 1: INTERPRETATION

#### 1 Definitions

In Parts 1-7 inclusive, unless the context otherwise requires:

|                                    |  |
|------------------------------------|--|
| <b>“2008 Final Determinations”</b> | 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;               |
| <b>“2013 Final Determination”</b>  | means the document entitled “Periodic Review 2013: Final determination of Network Rail’s outputs and funding for 2014-19” published by ORR on 31 October 2013;         |
| <b>“access charges review”</b>     | has the meaning ascribed to it by Schedule 4A to the Act;  |
| <b>“AC System”</b>                 | means the alternating current system of electricity traction supply on the Network;  |
| <b>“Aggregate Fixed Charges”</b>   | 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; |
| <b>“Basic Value”</b>               | has the meaning ascribed to it in paragraph 1.1(a) of Part 3A;   |
| <b>“Capacity Charge”</b>           | means a variable charge, calculated in accordance with paragraph 6 of Part 2;  |
| <b>“DC System”</b>                 | means the direct current system of electricity traction supply on the Network;   |
| <b>“Deed of Grant”</b>             | means the Deed of Grant made on or about 20 December 2013 between the Secretary of State and Network Rail;   |
| <b>“Default Charge”</b>            | means a variable charge calculated in accordance with paragraph 3.3 of Part 2;   |

|  |  |
|--|--|
| <b>“Default Period”</b>                                | <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 a supplement to the Track Usage Price List under paragraph 9.10 of Part 2 in respect of that New Specified Equipment;</p> |
| <b>“Default Rate”</b>                                  | <p>means, in respect of any New Specified Equipment used on the Network by the Train Operator, the corresponding passenger default rate for that type of vehicle set out in the section of the Track Usage Price List entitled “Passenger Variable Usage Charge default rates”;</p>  |
| <b>“Default Train Consist Data”</b>                    | <p>means the data listed in Appendix 7C as amended from time to time in accordance with paragraph 10.4 of Part 2;</p>  |
| <b>“Delivery Plan”</b>                                 | <p>means the document, including its supporting documentation, published by Network Rail on or about 31 March 2014 setting out its delivery plan for the period 1 April 2014 – 31 March 2019;</p>  |
| <b>“Efficiency Benefit Share”</b>                      | <p>means the amount determined in accordance with paragraph 5.1 of Part 2;</p>   |
| <b>“Electrification Asset Usage Charge”</b>            | <p>means a charge for electrification asset usage, calculated in accordance with paragraph 8 of Part 2;</p>  |
| <b>“English &amp; Welsh Grant Compensation Amount”</b> | <p>has the meaning ascribed to it in paragraph 3.2 of Part 3A;</p>   |
| <b>“English &amp; Welsh Grant Dilution”</b>            | <p>has the meaning ascribed to it in paragraph 2.1 of Part 3A;</p>   |
| <b>“English &amp; Welsh Grant Dilution Date”</b>       | <p>has the meaning ascribed to it in paragraph 2.2 of Part 3A;</p>   |
| <b>“excluded change”</b>                               | <p>means, in relation to paragraph 2(a) 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>  |

|  |   |
|--|---|
| <b>“Fixed Track Charge”</b>            | means a fixed annual charge, calculated in accordance with paragraph 1 of Part 2;   |
| <b>“Fixed Track Charge Indexation”</b> | has the meaning ascribed to it in paragraph 2 of Part 2;  |
| <b>“Geographic Area g”</b>             | 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;   |
| <b>“Grant Amount”</b>                  | has the meaning ascribed to it in paragraph 1.2 of Part 3A;   |
| <b>“Gross Tonne Mile”</b>              | 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;   |
| <b>“Initial Indexation Factor”</b>     | is derived from the following formula:<br><br>$\text{IIF} = \left( 1 + \frac{(\text{RPI}_{2013} - \text{RPI}_{2012})}{\text{RPI}_{2012}} \right)^2$<br>where:<br><br>IIF means the Initial Indexation Factor;<br><br>RPI <sub>2012</sub> means the RPI published or determined with respect to the month of November 2012; and<br><br>RPI <sub>2013</sub> means the RPI published or determined with respect to the month of November 2013; |
| <b>“kgtm”</b>                          | means 1000 Gross Tonne Miles;   |
| <b>“kWh”</b>                           | means kilowatt hours;   |
| <b>“List of Capacity Charge Rates”</b> | means the document entitled “List of Capacity Charge Rates” published by Network Rail on or about 20 December 2013 which, for the purposes of this contract, shall be deemed to incorporate any supplements to that document consented to or determined pursuant to paragraph 9.10 of Part 2 of Schedule 7 to this contract;  |

**“Material Alliance Agreement”**

means a legally binding agreement between:

- (a) Network Rail and the Train Operator; or
- (b) Network Rail, the Train Operator and one or more other train operators; or
- (c) Network Rail and one or more other train operators,

establishing an alliance under which the parties to such legally binding agreement agree to share risk or reward or both on a REBS Route or part thereof on which the Train Operator operates Services 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;

**“Metered Train m”**

means, as the context requires, either:

- (a) a train of a particular type; or
- (b) a specific train having a train ID,

in either case as specified in Appendix 7D of this Schedule 7 or Appendix 2 or Appendix 4 of the Traction Electricity Rules;

**“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 section of the Track Usage Price List entitled “Passenger Variable Usage Charge rates”;

**“On-Train Meter” and “On-Train Metering”**

have the meanings ascribed to them in paragraph 1.2 of the Traction Electricity Rules;

**“Outperformance Cap”**

means the maximum possible amount in pounds sterling that can be attributed to a REBS Outperformance as published by Network Rail in its Delivery Plan;

|                                  |  |
|----------------------------------|--|
| <b>“Outperformance Sum”</b>      | means the lower of: <ul style="list-style-type: none"> <li>(a) the Outperformance Cap as indexed in accordance with paragraph 1.11 of Part 3; and</li> <li>(b) 25% of the amount in pounds sterling which ORR, in its annual efficiency and finance assessment of Network Rail, determines in respect of the REBS Outperformance;</li> </ul>   |
| <b>“Payment Date”</b>            | has the meaning ascribed to it in paragraph 1.1(b) of Part 3A;   |
| <b>“Period”</b>                  | has the meaning ascribed to it in Schedule 8;  |
| <b>“Power Factor Correction”</b> | means the relevant power factor correction as set out in Appendix 2 of the Traction Electricity Rules;   |
| <b>“Rebatable Amount”</b>        | has the meaning ascribed to it in paragraph 7.2 of Part 2;   |
| <b>“REBS Outperformance”</b>     | 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 Chapter 19 of the 2013 Final Determination, that Network Rail’s performance has exceeded the performance set in the Route Baseline as indexed in accordance with paragraph 1.10 of Part 3;     |
| <b>“REBS Route”</b>              | means a route specified in the table in Appendix 7A for the purposes of the Route-Level Efficiency Benefit Share Mechanism;  |
| <b>“REBS Underperformance”</b>   | 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 Chapter 19 of the 2013 Final Determination, that Network Rail’s performance has not achieved the performance set in the Route Baseline as indexed in accordance with paragraph 1.10 of Part 3; |



|   |  |
|---|--|
| <b>“relevant access agreement”</b>                      | <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"> <li>(a) a franchise operator; or</li> <li>(b) a concession operator within the meaning of the Merseyrail Electrics Network Order 2003; or</li> <li>(c) a TfL concessionaire within the meaning of the Railways (North and West London Lines) Exemption Order 2007; or</li> <li>(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</li> <li>(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;</li> </ul> |
| <b>“Relevant Year”</b>                                  | <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>   |
| <b>"Route Baseline"</b>                                 | <p>means the baseline value in respect of a REBS Route in Relevant Year t that is published by Network Rail in its Delivery Plan;</p>  |
| <b>“Route-Level Efficiency Benefit Share”</b>           | <p>has the meaning ascribed to it in paragraph 1.1 of Part 3;</p>  |
| <b>“Route-Level Efficiency Benefit Share Mechanism”</b> | <p>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 of Part 3;</p>   |
| <b>“route type k”</b>                                   | <p>means route type k as identified by type of electrification (AC (OLE) or DC) in the Track Usage Price List;</p>   |

|                                      |   |
|--------------------------------------|---|
| <b>“RPI”</b>                         | <p>means the General Index of Retail Prices All Items measured by CHAW and published each month, or:</p> <p>(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</p> <p>(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;</p> |
| <b>“Schedule of Fixed Charges”</b>   | <p>means the document entitled “Schedule of Fixed Charges” published by Network Rail on or about 20 December 2013;</p>  |
| <b>“Service Coded Group”</b>         | <p>means any Service or collection of Services or Ancillary Movements operating under a service code specified in the List of Capacity Charge Rates and any Ancillary Movements relating to such Services;</p>  |
| <b>“tariff band j”</b>               | <p>means the tariff zone and time band in which the train in question is operated;</p>  |
| <b>“Tolerance Factor”</b>            | <p>means the relevant Tolerance Factor as set out in Appendix 4 of the Traction Electricity Rules;</p>  |
| <b>“Track Usage Price List”</b>      | <p>means the document entitled “Track Usage Price List” published by Network Rail on or about 20 December 2013 which, for the purposes of this contract, shall be deemed to incorporate any supplements to that document consented to or determined pursuant to paragraph 9.10 of Part 2 of Schedule 7 to this contract;</p>  |
| <b>“Traction Electricity Charge”</b> | <p>means a variable charge for traction current calculated in accordance with paragraph 4 of Part 2;</p>  |

|   |   |
|---|---|
| <b>“Traction Electricity Modelled Consumption Rates List”</b> | means the document entitled “Traction Electricity Modelled Consumption Rates List” published by Network Rail on or about 20 December 2013 and specifying freight and passenger traction electricity modelled consumption rates which, for the purposes of this contract, shall be deemed to incorporate any supplements to that document consented to or determined pursuant to paragraph 9.10 of Part 2 of Schedule 7 to this contract;  |
| <b>“train category i”</b>                                     | means train category i as identified in the relevant section of the Traction Electricity Modelled Consumption Rates List, being either: <ul style="list-style-type: none"> <li>(a) where there is a modelled consumption rate for a particular passenger vehicle type operating on a particular Train Service Code, the relevant category set out in the table entitled "Passenger Traction Electricity Modelled Consumption Rates for CP5"; or</li> <li>(b) in respect of any other passenger vehicle type not referred to in paragraph (a), the relevant category set out in the table entitled "Generic Traction Electricity Modelled Consumption Rates for CP5";</li> </ul> |
| <b>“Train Consist Data”</b>                                   | means the information relating to the number(s) and type(s) of railway vehicle comprised in a train movement;   |
| <b>“Train Mile”</b>   | in relation to a train, means a mile travelled by that train on the Network;  |
| <b>“Train Service Code”</b>                                   | has the meaning ascribed to it in paragraph 1.1 of Schedule 5;  |
| <b>“Underperformance Cap”</b>                                 | means the maximum possible amount in pounds sterling that can be attributed to a REBS Underperformance as published by Network Rail in its Delivery Plan;   |
| <b>“Underperformance Sum”</b>                                 | means the lower of: <ul style="list-style-type: none"> <li>(a) the Underperformance Cap as indexed in accordance with paragraph 1.11 of Part 3; and</li> <li>(b) 10% of the amount in pounds sterling which ORR, in its annual efficiency and finance assessment of Network Rail, determines in respect of the REBS Underperformance;</li> </ul>  |

|                                |   |
|--------------------------------|---|
| <b>“Variable Charges”</b>      | means the Capacity Charge, the Default Charge, the Electrification Asset Usage Charge, the Variable Usage Charge and the Traction Electricity Charge; |
| <b>“Variable Usage Charge”</b> | means a variable charge, calculated in accordance with paragraph 3.1 of Part 2;   |
| <b>“Vehicle Mile”</b>          | in relation to a railway vehicle, means a mile travelled by that vehicle on the Network;  |
| <b>“Volume Reconciliation”</b> | has the meaning ascribed to it in the Traction Electricity Rules; and   |
| <b>“Weekday”</b>               | 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, multiplied by the Fixed Track Charge Indexation calculated in accordance with paragraph 2.1; and
  - (b) in respect of any Relevant Year  $t$  commencing on or after 1 April 2015, 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 2.2;
- $V_t$  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

- 2.1 The Fixed Track Charge Indexation in respect of the Relevant Year commencing on 1 April 2014 shall be derived from the following formula:

$$FTCI_{2014} = \text{Initial Indexation Factor}$$

where:

$FTCI_{2014}$  means the Fixed Track Charge Indexation in respect of the Relevant Year commencing on 1 April 2014.

- 2.2 The Fixed Track Charge Indexation in respect of any Relevant Year  $t$  commencing on or after 1 April 2015 shall be derived from the following formula:

$$FTCI_t = \left( 1 + \frac{(RPI_{t-1} - RPI_{2013})}{RPI_{2013}} \right) \bullet \text{Initial Indexation Factor}$$

where:

$FTCI_t$  means the Fixed Track Charge Indexation in Relevant Year  $t$ ;

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

$RPI_{2013}$  means the RPI published or determined with respect to the month of November 2013.

## 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:

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

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:

$RPI_{t-1}$  has the meaning set out in paragraph 2.2 above; and

$RPI_{t-2}$  means the RPI published or determined with respect to the month of 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 vehicle type  $i$ , the corresponding variable usage charge rate per Vehicle Mile for that vehicle type  $i$  set out in the Track Usage Price List, 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 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

$\Sigma$  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:

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

where:

$D_{nt}$  means the Default Rate for that New Specified Equipment for Relevant Year  $t$  which is derived from the following formula:

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

where:

$RPI_{t-1}$  has the meaning set out in paragraph 2.2 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,  $D_{nt}$  shall have, in respect of New Specified Equipment, the corresponding Default Rate for that New Specified Equipment, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year  $D_{nt-1}$  shall have the same value;

$UD_{nt}$  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

$\Sigma$  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:

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

where:

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

$E_{tmog}$  is derived from the following formula:

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

where:

$\Sigma$  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 modelled consumption rate:

(a) in kWh per electrified Train Mile in relation to passenger electric multiple units (using the rate for the relevant number of units); and

(b) in kWh per electrified kgm in relation to locomotive-hauled units and all freight traffic,

for train category i shown in the Traction Electricity Modelled Consumption Rates List, taking into account any Regenerative Braking Discount applied in accordance with the Traction Electricity Rules;

$EF_{gjt}$  means the charge 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 19 of the Traction Electricity Rules; and

$UE_{igt}$  means the actual volume of usage (in electrified Vehicle Miles in relation to passenger electric multiple units or electrified kgm 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:

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

where:

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

$E_{tmeg}$  is derived from the following formula:

$$E_{tmeg} = \Sigma [((CME_{mgjt} \bullet PF_m \bullet EF_{gjt}) - (RGB_{mgjt} \bullet PF_m \bullet EF_{gjt})) \bullet (1 + \delta_m)]$$

where:

$\Sigma$  means the summation across all relevant Metered Trains m (determined in accordance with paragraph 4.1.1 above) and tariff bands j, as appropriate;

$CME_{mgjt}$  means the consumption of electricity (in kWh) by Metered Trains m operated by or on behalf of the Train Operator, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g, tariff band j and in Relevant Year t;

$PF_m$  means the Power Factor Correction for the relevant train type for Metered Train m;

$EF_{gjt}$  means the charge 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 19 of the Traction Electricity Rules;

$RGB_{mgjt}$  means the electricity (in kWh) generated by braking by Metered Trains m operated by or on behalf of the Train Operator, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g, tariff band j and in Relevant Year t; and

$\delta_m$  means the Tolerance Factor for the relevant train type for Metered Train m.

#### 4.1.4

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

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

where:

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

$E_{tmugAC}$  is derived from the following formula:

$$E_{tmugAC} = \Sigma [(CME_{mgjtAC} \bullet PF_m \bullet EF_{gjt}) \bullet (1 + \delta_m)] \bullet \lambda_{ACg}$$

where:

$\Sigma$  means the summation across all relevant Metered Trains m (determined in accordance with paragraph 4.1.1 above) and tariff bands j, as appropriate;

$CME_{mgjtAC}$  means the consumption of electricity (in kWh) from the AC System by Metered Trains m operated by or on behalf of the Train Operator, as measured by the On-Train

|                 |  |
|-----------------|--|
|                 | Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g , tariff band j and in Relevant Year t;  |
| $PF_m$          | means the Power Factor Correction for the relevant train type for Metered Train m;   |
| $EF_{gjt}$      | means the charge 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 19 of the Traction Electricity Rules; |
| $\delta_m$      | means the Tolerance Factor for the relevant train type for Metered Train m; and  |
| $\lambda_{ACg}$ | 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:

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

$E_{tmugDC}$  is derived from the following formula:

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

where:

$\Sigma$  means the summation across all relevant Metered Trains m (determined in accordance with paragraph 4.1.1 above) and tariff bands j, as appropriate;

$CME_{mijtDC}$  means the consumption of electricity (in kWh) from the DC System by Metered Trains m operated by or on behalf of the Train Operator, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g, tariff band j and in Relevant Year t;

$EF_{gjt}$  means the charge 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 19 of the Traction Electricity Rules;

$\delta_m$  means the Tolerance Factor for the relevant train type for Metered Train m; and

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

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

- 4.2 (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 4.2(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 4.2(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 4.2(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 4.2(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 4.2(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 4.2(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.

#### **4A Volume and Cost Reconciliation for the Relevant Year ending on 31 March 2014**

- 4A.1 For the purposes of the volume and cost reconciliation to be carried out for the Relevant Year ending on 31 March 2014, the provisions in paragraph 5 (volume and cost reconciliation) of Part 2 of Schedule 7 to this contract (and such definitions and other provisions as are relevant to that paragraph 5) in force as at that date shall continue to apply to the extent (and only to the extent) necessary to enable the calculation and payment of the supplementary amounts  $S1_t$  and  $S2_t$ .
- 4A.2 For subsequent Relevant Years, paragraph 18 of the Traction Electricity Rules shall apply.

#### **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:

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

where:

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

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

$$P_{g_{twdi}} = P_{g_{t-1wdi}} \cdot \left( 1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right)$$

where:

$RPI_{t-1}$  has the meaning set out in paragraph 2.2 above; and

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

but so that in relation to the Relevant Year  $t$  commencing on 1 April 2014,  $P_{g_{twdi}}$  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, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year,  $P_{g_{t-1wdi}}$  shall have the same value;

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

$$P_{g_{twei}} = P_{g_{t-1wei}} \cdot \left( 1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right)$$

where:

$RPI_{t-1}$  has the meaning set out in paragraph 2.2 above; and

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

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

$T_{g_{twdi}}$  means the actual Train Miles run on Weekdays by Services or Ancillary Movements in Service Coded Group  $i$  in the Relevant Year  $t$ ; and

$T_{g_{twei}}$  means the actual Train Miles run on weekends by Services or Ancillary Movements 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 accordance with paragraph 7.5, derived from the following formula:

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

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 for Relevant Year  $t$ ; 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, acting reasonably, considers it appropriate 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 No amount of Track Charges shall be rebated under this paragraph 7 unless ORR has consented to such rebate.

7.4 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".

7.5 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 7.3.

- 7.6 If, pursuant to paragraph 7.2, Network Rail notifies ORR of the Rebatable amount in respect of Relevant Year t after this contract has expired or has otherwise been terminated then, notwithstanding the expiration or termination of this contract, paragraph 7.5 shall apply.
- 7.7 If Network Rail has, prior to 31 March 2014 and pursuant to the provisions of this contract 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:

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

where:

$RPI_{t-1}$  has the meaning set out in paragraph 2.2 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 value per electrified Vehicle Mile for the Electrification Asset Usage Charge set out in the Track Usage Price List, 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 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 Modelled 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 where reasonably practicable inform Network Rail in writing 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 Train Operator shall pay Network Rail the relevant Default Charge during the Default Period.
- 9.3 No supplement to the Traction Electricity Modelled 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 ORR.
- 9.4 Either the Train Operator or Network Rail shall be entitled to propose that:
- (a) the Traction Electricity Modelled Consumption Rates List be supplemented as necessary to include a rate in respect of a new train category;
  - (b) the Track Usage Price List be supplemented as necessary to include a new vehicle type and corresponding rate; or
  - (c) the List of Capacity Charge Rates be supplemented as necessary to take account of changes in the pattern and number of Services or to include rates in respect of new 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 of the proposal in reasonable detail and the reasons for it. The parties shall thereafter seek to agree 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 reasonably 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, at any point thereafter either party shall be entitled to refer the matter to ORR for determination.
- 9.9 Following a reference to ORR under paragraph 9.8, the parties shall, within such timescales as ORR may reasonably specify, furnish ORR with such information and evidence as ORR shall reasonably 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.

9.10 ORR may:

- (a) consent to any supplement that is agreed by the parties and submitted to it under paragraph 9.7, or following consultation with the parties, determine that a different supplement should apply; or
- (b) following a referral to ORR under paragraph 9.8, determine the supplement that should apply.

9.11 In the case of a supplement to the Traction Electricity Modelled 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, provided that:

- (a) in the case of a supplement to the Traction Electricity Modelled Consumption Rates List, such date shall not be a date falling prior to the start of the Relevant Year in which ORR consented to or determined the supplement; and
- (b) in the case of a supplement to the List of Capacity Charge Rates, such date shall not be a date falling prior to 1 April 2014.

9.12 In the case of a supplement to the Track Usage Price List, the supplement shall have retrospective effect from the first day of the Default Period.

9.13 Following ORR's consent or determination under paragraph 9.10 Network Rail shall:

- (a) apply the supplement from the date in accordance with paragraph 9.11 or 9.12 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. In the case of a supplement to the Track Usage Price List this will reflect the difference between the amount paid by the Train Operator for the Default Charge during the Default Period and the amount that it would have paid during the Default Period in respect of the Variable Usage Charge had the supplement been in place at the time the Train Operator first used the relevant railway vehicle on the Network; 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 to which Network Rail is a party.

## **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;
  - (v) the Default Charge; and
  - (vi) 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 4A of this Part 2 or 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<sub>t</sub>**” or “**U<sub>t</sub>**” 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:

$$O_t = \left[ \frac{V_t + D_t}{AV_t} \right] \cdot \text{Outperformance Sum}$$

and

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

$$U_t = \left[ \frac{V_t + D_t}{AV_t} \right] \cdot \text{Underperformance Sum}$$

where:

- O<sub>t</sub>** means the amount that is payable by Network Rail to the Train Operator in respect of REBS Outperformance on the REBS Route in Relevant Year t;

- $D_t$  means the Default Charge payable by the Train Operator in respect of the REBS Route for Relevant Year t;
- $V_t$  means the Variable Usage Charge payable by the Train Operator in respect of the REBS Route for Relevant Year t;
- $AV_t$  means the aggregate Variable Usage Charge and Default Charge payable 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  $V_t$  and  $D_t$  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 and 9 of the variable charge payable 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 and 9 of the variable charge under paragraph 2.2.1 of Schedule 7 of each relevant train operator's access agreement); and
- $U_t$  means the amount that is payable by the Train Operator to Network Rail in respect of REBS Underperformance on 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 by or to the Train Operator, in respect of that REBS Route:
- (a) 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; and
  - (b) where Network Rail entered into a Material Alliance Agreement during the course of Relevant Year t and the Train Operator issued an Opt-out Notice pursuant to paragraph 1.4(b) in Relevant Year t+1, in respect of any Period in Relevant Year t commencing on or after the date of the Material Alliance Agreement.

*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 July 2014.



1.4 If any 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:
  - (i) on one or more REBS Routes, services for the carriage of passengers by railway pursuant to a new franchise agreement. Where the Train Operator was the incumbent franchisee immediately prior to the new franchise agreement being entered into then, for the purposes of this provision, the Train Operator shall be deemed to have commenced operating services on a REBS Route under the new franchise agreement even if it provided them as the incumbent franchisee; or
  - (ii) on one or more REBS Routes on which it did not previously operate services, services for the carriage of passengers or freight by railway as a result of entering into a new access agreement or otherwise.

In either of circumstances (i) or (ii) above, 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 ORR and the Train Operator that it has entered into an agreement which is, in its opinion, a Material Alliance Agreement and ORR confirms in writing that it agrees. In these circumstances the Opt-out Notice may only be served in respect of the REBS Route to which the Material Alliance Agreement applies.

In the circumstances described in paragraphs 1.4(a) and (b), 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 ORR and the Train Operator that it has entered into an agreement which it considers to be a Material Alliance Agreement within 14 days after entering into it.

1.6 Network Rail shall provide such information, excluding information which is subject to a legally binding duty or obligation of confidentiality (whether arising under the terms of any contract or otherwise), to the Train Operator as the Train Operator may reasonably request in order to determine whether to serve an Opt-out Notice. Network Rail shall provide such information within 14 days of the request, unless not reasonably practicable to do so, in which case it shall provide the information as soon as reasonably practicable.

### *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 paragraphs 1.2 and 1.8, such payment shall be made to the party entitled to the payment by the other party as a lump sum payment within 56 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 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.

*Route Baseline Indexation*

1.10 The indexed Route Baseline in respect of Relevant Year t shall be derived from the following formula:

$$RBI_t = \text{Route Baseline} \cdot \left( 1 + \frac{(RPI_t - RPI_{2012})}{RPI_{2012}} \right)$$

where:

- RBI<sub>t</sub> means the indexed Route Baseline in respect of Relevant Year t;
- RPI<sub>t</sub> means the RPI published or determined with respect to the month of November in Relevant Year t; and
- RPI<sub>2012</sub> means the RPI published or determined with respect to November 2012.

*Outperformance Cap and Underperformance Cap Indexation*

1.11 The indexed Outperformance Cap and Underperformance Cap in respect of Relevant Year t shall be derived from the following formula:

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

$$OCI_t = OC_t \cdot \left( 1 + \frac{(RPI_t - RPI_{2012})}{RPI_{2012}} \right)$$

(b) in the case of the Underperformance Cap:

$$UCI_t = UC_t \cdot \left( 1 + \frac{(RPI_t - RPI_{2012})}{RPI_{2012}} \right)$$

where:

- $OCI_t$  means the indexed Outperformance Cap in respect of Relevant Year t;
- $OC_t$  means the Outperformance Cap in respect of Relevant Year t;
- $UCI_t$  means the indexed Underperformance Cap in respect of Relevant Year t;
- $UC_t$  means the Underperformance Cap in respect of Relevant Year t;
- $RPI_t$  has the meaning set out in paragraph 1.10 above; and
- $RPI_{2012}$  has the meaning set out in paragraph 1.10 above.

## **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 does not, for any reason, 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 does not 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:

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

where:

GC means the English & Welsh Grant Compensation Amount;

GA<sub>p</sub> 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<sub>t</sub> has the meaning ascribed to it in paragraph 1 of Part 2; and

AF<sub>t</sub> means the Aggregate Fixed Charge in Relevant Year t.

## **PART 4: NOT USED**

## **PART 5: ADDITIONAL CHARGES**

NOT USED

## **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 any Default 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  $S2_{tw}$  and/or any Charge Correction Amount 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;
- (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; and
- (l) the amount of any sum  $S1_t$  and/or  $S2_t$  payable as provided in paragraph 4A of Part 2.

## **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 MECHANISM  
OPT-OUT NOTICE**

**[Name of train operator representative]**

**[Position]**

Telephone: [xxx]

E-mail: [xxx]

[Date]

[Enter name of person specified in paragraph 1 of Schedule 1 to the contract]

Network Rail

Kings Place

90 York Way

London

N1 9AG

Dear [Enter name of person specified in paragraph 1 of Schedule 1 to the contract]

**Opt-out from the Route-Level Efficiency Benefit Share (REBS) Mechanism**

This is an Opt-out Notice in respect of the REBS Mechanism in Schedule 7 of the track access contract between Network Rail Infrastructure Limited and [Enter train operator name here], dated [insert date of track access contract] (“the contract”).

[Enter train operator name here] hereby exercises its right to opt-out of the REBS Mechanism in respect of the REBS Routes identified in Table 1 below, pursuant to {delete as appropriate [paragraph 1.3 of Part 3 to Schedule 7] or [paragraph 1.4 of Part 3 to Schedule 7]} to the contract.

**Table 1: REBS opt-out matrix**

| <b>Route</b>      | <b>Route definition</b>   | <b>Opt-out<br/>(please mark with an<br/>'x')</b> |
|-------------------|---|--|
| Anglia            | As defined in Network Rail's Delivery Plan supporting information |  |
| East Midlands     |   |  |
| Kent              |   |  |
| London North East |   |  |
| London North West |   |  |
| Scotland          |   |  |
| Sussex            |   |  |

| Route   | Route definition | Opt-out<br>(please mark with an<br>'x') |
|---------|------------------|---|
| Wales   |                  |   |
| Wessex  |                  |   |
| Western |                  |   |

I have sent a copy of this notice to the Director of Railway Markets and Economics at the Office of Rail Regulation and to the Head of Regulatory Policy at Network Rail [and any other person at Network Rail entitled to a copy as set out in paragraph 1 of Schedule 1 to the contract].

Yours faithfully

**[Name of train operator representative]**

## APPENDIX 7C – DEFAULT TRAIN CONSIST DATA

**APPENDIX 7D**

**"METERED TRAINS M" FOR THE PURPOSES OF PARAGRAPH 4.1.1 OF PART 2**

| <b>Train Type</b> | <b>Train ID</b>   | <b>Traction Type</b> |
|-------------------|---|----------------------|
|                   | <i>[This column should include the full train ID. If all trains of the relevant train type used by the Train Operator are metered, this column should say "All".]</i> |                      |



**Appendix 3 to Annex 2**

**Schedule 7 for the ScotRail TAA**

## SCHEDULE 7: TRACK CHARGES AND OTHER PAYMENTS

### PART 1: INTERPRETATION

#### 1 Definitions

In Parts 1-7 inclusive, unless the context otherwise requires:

|                                    |  |
|------------------------------------|--|
| <b>“2008 Final Determinations”</b> | 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;               |
| <b>“2013 Final Determination”</b>  | means the document entitled “Periodic Review 2013: Final determination of Network Rail’s outputs and funding for 2014-19” published by ORR on 31 October 2013;         |
| <b>“access charges review”</b>     | has the meaning ascribed to it by Schedule 4A to the Act;  |
| <b>“AC System”</b>                 | means the alternating current system of electricity traction supply on the Network;  |
| <b>“Aggregate Fixed Charges”</b>   | 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; |
| <b>“Basic Value”</b>               | has the meaning ascribed to it in paragraph 1.1(a) of Part 3A;   |
| <b>“Capacity Charge”</b>           | means a variable charge, calculated in accordance with paragraph 6 of Part 2;  |
| <b>“DC System”</b>                 | means the direct current system of electricity traction supply on the Network;   |
| <b>“Default Charge”</b>            | means a variable charge calculated in accordance with paragraph 3.3 of Part 2;   |



|   |  |
|---|--|
| <b>“Default Period”</b>                     | <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 a supplement to the Track Usage Price List under paragraph 9.10 of Part 2 in respect of that New Specified Equipment;</p> |
| <b>“Default Rate”</b>                       | <p>means, in respect of any New Specified Equipment used on the Network by the Train Operator, the corresponding passenger default rate for that type of vehicle set out in the section of the Track Usage Price List entitled “Passenger Variable Usage Charge default rate”;</p>   |
| <b>“Default Train Consist Data”</b>         | <p>means the data listed in Appendix 7C as amended from time to time in accordance with paragraph 10.4 of Part 2;</p>  |
| <b>“Delivery Plan”</b>                      | <p>means the document, including its supporting documentation, published by Network Rail on or about 31 March 2014 setting out its delivery plan for the period 1 April 2014 – 31 March 2019;</p>  |
| <b>“Efficiency Benefit Share”</b>           | <p>means the amount determined in accordance with paragraph 5.1 of Part 2;</p>   |
| <b>“Electrification Asset Usage Charge”</b> | <p>means a charge for electrification asset usage, calculated in accordance with paragraph 8 of Part 2;</p>  |
| <b>“excluded change”</b>                    | <p>means, in relation to paragraph 2.1.1(a) 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>  |
| <b>“Fixed Track Charge”</b>                 | <p>means a fixed annual charge, calculated in accordance with paragraph 1 of Part 2;</p>   |
| <b>“Fixed Track Charge Indexation”</b>      | <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 Agreement”** means the Agreement as to Network Grant made on or about 20 December 2013 between the Scottish Ministers and Network Rail;

**“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;

**“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;

RPI<sub>2012</sub> means the RPI published or determined with respect to the month of November 2012; and

RPI<sub>2013</sub> means the RPI published or determined with respect to the month of November 2013;

**“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 which, for the purposes of this contract, shall be deemed to incorporate any supplements to that document consented to or determined pursuant to paragraph 9.10 of Part 2 of Schedule 7 to this contract;

|   |   |
|---|---|
| <b>“Material Alliance Agreement”</b>                  | <p>means a legally binding agreement between:</p> <ul style="list-style-type: none"> <li>(a) Network Rail and the Train Operator; or</li> <li>(b) Network Rail, the Train Operator and one or more other train operators; or</li> <li>(c) Network Rail and one or more other train operators,</li> </ul> <p>establishing an alliance under which the parties to such legally binding agreement agree to share risk or reward or both on a REBS Route or part thereof on which the Train Operator operates Services 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;</p> |
| <b>“Metered Train m”</b>                              | <p>means, as the context requires, either:</p> <ul style="list-style-type: none"> <li>(a) a train of a particular type; or</li> <li>(b) a specific train having a train ID,</li> </ul> <p>in either case as specified in Appendix 7D of this Schedule 7 or Appendix 2 or Appendix 4 of the Traction Electricity Rules;</p>  |
| <b>“Network Rail Distribution System Loss Factor”</b> | <p>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;</p>   |
| <b>“Network Rail Rebate”</b>                          | <p>has the meaning ascribed to it in paragraph 7.1 of Part 2;</p>   |
| <b>“New Specified Equipment”</b>                      | <p>means a type of railway vehicle not included in the section of the Track Usage Price List entitled “Passenger Variable Usage Charge rates”;</p>  |
| <b>“On-Train Meter” and “On-Train Metering”</b>       | <p>have the meanings ascribed to them in paragraph 1.2 of the Traction Electricity Rules;</p>   |
| <b>“Outperformance Cap”</b>                           | <p>means the maximum possible amount in pounds sterling that can be attributed to a REBS Outperformance as published by Network Rail in its Delivery Plan;</p>  |

|                                  |  |
|----------------------------------|--|
| <b>“Outperformance Sum”</b>      | means the lower of:<br><br>(a) the Outperformance Cap as indexed in accordance with paragraph 1.11 of Part 3; and<br><br>(b) 25% of the amount in pounds sterling which ORR, in its annual efficiency and finance assessment of Network Rail, determines in respect of the REBS Outperformance;  |
| <b>“Payment Date”</b>            | has the meaning ascribed to it in paragraph 1.1(b) of Part 3A;   |
| <b>“Period”</b>                  | has the meaning ascribed to it in Schedule 8;  |
| <b>“Power Factor Correction”</b> | means the relevant power factor correction as set out in Appendix 2 of the Traction Electricity Rules;   |
| <b>“Rebatable Amount”</b>        | has the meaning ascribed to it in paragraph 7.2 of Part 2;   |
| <b>“REBS Outperformance”</b>     | 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 Chapter 19 of the 2013 Final Determination, that Network Rail’s performance has exceeded the performance set in the Route Baseline as indexed in accordance with paragraph 1.10 of Part 3;     |
| <b>“REBS Route”</b>              | means a route specified in the table in Appendix 7A for the purposes of the Route-Level Efficiency Benefit Share Mechanism;  |
| <b>“REBS Underperformance”</b>   | 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 Chapter 19 of the 2013 Final Determination, that Network Rail’s performance has not achieved the performance set in the Route Baseline as indexed in accordance with paragraph 1.10 of Part 3; |

|   |  |
|---|--|
| <b>“relevant access agreement”</b>                      | <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"> <li>(a) a franchise operator; or</li> <li>(b) a concession operator within the meaning of the Merseyrail Electrics Network Order 2003; or</li> <li>(c) a TfL concessionaire within the meaning of the Railways (North and West London Lines) Exemption Order 2007; or</li> <li>(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</li> <li>(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;</li> </ul> |
| <b>“Relevant Year”</b>                                  | <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>   |
| <b>"Route Baseline"</b>                                 | <p>means the baseline value in respect of a REBS Route in Relevant Year t that is published by Network Rail in its Delivery Plan;</p>  |
| <b>“Route-Level Efficiency Benefit Share”</b>           | <p>has the meaning ascribed to it in paragraph 1.1 of Part 3;</p>  |
| <b>“Route-Level Efficiency Benefit Share Mechanism”</b> | <p>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 of Part 3;</p>   |
| <b>“route type k”</b>                                   | <p>means route type k as identified by type of electrification (AC (OLE) or DC) in the Track Usage Price List;</p>   |

|   |   |
|---|---|
| <b>“RPI”</b>                                | means the General Index of Retail Prices All Items measured by CHAW and published each month, or: <ul style="list-style-type: none"> <li>(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</li> <li>(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;</li> </ul> |
| <b>“Schedule of Fixed Charges”</b>          | means the document entitled “Schedule of Fixed Charges” published by Network Rail on or about 20 December 2013;   |
| <b>“Scottish Grant Compensation Amount”</b> | has the meaning ascribed to it in paragraph 3.2 of Part 3A;   |
| <b>“Scottish Grant Dilution”</b>            | has the meaning ascribed to it in paragraph 2.1 of Part 3A;   |
| <b>“Scottish Grant Dilution Date”</b>       | has the meaning ascribed to it in paragraph 2.2 of Part 3A;   |
| <b>“Service Coded Group”</b>                | means any Service or collection of Services or Ancillary Movements operating under a service code specified in the List of Capacity Charge Rates and any Ancillary Movements relating to such Services;   |
| <b>“tariff band j”</b>                      | means the tariff zone and time band in which the train in question is operated;   |
| <b>“Tolerance Factor”</b>                   | means the relevant Tolerance Factor as set out in Appendix 4 of the Traction Electricity Rules;   |
| <b>“Track Usage Price List”</b>             | means the document entitled “Track Usage Price List” published by Network Rail on or about 20 December 2013 which, for the purposes of this contract, shall be deemed to incorporate any supplements to that document consented to or determined pursuant to paragraph 9.10 of Part 2 of Schedule 7 to this contract;   |

|   |   |
|---|---|
| <b>“Traction Electricity Charge”</b>                          | means a variable charge for traction current calculated in accordance with paragraph 4 of Part 2;   |
| <b>“Traction Electricity Modelled Consumption Rates List”</b> | means the document entitled “Traction Electricity Modelled Consumption Rates List” published by Network Rail on or about 20 December 2013 and specifying freight and passenger traction electricity modelled consumption rates which, for the purposes of this contract, shall be deemed to incorporate any supplements to that document consented to or determined pursuant to paragraph 9.10 of Part 2 of Schedule 7 to this contract;  |
| <b>“train category i”</b>                                     | means train category i as identified in the relevant section of the Traction Electricity Modelled Consumption Rates List, being either: <ul style="list-style-type: none"> <li>(a) where there is a modelled consumption rate for a particular passenger vehicle type operating on a particular Train Service Code, the relevant category set out in the table entitled "Passenger Traction Electricity Modelled Consumption Rates for CP5"; or</li> <li>(b) in respect of any other passenger vehicle type not referred to in paragraph (a), the relevant category set out in the table entitled "Generic Traction Electricity Modelled Consumption Rates for CP5";</li> </ul> |
| <b>“Train Consist Data”</b>                                   | means the information relating to the number(s) and type(s) of railway vehicle comprised in a train movement;   |
| <b>“Train Mile”</b>   | in relation to a train, means a mile travelled by that train on the Network;  |
| <b>“Train Service Code”</b>                                   | has the meaning ascribed to it in paragraph 1.1 of Schedule 5;  |
| <b>“Underperformance Cap”</b>                                 | means the maximum possible amount in pounds sterling that can be attributed to a REBS Underperformance as published by Network Rail in its Delivery Plan;   |

|                                |   |
|--------------------------------|---|
| <b>“Underperformance Sum”</b>  | means the lower of:<br><br>(a) the Underperformance Cap as indexed in accordance with paragraph 1.11 of Part 3; and<br><br>(b) 10% of the amount in pounds sterling which ORR, in its annual efficiency and finance assessment of Network Rail, determines in respect of the REBS Underperformance; |
| <b>“Variable Charges”</b>      | means the Capacity Charge, the Default Charge, the Electrification Asset Usage Charge, the Variable Usage Charge and the Traction Electricity Charge;   |
| <b>“Variable Usage Charge”</b> | means a variable charge, calculated in accordance with paragraph 3.1 of Part 2;   |
| <b>“Vehicle Mile”</b>          | in relation to a railway vehicle, means a mile travelled by that vehicle on the Network;  |
| <b>“Volume Reconciliation”</b> | has the meaning ascribed to it in the Traction Electricity Rules; and   |
| <b>“Weekday”</b>               | 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 Grant Agreement 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, multiplied by the Fixed Track Charge Indexation calculated in accordance with paragraph 2.1; and
  - (b) in respect of any Relevant Year  $t$  commencing on or after 1 April 2015, 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 2.2;
- $V_t$  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

- 2.1 The Fixed Track Charge Indexation in respect of the Relevant Year commencing on 1 April 2014 shall be derived from the following formula:

$$FTCI_{2014} = \text{Initial Indexation Factor}$$

where:

$FTCI_{2014}$  means the Fixed Track Charge Indexation in respect of the Relevant Year commencing on 1 April 2014.

- 2.2 The Fixed Track Charge Indexation in respect of any Relevant Year  $t$  commencing on or after 1 April 2015 shall be derived from the following formula:

$$FTCI_t = \left( 1 + \frac{(RPI_{t-1} - RPI_{2013})}{RPI_{2013}} \right) \bullet \text{Initial Indexation Factor}$$

where:

$FTCI_t$  means the Fixed Track Charge Indexation in Relevant Year  $t$ ;

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

$RPI_{2013}$  means the RPI published or determined with respect to the month of November 2013.

## 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:

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

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:

$RPI_{t-1}$  has the meaning set out in paragraph 2.2 above; and

$RPI_{t-2}$  means the RPI published or determined with respect to the month of 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 vehicle type i, the corresponding variable usage charge rate per Vehicle Mile for that vehicle type i set out in the Track Usage Price List, 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 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

$\Sigma$  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:

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

where:

$D_{nt}$  means the Default Rate for that New Specified Equipment for Relevant Year t which is derived from the following formula:

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

where:

$RPI_{t-1}$  has the meaning set out in paragraph 2.2 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,  $D_{nt}$  shall have, in respect of New Specified Equipment, the corresponding Default Rate for that New Specified Equipment, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year  $D_{nt-1}$  shall have the same value;

$UD_{nt}$  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

$\Sigma$  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:

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

where:

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

$E_{tmog}$  is derived from the following formula:

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

where:

$\Sigma$  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 modelled consumption rate:

(a) in kWh per electrified Train Mile in relation to passenger electric multiple units (using the rate for the relevant number of units); and

(b) in kWh per electrified kgm in relation to locomotive-hauled units and all freight traffic,

for train category  $i$  shown in the Traction Electricity Modelled Consumption Rates List, taking into account any Regenerative Braking Discount applied in accordance with the Traction Electricity Rules;

$EF_{gjt}$  means the charge 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 19 of the Traction Electricity Rules; and

$UE_{igt}$  means the actual volume of usage (in electrified Vehicle Miles in relation to passenger electric multiple units or electrified kgm 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:

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

where:

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

$E_{tmeg}$  is derived from the following formula:

$$E_{tmeg} = \Sigma [((CME_{mgjt} \bullet PF_m \bullet EF_{gjt}) - (RGB_{mgjt} \bullet PF_m \bullet EF_{gjt})) \bullet (1 + \delta m)]$$

where:

$\Sigma$  means the summation across all relevant Metered Trains  $m$  (determined in accordance with paragraph 4.1.1 above) and tariff bands  $j$ , as appropriate;

$CME_{mgjt}$  means the consumption of electricity (in kWh) by Metered Trains  $m$  operated by or on behalf of the Train Operator, as measured by the On-Train Meters or as otherwise determined

- in accordance with the Traction Electricity Rules, in Geographic Area g, tariff band j and in Relevant Year t;
- $PF_m$  means the Power Factor Correction for the relevant train type for Metered Train m;
- $EF_{gjt}$  means the charge 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 19 of the Traction Electricity Rules;
- $RGB_{mgjt}$  means the electricity (in kWh) generated by braking by Metered Trains m operated by or on behalf of the Train Operator, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g, tariff band j and in Relevant Year t; and
- $\delta_m$  means the Tolerance Factor for the relevant train type for Metered Train m.

#### 4.1.4

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

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

where:

- $\Sigma$  means the summation across all Geographic Areas g, as appropriate;

$E_{tmugAC}$  is derived from the following formula:

$$E_{tmugAC} = \Sigma [(CME_{mgjtAC} \bullet PF_m \bullet EF_{gjt}) \bullet (1 + \delta_m)] \bullet \lambda_{ACg}$$

where:

- $\Sigma$  means the summation across all relevant Metered Trains m (determined in accordance with paragraph 4.1.1 above) and tariff bands j, as appropriate;

$CME_{mgjtAC}$  means the consumption of electricity (in kWh) from the AC System by Metered Trains m operated by or on behalf of the Train Operator, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g, tariff band j and in Relevant Year t;

$PF_m$  means the Power Factor Correction for the relevant train type for Metered Train m;

$EF_{gjt}$  means the charge 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 19 of the Traction Electricity Rules;

$\delta_m$  means the Tolerance Factor for the relevant train type for Metered Train m; and

$\lambda_{ACg}$  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:

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

$E_{tmugDC}$  is derived from the following formula:

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

where:

$\Sigma$  means the summation across all relevant Metered Trains m (determined in accordance with paragraph 4.1.1 above) and tariff bands j, as appropriate;

$CME_{mgjtDC}$  means the consumption of electricity (in kWh) from the DC System by Metered Trains m operated by or on behalf of the Train Operator, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g, tariff band j and in Relevant Year t;

$EF_{gjt}$  means the charge 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 19 of the Traction Electricity Rules;

$\delta_m$  means the Tolerance Factor for the relevant train type for Metered Train m; and

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

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

4.2 (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 4.2(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 4.2(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 4.2(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 4.2(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 4.2(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 4.2(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.

#### **4A Volume and Cost Reconciliation for the Relevant Year ending on 31 March 2014**

- 4A.1 For the purposes of the volume and cost reconciliation to be carried out for the Relevant Year ending on 31 March 2014, the provisions in paragraph 5 (volume and cost reconciliation) of Part 2 of Schedule 7 to this contract (and such definitions and other provisions as are relevant to that paragraph 5) in force as at that date shall continue to apply to the extent (and only to the



extent) necessary to enable the calculation and payment of the supplementary amounts  $S1_t$  and  $S2_t$ .

4A.2 For subsequent Relevant Years, paragraph 18 of the Traction Electricity Rules shall apply.

## 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:

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

where:

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

$Pg_{twdi}$  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:

$$Pg_{twdi} = Pg_{t-1wdi} \cdot \left( 1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right)$$

where:

$RPI_{t-1}$  has the meaning set out in paragraph 2.2 above; and

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

but so that in relation to the Relevant Year t commencing on 1 April 2014,  $Pg_{twdi}$  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, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year,  $Pg_{t-1wdi}$  shall have the same value;

$Pg_{twei}$  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:

$$Pg_{twei} = Pg_{t-1wei} \cdot \left( 1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right)$$

where:

$RPI_{t-1}$  has the meaning set out in paragraph 2.2 above; and

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

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

$Tg_{twdi}$  means the actual Train Miles run on Weekdays by Services or Ancillary Movements in Service Coded Group i in the Relevant Year t; and

$Tg_{twei}$  means the actual Train Miles run on weekends by Services or Ancillary Movements 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 accordance with paragraph 7.5, derived from the following formula:

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

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 for Relevant Year t; 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, acting reasonably, considers it appropriate 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 No amount of Track Charges shall be rebated under this paragraph 7 unless ORR has consented to such rebate.
- 7.4 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".
- 7.5 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 7.3.
- 7.6 If, pursuant to paragraph 7.2, Network Rail notifies ORR of the Rebatable amount in respect of Relevant Year t after this contract has expired or has otherwise been terminated then, notwithstanding the expiration or termination of this contract, paragraph 7.5 shall apply.
- 7.7 If Network Rail has, prior to 31 March 2014 and pursuant to the provisions of this contract 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:

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

where:

$RPI_{t-1}$  has the meaning set out in paragraph 2.2 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 value per electrified Vehicle Mile for the Electrification Asset Usage Charge set out in the Track Usage Price List, 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 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 Modelled 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 where reasonably practicable inform Network Rail in writing 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 Train Operator shall pay Network Rail the relevant Default Charge during the Default Period.

9.3 No supplement to the Traction Electricity Modelled 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 ORR.
- 9.4 Either the Train Operator or Network Rail shall be entitled to propose that:
  - (a) the Traction Electricity Modelled Consumption Rates List be supplemented as necessary to include a rate in respect of a new train category;
  - (b) the Track Usage Price List be supplemented as necessary to include a new vehicle type and corresponding rate; or
  - (c) the List of Capacity Charge Rates be supplemented as necessary to take account of changes in the pattern and number of Services or to include rates in respect of new 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 of the proposal in reasonable detail and the reasons for it. The parties shall thereafter seek to agree 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 reasonably 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, at any point thereafter either party shall be entitled to refer the matter to ORR for determination.
- 9.9 Following a reference to ORR under paragraph 9.8, the parties shall, within such timescales as ORR may reasonably specify, furnish ORR with such information and evidence as ORR shall reasonably 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.
- 9.10 ORR may:
  - (a) consent to any supplement that is agreed by the parties and submitted to it under paragraph 9.7, or following consultation with the parties, determine that a different supplement should apply; or
  - (b) following a referral to ORR under paragraph 9.8, determine the supplement that should apply.
- 9.11 In the case of a supplement to the Traction Electricity Modelled 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, provided that:

- (a) in the case of a supplement to the Traction Electricity Modelled Consumption Rates List, such date shall not be a date falling prior to the start of the Relevant Year in which ORR consented to or determined the supplement; and
  - (b) in the case of a supplement to the List of Capacity Charge Rates, such date shall not be a date falling prior to 1 April 2014.
- 9.12 In the case of a supplement to the Track Usage Price List, the supplement shall have retrospective effect from the first day of the Default Period.
- 9.13 Following ORR's consent or determination under paragraph 9.10 Network Rail shall:
- (a) apply the supplement from the date in accordance with paragraph 9.11 or 9.12 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. In the case of a supplement to the Track Usage Price List this will reflect the difference between the amount paid by the Train Operator for the Default Charge during the Default Period and the amount that it would have paid during the Default Period in respect of the Variable Usage Charge had the supplement been in place at the time the Train Operator first used the relevant railway vehicle on the Network; 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 to which Network Rail is a party.

## **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;
  - (v) the Default Charge; and
  - (vi) 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 4A of this Part 2 or 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:

$$O_t = \left[ \frac{V_t + D_t}{AV_t} \right] \cdot \text{Outperformance Sum}$$

and

(b) in the case of a REBS Underperformance:

$$U_t = \left[ \frac{V_t + D_t}{AV_t} \right] \cdot \text{Underperformance Sum}$$

where:

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

$D_t$  means the Default Charge payable by the Train Operator in respect of the REBS Route for Relevant Year t;

$V_t$  means the Variable Usage Charge payable by the Train Operator in respect of the REBS Route for Relevant Year t;

$AV_t$  means the aggregate Variable Usage Charge and Default Charge payable 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  $V_t$  and  $D_t$  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 and 9 of the variable charge payable 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 and 9 of the variable charge under paragraph 2.2.1 of Schedule 7 of each relevant train operator's access agreement); and

$U_t$  means the amount that is payable by the Train Operator to Network Rail in respect of REBS Underperformance on 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 by or to the Train Operator, in respect of that REBS Route:
- (a) 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; and
  - (b) where Network Rail entered into a Material Alliance Agreement during the course of Relevant Year t and the Train Operator issued an Opt-out Notice pursuant to paragraph 1.4(b) in Relevant Year t+1, in respect of any Period in Relevant Year t commencing on or after the date of the Material Alliance Agreement.

*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 July 2014.
- 1.4 If any 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:
    - (i) on one or more REBS Routes, services for the carriage of passengers by railway pursuant to a new franchise agreement. Where the Train Operator was the incumbent franchisee immediately prior to the new franchise agreement being entered into then, for the purposes of this provision, the Train Operator shall be deemed to have commenced operating services on a REBS Route under the new franchise agreement even if it provided them as the incumbent franchisee; or
    - (ii) on one or more REBS Routes on which it did not previously operate services, services for the carriage of passengers or freight by railway as a result of entering into a new access agreement or otherwise.

In either of circumstances (i) or (ii) above, 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 ORR and the Train Operator that it has entered into an agreement which is, in its opinion, a Material Alliance Agreement and ORR confirms in writing that it agrees. In these circumstances the Opt-out Notice may only be served in respect of the REBS Route to which the Material Alliance Agreement applies.

In the circumstances described in paragraphs 1.4(a) and (b), 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 ORR and the Train Operator that it has entered into an agreement which it considers to be a Material Alliance Agreement within 14 days after entering into it.
- 1.6 Network Rail shall provide such information, excluding information which is subject to a legally binding duty or obligation of confidentiality (whether arising under the terms of any contract or otherwise), to the Train Operator as the Train Operator may reasonably request in order to determine whether to serve an Opt-out Notice. Network Rail shall provide such information within 14 days of the request, unless not reasonably practicable to do so, in which case it shall provide the information as soon as reasonably practicable.

#### *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 paragraphs 1.2 and 1.8, such payment shall be made to the party entitled to the payment by the other party as a lump sum payment within 56 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 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.

### *Route Baseline Indexation*

1.10 The indexed Route Baseline in respect of Relevant Year t shall be derived from the following formula:

$$RBI_t = \text{Route Baseline} \cdot \left( 1 + \frac{(RPI_t - RPI_{2012})}{RPI_{2012}} \right)$$

where:

RBI<sub>t</sub> means the indexed Route Baseline in respect of Relevant Year t;

RPI<sub>t</sub> means the RPI published or determined with respect to the month of November in Relevant Year t; and

RPI<sub>2012</sub> means the RPI published or determined with respect to November 2012.

#### *Outperformance Cap and Underperformance Cap Indexation*

1.11 The indexed Outperformance Cap and Underperformance Cap in respect of Relevant Year t shall be derived from the following formula:

(a) in the case of the Outperformance Cap:

$$OCI_t = OC_t \cdot \left( 1 + \frac{(RPI_t - RPI_{2012})}{RPI_{2012}} \right)$$

(b) in the case of the Underperformance Cap:

$$UCI_t = UC_t \cdot \left( 1 + \frac{(RPI_t - RPI_{2012})}{RPI_{2012}} \right)$$

where:

OCI<sub>t</sub> means the indexed Outperformance Cap in respect of Relevant Year t;

OC<sub>t</sub> means the Outperformance Cap in respect of Relevant Year t;

UCI<sub>t</sub> means the indexed Underperformance Cap in respect of Relevant Year t;

UC<sub>t</sub> means the Underperformance Cap in respect of Relevant Year t;

RPI<sub>t</sub> has the meaning set out in paragraph 1.10 above; and

RPI<sub>2012</sub> has the meaning set out in paragraph 1.10 above.

## **PART 3A: SCOTTISH 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 8 of the Railways Act 2005 specified in the Grant Agreement as payable by the Scottish Ministers to Network Rail; and
- (b) the Payment Dates are the dates set out in the Grant Agreement for the payment of grant by the Scottish Ministers 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 Grant Agreement.

#### *1.2 Indexation*

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

### **2 Scottish Grant Dilution**

#### *2.1 Meaning of Scottish Grant Dilution*

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

- (a) the Scottish Ministers do not, for any reason, 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 Scottish Ministers 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 Scottish Grant Dilution Date*

In respect of any Scottish Grant Dilution:

- (a) if the Scottish Grant Dilution is of the kind referred to in paragraph 2.1(a), the Scottish Grant Dilution Date shall be the Payment Date in respect of which the Scottish Ministers do not pay the whole or any part of the Grant Amount due on that date; and



- (b) if the Scottish 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 a Scottish Grant Dilution Date.

### **3. Scottish Grant Compensation Amount**

#### *3.1 Payment obligation*

If a Scottish Grant Dilution occurs:

- (a) Network Rail shall notify the Train Operator and ORR that a Scottish 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 carriage of passengers by railway;
  - (ii) if the Scottish Grant Dilution is of the kind described in paragraph 2.1(a), pay Network Rail a Scottish Grant Compensation Amount calculated in accordance with paragraph 3.2 three months after the Scottish Grant Dilution Date; and
  - (iii) if the Scottish Grant Dilution is of the kind described in paragraph 2.1(b), pay Network Rail a Scottish Grant Compensation Amount calculated in accordance with paragraph 3.2 three months after each Scottish Grant Dilution Date.

#### *3.2 Calculation*

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

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

where:

GC means the Scottish Grant Compensation Amount;

GA<sub>p</sub> means the Grant Amount for the Payment Date which is the same date as the Scottish Grant Dilution Date;

P means:

- (a) if the Scottish 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 Scottish Grant Dilution Date, that it has received from the Scottish Ministers; and
- (b) if the Scottish 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: ADDITIONAL CHARGES**

NOT USED

#### **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 any Default 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  $S2_{tw}$  and/or any Charge Correction Amount 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;

- (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; and
- (l) the amount of any sum  $S1_t$  and/or  $S2_t$  payable as provided in paragraph 4A.

## **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**

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

#### 2.1.1

- (a) where it considers 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; or
- (b) where Network Rail's projections at that time (each such projection being prepared in accordance with the Regulatory Accounting Guidelines dated March 2013 (as amended from time to time)) as to its Net Expenditure in relation to that part of the Network which is situated in Scotland (the "**Scottish Network**") for the Review Period show a projected level of such Net Expenditure which is higher by 15 per cent or more than the assumed expenditure for that period, where:

- (i) "**Net Expenditure**" shall be derived from the following formula:

$$\text{Net Expenditure} = 1 + 2 + 3$$

where:

- 1 means Network Rail's total Scottish expenditure in the relevant Review Period;
  - 2 means the proportion of net interest payable in respect of the Scottish Network in the relevant Review Period; and
  - 3 means the proportion of corporation tax payable in respect of the Scottish Network in the relevant Review Period;
- (ii) expressions used in the formula specified in paragraph 2.1.1(b)(i) but not otherwise defined shall have the meanings ascribed to them in paragraph 3;
- (iii) “**assumed expenditure**” means the amount of Net Expenditure assumed by ORR to be incurred in respect of the Scottish Network in each Financial Year (or part) falling within the relevant Review Period and identified in respect of the Scottish Network in ‘Table 14.9: Our assessment of Network Rail’s CP5 expenditure for Scotland’ of Chapter 14 of the 2013 Final Determination; and
- (iv) “**total Scottish expenditure**” means any cost Network Rail incurs operating, maintaining, renewing and enhancing the Scottish Network where, for the purposes of this definition, the cost is net of other operating income treated by ORR as an operating cost in ‘Table 14.10: Our assessment of Network Rail’s CP5 revenue requirement for Scotland’ of Chapter 14 of the 2013 Final Determination,

provided that, where part only of a Financial Year falls within the relevant Review Period, each of the component elements of this formula shall be attributed to that Review Period on a pro rata basis reflecting the proportion of that Financial Year falling within that Review Period; and

2.1.2 where ORR considers 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:

- (a) “**corporation tax**” means corporation tax payable by Network Rail net of any group relief;
- (b) “**net interest payable**” is:
  - (i) interest, issuance costs and financing fees payable by Network Rail; less
  - (ii) interest receivable by Network Rail,  
in each case, on an accruals basis, and for these purposes, any calculation of interest:
  - (iii) shall treat all amounts payable and receivable under interest rate and foreign exchange derivative transactions as though such transactions fully qualified for hedge accounting whether or not they in fact do so  
but:
  - (iv) shall not include:
    - (A) capital accretion on index-linked debt; or
    - (B) interest that is payable but rolled-up under intercompany loan arrangements;
- (c) “**Review Period**” means a period commencing at any time and ending 36 consecutive months later, provided that if a period of 36 consecutive months would, but for this proviso, extend beyond 31 March 2019, the relevant Review Period shall be deemed to end, and shall end on 31 March 2019;
- (d) “**income**” is as provided in Annex B to the Regulatory Accounting Guidelines dated March 2013 (as amended from time to time) except that income shall not include the final bullet of paragraph 9 of Annex B being “other – other single till income generated by Network Rail from sources other than those described above. For the avoidance of doubt it does not include investment income”;

- (e) any calculation of income, expenditure and corporation tax made under or in connection with paragraph 2.1 shall be carried out on an accruals basis; and
- (f) 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 MECHANISM  
OPT-OUT NOTICE**

**[Name of train operator representative]**

**[Position]**

Telephone: [xxx]

E-mail: [xxx]

[Date]

[Enter name of person specified in paragraph 1 of Schedule 1 to the contract]

Network Rail

Kings Place

90 York Way

London

N1 9AG

Dear [Enter name of person specified in paragraph 1 of Schedule 1 to the contract]

**Opt-out from the Route-Level Efficiency Benefit Share (REBS) Mechanism**

This is an Opt-out Notice in respect of the REBS Mechanism in Schedule 7 of the track access contract between Network Rail Infrastructure Limited and [Enter train operator name here], dated [insert date of track access contract] (“the contract”).

[Enter train operator name here] hereby exercises its right to opt-out of the REBS Mechanism in respect of the REBS Routes identified in Table 1 below, pursuant to {delete as appropriate [paragraph 1.3 of Part 3 to Schedule 7] or [paragraph 1.4 of Part 3 to Schedule 7]} to the contract.

**Table 1: REBS opt-out matrix**

| <b>Route</b>      | <b>Route definition</b>   | <b>Opt-out<br/>(please mark with an<br/>'x')</b> |
|-------------------|---|--|
| Anglia            | As defined in Network Rail's Delivery Plan supporting information |  |
| East Midlands     |   |  |
| Kent              |   |  |
| London North East |   |  |
| London North West |   |  |
| Scotland          |   |  |
| Sussex            |   |  |



| Route   | Route definition | Opt-out<br>(please mark with an<br>'x') |
|---------|------------------|---|
| Wales   |                  |   |
| Wessex  |                  |   |
| Western |                  |   |

I have sent a copy of this notice to the Director of Railway Markets and Economics at the Office of Rail Regulation and to the Head of Regulatory Policy at Network Rail [and any other person at Network Rail entitled to a copy as set out in paragraph 1 of Schedule 1 to the contract].

Yours faithfully

**[Name of train operator representative]**

## APPENDIX 7C – DEFAULT TRAIN CONSIST DATA

**APPENDIX 7D**

**"METERED TRAINS M" FOR THE PURPOSES OF PARAGRAPH 4.1.1 OF PART 2**

| <b>Train Type</b>     | <b>Train ID</b> | <b>Traction Type</b> |
|-----------------------|-----------------|----------------------|
| 380 (3 car formation) | 380001 – 380022 | AC                   |
| 380 (4 car formation) | 380101 – 380116 | AC                   |



**Appendix 4 to Annex 2**

**Schedule 7 for the Chiltern TAA**

## SCHEDULE 7: TRACK CHARGES AND OTHER PAYMENTS

### PART 1: INTERPRETATION

#### 1 Definitions

In Parts 1-7 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” published by ORR on 30 October 2008;
- “2013 Final Determination”** means the document entitled “Periodic Review 2013: Final determination of Network Rail’s outputs and funding for 2014-19” published by ORR on 31 October 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;
- “Adjusted Sum”** means the amount calculated in accordance with paragraph 8I.3;
- “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;
- “Asset Life”** means the thirty (30) year life of an MS Enhanced Asset of which an MS Deliverable forms part, which runs from the relevant MS Deliverable Facility Charge Date;
- “Backstop Date”** means the date upon which EG3 Phase 1 or EG3 Phase 2 (as appropriate) reaches Stage Gate 5;
- “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;
- “CP4”** means the control period of five years that commenced at 0000 hours on 1 April 2009 and ends at 2359 hours on 31 March 2014;

|                                       |   |
|---------------------------------------|---|
| <b>“DC System”</b>                    | means the direct current system of electricity traction supply on the Network;  |
| <b>“Deed of Grant”</b>                | means the Deed of Grant made on or about 20 December 2013 between the Secretary of State and Network Rail;  |
| <b>“Default Charge”</b>               | means a variable charge calculated in accordance with paragraph 3.3 of Part 2;  |
| <b>“Default Period”</b>               | means the period from the later of: <ul style="list-style-type: none"> <li>(a) the date on which the New Specified Equipment is first used on the Network by the Train Operator; or</li> <li>(b) 1 April 2014,</li> </ul> until the date on which ORR consents to or determines a supplement to the Track Usage Price List under paragraph 9.10 of Part 2 in respect of that New Specified Equipment; |
| <b>“Default Rate”</b>                 | means, in respect of any New Specified Equipment used on the Network by the Train Operator, the corresponding passenger default rate for that type of vehicle set out in the section of the Track Usage Price List entitled “Passenger Variable Usage Charge default rates”;  |
| <b>“Default Train Consist Data”</b>   | means the data listed in Appendix 7C as amended from time to time in accordance with paragraph 10.4 of Part 2;  |
| <b>“Deliverable Financing Charge”</b> | means the interest, calculated at a pre-tax annual rate which is 0.06 in accordance with the ORR's CP4 pre-tax rate, chargeable by Network Rail on the Purchase Price for the MS Deliverables in respect of the period between the dates of payment for the MS Deliverables and the relevant MS Deliverable Facility Charge Date, and compounded at the end of each Relevant Year;                    |
| <b>“Deliverables”</b>                 | means the EG3 Phase 1 Deliverables;   |
| <b>“Delivery Plan”</b>                | means the document, including its supporting documentation, published by Network Rail on or about 31 March 2014 setting out its delivery plan for the period 1 April 2014 – 31 March 2019;  |

|  |  |
|--|--|
| <b>“Efficiency Benefit Share”</b>                            | means the amount determined in accordance with paragraph 5.1 of Part 2;  |
| <b>“EG3 Asset Life”</b>                                      | means in respect of EG3 Phase 1 only, the thirty year life of an EG3 Asset of which a Deliverable forms part which runs from the EG3 Phase 1 Facility Charge Date;   |
| <b>“EG3 Deliverable Financing Charge”</b>                    | means the interest, calculated at a pre-tax annual rate which is 0.06 in accordance with the ORR's CP4 pre-tax rate, chargeable by Network Rail on the Purchase Price for the Deliverables in respect of the period between the date of payment for the Deliverables and the EG3 Phase 1 Timetable Change Date, and compounded at the end of each Relevant Year;   |
| <b>“EG3 Incremental MRR Charge”</b>                          | means each of the Phase 1 Incremental MRR Charge, the Water Eaton Incremental MRR Charge and the Oxford Incremental MRR Charge as calculated in accordance with paragraph 8K;  |
| <b>“EG3 Phase 1 Accrued DFC”</b>                             | has the meaning given in paragraph 8H.1(a);  |
| <b>“EG3 Phase 1 Additional Accrued DFC”</b>                  | has the meaning given in paragraph 8H.1(b);  |
| <b>“EG3 Phase 1 Additional Deliverable Financing Charge”</b> | Means the interest, calculated at a pre-tax annual rate which is 0.06 in accordance with the ORR's CP4 pre-tax rate, chargeable by Network Rail on the Purchase Price for the Deliverables in respect of the period between the EG3 Phase 1 Timetable Change Date, or if later, the dates of payment for the EG3 Phase 1 Deliverables, and the EG3 Phase 1 Facility Charge Date compounded at the end of each Relevant Year; |
| <b>“EG3 Phase 1 Revised Completion Date”</b>                 | means 4th September 2011 or such other date as Network Rail agrees in its absolute discretion;   |
| <b>“EG3 Phase 1 Deliverable”</b>                             | means an EG3 Phase 1 deliverable specified in Schedule 2 of the EG3 Asset Purchase Agreement;  |



|  |  |
|--|--|
| <b>“EG3 Phase 1 Facility Charge”</b>                   | means the charge payable by the Train Operator to Network Rail in respect of the capital cost of an EG3 Phase 1 Deliverable purchased by Network Rail and any associated EG3 Phase 1 Accrued DFC, the total amount of such EG3 Phase 1 Facility Charge being calculated for each Relevant Year in accordance with paragraph 8H of this Schedule 7 (Track Charges); |
| <b>“EG 3 Phase 1 Facility Charge Date”</b>             | means the earlier of: <ul style="list-style-type: none"> <li>(a) the EG3 Phase 1 Revised Completion Date;</li> <li>(b) the date of termination of the EG3 Asset Purchase Agreement; and</li> <li>(c) the date of termination of the EG3 Asset Protection Agreement;</li> </ul>   |
| <b>“EG3 Phase 1 Timetable Change Date”</b>             | means the 22 May 2011;   |
| <b>“Electrification Asset Usage Charge”</b>            | means a charge for electrification asset usage, calculated in accordance with paragraph 8 of Part 2;   |
| <b>“English &amp; Welsh Grant Compensation Amount”</b> | has the meaning ascribed to it in paragraph 3.2 of Part 3A;  |
| <b>“English &amp; Welsh Grant Dilution”</b>            | has the meaning ascribed to it in paragraph 2.1 of Part 3A;  |
| <b>“English &amp; Welsh Grant Dilution Date”</b>       | has the meaning ascribed to it in paragraph 2.2 of Part 3A;  |
| <b>“excluded change”</b>                               | means, in relation to paragraph 2(a) 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;   |
| <b>“Final Contribution Sum Determination Date”</b>     | means the date on which the Water Eaton Final Facility Charge and the Oxford Final Facility Charge are determined pursuant to paragraph 4 of part 3 of Schedule 2 of the Contribution Agreement;   |
| <b>“Fixed Track Charge”</b>                            | means a fixed annual charge, calculated in accordance with paragraph 1 of Part 2;  |
| <b>“Fixed Track Charge Indexation”</b>                 | has the meaning ascribed to it in paragraph 2 of Part 2;   |

|  |  |
|--|--|
| <b>“Geographic Area g”</b>             | 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;  |
| <b>“Grant Amount”</b>                  | has the meaning ascribed to it in paragraph 1.2 of Part 3A;  |
| <b>“GRIP”</b>                          | has the meaning given to it in the EG3 Asset Protection Agreement;   |
| <b>“Gross Tonne Mile”</b>              | 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;  |
| <b>“Incremental MRR Charge”</b>        | has the meaning given in paragraph 8K.3;   |
| <b>“Initial Indexation Factor”</b>     | 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;   |
|  | RPI <sub>2012</sub> means the RPI published or determined with respect to the month of November 2012; and  |
|  | RPI <sub>2013</sub> means the RPI published or determined with respect to the month of November 2013;  |
| <b>“kgtm”</b>                          | means 1000 Gross Tonne Miles;  |
| <b>“kWh”</b>                           | means kilowatt hours;  |
| <b>“List of Capacity Charge Rates”</b> | means the document entitled “List of Capacity Charge Rates” published by Network Rail on or about 20 December 2013 which, for the purposes of this contract, shall be deemed to incorporate any supplements to that document consented to or determined pursuant to paragraph 9.10 of Part 2 of Schedule 7 to this contract; |

|   |   |
|---|---|
| <b>“Material Alliance Agreement”</b>                    | <p>means a legally binding agreement between:</p> <ul style="list-style-type: none"> <li>(a) Network Rail and the Train Operator; or</li> <li>(b) Network Rail, the Train Operator and one or more other train operators; or</li> <li>(c) Network Rail and one or more other train operators,</li> </ul> <p>establishing an alliance under which the parties to such legally binding agreement agree to share risk or reward or both on a REBS Route or part thereof on which the Train Operator operates Services 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;</p> |
| <b>“Metered Train m”</b>                                | <p>means, as the context requires, either:</p> <ul style="list-style-type: none"> <li>(a) a train of a particular type; or</li> <li>(b) a specific train having a train ID,</li> </ul> <p>in either case as specified in Appendix 7D of this Schedule 7 or Appendix 2 or Appendix 4 of the Traction Electricity Rules;</p>  |
| <b>“MS Accrued DFC”</b>                                 | <p>has the meaning given in paragraph 8F.1;</p>   |
| <b>“MS Additional Deliverable”</b>                      | <p>means the Regulatory Asset Base addition as specified in the ORR letter from John Larkinson to Graham Cross of Chiltern Railway Company Limited dated 30 March 2011;</p>   |
| <b>“MS additional Facility Charge Accrued DFC”</b>      | <p>has the meaning given in paragraph 8L.1;</p>   |
| <b>“MS Additional Facility Charge”</b>                  | <p>means the charge payable by the Train Operator to Network Rail in respect of the capital cost of an MS Additional Deliverable purchased by Network Rail and any associated MS Additional Facility Charge Accrued DFC, the total amount of such MS Additional Facility Charge being calculated for each Relevant Year in accordance with paragraph 8L.1 of this Schedule 7 (Track Charges);</p>   |
| <b>“MS Additional Deliverable Facility Charge Date”</b> | <p>means the date upon which an MS Additional Deliverable is Taken into Use as part of an MS Enhanced Asset;</p>  |
| <b>“MS Additional Facility Charge Term”</b>             | <p>has the meaning given to it in paragraph 8L.3(b)(ii)(B);</p>   |

|   |   |
|---|---|
| <b>“MS Deliverable”</b>   | means a deliverable specified in Schedule 3 of the MS Asset Purchase Agreement;   |
| <b>“MS Deliverable Facility Charge Date”</b>                    | means the date upon which an MS Deliverable is Taken into Use as part of an MS Enhanced Asset;  |
| <b>“MS Facility Charge”</b>                                     | means the charge payable by the Train Operator to Network Rail in respect of the capital cost of an MS Deliverable purchased by Network Rail and any associated MS Accrued DFC, the total amount of such MS Facility Charge being calculated for each Relevant Year in accordance with paragraph 8F of this Schedule 7 (Track Charges); |
| <b>“MS Purchase Price”</b>                                      | has the meaning given to it in the MS Asset Purchase Agreement;   |
| <b>“Network Rail Distribution System Loss Factor”</b>           | 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;  |
| <b>“Network Rail Rebate”</b>                                    | has the meaning ascribed to it in paragraph 7.1 of Part 2;  |
| <b>“New Specified Equipment”</b>                                | means a type of railway vehicle not included in the section of the Track Usage Price List entitled “Passenger Variable Usage Charge rates”;   |
| <b>“Notice of Consent”</b>                                      | means a notice given by the ORR to the parties under paragraph 8K.4(g);   |
| <b>“Notice of Determined Relevant Schedule 7 Modifications”</b> | means a notice given by the ORR to the parties under paragraph 8K.4(h)(ii);   |
| <b>“Notice of Procedural Modifications”</b>                     | means a notice given by the ORR to the parties under paragraph 8K.4(l) modifying any aspect of the procedures in paragraph 8K.4;  |
| <b>“On-Train Meter” and “On-Train Metering”</b>                 | have the meanings ascribed to them in paragraph 1.2 of the Traction Electricity Rules;  |
| <b>“ORR’s Criteria”</b>   | means the criteria set out in paragraph 8K.4(k);  |
| <b>“Outperformance Cap”</b>                                     | means the maximum possible amount in pounds sterling that can be attributed to a REBS Outperformance as published by Network Rail in its Delivery Plan;   |

|  |   |
|--|---|
| <b>“Outperformance Sum”</b>            | means the lower of:   |
|  | (a) the Outperformance Cap as indexed in accordance with paragraph 1.11 of Part 3; and  |
|  | (b) 25% of the amount in pounds sterling which ORR, in its annual efficiency and finance assessment of Network Rail, determines in respect of the REBS Outperformance;  |
| <b>“Oxford Contribution Sum”</b>       | means the sum calculated in accordance with paragraph 3 of Part 3 of Schedule 2 of the Contribution Agreement less an amount that is equal to the Wolvercot Tunnel Capital Sum;   |
| <b>“Oxford Facility Charge”</b>        | means the charge payable by the Train Operator to Network Rail in relation to the Oxford Works as determined by reference to the Oxford Contribution Sum, the total amount of such Oxford Facility Charge being calculated for each Relevant Year in accordance with paragraph 8I.2 of this Schedule 7 (Track Charges); |
| <b>“Oxford Facility Charge Date”</b>   | means the earlier of the date upon which the Oxford Services are first to be operated by the Train Operator on the Routes specified in paragraph 2.1(l) of Schedule 2 and the date that is six (6) months from the Oxford Effective Date;   |
| <b>“Oxford Final Contribution Sum”</b> | means the sum calculated in accordance with paragraph 4.3 of Schedule 2 Part 3 of the Contribution Agreement less an amount that is equal to the Wolvercot Tunnel Capital Sum;  |
| <b>“Oxford Final Facility Charge”</b>  | means the charge payable by the Train Operator to Network Rail in relation to the Oxford Works, the total amount of such Oxford Final Facility Charge being calculate for each Relevant Year in accordance with paragraph 8I.5 of the Schedule 7 (Track Charges);   |
| <b>“Oxford Incremental MRR Charge”</b> | means the charge calculated in accordance with paragraph 8K.1(C) of this Schedule 7 (Track Charges);  |
| <b>“Oxford Services“</b>               | means the railway passenger services specified in Tables 2.1(d)(B), 3.1(d)(B), 3.3(d)(B), 4.1(d)(B), 5.1(d)(B), 6.1(d)(B) and 6.2(b)(B) of Appendix 8(b) of Schedule 5;   |

|   |  |
|---|--|
| <b>“Payment Date”</b>                   | has the meaning ascribed to it in paragraph 1.1(b) of Part 3A;   |
| <b>“Phase 1 Incremental MRR Charge”</b> | means the charge calculated in accordance with paragraphs 8K.1(A) of this Schedule 7 (Track Charges);  |
| <b>“Period”</b>                         | has the meaning ascribed to it in Schedule 8;  |
| <b>“Power Factor Correction”</b>        | means the relevant power factor correction as set out in Appendix 2 of the Traction Electricity Rules;   |
| <b>“Purchase Price”</b>                 | has the meaning given to it in the EG3 Asset Purchase Agreement;   |
| <b>“Rebatable Amount”</b>               | has the meaning ascribed to it in paragraph 7.2 of Part 2;   |
| <b>“REBS Outperformance”</b>            | 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 Chapter 19 of the 2013 Final Determination, that Network Rail’s performance has exceeded the performance set in the Route Baseline as indexed in accordance with paragraph 1.10 of Part 3;     |
| <b>“REBS Route”</b>                     | means a route specified in the table in Appendix 7A for the purposes of the Route-Level Efficiency Benefit Share Mechanism;  |
| <b>“REBS Underperformance”</b>          | 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 Chapter 19 of the 2013 Final Determination, that Network Rail’s performance has not achieved the performance set in the Route Baseline as indexed in accordance with paragraph 1.10 of Part 3; |

**“relevant access agreement”** means an access agreement under which any of the following persons obtains permission from Network Rail to use the Network:

- (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 Schedule 7 Modifications”** means:

- (a) the value of the Incremental MRR Charge for each of the EG3 Phase 1 Assets and the EG3 Phase 2 Assets (as appropriate); and
- (b) any modifications to any other provision of the Contract which are necessary as a consequence of any modifications under limb (a) above;

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

**“Route Baseline”** means the baseline value in respect of a REBS Route in Relevant Year t that is published by Network Rail in its Delivery Plan;

**“Route-Level Efficiency Benefit Share”** has the meaning ascribed to it in paragraph 1.1 of Part 3;

|   |   |
|---|---|
| <b>“Route-Level Efficiency Benefit Share Mechanism”</b> | 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 of Part 3;   |
| <b>“route type k”</b>                                   | means route type k as identified by type of electrification (AC (OLE) or DC) in the Track Usage Price List;   |
| <b>“RPI”</b>  | means the General Index of Retail Prices All Items measured by CHAW and published each month, or: <ul style="list-style-type: none"> <li>(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</li> <li>(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;</li> </ul> |
| <b>“Schedule of Fixed Charges”</b>                      | means the document entitled “Schedule of Fixed Charges” published by Network Rail on or about 20 December 2013;   |
| <b>“Service Coded Group”</b>                            | means any Service or collection of Services or Ancillary Movements operating under a service code specified in the List of Capacity Charge Rates and any Ancillary Movements relating to such Services;   |
| <b>“Stage Gate 4”</b>                                   | has the meaning given to it in the EG3 Asset Protection Agreement;  |
| <b>“Stage Gate 5”</b>                                   | means the approval stage reached in accordance with GRIP when approval of detailed design is required, as may be amended from time to time  |
| <b>“Start Date”</b>                                     | means the date upon which EG3 Phase 1 or EG3 Phase 2 (as appropriate) passes Stage Gate 4;  |



|   |   |
|---|---|
| <b>“Taken into Use”</b>                                       | has the meaning given to it in the MS Asset Purchase Agreement;   |
| <b>“tariff band j”</b>  | means the tariff zone and time band in which the train in question is operated;   |
| <b>“Tolerance Factor”</b>                                     | means the relevant Tolerance Factor as set out in Appendix 4 of the Traction Electricity Rules;   |
| <b>“Track Usage Price List”</b>                               | means the document entitled “Track Usage Price List” published by Network Rail on or about 20 December 2013 which, for the purposes of this contract, shall be deemed to incorporate any supplements to that document consented to or determined pursuant to paragraph 9.10 of Part 2 of Schedule 7 to this contract;   |
| <b>“Traction Electricity Charge”</b>                          | means a variable charge for traction current calculated in accordance with paragraph 4 of Part 2;   |
| <b>“Traction Electricity Modelled Consumption Rates List”</b> | means the document entitled “Traction Electricity Modelled Consumption Rates List” published by Network Rail on or about 20 December 2013 and specifying freight and passenger traction electricity modelled consumption rates which, for the purposes of this contract, shall be deemed to incorporate any supplements to that document consented to or determined pursuant to paragraph 9.10 of Part 2 of Schedule 7 to this contract;  |
| <b>“train category i”</b>                                     | <p>means train category i as identified in the relevant section of the Traction Electricity Modelled Consumption Rates List, being either:</p> <p>(a) where there is a modelled consumption rate for a particular passenger vehicle type operating on a particular Train Service Code, the relevant category set out in the table entitled "Passenger Traction Electricity Modelled Consumption Rates for CP5"; or</p> <p>(b) in respect of any other passenger vehicle type not referred to in paragraph (a), the relevant category set out in the table entitled "Generic Traction Electricity Modelled Consumption Rates for CP5";</p> |
| <b>“Train Consist Data”</b>                                   | means the information relating to the number(s) and type(s) of railway vehicle comprised in a train movement;   |

|                                       |  |
|---------------------------------------|--|
| <b>“Train Mile”</b>                   | in relation to a train, means a mile travelled by that train on the Network;   |
| <b>“Train Service Code”</b>           | has the meaning ascribed to it in paragraph 1.1 of Schedule 5;   |
| <b>“Underperformance Cap”</b>         | means the maximum possible amount in pounds sterling that can be attributed to a REBS Underperformance as published by Network Rail in its Delivery Plan;  |
| <b>“Underperformance Sum”</b>         | means the lower of: <ul style="list-style-type: none"> <li>(a) the Underperformance Cap as indexed in accordance with paragraph 1.11 of Part 3; and</li> <li>(b) 10% of the amount in pounds sterling which ORR, in its annual efficiency and finance assessment of Network Rail, determines in respect of the REBS Underperformance;</li> </ul> |
| <b>“Variable Charges”</b>             | means the Capacity Charge, the Default Charge, the Electrification Asset Usage Charge, the Variable Usage Charge and the Traction Electricity Charge;  |
| <b>“Variable Usage Charge”</b>        | means a variable charge, calculated in accordance with paragraph 3.1 of Part 2;  |
| <b>“Vehicle Mile”</b>                 | in relation to a railway vehicle, means a mile travelled by that vehicle on the Network;   |
| <b>“Volume Reconciliation”</b>        | has the meaning ascribed to it in the Traction Electricity Rules;  |
| <b>“Water Eaton Contribution Sum”</b> | means the sum calculated in accordance with paragraph 2 of Part 3 of Schedule 2 of the Contribution Agreement;   |
| <b>“Water Eaton Facility Charge”</b>  | means the charge payable by the Train Operator to Network Rail in relation to the Water Eaton Works as determined by reference to the Water Eaton Contribution Sum, the total amount of such Water Eaton Facility Charge being calculated for each Relevant Year in accordance with paragraph 8I.1 of this Schedule 7 (Track Charges);           |

|   |   |
|---|---|
| <b>“Water Eaton Facility Charge Date”</b>   | means the earlier of the date upon which the Water Eaton Services are first to be operated by the Train Operator on the Routes specified in paragraph 2.1(k) of Schedule 2 and the date that is six (6) months from the Water Eaton Effective Date;                           |
| <b>“Water Eaton Final Facility Charge”</b>  | means the charge payable by the Train Operator to Network Rail in relation to the Water Eaton Works, the total amount of such Water Eaton Final Facility Charge being calculated for each Relevant Year in accordance with paragraph 8I.4 of this Schedule 7 (Track Charges); |
| <b>“Water Eaton Final Contribution Sum”</b> | means the sum calculated in accordance with paragraph 4.3 of Schedule 2 Part 3 of the Contribution Agreement;   |
| <b>“Water Eaton Incremental MRR Charge”</b> | means the charge calculated in accordance with paragraph 8K.1(B) of this Schedule 7 (Track Charges);  |
| <b>“Water Eaton Services”</b>               | Means the railway passenger services specified in Tables 2.1(d)(A), 3.1(d)(A), 3.3(d)(A), 4.1(d)(A), 5.1(d)(A), 6.1(d)(A) and 6.2(b)(A) of Appendix 8(b) of Schedule 5;   |
| <b>“Weekday”</b>                            | has the meaning ascribed to it in paragraph 1.1 of Schedule 5;  |
| <b>“Wolvercot Tunnel Works”</b>             | means the works in relation to Wolvercot tunnel more fully described in the Contribution Agreement at Schedule 3 paragraph 2.2(b);  |
| <b>“Wolvercot Tunnel Facility Charge”</b>   | means the charge payable by the Train Operator to Network Rail in respect of the capital cost for the Wolvercot Tunnel Works the total amount of such charge being calculated for each Relevant Year in accordance with paragraph 8J of this Schedule 7 (Track Charges); and  |
| <b>“Wolvercot Tunnel Capital Sum”</b>       | means the capital cost of the Wolvercot Tunnel Works being [     ].   |

## 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:
- 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, multiplied by the Fixed Track Charge Indexation calculated in accordance with paragraph 2.1; and
  - in respect of any Relevant Year  $t$  commencing on or after 1 April 2015, 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 2.2;
- $V_t$  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

- 2.1 The Fixed Track Charge Indexation in respect of the Relevant Year commencing on 1 April 2014 shall be derived from the following formula:

$$FTCI_{2014} = \text{Initial Indexation Factor}$$

where:

$FTCI_{2014}$  means the Fixed Track Charge Indexation in respect of the Relevant Year commencing on 1 April 2014.

- 2.2 The Fixed Track Charge Indexation in respect of any Relevant Year  $t$  commencing on or after 1 April 2015 shall be derived from the following formula:

$$FTCI_t = \left( 1 + \frac{(RPI_{t-1} - RPI_{2013})}{RPI_{2013}} \right) \bullet \text{Initial Indexation Factor}$$

where:

$FTCI_t$  means the Fixed Track Charge Indexation in Relevant Year  $t$ ;

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

$RPI_{2013}$  means the RPI published or determined with respect to the month of November 2013.

## 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:

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

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:

$RPI_{t-1}$  has the meaning set out in paragraph 2.2 above; and

$RPI_{t-2}$  means the RPI published or determined with respect to the month of 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 vehicle type i, the corresponding variable usage charge rate per Vehicle Mile for that vehicle type i set out in the Track Usage Price List, 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 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

$\Sigma$  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:

$$D_t = \sum D_{nt} \bullet UD_{nt}$$

where:

$D_{nt}$  means the Default Rate for that New Specified Equipment for Relevant Year t which is derived from the following formula:

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

where:

$RPI_{t-1}$  has the meaning set out in paragraph 2.2 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,  $D_{nt}$  shall have, in respect of New Specified Equipment, the corresponding Default Rate for that New Specified Equipment, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year  $D_{nt-1}$  shall have the same value;

$UD_{nt}$  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

$\Sigma$  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:

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

where:

$\Sigma$  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:

$\Sigma$  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 modelled consumption rate:

(a) in kWh per electrified Train Mile in relation to passenger electric multiple units (using the rate for the relevant number of units); and

(b) in kWh per electrified kgm in relation to locomotive-hauled units and all freight traffic,

for train category  $i$  shown in the Traction Electricity Modelled Consumption Rates List, taking into account any Regenerative Braking Discount applied in accordance with the Traction Electricity Rules;

$EF_{gjt}$  means the charge 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 19 of the Traction Electricity Rules; and

$UE_{igt}$  means the actual volume of usage (in electrified Vehicle Miles in relation to passenger electric multiple units or electrified kgm 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:

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

$E_{tmeg}$  is derived from the following formula:

$$E_{tmeg} = \sum [((CME_{mgjt} \bullet PF_m \bullet EF_{gjt}) - (RGB_{mgjt} \bullet PF_m \bullet EF_{gjt})) \bullet (1 + \delta_m)]$$

where:

$\Sigma$  means the summation across all relevant Metered Trains  $m$  (determined in accordance with paragraph 4.1.1 above) and tariff bands  $j$ , as appropriate;

$CME_{mgjt}$  means the consumption of electricity (in kWh) by Metered Trains  $m$  operated by or on behalf of the Train Operator, as



measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g, tariff band j and in Relevant Year t;

$PF_m$  means the Power Factor Correction for the relevant train type for Metered Train m;

$EF_{gjt}$  means the charge 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 19 of the Traction Electricity Rules;

$RGB_{mgjt}$  means the electricity (in kWh) generated by braking by Metered Trains m operated by or on behalf of the Train Operator, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g, tariff band j and in Relevant Year t; and

$\delta_m$  means the Tolerance Factor for the relevant train type for Metered Train m.

#### 4.1.4

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

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

where:

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

$E_{tmugAC}$  is derived from the following formula:

$$E_{tmugAC} = \Sigma [(CME_{mgjtAC} \bullet PF_m \bullet EF_{gjt}) \bullet (1 + \delta_m)] \bullet \lambda_{ACg}$$

where:

$\Sigma$  means the summation across all relevant Metered Trains m (determined in accordance with paragraph 4.1.1 above) and tariff bands j, as appropriate;

$CME_{mgjtAC}$  means the consumption of electricity (in kWh) from the AC System by Metered Trains m operated by or on behalf of the Train Operator, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g, tariff band j and in Relevant Year t;

$PF_m$  means the Power Factor Correction for the relevant train type for Metered Train m;

$EF_{gjt}$  means the charge 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 19 of the Traction Electricity Rules;

$\delta_m$  means the Tolerance Factor for the relevant train type for Metered Train m; and

$\lambda_{ACg}$  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:

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

$E_{tmugDC}$  is derived from the following formula:

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

where:

$\Sigma$  means the summation across all relevant Metered Trains m (determined in accordance with paragraph 4.1.1 above) and tariff bands j, as appropriate;

$CME_{mgjtDC}$  means the consumption of electricity (in kWh) from the DC System by Metered Trains m operated by or on behalf of the Train Operator, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g, tariff band j and in Relevant Year t;

$EF_{gjt}$  means the charge 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 19 of the Traction Electricity Rules;

$\delta_m$  means the Tolerance Factor for the relevant train type for Metered Train m; and

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

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

4.2 (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 4.2(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 4.2(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 4.2(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 4.2(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 4.2(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 4.2(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.

#### **4A Volume and Cost Reconciliation for the Relevant Year ending on 31 March 2014**

- 4A.1 For the purposes of the volume and cost reconciliation to be carried out for the Relevant Year ending on 31 March 2014, the provisions in paragraph 5 (volume and cost reconciliation) of Part 2 of Schedule 7 to this contract (and such definitions and other provisions as are relevant to that paragraph 5) in

force as at that date shall continue to apply to the extent (and only to the extent) necessary to enable the calculation and payment of the supplementary amounts  $S1_t$  and  $S2_t$ .

4A.2 For subsequent Relevant Years, paragraph 18 of the Traction Electricity Rules shall apply.

## 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:

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

where:

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

$Pg_{twdi}$  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:

$$Pg_{twdi} = Pg_{t-1wdi} \cdot \left( 1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right)$$

where:

$RPI_{t-1}$  has the meaning set out in paragraph 2.2 above; and

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

but so that in relation to the Relevant Year  $t$  commencing on 1 April 2014,  $Pg_{twdi}$  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, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year,  $Pg_{t-1wdi}$  shall have the same value;

$Pg_{twei}$  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:

$$Pg_{twei} = Pg_{t-1wei} \cdot \left( 1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right)$$

where:

$RPI_{t-1}$  has the meaning set out in paragraph 2.2 above; and

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

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

$Tg_{twdi}$  means the actual Train Miles run on Weekdays by Services or Ancillary Movements in Service Coded Group  $i$  in the Relevant Year  $t$ ; and

$Tg_{twei}$  means the actual Train Miles run on weekends by Services or Ancillary Movements 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 accordance with paragraph 7.5, derived from the following formula:

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

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 for Relevant Year t; and

$AF_t$  means the Aggregate Fixed Charge in Relevant Year t.

- 7.2 The Rebatable Amount shall be the amount, if any:
- 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;
  - which Network Rail, acting reasonably, considers it appropriate 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
  - which Network Rail notifies as such to ORR within 9 months after the end of each Relevant Year t.
- 7.3 No amount of Track Charges shall be rebated under this paragraph 7 unless ORR has consented to such rebate.
- 7.4 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".
- 7.5 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 7.3.
- 7.6 If, pursuant to paragraph 7.2, Network Rail notifies ORR of the Rebatable amount in respect of Relevant Year t after this contract has expired or has otherwise been terminated then, notwithstanding the expiration or termination of this contract, paragraph 7.5 shall apply.

7.7 If Network Rail has, prior to 31 March 2014 and pursuant to the provisions of this contract 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:

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

where:

$RPI_{t-1}$  has the meaning set out in paragraph 2.2 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 value per electrified Vehicle Mile for the Electrification Asset Usage Charge set out in the Track Usage Price List, 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 on route type k in Relevant Year t operated by or on behalf of the Train Operator.

## 8F Facility Charge

8F.1 From the date upon which Network Rail pays the Train Operator for an MS Deliverable, the Deliverable Financing Charge for that MS Deliverable shall accrue (the **MS Accrued DFC**).

### 8F.2



- (a) During each Relevant Year (and, where relevant, pro-rated for each day of any period of this Contract comprising less than a full Relevant Year) from each relevant MS Deliverable Facility Charge Date, the Train Operator shall pay each MS Facility Charge for each relevant MS Deliverable.
- (b) The MS Accrued DFC for each MS Deliverable shall be paid to Network Rail by the Train Operator as part of the MS Facility Charge in accordance with paragraph 8F.3 from each relevant MS Deliverable Facility Charge Date.

**8F.3** The MS Facility Charge due and payable for an MS Deliverable in Relevant Year t shall be calculated as follows:

- (a) in each Relevant Year (or part year) prior to the relevant MS Deliverable Facility Charge Date, zero; and
- (b) from the relevant MS Deliverable Facility Charge Date, calculated in accordance with the following formula:

$$FC_t = (AC_t + RC_t) \times \left[ 1 + \frac{RPI_{t-1}}{100} \right]$$

where:

- (i) **FC<sub>t</sub>** means an amount of the MS Facility Charge in Relevant Year t;
- (ii) **AC<sub>t</sub>** means the amortisation charge calculated in accordance with the following formula:

$$AC_t = \left[ \frac{FCDValue}{30} \right] \times \left[ \frac{TPP_t}{365} \right]$$

where:

- (A) **FCDValue** means:

$$[DP_{nt} + DFC]$$

where:

- 1) **DP<sub>nt</sub>** means the net amount paid by Network Rail for an MS Deliverable referenced number n in Schedule 3 of the MS Asset Purchase

Agreement in the Relevant Year  $t$ , as may be reduced from time to time following any capital payment to Network Rail by the Train Operator in respect of that MS Deliverable in accordance with the terms of the MS Asset Purchase Agreement; and

- 2) **DFC** means the MS Accrued DFC for an MS Deliverable referenced number  $n$  in Schedule 3 of the MS Asset Purchase Agreement that is not paid to Network Rail prior to the relevant MS Deliverable Facility Charge Date;

(B) **TPP<sub>t</sub>** means:

- 1) in the first year of payment of  $AC_t$ , the number of days from the relevant MS Deliverable Facility Charge Date to the end of Relevant Year  $t$ ; and
- 2) in all subsequent years, the number of days from the start of the Relevant Year to the earlier of:
  - a) the date of expiry of the Asset Life; and
  - b) the end of the Relevant Year  $t$ ;

(iii) **RC<sub>t</sub>** means the return charge derived from the following formula:

$$RC_t = \left( \frac{OB_t + CB_t}{2} \right) \times ROR$$

where:

(A) **OB<sub>t</sub>** means the sum derived from the formulas in paragraphs (1)(a) and (2)(a) below as appropriate;

(B) **CB<sub>t</sub>** means the sum derived from the formulas in paragraphs (1)(b) and (2)(b) below as appropriate;

1) in relation to the Relevant Year in which the relevant MS Deliverable Facility Charge Date occurs:

(a)  $OB_t = DPnt$

(b)  $CB_t = DPnt - AC_t$

2) in relation to each subsequent Relevant Year:

(a)  $OB_t = CB_{t-1}$

(b)  $CB_t = OB_t - AC_t$

(C) **ROR** means:

$$\left[ \frac{AROR \times TPP_t}{365} \right]$$

where:

3) **TPP<sub>t</sub>** means:

a) in the Relevant Year in which the relevant MS Deliverable Facility Charge Date occurs, the number of days from the relevant MS Deliverable Facility Charge Date to the end of the Relevant Year t; and

b) in each subsequent Relevant Year, the number of days from the start of the Relevant Year to the earlier of:

i) the expiry of the Asset Life;  
and

ii) the end of the Relevant Year t;

2) **AROR** means the applicable rate of annual return which is 0.06 in accordance with the ORR's CP4 pre tax rate of return for the investment framework.

- (iv) **RPI<sub>t-1</sub>** means the percentage change (whether of a positive or negative value) between the Retail Prices Index published or determined with respect to November in Relevant Year<sub>t-1</sub> and the index published or determined with respect to November in the Relevant Year before the Relevant Year in which the date that Network Rail pays for an MS Deliverable occurs.

**8G MS Incremental MRR Charge [NOT USED]**

**8H EG3 Phase 1 Facility Charge**

8H.1 (a) From the date upon which Network Rail pays the Train Operator for an EG3 Phase 1 Deliverable up to and including the EG3 Phase 1 Timetable Change Date, the EG3 Deliverable Financing Charge for that EG3 Phase 1 Deliverable shall accrue (the **EG3 Phase 1 Accrued DFC**).

(b) From the day after the EG3 Phase 1 Timetable Change Date or, if later, the date upon which Network Rail pays the Train Operator for an EG3 Phase 1 Deliverable until the EG3 Phase 1 Facility Charge Date, the EG3 Phase 1 Additional Deliverable Financing Charge for that EG3 Phase 1 Deliverable shall accrue (the **EG3 Phase 1 Additional Accrued DFC**).

8H.2

(a) During each Relevant Year (and, where relevant, pro-rated for each day of any period of this Contract comprising less than a full Relevant Year) from the EG3 Phase 1 Facility Charge Date, the Train Operator shall pay each EG3 Phase 1 Facility Charge for each EG3 Phase 1 Deliverable.

(b) The EG3 Phase 1 Accrued DFC and the EG3 Phase 1 Additional Accrued DFC for each EG3 Phase 1 Deliverable shall be paid to Network Rail by the Train Operator as part of the EG3 Phase 1 Facility Charge in accordance with paragraph 8H.3 from the EG3 Phase 1 Facility Charge Date.

8H.3 The EG3 Phase 1 Facility Charge due and payable for an EG3 Phase 1 Deliverable in Relevant Year t shall be calculated as follows:

- (b) in each Relevant Year (or part year) prior to the EG3 Phase 1 Facility Charge Date, zero; and
- (c) from the EG3 Phase 1 Facility Charge Date, calculated in accordance with the following formula:

$$FC_t^1 = (AC_t^1 + RC_t^1 + AC_t^a + RC_t^a) \times \left[ 1 + \frac{RPI_{t-1}}{100} \right]$$

where:

- (i)  $FC_t^1$  means an amount of the EG3 Phase 1 Facility Charge in Relevant Year t;
- (ii)  $AC_t^1$  means the amortisation charge, calculated in accordance with the following formula:

$$AC_t^1 = \left[ \frac{FCDValue}{EG3P1Term} \right] \times \left[ \frac{TPP_t^1}{365} \right]$$

where:

- (A) **FCD Value** means:

$$[DPnt^1 + DFC^1]$$

where:

- 1)  $DPnt^1$  means the net amount paid by Network Rail for an EG3 Phase 1 Deliverable referenced number  $n$  in Schedule 2 of the EG3 Asset Purchase Agreement, as may be reduced from time to time following any capital payment to Network Rail by the Train Operator in respect of that EG3 Phase 1 Deliverable in accordance with the terms of the EG3 Asset Purchase Agreement; and
- 2)  $DFC^1$  means the EG3 Phase 1 Accrued DFC for an EG3 Phase 1 Deliverable referenced number  $n$  in Schedule 2 of the EG3 Asset Purchase

Agreement that is not paid to Network Rail prior to the EG3 Phase 1 Timetable Change Date;

(B) EG3P1 Term means the period (expressed in whole and fractions of a year (rounded to the nearest month) over which the EG3 Phase 1 Facility Charge is paid for, being the period from the EG3 Phase 1 Revised Completion Date to the date 30 years after the EG3 Phase 1 Timetable Change Date;

(C)  $TPP_t^1$  means:

(1) in the first year of payment of  $AC_t^1$  the number of days from the EG3 Phase 1 Facility Charge Date to the end of Relevant Year t; and

(2) in all subsequent years, the number of days from the start of the Relevant Year to the earlier of:

a) the date of expiry of the EG3 Asset Life; and

b) the end of the Relevant Year t;

(iii)  $RC_t^1$  means the return charge derived from the following formula:

$$RC_t^1 = \left( \frac{OB_t^1 + CB_t^1}{2} \right) \times ROR^1$$

where:

(A)  $OB_t^1$  means the sum derived from the formulas in paragraphs (1)(a) and (2)(a) below (as appropriate);

(B)  $CB_t^1$  means the sum derived from the formulas in paragraphs (1)(b) and (2)(b) below (as appropriate);

1) in relation to the Relevant Year in which the EG3 Phase 1 Facility Charge Date occurs:

a)  $OB_t^1 = DPnt^1$

b)  $CB_t^1 = DPnt^1 - AC_t^1$

2) in relation to each subsequent Relevant Year:

a)  $OB_t^1 = CB_{t-1}^1$

b)  $CB_t^1 = OB_t^1 - AC_t^1$

(C) ROR<sup>1</sup> means:

$$\left[ \frac{AROR \times TPP_t^1}{365} \right]$$

where:

1)  $TPP_t^1$  means:

a) in the Relevant Year in which the EG3 Phase 1 Facility Charge Date occurs, the number of days from the EG3 Phase 1 Facility Charge Date to the end of the Relevant Year t; and

b) in each subsequent Relevant Year, the number of days from the start of the Relevant Year to the earlier of:

i) the expiry of the EG3 Asset Life; and

ii) the end of the Relevant Year t;

2) AROR means the applicable rate of annual return which is 0.06 in accordance with the

ORR's CP4 pre-tax rate of return for the investment framework;

- (iv)  $AC_t^a$  means the additional accrued DFC amortisation charge, calculated in accordance with the following formula:

$$AC_t^a = \left[ \frac{ADFC}{ADFC \text{ Term}} \right] \times \left[ \frac{TPP_t^a}{365} \right]$$

where:

- (A) ADFC means the EG3 Phase 1 Additional Accrued DFC for an EG3 Phase 1 Deliverable referenced number  $n$  in Schedule 2 of the EG3 Asset Purchase Agreement that is not paid to Network Rail prior to the EG3 Phase 1 Facility Charge Date;
- (B) ADFC Term means the period (expressed in whole and fractions of a year (rounded to the nearest month)) over which the EG3 Phase 1 Additional Accrued DFC is paid for, being the period from the EG3 Phase 1 Facility Charge Date to 31 December 2021;
- (C)  $TPP_t^a$  means:
- (1) in the first year of payment of  $AC_t^a$  the number of days from the EG3 Phase 1 Facility Charge Date to the end of Relevant Year  $t$ ; and
  - (2) in all subsequent years, the number of days from the start of the Relevant Year to the earlier of:
    - a) the date of expiry of the ADFC Term and
    - b) the end of the Relevant Year  $t$ ;



- (v)  $RC_t^a$  means the additional accrued DFC return charge derived from the following formula:

$$RC_t^a = \left( \frac{OB_t^a + CB_t^a}{2} \right) \times ROR_t^a$$

where:

- (A)  $OB_t^a$  means the sum derived from the formulas in paragraphs (1)(a) and (2)(a) below (as appropriate);

- (B)  $CB_t^a$  means the sum derived from the formulas in paragraphs (1)(b) and (2)(b) below (as appropriate);

- 1) in relation to the Relevant Year in which the EG3 Phase 1 Facility Charge Date occurs:

a)  $OB_t^a = ADFC$

b)  $CB_t^a = ADFC - AC_t^a$

- 2) in relation to each subsequent Relevant Year:

a)  $OB_t^a = CB_{t-1}^a$

b)  $CB_t^a = OB_t^a - AC_t^a$

- (C)  $ROR^a$  means:

$$\left[ \frac{AROR \times TPP_t^a}{365} \right]$$

where:

- 1)  $TPP_t^a$  means:

- a) in the Relevant Year in which the EG3 Phase 1 Facility Charge Date occurs, the number of days from the EG3 Phase 1 Facility Charge Date to the end of the Relevant Year  $t$ ; and
  - b) in each subsequent Relevant Year, the number of days from the start of the Relevant Year to the earlier of:
    - i) the expiry of the ADFC Term; and
    - ii) the end of the Relevant Year  $t$ ;
- 2) AROR means the applicable rate of annual return which is 0.06 in accordance with the ORR's CP4 pre-tax rate of return for the investment framework; and
- (vi)  $RPI_{t-1}$  means the percentage change (whether of a positive or negative value) between the Retail Prices Index published or determined with respect to November in Relevant Year  $t-1$  and the index published or determined with respect to November in the Relevant Year before the Relevant Year in which the date that Network Rail pays for an EG3 Phase 1 Deliverable occurs.

## **8I The EG3 Phase 2 Facility Charges plus the Adjustment Sum**

### **8I.1 The Water Eaton Facility Charge**

- (a) During each Relevant Year (and, where relevant, pro-rated for each day of any period of this Contract comprising less than a full Relevant Year) from the Water Eaton Facility Charge Date until the Final Contribution Sum Determination Date the Train Operator shall pay the Water Eaton Facility Charge.
- (b) The Water Eaton Facility Charge due and payable in Relevant Year  $t$  shall be calculated as follows:
  - (i) in each Relevant Year (or part year) prior to the Water Eaton Facility Charge Date, zero; and
  - (ii) from the Water Eaton Facility Charge Date, calculated in accordance with the following formula:

$$WFC_t = (AC_t + RC_t) \times \left[ 1 + \frac{RPI_{t-1}}{100} \right]$$

where:

$WFC_t$  means an amount of the Water Eaton Facility Charge in Relevant Year  $t$ ;

$AC_t$  means the amortisation charge, calculated in accordance with the following formula:

$$AC_t = \left[ \frac{WCS}{30} \right] \times \left[ \frac{TPP_t}{TAP} \right]$$

where

(A)  $WCS$  is the Water Eaton Contribution Sum;

(B)  $TAP$  is equal to 365, or if February 29 falls during the Relevant Year  $t$ , then 366;

(C)  $TPP_t$  means

(1) in the first year of payment of  $AC_t$  the number of days from the Water Eaton Facility Charge Date to the end of Relevant Year  $t$ ; and

(2) in all subsequent years, the number of days from the start of the Relevant Year to the earlier of:

a) the date which is 30 years after the Water Eaton Facility Charge Date; and

b) the end of the Relevant Year  $t$

$RC_t$  means the return charge derived from the following formula:

$$RC_t^2 = \left( \frac{OB_t + CB_t}{2} \right) \times ROR$$

where

(A)  $OB_t$  means the sum derived from the formulas in paragraphs (1)(a) and (2)(a) below (as appropriate) (being the opening balance for the Relevant Year)

(B)  $CB_t$  means the sum derived from the formulas in paragraphs (1)(b) and (2)(b) below (as appropriate) (being the closing balance for the Relevant Year);

1) in relation to the Relevant Year in which the Water Eaton Facility Charge Date occurs:

a)  $OB_t = WCS$

b)  $CB_t = WCS - AC_t$

2) in relation to each subsequent Relevant Year:

a)  $OB_t = CB_{t-1}$

b)  $CB_t = OB_t - AC_t$

(C)  $ROR$  means

$$\left[ \frac{AROR \times TPP_1^t}{TAP} \right]$$

where

1)  $TPP_1^t$  means

(a) in the Relevant Year in which the Water Eaton Facility Charge Date occurs, the number of days from the Water Eaton Facility Charge Date to the end of the Relevant

Year  $t$ ; and

- (b) in each subsequent Relevant Year, the number of days from the start of the Relevant Year to the earlier of:
  - i) the date which is 30 years after the Water Eaton Facility Charge Date; and
  - ii) the end of the Relevant Year  $t$ ;

2) *AROR* means the applicable pre-tax rate of annual return for the investment framework applicable in respect of the control period commencing 1 April 2014 as determined by the ORR;

(ii) *RPI <sub>$t-1$</sub>*  means the percentage change (whether of a positive or negative value) between the Retail Prices Index published or determined with respect to November in Relevant Year  $t-1$  and the index published or determined with respect to November in the Relevant Year before the Relevant Year in which the Water Eaton Works Completion Certificate is issued.

## 81.2 Oxford Facility Charge

- (a) During each Relevant Year (and, where relevant, pro-rated for each day of any period of this Contract comprising less than a full Relevant Year) from the Oxford Facility Charge Date until the Final Contribution Sum Determination Date the Train Operator shall pay the Oxford Facility Charge.
- (b) The Oxford Facility Charge due and payable in Relevant Year  $t$  shall be calculated as follows:

(i) in each Relevant Year (or part year) prior to the Oxford Facility Charge Date, zero; and

(ii) from the Oxford Facility Charge Date, calculated in accordance with the following formula:

$$OFC_t = (AC_t + RC_t) \times \left[ 1 + \frac{RPI_{t-1}}{100} \right]$$

where:

$OFC_t$  means an amount of the Oxford Facility Charge in Relevant Year  $t$ ;

$AC_t$  means the amortisation charge, calculated in accordance with the following formula:

$$AC_t = \left[ \frac{OCS}{30} \right] \times \left[ \frac{TPP_t}{TAP} \right]$$

where

(A)  $OCS$  is the Oxford Contribution Sum;

(B)  $TAP$  is equal to 365, or if February 29 falls during the Relevant Year  $t$ , then 366;

(C)  $TPP_t$  means

(1) in the first year of payment of  $AC_t$  the number of days from the Oxford Facility Charge Date to the end of Relevant Year  $t$ ; and

- (2) in all subsequent years, the number of days from the start of the Relevant Year to the earlier of:
- a) the date which is 30 years after the Oxford Facility Charge Date; and
  - b) the end of the Relevant Year  $t$

$RC_t$  means the return charge derived from the following formula:

$$RC_t = \left( \frac{OB_t + CB_t}{2} \right) \times ROR$$

where

(A)  $OB_t$  means the sum derived from the formulas in paragraphs (1)(a) and (2)(a) below (as appropriate) (being the opening balance for the Relevant Year)

(B)  $CB_t$  means the sum derived from the formulas in paragraphs (1)(b) and (2)(b) below (as appropriate) (being the closing balance for the Relevant Year);

- 1) in relation to the Relevant Year in which the Oxford

Facility Charge Date occurs:

- a)  $OB_t = OCS$
- b)  $CB_t = OCS - AC_t$

2) in relation to each subsequent Relevant Year:

- a)  $OB_t = CB_{t-1}$
- b)  $CB_t = OB_t - AC_t$

(C) *ROR* means

$$\left[ \frac{AROR \times TPP_1^t}{TAP} \right]$$

where

- 1)  $TPP_1^t$  means
  - (a) in the Relevant Year in which the Oxford Facility Charge Date occurs, the number of days from the Oxford Facility Charge Date to the end of the Relevant Year  $t$ ; and
  - (b) in each subsequent Relevant Year, the number of days from the start of the Relevant Year to the earlier of:
    - i) the date which is 30 years after the Oxford Facility Charge Date; and
    - ii) the end of the Relevant Year  $t$ ;
- 2) *AROR* means the applicable pre-tax rate of annual return for the investment framework applicable in respect of the control period commencing 1 April 2014 as determined by the ORR;



- (ii)  $RPI_{t-1}$  means the percentage change (whether of a positive or negative value) between the Retail Prices Index published or determined with respect to November in Relevant Year  $t-1$  and the index published or determined with respect to November in the Relevant Year before the Relevant Year in which the Oxford Works Completion Certificate is issued.

### 81.3 Adjustment Sum

- (a) On the Final Contribution Sum Determination Date, an adjustment sum shall be determined as follows:

$$\text{Adjustment Sum} = (WEFC + OFC) - (FWFC + FOFC)$$

where:

$WEFC$  is the amount of the Water Eaton Facility Charge paid by the Train Operator to Network Rail pursuant to paragraph 81.1 in respect of the period from the Water Eaton Facility Charge Date until the Final Contribution Sum Determination Date;

$OFC$  is the amount of the Oxford Facility Charge paid by the Train Operator to Network Rail pursuant to paragraph 81.2 in respect of the period from the Oxford Facility Charge Date until the Final Contribution Sum Determination Date;

$FWFC$  is the amount of the Water Eaton Facility Charge that would have been payable by the Train Operator to Network Rail pursuant to paragraph 81.1 in respect of the period from the Water Eaton Facility Charge Date until the Final Contribution Sum Determination Date had the Water Eaton Facility Charge been calculated using the Water Eaton Final

Contribution Sum;

*FOFC*

is the amount of the Oxford Facility Charge that would have been payable by the Train Operator to Network Rail pursuant to paragraph 8I.2 in respect of the period from the Oxford Facility Charge Date until Final Contribution Sum Determination Date had the Oxford Facility Charge been calculated using the Oxford Final Contribution Sum;

- (b) Within 90 days of the determination of the Adjustment Sum pursuant to paragraph 8I.3(a) above, an amount that is equal to the Adjustment Sum shall be paid by the Train Operator to Network Rail where the Adjustment Sum is a negative amount and by Network Rail to Train Operator where the Adjustment Sum is a positive amount.

#### 8I.4 The Water Eaton Final Facility Charge

- (a) During each Relevant Year (and, where relevant, pro-rated for each day of any period of this Contract comprising less than a full Relevant Year) from the Final Contribution Sum Determination Date the Train Operator shall pay the Water Eaton Final Facility Charge.
- (b) The Water Eaton Final Facility Charge due and payable in Relevant Year t shall be calculated as follows:
- (i) in each Relevant Year (or part year) prior to the Final Contribution Sum Determination Date, zero; and
  - (ii) from the Final Contribution Sum Determination Date, calculated in accordance with the following formula:

$$WFFC_t = (WAC_t + RC_t) \times \left[ 1 + \frac{RPI_{t-1}}{100} \right]$$

where:

*WFFC<sub>t</sub>* means an amount of the Water Eaton Final Facility Charge in Relevant Year t;

*WAC<sub>t</sub>* means the amortisation charge, calculated in accordance with the following formula:

$$WAC_t = \left[ \frac{WFS}{30} \right] \times \left[ \frac{TPP_t}{TAP} \right]$$

where

- (A)  $WFS$  is the amount that is equal to the Water Eaton Final Contribution Sum.
- (B)  $TAP$  is equal to 365, or if February 29 falls during the Relevant Year  $t$ , then 366
- (C)  $TPP_t$  means
- (1) in the first year of payment of  $WAC_t$ , the number of days from the Final Contribution Sum Determination Date to the end of Relevant Year  $t$ ; and
  - (2) in all subsequent years, the number of days from the start of the Relevant Year to the earlier of:
    - a) the date which 30 years after the Water Eaton Facility Charge Date; and
    - b) the end of the Relevant Year  $t$

$RC_t$

means the return charge derived from the following formula:

$$RC_t = \left( \frac{OB_t + CB_t}{2} \right) \times ROR$$

where

- (A)  $OB_t$  means the sum derived from the formulas in paragraphs (1)(a) and (2)(a) below (as appropriate) (being the opening balance for the Relevant Year)
- (B)  $CB_t$  means the sum derived from the formulas in paragraphs

(1)(b) and (2)(b) below (as appropriate) (being the closing balance for the Relevant Year);

1) in relation to the Relevant Year in which the Water Eaton Final Facility Charge Date occurs:

a)  $OB_t = WFS$

b)  $CB_t = WFS - AC_t$

2) in relation to each subsequent Relevant Year:

a)  $OB_t = CB_{t-1}$

b)  $CB_t = OB_t - AC_t$

(C) *ROR* means

$$\left[ \frac{AROR \times TPP_1^t}{TAP} \right]$$

where

1)  $TPP_1^t$  means

(a) in the Relevant Year in which the Water Eaton Final Facility Charge Date occurs, the number of days from the Final Contribution Sum Determination Date to the end of the Relevant Year t; and

(b) in each subsequent Relevant Year, the number of days from the start of the Relevant Year to the earlier of:

i) the date which 30 years after the Water Eaton Facility Charge Date; and

- ii) the end of the Relevant Year  $t$ ;
- 2) **AROR** means the applicable pre-tax rate of annual return for the investment framework applicable in respect of the control period commencing 1 April 2014 as determined by the ORR;
- (ii) **RPI<sub>t-1</sub>** means the percentage change (whether of a positive or negative value) between the Retail Prices Index published or determined with respect to November in Relevant Year  $t-1$  and the index published or determined with respect to November in the Relevant Year before the Relevant Year in which the Water Eaton Works Completion Certificate is issued.

### 81.5 Oxford Final Facility Charge

- (a) During each Relevant Year (and, where relevant, pro-rated for each day of any period of this Contract comprising less than a full Relevant Year) from the Final Contribution Sum Determination Date the Train Operator shall pay the Oxford Final Facility Charge.
- (b) The Oxford Final Facility Charge due and payable in Relevant Year  $t$  shall be calculated as follows:
- (i) in each Relevant Year (or part year) prior to the Oxford Final Facility Charge Date, zero; and
  - (ii) from the Final Contribution Sum Determination Date, calculated in accordance with the following formula:

$$OFFC_t = (AC_t + RC_t) \times \left[ 1 + \frac{RPI_{t-1}}{100} \right]$$

where:

$OFFC_t$  means an amount of the Oxford Final Facility Charge in Relevant Year  $t$ ;

$AC_t$  means the amortisation charge, calculated in accordance with the following formula:

$$AC_t = \left[ \frac{OFS}{30} \right] \times \left[ \frac{TPP_t}{TAP} \right]$$

where

- (A)  $OFS$  is the amount that is equal to the Oxford Final Contribution Sum;
- (B)  $TAP$  is equal to 365, or if February 29 falls during the Relevant Year  $t$ , then 366;
- (C)  $TPP_t$  means
- (1) in the first year of payment of  $AC_t$  the number of days from the Oxford Final Facility Charge Date to the end of Relevant Year  $t$ ; and
  - (2) in all subsequent years, the number of days from the start of the Relevant Year to the earlier of:
    - a) the date which is 30 years after the Oxford Facility Charge Date; and
    - b) the end of the Relevant Year  $t$

$RC_t$  means the return charge derived from the following formula:

$$RC_t = \left( \frac{OB_t + CB_t}{2} \right) \times ROR$$

where

(A)  $OB_t$  means the sum derived from the formulas in paragraphs (1)(a) and (2)(a) below (as appropriate) (being the opening balance for the Relevant Year)

(B)  $CB_t$  means the sum derived from the formulas in paragraphs (1)(b) and (2)(b) below (as appropriate) (being the closing balance for the Relevant Year);

1) in relation to the Relevant Year in which the Oxford Facility Charge Date occurs:

a)  $OB_t = OFS$

b)  $CB_t = OFS - AC_t$

2) in relation to each subsequent Relevant Year:

a)  $OB_t = CB_{t-1}$

b)  $CB_t = OB_t - AC_t$

(C)  $ROR$  means

$$\left[ \frac{AROR \times TPP_1^t}{TAP} \right]$$

where

1)  $TPP_1^t$  means

(a) in the Relevant Year in which the Oxford Facility Charge Date occurs, the number of days from the Oxford Facility Charge Date to the end of the Relevant Year  $t$ , and

(b) in each subsequent Relevant Year, the number of days from the start of the Relevant Year to the earlier of:

i) the date which is 30 years after the Oxford Facility Charge Date; and

ii) the end of the Relevant Year  $t$ ;

2) *AROR* means the applicable pre-tax rate of annual return for the investment framework applicable in respect of the control period commencing 1 April 2014 as determined by the ORR;

(ii) *RPI<sub>t-1</sub>* means the percentage change (whether of a positive or negative value) between the Retail Prices Index published or determined with respect to November in Relevant Year<sub>t-1</sub> and the index published or determined with respect to November in the Relevant Year before the Relevant Year in which the Oxford Works Completion Certificate is issued.”

## 8J Wolvercot Tunnel Facility Charge

8J.1 During each Relevant Year (and, where relevant, pro-rated for each day of any period of this Contract comprising less than a full Relevant Year) from the Oxford Facility Charge Date until the end of the Contract, the Train Operator shall pay each Wolvercot Tunnel Facility Charge for the Wolvercot Tunnel Works.

8J.1 The Wolvercot Tunnel Facility Charge due and payable for the Wolvercot Tunnel Works in each Relevant Year  $t$  shall be calculated as follows:

(a) in each Relevant Year (or part year) prior to the Oxford Facility Charge Date, zero; and



- (b) from the Oxford Facility Charge Date, calculated in accordance with the following formula:

$$WOCT_t = (AC_t + RC_t) \times \left[ 1 + \frac{RPI_{t-1}}{100} \right]$$

where:

$WOCT_t$  means an amount of the Wolvercot Tunnel Facility Charge in Relevant Year  $t$ ;

$AC_t$  means the amortisation charge, calculated in accordance with the following formula:

$$AC_t = \left[ \frac{WOCTS}{10} \right] \times \left[ \frac{TPP_t}{TAP} \right]$$

where

(A)  $WOCTS$  is the amount that is equal to the Wolvercot Tunnel Capital Sum;

(B)  $TAP$  is equal to 365, or if February 29 falls during the Relevant Year  $t$ , then 366;

(C)  $TPP_t$  means

- (1) in the first year of payment of  $AC_t$  the number of days from the Oxford Facility Charge Date to the end of Relevant Year  $t$ , and
- (2) in all subsequent years, the number of days from the start of the Relevant Year to the earlier of:
  - a) the date which is 10 years after the Oxford Facility Charge Date; and
  - b) the end of the Relevant Year  $t$

$RC_t$  means the return charge derived from the following

formula:

$$RC_t = \left( \frac{OB_t + CB_t}{2} \right) \times ROR$$

where

(A)  $OB_t$  means the sum derived from the formulas in paragraphs (1)(a) and (2)(a) below (as appropriate) (being the opening balance for the Relevant Year)

(B)  $CB_t$  means the sum derived from the formulas in paragraphs (1)(b) and (2)(b) below (as appropriate) (being the closing balance for the Relevant Year);

1) in relation to the Relevant Year in which the Oxford Facility Charge Date occurs:

a)  $OB_t = WOCTS$

b)  $CB_t = WOCTS - AC_t$

2) in relation to each subsequent Relevant Year:

a)  $OB_t = CB_{t-1}$

b)  $CB_t = OB_t - AC_t$

(C)  $ROR$  means

$$\left[ \frac{AROR \times TPP_1^t}{TAP} \right]$$

where

1)  $TPP_1^t$  means

(a) in the Relevant Year in which the Oxford Facility Charge Date occurs, the number of days from the Oxford Facility Charge

Date to the end of the Relevant Year  $t$ ; and

(b) in each subsequent Relevant Year, the number of days from the start of the Relevant Year to the earlier of:

i) the date which is 10 years after the Oxford Facility Charge Date; and

ii) the end of the Relevant Year  $t$ ;

2) **AROR** means the applicable pre-tax rate of annual return for the investment framework applicable in respect of the control period commencing 1 April 2014 as determined by the ORR;

(ii)  **$RPI_{t-1}$**  means the percentage change (whether of a positive or negative value) between the Retail Prices Index published or determined with respect to November in Relevant Year  $t-1$  and the index published or determined with respect to November in the Relevant Year before the Relevant Year in which the Oxford Works Completion Certificate is issued.

## **8K EG3 Incremental MRR Charge**

8K.1 During each Relevant Year (and, where relevant, pro-rated for each day of any period of this Contract comprising less than a full Relevant Year) from:

(i) in respect to any EG3 Asset relating to EG3 Phase 1, the date that such EG3 Asset is Taken into Use until the date that is thirty years after such EG3 Asset is Taken into Use;

- (ii) in respect of any Water Eaton Works, the Water Eaton Facility Charge Date until the date that is thirty years after the Water Eaton Facility Charge Date; and
- (iii) in respect of any Oxford Works, the Oxford Facility Charge Date until the period that is thirty years after the Oxford Facility Charge Date,

Network Rail shall levy, and the Train Operator shall pay, each EG3 Incremental MRR Charge as calculated in accordance with the following formulas:

(A) in relation to EG3 Phase 1:

$$IOM_t = X \times \left[ 1 + \frac{RPI_{t-1}}{100} \right]$$

where:

*IOM<sub>t</sub>*

means the amount of the Phase 1 Incremental MRR Charge payable in Relevant Year t;

*X*

means the Incremental MRR Charge based on the EG3 Assets in respect of EG3 Phase 1 that are Taken into Use as calculated in accordance with paragraphs 8K.3 and 8K.4; and

*RPI<sub>t-1</sub>*

means the percentage change (whether positive or negative value) between the between the Retail Prices Index published or determined with respect to November in Relevant Year<sub>t-1</sub> and the index published or determined with respect to November in the Relevant Year before the Relevant Year in which the first EG3 Asset relating to EG3 Phase 1 is Taken

into Use;

(B) in relation to the Water Eaton Works:

$$WIM_t = X_w \times \left[ 1 + \frac{RPI_{t-1}}{100} \right]$$

where:

$WIM_t$  means the amount of the Water Eaton Incremental MRR Charge payable in Relevant Year t;

$X_w$  means the Incremental MRR Charge relating to the Water Eaton Works as calculated in accordance with paragraphs 8K.3 and 8K.4; and

$RPI_{t-1}$  means the percentage change (whether positive or negative value) between the between the Retail Prices Index published or determined with respect to November in Relevant Year<sub>t-1</sub> and the index published or determined with respect to November in the Relevant Year before the Relevant Year in which the Water Eaton Completion Certificate is issued;

(C) in relation to the Oxford Works:

$$OIM_t = X_o \times \left[ 1 + \frac{RPI_{t-1}}{100} \right]$$

where:

$OIM_t$  means the amount of the Oxford Incremental MRR Charge payable in Relevant Year t;

$X_o$  means the Incremental MRR Charge relating to the Oxford Works as calculated in accordance with paragraphs 8K.3 and 8K.4; and

$RPI_{t-1}$  means the percentage change (whether positive or negative value) between the between the Retail Prices Index published or determined with respect to November in Relevant Year<sub>t-1</sub> and the index published or determined with respect to November in the Relevant Year before the Relevant Year in which the Oxford Completion Certificate is issued;

8K.2 The first Phase 1 Incremental MRR Charge shall be made in respect of the Period in which the first Taken into Use of an EG3 Asset relating to EG3 Phase 1 falls; and

8K.3 In relation to the EG3 Assets, the Incremental MRR Charge shall be agreed between the parties and approved by the ORR in accordance with the provisions of paragraph 8K.4.

8K.4 For each of EG3 Phase 1 and EG3 Phase 2:

(a) the Contract shall have effect:

(i) with the Relevant Schedule 7 Modifications; and

(ii) from the date,

specified by the ORR in a Notice of Consent or Notice of Determined Relevant Schedule 7 Modifications;

(b) a Notice of Consent or Notice of Determined Relevant Schedule 7 Modifications may have retrospective effect;

- (c) in respect of the Relevant Schedule 7 Modifications:
  - (i) the parties shall, within the period between the relevant Start Date and the relevant Backstop Date, meet and negotiate and attempt to agree the Relevant Schedule 7 Modifications;
  - (ii) each party shall ensure that:
    - (A) such negotiations are conducted in a timely, efficient and economical manner, with appropriate recourse to professional advice; and
    - (B) the ORR's Criteria are applied in the negotiations; and
    - (C) the negotiations shall not continue after the relevant Backstop Date;
- (d) if the parties fail to agree the Relevant Schedule 7 Modifications on or before the relevant Backstop Date:
  - (i) the matter shall be submitted to arbitration in accordance with Part C of the Access Dispute Resolution Rules; and
  - (ii) Network Rail shall within five (5) Working Days notify the ORR in writing of such submission to arbitration;
- (e) if a matter is referred to arbitration under paragraph 8K.4(d), the arbitrator shall be required by the parties to:
  - (i) determine the Relevant Schedule 7 Modifications in accordance with the ORR's Criteria and make such orders in his award as he considers necessary to establish the requisite Relevant Schedule 7 Modifications;
  - (ii) provide reasons for his award; and
  - (iii) state the extent to which and ways in which the ORR's Criteria have been applied in determining the Relevant Schedule 7 Modifications and, in any case where they have not been applied, give the reasons;
- (f) not later than seven (7) days after the relevant Backstop Date or the conclusion of arbitration, as the case may be, the Relevant Schedule 7 Modifications shall be sent by the parties to the ORR for its consent, together with a statement, signed by or on behalf of both parties:
  - (i) stating the reasons for the Relevant Schedule 7 Modifications;

- (ii) stating the extent to which and ways in which the ORR's Criteria have been applied in determining the Relevant Schedule 7 Modifications and, in any case where they have not been applied, the reasons; and
  - (iii) giving such other information as the ORR may have requested;
- (g) if the ORR is satisfied with the Relevant Schedule 7 Modifications submitted to it pursuant to paragraph 8K.4(f), and it gives a notice to that effect, such modifications shall have effect as provided for in paragraph 8K.4(a);
- (h) if the ORR gives notice to the parties that it is not satisfied with any or all of the proposed Relevant Schedule 7 Modifications, it may:
  - (i) require the parties again to follow the procedure or any part of the procedure set out in paragraphs 8K.4(c) to 8K.4(f) for agreeing the Relevant Schedule 7 Modifications (with such modifications as to time limits as it specifies), in which case they shall do so; or
  - (ii) following such consultation with the parties as it considers necessary, determine the Relevant Schedule 7 Modifications itself and give a notice specifying such Relevant Schedule 7 Modifications;
- (i) within ten (10) Working Days of the date of any notice referred to in paragraph 8K.4(a) the parties shall make such adjustments to the payments made under this paragraph 8K (EG3 Incremental MRR Charge) as are necessary to ensure that the parties are in the financial position in respect of the Relevant Schedule 7 Modifications as if those modifications had had effect from the date specified in the notice given under paragraph 8K.4(a);
- (j) if the ORR gives notice to either or both of the parties that it requires from either or both of them information in relation to the Relevant Schedule 7 Modifications or proposed Relevant Schedule 7 Modifications:
  - (i) the party of whom the request is made shall provide the requested information promptly and to the standard required by the ORR; and
  - (ii) if that party fails timeously to do so, the 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;

- (k) any Relevant Schedule 7 Modifications shall:
  - (i) take account, where relevant, of the 'Criteria and procedures for the approval of track access contracts' published by the ORR and dated 21 August 2009; and
  - (ii) take account of the duties of the ORR under section 4 of the Act;
- (l) in relation to the procedure in paragraphs 8K.4(c) – 8K.4(i) for the Relevant Schedule 7 Modifications (including the times within which any step or thing requires to be done or achieved):
  - (i) such procedure may be modified by the ORR by a Notice of Procedural Modifications; but
  - (ii) the ORR may only give a Notice of Procedural Modifications if it is satisfied that it is necessary or expedient to do so in order to promote or achieve the objectives specified in section 4 of the Act or if it is requested by both parties;
- (m) in this paragraph 8K.4:
  - (i) where provision is made for a date to be specified or stated by the ORR, it may, instead of specifying or stating a date, specify or state a method by which a date is to be determined, and references to dates shall be construed accordingly; and
  - (ii) any notice given by the ORR which states a date may state different dates for different purposes;
- (n) not later than twenty eight (28) days after the giving of a Notice of Consent or Notice of Determined Relevant Schedule 7 Modifications, Network Rail shall prepare and send to the Train Operator and the ORR a copy of this Contract containing such Relevant Schedule 7 Modifications; and
- (o) nothing in this paragraph 8K.4 affects the right of either party to approach and obtain from the ORR guidance in relation to the Relevant Schedule 7 Modifications.

## **8L MS Additional Facility Charge**

8L.1 From the date upon which Network Rail pays the Train Operator for an MS Additional Facility Deliverable, the MS Deliverable Financing Charge for that MS Deliverable shall accrue (the **MS Additional Accrued DFC**).

8L.2

(a) During each Relevant Year (and, where relevant, pro-rated for each day of any period of this Contract comprising less than a full Relevant Year) from the MS Additional Deliverable Facility Charge Date, the Train Operator shall pay the MS Additional Facility Charge.

(b) The MS Accrued DFC for the MS Additional Facility Charge shall be paid to Network Rail by the Train Operator in accordance with paragraph 8L.3.

8L.3 The MS Additional Facility Charge due and payable for an MS Additional Deliverable in Relevant Year  $t$  shall be calculated as follows:

(a) in each Relevant Year (or part year) prior to the relevant MS Additional Facility Charge Date, zero; and

(b) from the MS Additional Facility Charge Date, calculated in accordance with the following formula:

$$FC_t^m = (AC_t^m + RC_t^m) x \left[ 1 + \frac{RPI_{t-1}}{100} \right]$$

where:

(i)  $FC_t^m$  means an amount of the MS Additional Facility Charge in Relevant Year  $t$ ;

(ii)  $AC_t^m$  means the amortisation charge, calculated in accordance with the following formula:

$$AC_t^m = \left[ \frac{FCDValue}{MSACTerm} \right] x \left[ \frac{TPP_t^m}{365} \right]$$

where:

(A) **FCDValue** means:

$$[DPnt^m + DFC^m]$$

where:

- 1)  $DPnt^m$  means the net amount paid by Network Rail for the MS Additional Deliverable referenced in Schedule 3 of the MS Asset Purchase Agreement, as may be reduced from time to time following any capital payment to Network Rail by the Train Operator in respect of that MS Additional Deliverable in accordance with the terms of the MS Asset Purchase Agreement; and
  - 2)  $DFC^m$  means the MS Additional Facility Charge Accrued DFC for the MS Additional Deliverable referenced number in Schedule 3 of the MS Asset Purchase Agreement that is not paid to Network Rail prior to the MS Additional Facility Charge Date;
- (B) MSAC Term means the period (expressed in whole and fractions of a year (rounded to the nearest month)) over which the MS Additional Deliverable is paid for, being the period from the MS Additional Facility Charge Date to 31 December 2021;
- (C)  $TPP_t^m$  means:
- (1) in the first year of payment of  $AC_t^m$  the number of days from the MS Additional Facility Charge Date to the end of Relevant Year t; and
  - (2) in all subsequent years, the number of days from the start of the Relevant Year to the earlier of:

a) the date of expiry of the MSAC Term;  
and

b) the end of the Relevant Year t;

(iii)  $RC_t^m$  means the return charge derived from the following formula

$$RC_t^m = \left( \frac{OB_t^m + CB_t^m}{2} \right) \times ROR_t^m$$

where:

(A)  $OB_t^m$  means the sum derived from the formulas in paragraphs (1)(a) and (2)(a) below (as appropriate);

(B)  $CB_t^m$  means the sum derived from the formulas in paragraphs (1)(b) and (2)(b) below (as appropriate);

1) in relation to the Relevant Year in which the MS Additional Facility Charge Date occurs:

a)  $OB_t^m = DPnt^m$

b)  $CB_t^m = DPnt^m - AC_t^m$

2) in relation to each subsequent Relevant Year:

a)  $OB_t^m = CB_{t-1}^m$

b)  $CB_t^m = OB_t^m - AC_t^m$

(C)  $ROR^m$  means:

$$\left[ \frac{AROR \times TPP_t^m}{365} \right]$$

where:

1)  $TPP_t^m$  means:

- a) in the Relevant Year in which the MS Additional Facility Charge Date occurs, the number of days from the MS Additional Facility Charge Date to the end of the Relevant Year  $t$ ; and
  - b) in each subsequent Relevant Year, the number of days from the start of the Relevant Year to the earlier of:
    - i) the expiry of the MSAC Term; and
    - ii) the end of the Relevant Year  $t$ ;
- 2) AROR means the applicable rate of annual return which is 0.06 in accordance with the ORR's CP4 pre-tax rate of return for the investment framework; and
- (iv)  $RPI_{t-1}$  means the percentage change (whether of a positive or negative value) between the Retail Prices Index published or determined with respect to November in Relevant Year  $t-1$  and the index published or determined with respect to November in the Relevant Year before the Relevant Year in which the date that Network Rail pays for the MS Additional Deliverable occurs.

**9 Bilateral supplements to the List of Capacity Charge Rates, Traction Electricity Modelled 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 where reasonably practicable inform Network Rail in writing 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 Train Operator shall pay Network Rail the relevant Default Charge during the Default Period.
- 9.3 No supplement to the Traction Electricity Modelled 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 ORR.

- 9.4 Either the Train Operator or Network Rail shall be entitled to propose that:
- (a) the Traction Electricity Modelled Consumption Rates List be supplemented as necessary to include a rate in respect of a new train category;
  - (b) the Track Usage Price List be supplemented as necessary to include a new vehicle type and corresponding rate; or
  - (c) the List of Capacity Charge Rates be supplemented as necessary to take account of changes in the pattern and number of Services or to include rates in respect of new 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 of the proposal in reasonable detail and the reasons for it. The parties shall thereafter seek to agree 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 reasonably 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, at any point thereafter either party shall be entitled to refer the matter to ORR for determination.
- 9.9 Following a reference to ORR under paragraph 9.8, the parties shall, within such timescales as ORR may reasonably specify, furnish ORR with such information and evidence as ORR shall reasonably 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.
- 9.10 ORR may:
- (a) consent to any supplement that is agreed by the parties and submitted to it under paragraph 9.7, or following consultation with the parties, determine that a different supplement should apply; or
  - (b) following a referral to ORR under paragraph 9.8, determine the supplement that should apply.
- 9.11 In the case of a supplement to the Traction Electricity Modelled 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, provided that:

- (a) in the case of a supplement to the Traction Electricity Consumption Rates List, such date shall not be a date falling prior to the start of the Relevant Year in which ORR consented to or determined the supplement; and
  - (b) in the case of a supplement to the List of Capacity Charge Rates, such date shall not be a date falling prior to 1 April 2014.
- 9.12 In the case of a supplement to the Track Usage Price List, the supplement shall have retrospective effect from the first day of the Default Period.
- 9.13 Following ORR's consent or determination under paragraph 9.10 Network Rail shall:
- (a) apply the supplement from the date in accordance with paragraph 9.11 or 9.12 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. In the case of a supplement to the Track Usage Price List this will reflect the difference between the amount paid by the Train Operator for the Default Charge during the Default Period and the amount that it would have paid during the Default Period in respect of the Variable Usage Charge had the supplement been in place at the time the Train Operator first used the relevant railway vehicle on the Network; 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 to which Network Rail is a party.

## **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;
  - (v) the Default Charge; and
  - (vi) 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.
- (d) Not used.
- (e) The Train Operator shall pay or procure the payment to Network Rail of that part of the MS Facility Charge and the MS Additional Facility Charge due and payable in respect of any Period as invoiced by Network Rail on or after expiry of each such Period within twenty eight (28) days of the invoice date or ten (10) Working Days after the end of the Period, whichever is later.
- (f) The Train Operator shall pay or procure the payment to Network Rail of that part of the EG3 Phase 1 Facility Charge, the Water Eaton Facility Charge, the Oxford Facility Charge, the Water Eaton Final Facility Charge, the Oxford Final Facility Charge and the Wolvercot Tunnel Facility Charge due and payable in respect of any Period as invoiced by Network Rail on or after the expiry of each such Period within twenty-eight (28) days of the invoice date or ten (10) Working Days after the end of the Period, whichever is later.

## 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 4A of this Part 2 or 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:

$$O_t = \left[ \frac{V_t + D_t}{AV_t} \right] \cdot \text{Outperformance Sum}$$

and

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

$$U_t = \left[ \frac{V_t + D_t}{AV_t} \right] \cdot \text{Underperformance Sum}$$

where:

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

- $D_t$  means the Default Charge payable by the Train Operator in respect of the REBS Route for Relevant Year  $t$ ;
- $V_t$  means the Variable Usage Charge payable by the Train Operator in respect of the REBS Route for Relevant Year  $t$ ;
- $AV_t$  means the aggregate Variable Usage Charge and Default Charge payable 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  $V_t$  and  $D_t$  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 and 9 of the variable charge payable 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 and 9 of the variable charge under paragraph 2.2.1 of Schedule 7 of each relevant train operator's access agreement); and
- $U_t$  means the amount that is payable by the Train Operator to Network Rail in respect of REBS Underperformance on 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 by or to the Train Operator, in respect of that REBS Route:
- (a) 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; and
  - (b) where Network Rail entered into a Material Alliance Agreement during the course of Relevant Year  $t$  and the Train Operator issued an Opt-out Notice pursuant to paragraph 1.4(b) in Relevant Year  $t+1$ , in respect of any Period in Relevant Year  $t$  commencing on or after the date of the Material Alliance Agreement.

*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 July 2014.

1.4 If any 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:
  - (i) on one or more REBS Routes, services for the carriage of passengers by railway pursuant to a new franchise agreement. Where the Train Operator was the incumbent franchisee immediately prior to the new franchise agreement being entered into then, for the purposes of this provision, the Train Operator shall be deemed to have commenced operating services on a REBS Route under the new franchise agreement even if it provided them as the incumbent franchisee; or
  - (ii) on one or more REBS Routes on which it did not previously operate services, services for the carriage of passengers or freight by railway as a result of entering into a new access agreement or otherwise.

In either of circumstances (i) or (ii) above, 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 ORR and the Train Operator that it has entered into an agreement which is, in its opinion, a Material Alliance Agreement and ORR confirms in writing that it agrees. In these circumstances the Opt-out Notice may only be served in respect of the REBS Route to which the Material Alliance Agreement applies.

In the circumstances described in paragraphs 1.4(a) and (b), 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 ORR and the Train Operator that it has entered into an agreement which it considers to be a Material Alliance Agreement within 14 days after entering into it.

1.6 Network Rail shall provide such information, excluding information which is subject to a legally binding duty or obligation of confidentiality (whether arising under the terms of any contract or otherwise), to the Train Operator as the Train Operator may reasonably request in order to determine whether to serve an Opt-out Notice. Network Rail shall provide such information within 14 days of the request, unless not reasonably practicable to do so, in which case it shall provide the information as soon as reasonably practicable.

*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 paragraphs 1.2 and 1.8, such payment shall be made to the party entitled to the payment by the other party as a lump sum payment within 56 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 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.

*Route Baseline Indexation*

1.10 The indexed Route Baseline in respect of Relevant Year t shall be derived from the following formula:

$$RBI_t = \text{Route Baseline} \cdot \left( 1 + \frac{(RPI_t - RPI_{2012})}{RPI_{2012}} \right)$$

where:

$RBI_t$  means the indexed Route Baseline in respect of Relevant Year t;

$RPI_t$  means the RPI published or determined with respect to the month of November in Relevant Year t; and

$RPI_{2012}$  means the RPI published or determined with respect to November 2012.

*Outperformance Cap and Underperformance Cap Indexation*

1.11 The indexed Outperformance Cap and Underperformance Cap in respect of Relevant Year t shall be derived from the following formula:

(a) in the case of the Outperformance Cap:

$$OCI_t = OC_t \cdot \left( 1 + \frac{(RPI_t - RPI_{2012})}{RPI_{2012}} \right)$$

(b) in the case of the Underperformance Cap:

$$UCI_t = UC_t \cdot \left( 1 + \frac{(RPI_t - RPI_{2012})}{RPI_{2012}} \right)$$

where:

$OCI_t$  means the indexed Outperformance Cap in respect of Relevant Year t;

$OC_t$  means the Outperformance Cap in respect of Relevant Year t;

$UCI_t$  means the indexed Underperformance Cap in respect of Relevant Year t;

$UC_t$  means the Underperformance Cap in respect of Relevant Year t;

$RPI_t$  has the meaning set out in paragraph 1.10 above; and

$RPI_{2012}$  has the meaning set out in paragraph 1.10 above.

## **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 does not, for any reason, 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 does not 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 carriage 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:

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

where:

GC means the English & Welsh Grant Compensation Amount;

GA<sub>p</sub> 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<sub>t</sub> has the meaning ascribed to it in paragraph 1 of Part 2; and

AF<sub>t</sub> means the Aggregate Fixed Charge in Relevant Year t.

## **PART 4: NOT USED**

## **PART 5: ADDITIONAL CHARGES**

NOT USED

## **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 any Default 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  $S2_{tw}$  and/or any Charge Correction Amount 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;
- (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; and
- (l) the amount of any sum  $S1_t$  and/or  $S2_t$  payable as provided in paragraph 4A of Part 2.

## **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 MECHANISM  
OPT-OUT NOTICE**

**[Name of train operator representative]**

**[Position]**

Telephone: [xxx]

E-mail: [xxx]

[Date]

[Enter name of person specified in paragraph 1 of Schedule 1 to the contract]

Network Rail  
Kings Place  
90 York Way  
London  
N1 9AG

Dear [Enter name of person specified in paragraph 1 of Schedule 1 to the contract]

**Opt-out from the Route-Level Efficiency Benefit Share (REBS) Mechanism**

This is an Opt-out Notice in respect of the REBS Mechanism in Schedule 7 of the track access contract between Network Rail Infrastructure Limited and [Enter train operator name here], dated [insert date of track access contract] (“the contract”).

[Enter train operator name here] hereby exercises its right to opt-out of the REBS Mechanism in respect of the REBS Routes identified in Table 1 below, pursuant to {delete as appropriate [paragraph 1.3 of Part 3 to Schedule 7] or [paragraph 1.4 of Part 3 to Schedule 7]} to the contract.

**Table 1: REBS opt-out matrix**

| <b>Route</b>      | <b>Route definition</b>   | <b>Opt-out<br/>(please mark with an<br/>'x')</b> |
|-------------------|---|--|
| Anglia            | As defined in Network Rail's Delivery Plan supporting information |  |
| East Midlands     |   |  |
| Kent              |   |  |
| London North East |   |  |
| London North West |   |  |
| Scotland          |   |  |
| Sussex            |   |  |

| Route   | Route definition | Opt-out<br>(please mark with an<br>'x') |
|---------|------------------|---|
| Wales   |                  |   |
| Wessex  |                  |   |
| Western |                  |   |

I have sent a copy of this notice to the Director of Railway Markets and Economics at the Office of Rail Regulation and to the Head of Regulatory Policy at Network Rail [and any other person at Network Rail entitled to a copy as set out in paragraph 1 of Schedule 1 to the contract].

Yours faithfully

**[Name of train operator representative]**

## APPENDIX 7C – DEFAULT TRAIN CONSIST DATA



**APPENDIX 7D**

**"METERED TRAINS M" FOR THE PURPOSES OF PARAGRAPH 4.1.1 OF PART 2**

| <b>Train Type</b> | <b>Train ID</b>   | <b>Traction Type</b> |
|-------------------|---|----------------------|
|                   | <i>[This column should include the full train ID. If all trains of the relevant train type used by the Train Operator are metered, this column should say "All".]</i> |                      |



**Appendix 5 to Annex 2**

**Schedule 8**

## SCHEDULE 8: PERFORMANCE REGIME

### 1 Interpretation

#### 1.1 Definitions

In this Schedule 8 and its Appendices, unless the context otherwise requires:

- “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 2200 hours on the day prior to that day, and which is applicable to the Trains;
- “Bi-annual Timetable”** means in respect of any day or any Period the Passenger Timetable commencing on either the Principal Change Date or Subsidiary Change Date (as the case may be) in which falls the last day of the Period containing that day or the last day of that Period respectively;
- “Cancelled Stop”** means in relation to a Train scheduled in the Applicable Timetable to stop to set down passengers at a Monitoring Point, the Train failing to trigger that Monitoring Point (except where the failure of the train to trigger the Monitoring Point is due to a malfunction of the Monitoring Point);
- “Cancellation Minutes”** means, in relation to a Cancelled Stop, the number of Cancellation Minutes specified in column J of Appendix 1 for the Service Group which includes that Train;
- “Cap”** means, in relation to a Monitoring Point, or a Train, the cap for the relevant Service Group in column K of Appendix 1;
- “Capped Value”** means in relation to any Service Group, the capped value (if any) specified in respect of that Service Group in Appendix 1 (as indexed in accordance with paragraph 9);
- “Charter Destination Point”** means any such station so specified in Appendix 2;
- “ETCS”** means the European Train Control System;
- “Initial Indexation Factor”** has the meaning ascribed to it in Schedule 7;
- “Joint Inquiry”** means a formal inquiry which is required by any of the Railway Group Standards to be held or is permitted by any of the Railway Group Standards to be held and is in fact held;

|   |   |
|---|---|
| <b>“Minutes Delay”</b>                  | means, in relation to a Train and a Recording Point, the delay at that Recording Point, calculated in accordance with paragraph 3;  |
| <b>“Minutes Late”</b>                   | means, in relation to a day and a Monitoring Point, the lateness at that Monitoring Point, calculated in accordance with paragraph 2;   |
| <b>“Monitoring Point”</b>               | means, in relation to a direction of a Service, a point listed in column N of Appendix 1 as a point to be used for recording lateness of Trains in accordance with paragraph 2, and each such Monitoring Point shall be treated as a separate Monitoring Point notwithstanding that it may also be a Monitoring Point for the same Service in the opposite direction and/or for other Services;   |
| <b>“Network Rail Performance Point”</b> | means, in relation to a Service Group, the Network Rail performance point specified in column B of Appendix 1;  |
| <b>“Off-Peak”</b>                       | where applicable, has the meaning ascribed to it in Schedule 5;   |
| <b>“Passenger’s Charter”</b>            | means a commitment to passengers generally (whether or not legally binding) made by the Train Operator or any Passenger Transport Executive (in respect of any services operated by the Train Operator which are the subject of arrangements between the Train Operator and that Passenger Transport Executive) in relation to the punctuality and/or reliability of all or any of the Trains. The foregoing shall not be construed as to include any specific alternative or additional arrangements with any particular passenger (whether or not legally binding); |
| <b>“Passenger Timetable”</b>            | means the timetable referred to within the Performance Monitoring System as the passenger timetable and which reflects the Applicable Timetable;  |
| <b>“Peak”</b>                           | Where applicable, has the meaning ascribed to it in Schedule 5;   |
| <b>“Performance Data Accuracy Code”</b> | means the version of the Performance Data Accuracy Code referred to in Part B of the Network Code;  |
| <b>“Performance Monitoring System”</b>  | means the recording system which Network Rail is required to operate under Part B of the Network Code;  |
| <b>“Performance Sum”</b>                | means, in relation to a Service Group, a sum of money which Network Rail or the Train Operator is liable to pay to the other under this Schedule 8, as calculated in accordance with paragraph 9 or 10, as the case may be;   |

|   |  |
|---|--|
| <b>“Period”</b>                           | 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;   |
| <b>“Recording Point”</b>                  | means a point at which Network Rail records Trains using the Performance Monitoring System;  |
| <b>“Recovery Time”</b>                    | means additional time incorporated in the Applicable Timetable to allow for a Train to regain time lost during an earlier part of its journey;   |
| <b>“Relevant Year”</b>                    | has the meaning ascribed to it in Schedule 7;  |
| <b>“Restriction of Use”</b>               | has the meaning ascribed to it in Schedule 4;  |
| <b>“RPI”</b>                              | has the meaning ascribed to it in Schedule 7;  |
| <b>“Season Ticket”</b>                    | means any ticket valid for unlimited travel on a Service for not less than a period of one calendar month;   |
| <b>“Service Code”</b>                     | means the third, fourth and fifth digits of an eight character train service code applied in the Performance Monitoring System to Trains and used to identify them;  |
| <b>“Service Group”</b>                    | means a collection of Services contained within the service groups specified in column A of Appendix 1;  |
| <b>“Train”</b>                            | means each train operating a Service which is: <ul style="list-style-type: none"> <li>(a) operated by or on behalf of the Train Operator pursuant to the permission to use the Routes granted under this contract; and</li> <li>(b) used to provide services for the carriage of passengers by railway,</li> </ul> but excludes any and all trains making an Ancillary Movement; and |
| <b>“Train Operator Performance Point”</b> | means, in relation to a Service Group, the Train Operator performance point specified in column F of Appendix 1.   |

## 1.2 Interpretation

For the purposes of this Schedule 8:

- (a) a Train shall be treated as being in a Service Group for that part of its journey during which it satisfies the characteristics specified in

columns A, L and N of Appendix 1 as forming a Service which is included in that Service Group;

- (b) events in respect of a Train shall be treated as occurring on the day on which the Train is scheduled in the Applicable Timetable to depart from the first point at which it is to pick up passengers; and
- (c) save as otherwise provided, each final calculation of minutes shall be accurate to three decimal places.

### 1.3 *Suspension Notices*

Wherever a Suspension Notice is in force, the effects of that Suspension Notice shall be the subject of Clause 3.6 and not of this Schedule 8. Accordingly, for the purposes of this Schedule 8:

- (a) neither Network Rail nor the Train Operator shall be allocated any responsibility for those effects; and
- (b) those effects shall not be regarded as causing any Minutes Late or Minutes Delay or Cancelled Stops.

## 2 **Calculation of Minutes Late**

The Minutes Late at a Monitoring Point on a day shall be derived from the following formula:

$$\text{Minutes Late} = \Sigma L$$

where:

L in respect of a Train is the lesser of:

- (i) the number of minutes (rounded down to the nearest whole minute) by which the time at which the Train stops at the Monitoring Point is later than the time at which that Train is scheduled in the Passenger Timetable to stop at that Monitoring Point; and
- (ii) the Cap,

provided that no regard shall be had for any Train which is not recorded as stopping at the Monitoring Point; and

$\Sigma$  is the sum across all those Trains in the relevant Service Group which are scheduled in the Passenger Timetable to stop at that Monitoring Point on that day which do so stop.

## 3 **Calculation of Minutes Delay**

The Minutes Delay in respect of a Train when it triggers a Recording Point shall be equal to:

- (a) in respect of the first Recording Point triggered by that Train on any day, the number of minutes (rounded down to the nearest whole minute) by which the time at which that Train triggers the Recording Point is later than the time at which that Train is scheduled in the Applicable Timetable to do so; and
- (b) in respect of any other Recording Point, the lesser of:

(i) the number of Minutes Delay in respect of that Recording Point calculated in accordance with paragraph 3(a) (as if that Recording Point were the first Recording Point triggered by that Train); and

(ii) the greater of  $((A_1 - A_2) + B)$  and zero

where:

$A_1$  is the number of minutes between the time at which the Train triggers the Recording Point (rounded down to the nearest whole minute) and the time the Train last triggered a Recording Point (rounded down to the nearest whole minute);

$A_2$  is the relevant time lapse scheduled in the Applicable Timetable between those same two Recording Points; and

$B$  is any Recovery Time between those Recording Points incorporated in the Applicable Timetable;

provided that:

(1) any Minutes Delay which arise from a single incident or a series of related incidents and which are less than three minutes in aggregate shall be deemed to be zero; and

(2) if for any Train the aggregate Minutes Delay in respect of all Recording Points caused by a single incident are in excess of the Cap specified in column K of Appendix 1 for that Service Group, then such excess shall be disregarded.

## **4 Recording of performance information**

### **4.1 *Recording of lateness, Minutes Delay and Cancelled Stops***

Without prejudice to its obligations under Part B of the Network Code, Network Rail shall use the Performance Monitoring System to record for each day in respect of each Train scheduled in the Applicable Timetable:

(a) the time at which the Train stops to set down passengers at each Monitoring Point;

(b) each Cancelled Stop and the incident(s) causing such Cancelled Stop where the incident can be identified;

(c) the time at which the Train triggers each Recording Point;

(d) the Minutes Delay for that Train at each Recording Point;

(e) where the Minutes Delay which that Train has accrued since the last Recording Point are greater than or equal to three minutes:

(i) the incident(s) causing each minute of any delay included in Minutes Delay; and

(ii) those Minutes Delay for which Network Rail is unable to identify a cause; and



- (f) for each Charter Destination Point in respect of Trains for which the Charter Destination Point is a destination for the purposes of a Passenger's Charter, the time of the Train's arrival.

The provisions of this Schedule 8, which concern the recording of train performance information or which refer to information regarding train performance, and the rights and remedies of the parties in respect of the recording of that information, shall be subject to and interpreted in accordance with the provisions of the Performance Data Accuracy Code.

#### 4.2 *Recording of allocated responsibility for Minutes Delay and Cancelled Stops*

Network Rail shall for each day and for each Train scheduled in the Applicable Timetable record separately in the Performance Monitoring System those Minutes Delay and Cancelled Stops caused by incidents:

- (a) for which Network Rail is allocated responsibility in accordance with paragraph 5.2;
- (b) for which the Train Operator is allocated responsibility in accordance with paragraph 5.3;
- (c) for which Network Rail and the Train Operator are allocated joint responsibility, in accordance with paragraph 5.4;
- (d) for which no cause can be identified; and
- (e) which are planned incidents in accordance with paragraph 5.7.

#### 4.3 *Failed Recording Points*

Without prejudice to its obligations under Part B of the Network Code, Network Rail shall use all reasonable endeavours:

- (a) to restore as soon as reasonably practicable any failed Recording Point; and
- (b) pending such restoration, to compile such information from manual records and other sources, including the Train Operator, and otherwise to substitute such information as is appropriate to reflect as accurately as is reasonably practicable the actual performance of the relevant Trains for the purposes of this Schedule 8.

#### 4.4 *Provision of information by Train Operator*

The Train Operator shall record and shall continue to record such information as Network Rail may reasonably require and which it is reasonable to expect the Train Operator to have or procure in connection with any Minutes Delay that may arise and shall provide such information to Network Rail promptly after such information first becomes available to the Train Operator.

Network Rail shall promptly notify the Train Operator upon Network Rail becoming aware of any failure or any likely failure to record accurately the information which it is required to record under paragraph 4.1. Any such notification shall be in sufficient detail to enable the Train Operator to institute the recording of such information in connection with the Trains

for which the recording of information is subject to such failure or likely failure as the Train Operator may reasonably achieve. The Train Operator shall institute such recording as soon as it is reasonably able following receipt of the notification from Network Rail and will provide Network Rail with the resulting information no later than 1700 hours two Working Days following the day on which it was recorded.

## **5 Allocation of responsibility for Minutes Delay and Cancelled Stops**

### *5.1 Assessment of incidents causing Minutes Delay and Cancelled Stops*

- (a) In assessing the cause of any Minutes Delay or Cancelled Stop, there shall be taken into account all incidents contributing thereto including:
  - (i) the extent to which each party has taken reasonable steps to avoid and/or mitigate the effects of the incidents; and
  - (ii) where a Restriction of Use overruns due to the start of such Restriction of Use being delayed by a late running Train, the incident(s) giving rise to that late running;
- (b) The parties shall take reasonable steps to avoid and mitigate the effects of any incidents upon the Trains and any failure to take such steps shall be regarded as a separate incident;
- (c) Network Rail shall identify:
  - (i) in respect of each incident recorded under paragraph 4.1(e)(i) as causing Minutes Delay, the extent to which that incident caused each of the Minutes Delay; and
  - (ii) in respect of each incident recorded under paragraph 4.1(b), the extent to which that incident caused the Cancelled Stop;
- (d) So far as Network Rail is reasonably able to do so, it shall identify whether responsibility for incidents causing Minutes Delay or Cancelled Stops is to be allocated to Network Rail or to the Train Operator or to them jointly in accordance with the following provisions of this paragraph 5.

### *5.2 Network Rail responsibility incidents*

Responsibility for Minutes Delay and Cancelled Stops on a day caused by incidents for which Network Rail is allocated responsibility pursuant to this paragraph 5.2 shall be allocated to Network Rail. Unless and to the extent otherwise agreed, Network Rail shall be allocated responsibility for an incident other than a planned incident (as defined in paragraph 5.7), if that incident is caused wholly or mainly:

- (a) by breach by Network Rail of any of its obligations under this contract; or
- (b) (whether or not Network Rail is at fault) by circumstances within the control of Network Rail in its capacity as operator of the Network; or
- (c) (whether or not Network Rail is at fault) by any act, omission or circumstance originating from or affecting the Network (including its

operation), including, subject to paragraph 5.3(b)(i), any incident in connection with rolling stock on the Network for which any train operator other than the Train Operator would be allocated responsibility if it were the Train Operator under this contract.

### 5.3 *Train Operator responsibility incidents*

Responsibility for Minutes Delay and Cancelled Stops on a day caused by incidents for which the Train Operator is allocated responsibility pursuant to this paragraph 5.3 shall be allocated to the Train Operator. Unless and to the extent otherwise agreed, the Train Operator shall be allocated responsibility for an incident other than a planned incident (as defined in paragraph 5.7) if that incident:

- (a) is caused wholly or mainly:
  - (i) by breach by the Train Operator of any of its obligations under this contract; or
  - (ii) (whether or not the Train Operator is at fault) by circumstances within the control of the Train Operator in its capacity as an operator of trains; or
  - (iii) (whether or not the Train Operator is at fault) by any act, omission or circumstance originating from or affecting rolling stock operated by or on behalf of the Train Operator (including its operation), including any such act, omission or circumstance originating in connection with or at any station (other than in connection with signalling under the control of Network Rail at that station or physical works undertaken by Network Rail at that station), any light maintenance depot or any network other than the Network; or
- (b) causes delay to:
  - (i) rolling stock operated by or on behalf of another train operator which is delayed in entering or leaving the Network due to any act, omission or circumstance originating in connection with a light maintenance depot or network other than the Network and, as a result of that delay, rolling stock operated by or on behalf of the Train Operator which is scheduled to leave or enter the Network at the connection with that light maintenance depot or other network is then delayed behind the first mentioned rolling stock; or
  - (ii) the commencement of a Train's journey, which is caused by the late running for any reason whatever of any rolling stock included in that Train when that rolling stock is operated by or on behalf of another train operator.

### 5.4 *Joint responsibility incidents*

- (a) Network Rail and the Train Operator shall be allocated joint responsibility for:

- (i) any incident which is not a planned incident (as defined in paragraph 5.7), caused by an act, omission or circumstance originating in connection with or at a station which:
    - (1) is an act, omission or circumstance which affects the Network, or its operation, and prevents a Train entering or passing through a station at the time it is scheduled to do so; and
    - (2) prevents the access of passengers through the station to or from the Train;and paragraphs 5.2 and 5.3 shall not apply to any such incident; or
  - (ii) 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 5.2 or 5.3.
- (b) Unless and to the extent otherwise agreed, Minutes Delay or Cancelled Stops caused by incidents for which Network Rail and the Train Operator are allocated joint responsibility pursuant to paragraph 5.4(a) shall be allocated 50% to Network Rail and 50% to the Train Operator.

#### 5.5 *Unidentified incidents: Minutes Delay*

Responsibility for Minutes Delay on any day in respect of a Service Group caused by incidents which are unidentified, as recorded under paragraph 4.2(d), shall be allocated as follows:

- (a) if there are any Minutes Delay in respect of the Service Group recorded as being caused by incidents for which Network Rail or the Train Operator are allocated responsibility:
  - (i) 50% of the unidentified Minutes Delay under paragraph 4.2(d) shall be allocated to Network Rail, the Train Operator and joint responsibility incidents *pro rata* to the aggregate Minutes Delay for that Service Group respectively recorded as being their responsibility under this paragraph 5 for that day; and
  - (ii) the balance of the Minutes Delay under paragraph 4.2(d) shall be allocated to Network Rail; and
- (b) if no Minutes Delay on that day in respect of the Service Group are recorded as being caused by incidents for which Network Rail or the Train Operator are allocated responsibility, then Network Rail and the Train Operator shall each be allocated 50% of the unidentified Minutes Delay recorded under paragraph 4.2(d).

#### 5.6 *Unidentified incidents: Cancelled Stops*

Responsibility for Cancelled Stops on a day in respect of a Service Group caused by incidents which are unidentified shall be allocated 50% to Network Rail and 50% to the Train Operator.

### 5.7 *Planned incidents*

An incident shall be treated as a planned incident if and to the extent that:

- (a) such incident was a Restriction of Use notified in accordance with Schedule 4 by Network Rail to the Train Operator; or
- (b) there is Recovery Time in respect of that incident.

### 5.8 *Allocation of responsibility for Minutes Delay at Service Group level: aggregate Minutes Delay*

In respect of a Service Group, the aggregate Minutes Delay on a day shall be the aggregate of all Minutes Delay recorded under paragraphs 4.2(a) to 4.2(d) in respect of all Trains in that Service Group scheduled in the Applicable Timetable.

### 5.9 *Allocation of responsibility for Minutes Delay at Service Group level: Network Rail Minutes Delay*

In respect of a Service Group, the Minutes Delay on a day allocated to Network Rail shall be the aggregate of any Minutes Delay allocated to Network Rail under paragraph 5.2, paragraph 5.4 and paragraph 5.5.

### 5.10 *Allocation of responsibility for Minutes Delay at Service Group level: Train Operator Minutes Delay*

In respect of a Service Group, the Minutes Delay on a day allocated to the Train Operator shall be the aggregate of any Minutes Delay allocated to the Train Operator under paragraph 5.3, paragraph 5.4 and paragraph 5.5.

### 5.11 *Network Rail Cancelled Stops at Monitoring Point level*

In respect of a Monitoring Point, the Cancelled Stops on a day allocated to Network Rail shall be the aggregate of any Cancelled Stops allocated to Network Rail under paragraph 5.2, paragraph 5.4 and paragraph 5.6.

### 5.12 *Train Operator Cancelled Stops at Monitoring Point level*

In respect of a Monitoring Point, the Cancelled Stops on a day allocated to the Train Operator shall be the aggregate of any Cancelled Stops allocated to the Train Operator under paragraph 5.3, paragraph 5.4 or paragraph 5.6.

## **6 Statement of allocated responsibility**

### 6.1 *Initial statement*

For each day, Network Rail shall provide to the Train Operator as soon as reasonably practicable and in any event no later than the following Working Day:

- (a) the allocation of responsibility for incidents made by Network Rail under paragraph 5; and
- (b) a summary for each Service Group showing:

- (i) the aggregate Minutes Delay and Cancelled Stops recorded under each category set out in paragraph 4.2; and
- (ii) a list of the Minutes Delay and Cancelled Stops (in each case broken down by incident) recorded as the responsibility of Network Rail and as the responsibility of the Train Operator.

## 6.2 *Further statements*

If Network Rail's nominated representative has reasonable grounds to believe that any further incident was the responsibility of the Train Operator or of Network Rail but was not shown as such in the information made available in accordance with paragraph 6.1, then Network Rail may, within seven days after the last Minutes Delay or Cancelled Stop caused by that incident, issue a notice in accordance with paragraph 15 revising the information and/or allocations of responsibility made available under paragraph 6.1.

## 6.3 *Adjustment statements*

If Condition B3.3 (adjustment to prior results) applies in respect of all or part of a Period, then Network Rail shall promptly issue to the Train Operator a statement showing the necessary adjustments (if any) to statements already issued and Performance Sums already paid in respect of the Period, and any such adjusting statement shall be treated as if it were a statement under paragraph 11.1 and, subject to paragraph 12.2, an adjusting payment shall be payable within 28 days of Network Rail's statement.

## 6.4 *Disputes about statements of allocated responsibility*

- (a) Except to the extent that it has, within two Working Days of receipt, notified Network Rail in accordance with paragraph 15 that it disputes the contents of a statement under paragraphs 6.1 or 6.2, the Train Operator shall be deemed to have agreed the contents of that statement. Any notification of a dispute shall specify the reasons for that dispute.
- (b) The parties shall attempt to resolve disputes notified in accordance with paragraph 6.4(a) as follows:
  - (i) within the next two clear Working Days after notification of any dispute, nominated representatives of the parties shall attempt to resolve that dispute; and
  - (ii) if agreement has not been reached after two clear Working Days, representatives authorised by a more senior level of management of the parties shall use all reasonable endeavours to negotiate a resolution of the dispute.
- (c) Negotiations under paragraph 6.4(b)(ii) shall continue, if necessary, until a date no earlier than five clear Working Days after the end of the Period in which the event giving rise to the dispute referred to in paragraph 6.4(a) occurred.

## 7 Allocation of Minutes Late to Network Rail

In respect of each Monitoring Point, the Minutes Late on a day at that Monitoring Point allocated to Network Rail (MLNR) shall be calculated according to the following formulae:

if MD is greater than zero

$$MLNR = \frac{(MDNR \cdot ML)}{MD} + DMLNR$$

or if MD is equal to zero

$$MLNR = (0.5 \cdot ML) + DMLNR$$

where:

ML is the aggregate Minutes Late at that Monitoring Point on that day for all Trains in that Service Group, calculated in accordance with paragraph 2;

MD is the aggregate Minutes Delay on that day in respect of the Service Group under which that Monitoring Point is listed in column N of Appendix 1, calculated in accordance with paragraph 5.8;

MDNR is that part of such MD allocated to Network Rail in accordance with paragraph 5.9; and

DMLNR is the deemed minutes late at that Monitoring Point on that day allocated to Network Rail, derived from the following formula:

$$DMLNR = RC \cdot CM$$

where:

RC is the number of Cancelled Stops recorded at that Monitoring Point on that day for which Network Rail is allocated responsibility in accordance with paragraph 5.11; and

CM is the Cancellation Minutes for that Service Group set out in column J of Appendix 1.

## 8 Allocation of Minutes Late to the Train Operator

In respect of each Monitoring Point, the Minutes Late at that Monitoring Point on a day allocated to the Train Operator (MLT) shall be calculated according to the following formulae:

if MD is greater than zero

$$MLT = \frac{(MDT \cdot ML)}{MD} + DMLT$$

or if MD is equal to zero

$$MLT = (0.5 \cdot ML) + DMLT$$

where:

- ML is the aggregate Minutes Late at that Monitoring Point on that day for all Trains in that Service Group, calculated in accordance with paragraph 2;
- MD is the aggregate Minutes Delay on that day in respect of the Service Group under which that Monitoring Point is listed in column N of Appendix 1, calculated in accordance with paragraph 5.8;
- MDT is that part of such MD allocated to the Train Operator in accordance with paragraph 5.10; and
- DMLT is the deemed minutes late at that Monitoring Point on that day allocated to the Train Operator, derived from the following formula:
- $$DMLT = TC \cdot CM$$
- where:
- TC is the number of Cancelled Stops recorded at that Monitoring Point on that day for which the Train Operator is allocated responsibility in accordance with paragraph 5.12; and
- CM is the Cancellation Minutes for that Service Group set out in column J of Appendix 1.

## 9 Network Rail Performance Sums

- 9.1 In respect of a Service Group, the Network Rail Performance Sum (NRPS) for each Period shall be calculated according to the following formula:

$$NRPS = (NRPP - NRWAML) \cdot BF \cdot NRPR$$

where:

- NRPP is the Network Rail Performance Point for that Service Group specified in column B of Appendix 1 for the year in which that Period falls;
- NRWAML is the aggregate for all Monitoring Points in the Service Group of the weighted average minutes late allocated to Network Rail in accordance with the following formula:

$$NRWAML = \sum \frac{(MLNR \cdot MPW)}{SP}$$

where:

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



MLNR is the Minutes Late allocated to Network Rail in respect of each Monitoring Point in that Period, in accordance with paragraph 7;

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

SP is the aggregate number of stops to set down passengers at that Monitoring Point scheduled for the Period in the Applicable Timetable for which a stop or Cancelled Stop is recorded in accordance with paragraphs 4.1(a) and (b) except that if SP=0 for any Monitoring Point, then for that Monitoring Point it shall be deemed that  $\frac{(MLNR \cdot MPW)}{SP}$  shall equal zero;

BF is the relevant busyness factor estimated for the Period according to the following formula:

$$BF = \frac{\sum(MPW \cdot SD)}{AS}$$

where:

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

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

SD is the aggregate number of stops to set down passengers at that Monitoring Point scheduled in the Applicable Timetable for that Period for that Service Group; and

AS is the average number of stops per day at the Monitoring Point scheduled in the Bi-annual Timetable in respect of that Period except that if AS=0 for any Monitoring Point it shall be deemed that  $\frac{(MPW \cdot SD)}{AS}$  shall equal zero; and

NRPR is the relevant Network Rail payment rate for that Service Group specified in column E of Appendix 1 as indexed in accordance with paragraph 13,

provided that:

- (i) if a Capped Value is specified in respect of that Service Group in Appendix 1 and the value of NRPS in respect of any Period is determined in accordance with the formula set out in this paragraph to be greater than the Capped Value in respect of such Period, then the value of NRPS shall be deemed to be equal to the Capped Value in respect of such Period;
- (ii) the Capped Value shall be multiplied by the CV indexation figure for the Relevant Year;

(iii) the CV indexation figure in Relevant Year t shall be derived from the following formula:

$$CV_t = \left( 1 + \frac{(RPI_{t-1} - RPI_{2013})}{RPI_{2013}} \right) \cdot \text{Initial Indexation Factor}$$

where:

- CV<sub>t</sub> means the CV indexation in Relevant Year t;
- RPI<sub>t-1</sub> means the RPI published or determined with respect to the month of November in Relevant Year t-1; and;
- RPI<sub>2013</sub> means the RPI published or determined with respect to the month of November 2013.

9.2 Where NRPS is less than zero, Network Rail shall pay the amount of the NRPS to the Train Operator. Where NRPS is greater than zero, the Train Operator shall pay that amount to Network Rail.

## 10 Train Operator Performance Sums

10.1 In respect of a Service Group, the Train Operator Performance Sum (TPS) for each Period shall be calculated according to the following formula:

$$TPS = (TPP - TWAML) \cdot BF \cdot TPR$$

where:

- TPP is the Train Operator Performance Point for the Service Group specified in column F of Appendix 1;
- TWAML is the aggregate for all Monitoring Points in the Service Group of the weighted average minutes late allocated to the Train Operator in accordance with the following formula:

$$TWAML = \sum \frac{(MLT \cdot MPW)}{SP}$$

where:

- $\sum$  is the sum across all Monitoring Points in the Service Group;
- MLT is the Minutes Late allocated to the Train Operator in respect of each Monitoring Point in that Period, in accordance with paragraph 8;
- MPW is the weighting attributable to that Monitoring Point, as specified in column O of Appendix 1; and

SP is the aggregate number of stops to set down passengers at that Monitoring Point scheduled for the Period in the Applicable Timetable for which a stop or Cancelled Stop is recorded in accordance with paragraphs 4.1(a) and (b) except that if SP=0 for any Monitoring Point, then for that Monitoring Point it shall be deemed that  $\frac{MLT \cdot MPW}{SP}$  shall equal zero;

BF is the relevant busyness factor estimated for the Period according to the following formula:

$$BF = \sum(MPW \cdot \frac{SD}{AS})$$

where:

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

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

SD is the aggregate number of stops to set down passengers at the Monitoring Point scheduled in the Applicable Timetable for that Period for that Service Group; and

AS is the average number of stops per day at the Monitoring Point scheduled in the Bi-annual Timetable in respect of that Period except that if AS=0 for any Monitoring Point it shall be deemed that  $\frac{MPW \cdot SD}{AS}$  shall equal zero; and

TPR is the relevant Train Operator payment rate for that Service Group specified in column I of Appendix 1 as indexed in accordance with the provisions in paragraph 13.

10.2 Where TPS is less than zero, the Train Operator shall pay the amount of the TPS to Network Rail. Where TPS is greater than zero, Network Rail shall pay that amount to the Train Operator.

## 11 Notification of Performance Sums

### 11.1 Notification

Within 14 days after the end of each Period, Network Rail shall provide the Train Operator with a statement for each Service Group for that Period showing:

- (a) any Performance Sums for which Network Rail or the Train Operator is liable, together with such supporting information (other than information in respect of incidents recorded as the responsibility of Network Rail) as the Train Operator may reasonably require; and
- (b) any matter referred to in paragraph 6.1 which the Train Operator has disputed in accordance with paragraph 6.4(a) and which is still in dispute.

## 11.2 Disputes

Within 14 days after receipt by the Train Operator of a statement required under paragraph 11.1, the Train Operator shall notify Network Rail of any aspects of such statement which it disputes, giving reasons for each such dispute. The Train Operator shall not dispute any matter which it has agreed or deemed to have agreed under paragraph 6. Such disputes and any matter referred to in paragraph 11.1(b) shall be resolved in accordance with the procedure in paragraph 16. Save to the extent that disputes are so notified, the Train Operator shall be deemed to have agreed the contents of each statement.

## 12 Payment procedures

### 12.1 Payments and set-off

- (a) In respect of any and all Performance Sums for which Network Rail and the Train Operator are liable in any Period, the aggregate liabilities of Network Rail and the Train Operator shall be set off against each other. The balance shall be payable by Network Rail or the Train Operator, as the case may be, within 35 days after the end of the Period to which the payment relates.
- (b) Subject to paragraph 12.2, and save as otherwise provided, all other sums payable under this Schedule 8 shall be paid within 35 days after the end of the Period to which such payment relates.

### 12.2 Payments in the event of dispute

Where any sum which is payable under this paragraph 12 is in dispute:

- (a) the undisputed amount shall be paid or set off (as the case may be) in accordance with paragraph 12.1;
- (b) the disputed balance (or such part of it as has been agreed or determined to be payable) shall be paid or set off (as the case may be) within 35 days after the end of the Period in which the dispute is resolved or determined; and
- (c) from the date at which such balance would but for the dispute have been due to be paid or set off, the disputed balance shall carry interest (incurred daily and compounded monthly) at the Default Interest Rate, unless the dispute relates to an incident the responsibility for which is the subject of a Joint Inquiry, in which case interest shall be payable at the prevailing base rate of Barclays Bank plc.

## 13 Payment rates

- 13.1 Each payment rate in columns E and I of Appendix 1 shall be adjusted in respect of Periods in Relevant Year t in accordance with the following formula:

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

Where:

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

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

$RPI_{t-1}$  has the same meaning as set out in Paragraph 9.1 above of this Schedule 8; and

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

but so that in relation to the Relevant Year commencing on 1 April 2014,  $R_t$  shall have the relevant value specified in the relevant column (either E or I) of Appendix 1, multiplied by the Initial Indexation Factor and in the next following Relevant Year,  $R_{t-1}$  shall have the same value.

#### **14 Not used**

#### **15 Notices**

15.1 All notices under this Schedule 8 shall be given in writing and shall be sent by prepaid first class post, email or fax or delivered by hand to the party in question at the address for service last notified by that party.

15.2 Any such notice shall be deemed to have been duly received:

- (a) if sent by prepaid first class post, three days after posting unless otherwise proven;
- (b) if sent by hand, when delivered;
- (c) if sent by facsimile, (subject to confirmation of uninterrupted transmission by a transmission report) before 1700 hours on a business day, on the day of transmission and, in any other case, at 0900 hours on the next following business day ("business day" for these purposes being a day which is not a Saturday, Sunday or a public holiday in the place where the transmission is to be received); and
- (d) if sent by email, (unless a notice of non-delivery is received) upon receipt.

#### **16 Disputes**

16.1 If any dispute is notified under paragraph 11.2 it shall be resolved according to the following procedure:

- (a) within seven days of service of the relevant notice (or, if the dispute relates to an incident the responsibility for which is or is to be the subject of a Joint Inquiry, within seven days of publication of the

conclusion of that Joint Inquiry), the parties shall meet to discuss the disputed aspects with a view to resolving all disputes in good faith;

- (b) if, for any reason, within seven days of the meeting referred to in paragraph 16.1(a), the parties are still unable to agree any disputed aspects, each party shall promptly and in any event within seven days prepare a written summary of the disputed aspects and the reasons for each such dispute and submit such summaries to the senior officer of each party;
- (c) within 28 days of the first meeting of the parties, the senior officers of the parties shall meet with a view to resolving all disputes; and
- (d) if no resolution results before the expiry of 14 days following that meeting, then either party may refer the matter for resolution in accordance with the ADRR.

## **17 Amendments to Appendix 1**

### *17.1 Circumstances in which parties agree to amend Appendix 1*

Either party may by notice to the other propose that Appendix 1 be amended in accordance with this paragraph 17.

### *17.2 Procedure for amendments to Appendix 1*

- (a) The party who wishes to amend Appendix 1 shall notify the other party of any such proposed change and the date from which it proposes that such change will have effect:
  - (i) where such change relates to a forthcoming timetable change, on or before the first day of the month six months before the relevant Principal Change Date or Subsidiary Change Date on which that timetable change is due to occur; and
  - (ii) in any other case, prior to the date from which it proposes such change shall have effect.
- (b) Any notice under paragraph 17.2(a) shall:
  - (i) specify as far as possible that party's proposed amendments to Appendix 1; and
  - (ii) be accompanied by information and evidence in reasonable detail supporting the change proposed and setting out the reasons for it.
- (c) The party receiving a notice issued under paragraph 17.2(a) shall respond to that notice in writing, in reasonable detail and with reasons for its response, within 56 days of service of such notice.
- (d) Promptly (and in any event within 34 days) following the service of any response under paragraph 17.2(c), the parties shall endeavour to agree whether Appendix 1 should be amended in accordance with this paragraph 17 and, if so, the amendments.

- (e) If the parties fail to reach agreement within 90 days of service of a notice under paragraph 17.2(a), or if prior to that date both parties agree that agreement is unlikely to be reached within that period:
  - (i) either party may notify ORR; and
  - (ii) if ORR elects to determine the matter, the parties shall furnish ORR with such information and evidence as ORR shall require in order to determine the matter, such determination to be binding on the parties.
- (f) If ORR does not elect to determine the matter within 56 days of receipt by ORR of notification in accordance with paragraph 17.2(e)(i), either party may refer the matter for resolution in accordance with the ADRR and the parties shall agree in a Procedure Agreement (such term to have the same meaning as in the ADRR) that:
  - (i) the relevant ADRR Forum shall have regard to any relevant criteria and/or policy statement issued by ORR including in relation to the introduction of any capped value in respect of any Service Group in Appendix 1; and
  - (ii) that the relevant ADRR Forum will set out its reasoning in any determination.
- (g) An amendment to Appendix 1 shall take effect only when it has been approved by ORR under section 22 of the Act. Accordingly, as soon as reasonably practicable after any such amendment is agreed or determined in accordance with this paragraph 17 (other than a determination by ORR pursuant to paragraph 17.2(e)(ii)), the parties shall ensure that ORR is furnished with such amendment and such information and evidence as ORR requires to decide whether or not to approve the amendment.
- (h) Any agreed amendment to Appendix 1 in connection with the proposal referred to in paragraph 17.1 which is agreed by the parties or determined by the relevant ADRR Forum, and 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 by the party requesting the change (where 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).
- (i) Where ORR determines the matter subject to paragraph 17.2(e)(ii), it may issue a notice to the parties setting out the amendments to be made to Appendix 1 and the date, which may be retrospective, from which they shall take effect.

### *17.3 Adjustments to the Performance Monitoring System*

Network Rail shall make appropriate amendments to the Performance Monitoring System to reflect the amendments to Appendix 1 by the date when in accordance with paragraph 17.2 such amendments are to take effect, or as soon as reasonably practicable thereafter. Where any such amendment to Appendix 1 or any consequential amendment to the Performance Monitoring System is not made until after that date, Network Rail shall, promptly following such amendments being made, issue to the Train Operator a statement showing the necessary adjustments to the statements already issued and the payments already made in respect of Performance Sums up to and including the Period commencing on the date when in accordance with paragraph 17.2 such amendments to Appendix 1 are to take effect. Any such adjusting statement shall be treated as if it were a statement under paragraph 11.1 and, subject to paragraph 12.2, an adjusting payment shall be payable within 35 days of that adjusting statement.

### *17.4 Costs of implementing amendment*

Network Rail shall (subject to any determination of the relevant ADRR Forum as to costs, where a matter is referred to that forum under paragraph 17.2(f)) be entitled to ninety percent (90%) of costs incurred by or on behalf of Network Rail in assessing and implementing any amendments to Appendix 1 and the Performance Monitoring System, provided that those costs shall be the minimum reasonably necessary for Network Rail to assess and implement that amendment.

### *17.5 Relationship with Appendix 3 and remainder of Schedule 8*

References in this paragraph to amendments to Appendix 1 shall include any amendments to Appendix 3 or any other relevant parts of Schedule 8 which are agreed or determined to be reasonably required in connection with those amendments to Appendix 1.

## **17A ETCS Amendments**

### *17A.1 Circumstances in which ETCS Amendments can be made*

- (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 of the Routes that the Train Operator has permission to use ("**ETCS Amendments**").
- (b) ORR may make ETCS Amendments, subject to complying with paragraph 17A.3.

### *17A.2 ETCS Amendments agreed by the parties*

- (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 17A.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 17A.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 17A.2(c); or
  - (ii) the parties fail to reach agreement within 50 Working Days of service of a notice under paragraph 17A.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.

### *17A.3 ORR right to approve, determine or make ETCS Amendments*

- (a) If ORR:
- (i) receives a notification under paragraph 17A.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 17A.3(a), and such information shall be provided in accordance with any timescales and to the standard required by ORR.

## **18. Compensation for sustained poor performance**

### *18.1 Definitions*

In this paragraph 18, unless the context otherwise requires:

**“Average Periodic Liability”** means one thirteenth of the sum of all values of NRPS (as that term is defined in paragraph 9) to be calculated by deducting the sum of all values of NRPS for which the Train Operator is liable from the sum of all values of NRPS for which Network Rail is liable in each case in respect of the relevant Calculation Term;

**“Calculation Term”** means the 13 Periods immediately preceding each Periodic Liability Date;

**“Periodic Liability Date”** means the first day of the first, fourth, seventh and eleventh Periods in each Relevant Year ignoring for these purposes any Period that commences before the Transition Date as referred to in Clause 19; and

**“SPP Threshold”** means the value specified in respect of the end of the relevant Calculation Term in Appendix 3 (as indexed in accordance with paragraph 19).

## 18.2 *Indemnity*

Network Rail shall indemnify the Train Operator against all Relevant Losses in accordance with this paragraph 18 if, and to the extent that, the Average Periodic Liability shows Network Rail has exceeded (that is, equalled or been worse than) the relevant SPP Threshold.

## 18.3 *Determination of Relevant Losses*

Subject to paragraph 18.4, the liability of Network Rail under paragraph 18.2 for sustained poor performance (SPPL) shall be determined in accordance with the following formula:

$$\text{SPPL} = \text{RL} - \text{PS}$$

where:

**RL** means the Train Operator’s Relevant Losses arising as a direct result of Minutes Delay and Cancelled Stops during the Calculation Term in each case insofar as these do not arise as a result of an incident for which the Train Operator is allocated responsibility pursuant to paragraph 5.3; and

**PS** means the sum of all values of NRPS (as that term is defined in paragraph 9) to be calculated by deducting the sum of all values of NRPS for which the Train Operator is liable from the sum of all values of NRPS for which Network Rail is liable in each case in respect of the relevant Calculation Term;

## 18.4 *Restrictions on claims by Train Operator*

The Train Operator shall not be entitled to make a claim for Relevant Losses pursuant to this paragraph 18:

- (a) if and to the extent that it has previously recovered those Relevant Losses whether under this paragraph 18 or otherwise; or
- (b) in relation to any Calculation Term or part of it that precedes the Transition Date as referred to in Clause 19.

## 19 SPP Indexation

### 19.1 SPP Indexation

Each value specified in Appendix 3 shall be multiplied by the SPP indexation figure for the Relevant Year.

### 19.2 Application of SPP Indexation

The SPP indexation figure in Relevant Year t shall be derived from the following formula:

$$\mathbf{SPPI}_t = \left( 1 + \frac{(\mathbf{RPI}_{t-1} - \mathbf{RPI}_{2013})}{\mathbf{RPI}_{2013}} \right) \bullet \text{Initial Indexation Factor}$$

where:

$\mathbf{SPPI}_t$  means the SPP indexation in Relevant Year t;

$\mathbf{RPI}_{t-1}$  has the meaning as set out in Paragraph 9.1 above of this Schedule 8; and

$\mathbf{RPI}_{2013}$  has the meaning as set out in Paragraph 9.1 above of this Schedule 8.

Appendix 1

| A             | B                 | C            | D          | E     | F                 | G            | H          | I     | J                    | K   | L            | M | N         | O                |           |
|---------------|-------------------|--------------|------------|-------|-------------------|--------------|------------|-------|----------------------|-----|--------------|---|-----------|------------------|-----------|
| Service Group | Network Rail      |              |            |       | TOC               |              |            |       | Cancellation Minutes | Cap | Service Code |   | Direction | Monitoring Point | Weighting |
|               | Performance Point | Payment Rate |            |       | Performance Point | Payment Rate |            |       |                      |     |              |   |           |                  |           |
|               |                   | (Not Used)   | (Not Used) | Total |                   | (Not Used)   | (Not Used) | Total |                      |     |              |   |           |                  |           |
|               |                   |              |            |       |                   |              |            |       |                      |     |              |   |           |                  |           |

Appendix 2 – Charter Destination Points

Not Used.

**APPENDIX 3 - SPP THRESHOLD**

|         | <b>Period:</b> | <b>3</b> | <b>6</b> | <b>10</b> | <b>13</b> |
|---------|----------------|----------|----------|-----------|-----------|
| 2014/15 |                |          |          |           |           |
| 2015/16 |                |          |          |           |           |
| 2016/17 |                |          |          |           |           |
| 2017/18 |                |          |          |           |           |
| 2018/19 |                |          |          |           |           |



**Appendix 6 to Annex 2**

**Schedule 10**



## **SCHEDULE 10: NETWORK CODE AND TRACTION ELECTRICITY RULES MODIFICATIONS**

### **1 Automatic effect**

#### *1.1 General*

This contract shall have effect:

- (a) with the modifications; and
- (b) from the date,

specified by ORR in a modification notice as supplemented (where appropriate) by a notice of consent to requisite adaptations or a notice of determined requisite adaptations.

#### *1.2 Retrospective effect*

No relevant notice may have retrospective effect.

### **2 Modification notice**

#### *2.1 Meaning*

A modification notice is a notice given by ORR to the parties for the purposes of this contract which modifies specified provisions of this contract (other than this Schedule 10) by making such modifications as are consequential upon, or necessary to give full effect to, any change to the Network Code or the Traction Electricity Rules.

#### *2.2 Contents of modification notice*

A modification notice shall state:

- (a) the modifications which are to be made to this contract;
- (b) the date from which specified modifications are to have effect; and, if any such modifications are to have effect from different dates, the dates applicable to each modification; and
- (c) which of the specified modifications are to be subject to adaptation and the backstop date for the requisite adaptations in question.

### **3 Adaptation procedure**

#### *3.1 Application*

This paragraph 3 applies in the case of specified modifications which are specified as being subject to adaptation.

### 3.2 *Negotiation of adaptations*

In respect of the modifications in each modification notice:

- (a) within 14 days of the date of service of the relevant modification notice, the parties shall meet and in good faith negotiate and attempt to agree the requisite adaptations;
- (b) each party shall ensure that:
  - (i) such negotiations are conducted in good faith in a timely, efficient and economical manner, with appropriate recourse to professional advice; and
  - (ii) ORR's criteria are applied in the negotiations; and
- (c) the negotiations shall not continue after the backstop date.

### 3.3 *Agreed adaptations - notice to the Office of Rail Regulation*

If the parties have agreed the requisite adaptations on or before the backstop date, not later than seven days after the backstop date the agreed requisite adaptations shall be sent by the parties to ORR for its consent, together with a statement, signed by or on behalf of both parties:

- (a) stating the reasons for the agreed requisite adaptations;
- (b) stating the extent to which and ways in which ORR's criteria have been applied in arriving at the agreed requisite adaptations and, in any case where they have not been applied, the reasons; and
- (c) giving such other information as ORR may have requested.

### 3.4 *Agreed adaptations – Office of Rail Regulation's consent*

If ORR is satisfied with the agreed requisite adaptations, and it gives a notice of consent to requisite adaptations, they shall have effect as provided for in paragraph 3.8.

### 3.5 *Agreed requisite adaptations – Office of Rail Regulation's refusal of consent*

If ORR gives notice to the parties that it is not satisfied with any or all of the agreed requisite adaptations, it may:

- (a) require the parties again to follow the procedure for negotiating requisite adaptations (with such modifications as to time limits as it specifies), in which case they shall do so; or
- (b) determine the requisite adaptations itself.

### 3.6 *Requisite adaptations - failure to agree or submit*

If the parties have failed to submit agreed requisite adaptations to ORR for its consent within seven days after the backstop date, it may determine the requisite adaptations itself.

### 3.7 *Notice of determined requisite adaptations*

A notice of determined requisite adaptations is a notice:

- (a) given by ORR to the parties for the purposes of this paragraph 3 following the failure of the parties to send to ORR within seven days of the backstop date requisite adaptations to which it gives its consent; and
- (b) which states the requisite adaptations which ORR has determined should be made using its powers to do so under paragraph 3.5 or 3.6.

### 3.8 *Effect of requisite adaptations*

Requisite adaptations established either:

- (a) by agreement of the parties and in respect of which ORR has given a notice of consent to requisite adaptations under paragraph 3.4; or
- (b) by the determination of ORR under paragraph 3.5 or 3.6 and stated in a notice of determined requisite adaptations,

shall have effect from such date as ORR states in the relevant notice of consent to requisite adaptations or (as the case may be) the relevant notice of determined requisite adaptations.

## **4 Procedural matters**

### 4.1 *More than one notice*

More than one modification notice may be given.

### 4.2 *Differences etc as to requisite adaptations*

Any difference or question as to whether any thing is a requisite adaptation shall be determined by ORR:

- (a) on the application of either party; and
- (b) in accordance with such procedure (including as to consultation) as ORR may by notice to the parties determine.

### 4.3 *Co-operation and information*

If ORR gives notice to either or both of the parties that it requires from either or both of them information in relation to any requisite adaptation or proposed requisite adaptation:

- (a) the party of whom the request is made shall provide the requested information promptly and to the standard required by ORR; and
- (b) if that party fails timeously 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.

#### 4.4 *Office of Rail Regulation's criteria*

In relation to the negotiation of any requisite adaptation, ORR shall be entitled to:

- (a) give to the parties any criteria which it requires to be applied in the negotiations; and
- (b) modify the criteria after consultation.

#### 4.5 *Procedural modifications*

In relation to the procedure in paragraph 3 for the agreement or establishment of requisite adaptations (including the times within which any step or thing requires to be done or achieved):

- (a) such procedure may be modified by ORR by a notice of procedural modification given by it to the parties; but
- (b) ORR may give a notice of procedural modification only if it is satisfied that it is necessary or expedient to do so in order to promote or achieve the objectives specified in section 4 of the Act or if such a notice is requested by both parties.

#### 4.6 *Dates*

In this Schedule 10:

- (a) where provision is made for a date to be specified or stated by ORR it may, instead of specifying or stating a date, specify or state a method by which a date is to be determined, and references to dates shall be construed accordingly; and
- (b) any notice given by ORR which states a date may state different dates for different purposes.

#### 4.7 *Requirement for prior consultation*

No relevant notice shall have effect unless:

- (a) ORR has first consulted the parties and the Secretary of State in relation to the proposed relevant notice in question;
- (b) in the consultations referred to in paragraph 4.7(a), ORR has made available to the parties and the Secretary of State such drafts of the proposed relevant notice as it considers are necessary so as properly to inform them of its contents;
- (c) ORR has given each party and the Secretary of State the opportunity to make representations in relation to the proposed relevant notice and has taken into account all such representations (other than those which are frivolous or trivial) in making its decision on the relevant notice to be given;

- (d) ORR has notified the parties and the Secretary of State as to its conclusions in relation to the relevant notice in question (including by providing to each such person a copy of the text of the proposed relevant notice) and its reasons for those conclusions; and
- (e) in effecting the notifications required by paragraph 4.7(d), ORR has treated as confidential any representation (including any submission of written material) which (and to the extent that) the person making the representation, by notice in writing to ORR or by endorsement on the representation of words indicating the confidential nature of such representation, has specified as confidential information.

#### 4.8 *Consolidated contract*

Not later than 28 days after the giving of the last of:

- (a) a modification notice; and
- (b) a notice of determined requisite adaptations or a notice of consent to requisite adaptations (as the case may be),

Network Rail shall prepare and send to the Train Operator, ORR and the Secretary of State a copy of this contract as so modified.

#### 4.9 *Saving*

Nothing in this Schedule 10 affects:

- (a) the right of either party to approach and obtain from ORR guidance in relation to the requisite adaptations; or
- (b) the right of ORR at any time to effect modifications to either the Network Code under Condition C8 of that code, or the Traction Electricity Rules pursuant to the provisions contained therein.

### 5 **Definitions**

In this Schedule 10:

- “backstop date”** means the date (being not earlier than 28 days from the date of the modification notice) specified as such in a modification notice (or such later date as may be established under paragraph 3.5(a) or 4.6);
- “modification notice”** has the meaning ascribed to it in paragraph 2.1;
- “notice of consent to requisite adaptations”** means a notice given by ORR under paragraph 3.4;

|   |   |
|---|---|
| <b>“notice of determined requisite adaptations”</b> | has the meaning ascribed to it in paragraph 3.7;  |
| <b>“notice of procedural modification”</b>          | means a notice given by ORR to the parties under paragraph 4.5 modifying any aspect of the procedure in this Schedule 10 for the agreement or establishment of requisite adaptations;   |
| <b>“ORR’s criteria”</b>                             | means the criteria established by ORR for the purposes of the negotiation of requisite adaptations and given to the parties, or modified, under paragraph 4.4;  |
| <b>“relevant notice”</b>                            | means a modification notice, notice of determined requisite adaptations, notice of procedural modification or notice of modification of ORR’s criteria;   |
| <b>“requisite adaptations”</b>                      | in relation to specified modifications, means the amendments (including the addition of information) to the provisions in question which are necessary or expedient so as to give full effect to them in the particular circumstances of the case, and “adaptation” shall be construed accordingly; and |
| <b>“specified”</b>                                  | means specified in a modification notice.   |



## ANNEX 3

### BESPOKE AMENDMENTS

#### **PART 1 (MODIFICATIONS TO STANDARD AMENDMENTS AND OTHER BESPOKE AMENDMENTS)**

***Explanatory Note:***

*This Annex 3 sets out (i) the modifications which need to be made to the standard amendments and (ii) certain other bespoke amendments, in each case required in order to give effect to ORR's conclusions on the Review in the Track Access Agreements listed below.*

*If a particular Track Access Agreement does not appear in Part 1 of this Annex 3, ORR proposes that the standard amendments will be made to that Track Access Agreement without modification.*

*If a particular Track Access Agreement appears in Part 1 of this Annex 3, ORR proposes that the standard amendments will be made to that Track Access Agreement, modified to the extent specified in the paragraph or paragraphs of Part 1 of this Annex 3 relating to that Track Access Agreement.*



Each Track Access Agreement referred to in this Annex 3, in each case as amended in accordance with Annex 2, shall be further amended on the terms set out in this Annex 3.

## **1 Definitions of SPD Cost Threshold No.1 and SPD Cost Threshold No.2 in Schedule 4**

1.1 In the following Track Access Agreements:

- (i) the **c2c TAA**;
- (ii) the **Chiltern TAA**;
- (iii) the **LOROL TAA**; and
- (iv) the **Merseyrail TAA**,

(a) delete the definition of “SPD Cost Threshold No.1” and replace it with the following definition:

“**SPD Cost Threshold No.1**” means £304,750;”;

(b) delete the definition of “SPD Cost Threshold No.2” and replace it with the following definition:

“**SPD Cost Threshold No.2**” means £609,500;”.

## **2 Paragraph 4.2 of Part 3 to Schedule 4: EBM Rates for Cost Compensation Formula**

2.1 In paragraph 4.2 of Part 3 to Schedule 4 (Cost compensation formula) of the following Track Access Agreements:

- (i) The **East Coast TAA**;
- (ii) the **XC TAA**;
- (iii) the **Northern TAA**;

- (iv) the **ATW TAA**;
- (v) the **ScotRail TAA**;
- (vi) the **FTPE TAA**;
- (vii) the **East Midlands TAA**;
- (viii) the **West Coast TAA**; and
- (ix) the **Merseyrail TAA**,

delete the following text:

“EBMPR is the payment rate per EBM, which is £14.29.”

and replace it with the following:

“EBMPR is the payment rate per EBM, which is £9.66.”

2.2 In paragraph 4.2 of Part 3 to Schedule 4 (Cost compensation formula) of the **FGW TAA**, delete the following text:

“EBMPR is the payment rate per EBM, which is £14.29.”

and replace it with the following:

“EBMPR is the payment rate per EBM, which is:

- (i) in respect of any LSE Service Group, £14.29; and
- (ii) in respect of every other Service Group that is not an LSE Service Group, £9.66,

where “**LSE Service Group**” means any of the following Service Groups: Service Group EE01 (peak), Service Group EE01 (off peak), Service Group EF05 (peak), Service Group EF05 (off peak), Service Group EF06 (peak), Service Group

EF06 (off peak), Service Group EF07, Service Group EF08 and Service Group EF09.”.

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

- 3.1 In each Track Access Agreement, in Annex B to Part 3 of Schedule 4 (Lookup Table for EBM Weights), immediately after the column headed “% Trains”, insert a new column headed “No Bus Replacement (0%)” and insert the figure “0” in every row in that column.

### **4 Appendix 7D to Schedule 7**

- 4.1 In the following Track Access Agreements:

- (a) the **FCC TAA**;
- (b) the **London & Birmingham TAA**;
- (c) the **Southern TAA**; and
- (d) the **West Coast TAA**,

in Appendix 7D to Schedule 7, complete the table using the information specific to that Track Access Agreement, which is attached separately in Appendix 1 to this Annex 3, Part 1.

### **5 Appendix 1 to Schedule 8**

- 5.1 Delete columns B to I (inclusive) of Appendix 1 of Schedule 8 to each Track Access Agreement and replace them in their entirety with the Columns B to I (inclusive) of Appendix 1 of Schedule 8, which is specific to each Track Access Agreement and attached separately in Part 2 of Annex 3 to this Review Notice.

5.2 In the following Track Access Agreements:

- (a) the **Chiltern TAA**;
- (b) the **FCC TAA**;
- (c) the **FGW TAA**;
- (d) the **East Midlands TAA**; and
- (e) the **LOROL TAA**,

delete columns J to O (inclusive) of Appendix 1 to Schedule 8 and replace them in their entirety with the Columns J to O (inclusive) of Appendix 1 to Schedule 8, which is specific to each Track Access Agreement and attached separately in Part 2 of Annex 3 to this Review Notice.

## 6 Appendix 2 to Schedule 8: Charter Destination Points

- 6.1 In Appendix 2 to Schedule 8 to the **ATW TAA**, delete the words “Not Used” and replace them with the heading and the list of Charter Destination Points set out in Appendix 2 to this Annex 3, Part 1;
- 6.2 In Appendix 2 to Schedule 8 to the **c2c TAA**, delete the words “Not Used” and replace them with the heading and the list of Charter Destination Points set out in Appendix 3 to this Annex 3, Part 1;
- 6.3 In Appendix 2 to Schedule 8 to the **Chiltern TAA**, delete the words “Not Used” and replace them with the heading and the list of Charter Destination Points set out in Appendix 4 to this Annex 3, Part 1;
- 6.4 In Appendix 2 to Schedule 8 to the **FGW TAA**, delete the words “Not Used” and replace them with the heading and the list of Charter Destination Points set out in Appendix 5 to this Annex 3, Part 1;

- 6.5 In Appendix 2 to Schedule 8 to the **ScotRail TAA**, delete the words “Not Used” and replace them with the heading and the list of Charter Destination Points set out in Appendix 6 to this Annex 3, Part 1;
- 6.6 In Appendix 2 to Schedule 8 to the **Merseyrail TAA**, delete the words “Not Used” and replace them with the heading and the list of Charter Destination Points set out in Appendix 7 to this Annex 3, Part 1; and
- 6.7 In Appendix 2 to Schedule 8 to the **Northern TAA**, delete the words “Not Used” and replace them with the heading and the list of Charter Destination Points set out in Appendix 8 to this Annex 3, Part 1.

## **7 Track Access Agreement between Network Rail and The Chiltern Railway Company Limited**

### **7.1 In the Chiltern TAA:**

(a) In Schedule 4 part 3:

(i) in paragraph 2.3(b) delete the word “or”;

(ii) in paragraph 2.3(c), after “G3”, delete “.” and add:

”; or

(d) the Restrictions of Use are related to the EG3 Project.”;

(b) in paragraph 1 of Part 1 of Schedule 7, (Definitions), at the end of the definition of “Wolvercot Tunnel Capital Sum”, insert the sum, in words and figures, in relation to the Wolvercot Tunnel Capital Sum set out in Part 2 of this Annex 3;

(c) at the end of paragraph 5.9 of Schedule 8 delete the “.” and insert the following text:

", provided that the Minutes Delay attributable to the EVG2 Works will be allocated to Network Rail under paragraph 5.2, paragraph 5.4 and paragraph 5.5";

- (d) at the end of paragraph 5.10 of Schedule 8, delete the "." and insert the following text:

" , provided that the Minutes Delay attributable to the EVG2 Works shall not be allocated to the Train Operator under paragraph 5.3, paragraph 5.4 and paragraph 5.5";

- (e) at the end of paragraph 5.11 of Schedule 8, delete the "." and insert the following text:

", provided that the Cancelled Stops attributable to the EVG2 Works will be allocated to Network Rail under paragraph 5.3, paragraph 5.4 and paragraph 5.6 "; and

- (f) at the end of paragraph 5.12 of Schedule 8, delete the "." and insert the following text:

", provided that the Cancelled Stops attributable to the EVG2 Works shall not be allocated to the Train Operator under paragraph 5.3, paragraph 5.4 and paragraph 5.6".

## **8 Track Access Agreement between Network Rail and First Capital Connect Limited**

### **8.1 In the FCC TAA:**

- (a) in Schedule 8, delete paragraph 5.2 and replace it with the following paragraph:

#### *"5.2 Network Rail responsibility incidents*

Responsibility for Minutes Delay and Cancelled Stops on a day caused by incidents for which Network Rail is

allocated responsibility pursuant to this paragraph 5.2 shall be allocated to Network Rail. Unless and to the extent otherwise agreed, Network Rail shall be allocated responsibility for an incident other than a planned incident (as defined in paragraph 5.7), if that incident:

- (a) is caused wholly or mainly:
  - (i) by breach by Network Rail of any of its obligations under this contract; or
  - (ii) (whether or not Network Rail is at fault) by circumstances within the control of Network Rail in its capacity as operator of the Network; or
  - (iii) (whether or not Network Rail is at fault) by any act, omission or circumstance originating from or affecting the Network (including its operation), including, subject to paragraph 5.3(b)(i), any incident in connection with rolling stock on the Network for which any train operator other than the Train Operator would be allocated responsibility if it were the Train Operator under this contract; or
- (b) causes delay to the commencement of a Train's journey from Blackfriars, and is caused by the late running for any reason whatever of any rolling stock included in that Train when that rolling stock is operated by or on behalf of another train operator (and the parties agree that, notwithstanding Condition A1.1(h) of the Network Code, responsibility for minutes delay so caused shall be allocated as set out in this paragraph 5.2(b))

and not in accordance with section 4.17.2 of the Delay Attribution Guide or any other section of the Delay Attribution Guide as may from time to time provide guidance on the attribution of delays so caused)."; and

(b) In Schedule 8 at the beginning of paragraph 5.3(b)(ii), before "the commencement", insert:

" (except in the circumstances described in paragraph 5.2(b) above)".

## **9 Track Access Agreement between Network Rail and First Greater Western Limited**

### **9.1 In the FGW TAA:**

(a) In Schedule 7 Part 2:

(i) delete the numbering of paragraph 4.1.1 and re-number that paragraph "4.1.1 (a)";

(ii) at the beginning of the new paragraph 4.1.1(a), insert the following words:

"Subject to paragraph 4.1.1(b)";

(iii) immediately following the new paragraph 4.1.1(a), insert the following new paragraph 4.1.1(b):

"4.1.1(b) Notwithstanding any amount for traction current (in pence per kWh) agreed or determined pursuant to paragraph 19 of the Traction Electricity Rules, for so long as the track access contract between Network Rail and Heathrow Express Operating Company Limited relating to the operation of the Hayes & Harlington Shuttle is in force and effect, the value of  $EF_{gjt}$  in the calculation of  $E_{tmo}$ ,  $E_{tme}$ ,  $E_{tmuAC}$  and  $E_{tmuDC}$  shall be deemed to be nil (0) in respect of each any electric multiple units operated



by or on behalf of the Train Operator on the route between London Paddington and Hayes & Harlington.”;

- (b) In Schedule 7 Part 2 paragraph 8, at the end of the definition of  $UV_{tk}$ , add:

“, provided that, notwithstanding any value provided for in the Track Usage Price List, for so long as the track access contract between Network Rail and Heathrow Express Operating Company Limited relating to the operation of the Hayes & Harlington Shuttle is in full force and effect, the value of  $EV_{tk}$  shall be deemed to be nil (0) in respect of each any electric multiple units operated by or on behalf of the Train Operator on the route between London Paddington and Hayes & Harlington.”.

- (c) In Schedule 7 delete “Part 5” and replace it with the wording attached at Appendix 9 to this Annex 3, Part 1.

## **10 Track Access Agreement between Network Rail and First ScotRail Limited**

- 10.1 In Schedule 10 of the **ScotRail TAA**, wherever the words "Secretary of State" are used, delete them and replace them with the words "Scottish Ministers”.

## **11 Track Access Agreement between Network Rail and London Overground Rail Operations Ltd**

- 11.1 In the **LOROL TAA**:

- (a) Schedule 8 paragraph 1.1:

- (i) delete the definitions of “Off-Peak” and “Peak” in their entirety;  
and

(ii) insert the following new definitions in alphabetical order:

**“East London Line Off-Peak”** refers, in Appendix 1, Service Group EK03 to Services other than Services referred to in the definition of East London Line Peak;

**“East London Line Peak”** refers, in Appendix 1, Service Group EK03, to Services Scheduled to arrive at New Cross Gate (Forward) between 07:00 and 09:59 (inclusive) and Services Scheduled to arrive at Queens Road, Peckham (Forward) between 07:00 and 09:59 (inclusive) and Services Scheduled to depart from New Cross Gate (reverse) between 16:00 and 18:59 (inclusive) and Services Scheduled to depart from Queens Road, Peckham (reverse) between 16:00 and 18:59 (inclusive) all Monday to Friday (excluding Public Holidays);

**“Orbitals Off-Peak”** refers, in Appendix 1, Service Group EK01, to Services other than Services referred to in the definition of Orbitals Peak;

**“Orbitals Peak”** refers, in Appendix 1, Service Group EK01, to Services Scheduled to arrive at their destination between 07.00 and 09.59 (inclusive) and Services Scheduled to depart from their origin between 16.00 and 18.59 (inclusive), Monday to Friday;

**“Watford Off-Peak”** refers, in Appendix 1, Service Group EK02, to Services other than Services referred to in the definition of Watford Peak; and

**“Watford Peak”** refers, in Appendix 1, Service Group EK02, to Services Scheduled to arrive at London Euston between 07.00 and 09.59 (inclusive) and Services Scheduled to depart from London Euston between 16.00 and 18.59 (inclusive), Monday to Friday."; and

- (b) in Schedule 10, wherever the words “the Secretary of State” are used, delete them and replace them with the words “Rail for London Limited” throughout.

## **12 Track Access Agreement between Network Rail and London & South Eastern Railway Limited**

### **12.1 In the South Eastern TAA:**

- (a) in paragraph 1 of Part 1 of Schedule 7, insert the following definitions in alphabetical order:

“**Folkestone East PN Point Project Charge**” has the meaning ascribed to it in paragraph 1.1 of Part 5 of Schedule 7;”

“**Folkestone East PN Point Project Charge Indexation**” has the meaning ascribed to it in paragraph 1.3 of Part 5 of this Schedule 7;”;

- (b) in Schedule 7 delete Part 5 and replace it with:

#### **“PART 5: ADDITIONAL CHARGES**

##### **1 Additional Fixed Charge for Folkestone East PN Point Project**

1.1 In each Relevant Year commencing on or after 1 April 2009 until the earlier of termination of this contract for any reason and 31 March 2029, the Train Operator shall pay an additional fixed charge of £18,134.39 (the “**Folkestone East PN Point Project Charge**”), multiplied by the Folkestone East PN Point Project Charge Indexation for that year.

1.2 In all Relevant Years the Folkestone East PN Point Project Charge shall be payable after the expiry of the

relevant Period in accordance with paragraph 10.1 of Part 2 of this Schedule 7.

### 1.3 Folkestone East PN Point Project Charge Indexation

The Folkestone East PN Point Project Charge Indexation in Relevant Year t shall be derived from the following formula:

$$\text{SECHSCI}_t = 1 + \left( \frac{\text{RPI}_{t-1} - \text{RPI}_{2008}}{\text{RPI}_{2008}} \right)$$

where:

$\text{SECHSCI}_t$  means the Folkestone East PN Point Project Charge Indexation in Relevant Year t;

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

$\text{RPI}_{2008}$  means the Retail Prices Index published or determined with respect to November 2008.";

## **2 Transitional provision for traction electricity consumption rate for Class 395 rolling stock for CP4**

2.1 If, by or on 31 March 2014, a rate to replace the temporary traction electricity consumption rate for Class 395 rolling stock set out in paragraph 3 of Part 5 to Schedule 7 of this contract as in force at that date ("the CP4 Paragraph 3 of Part 5") has:

- (a) not received ORR's consent pursuant to paragraph 9 of Part 2 to Schedule 7 of this contract in force at that time ("the CP4 Paragraph 9 of Part 2") and:
- (b) has either been:
  - (i) referred for resolution in accordance with the ADRR under the CP4 Paragraph 9 of Part 2 or:
  - (ii) agreed by the parties and submitted to ORR for its consent (together sub-paragraphs 2.1(a) and 2.1(b) shall be "**the Conditions**");

then the CP4 Paragraph 3 of Part 5 and the CP4 Paragraph 9 of Part 2 shall, for the purpose of determining or agreeing the rate, remain in force until such rate is either agreed or determined and also consented to by ORR. Any such supplement shall be treated as a supplement to the traction electricity consumption rates list that existed for the control period that ran from 1 April 2009 to 31 March 2014 (and which was published on or about 18 December 2008).

2.2 If, on 1 April 2014, the Conditions set out in sub-paragraph 2.1 above have not been met, then this paragraph 2 shall have no effect."

- (c) in Schedule 8 delete paragraph 5.2 and replace it with:

"5.2 *Network Rail responsibility incidents*

Responsibility for Minutes Delay and Cancelled Stops on a day caused by incidents for which Network Rail is allocated responsibility pursuant to this paragraph 5.2 shall be allocated to Network Rail. Unless and to the extent otherwise agreed, Network Rail shall be allocated responsibility for an incident other than a planned incident (as defined in paragraph 5.7), if that incident:

- (a) is caused wholly or mainly:
  - (i) by breach by Network Rail of any of its obligations under this contract; or
  - (ii) (whether or not Network Rail is at fault) by circumstances within the control of Network Rail in its capacity as operator of the Network; or
  - (iii) (whether or not Network Rail is at fault) by any act, omission or circumstance originating from or affecting the Network (including its operation), including, subject to paragraph 5.3(b)(i), any incident in connection with rolling stock on the Network for which any train operator other than the Train Operator would be allocated responsibility if it were the Train Operator under this contract; or
  
- (b) causes delay to the commencement of a Train's journey from Blackfriars, and is caused by the late running for any reason whatever of any rolling stock included in that Train when that rolling stock is operated by or on behalf of another train operator (and the parties agree that, notwithstanding Condition A1.1(h) of the Network Code, responsibility for minutes delay so caused shall be allocated as set out in this paragraph 5.2(b) and not in accordance with section 4.17.2 of the Delay Attribution Guide or any other section of the Delay Attribution Guide as may from time to time provide guidance on the attribution of delays so caused)."; and

(d) in Schedule 8 paragraph 5.3(b)(ii) before “the commencement”, insert:

"(except in the circumstances described in paragraph 5.2(b) above) ".

### **13 Track Access Agreement between Network Rail and Merseyrail Electrics 2002 Limited**

13.1 In Schedule 10 of the **Merseyrail TAA**, wherever the words "the Secretary of State" are used, delete them and replace them with the words "MPTE" throughout.

### **14 Track Access Agreement between Network Rail and Northern Rail Limited**

14.1 In Schedule 7 of the **Northern TAA**, delete Part 5 and replace it with:

#### **“PART 5: ADDITIONAL CHARGES**

##### **1. The East Lancashire Railway Additional Fixed Charge**

1.1 In respect of Ancillary Movements to or from the East Lancashire Railway and in addition to any other amount payable by the Train Operator to Network Rail under the contract, the Train Operator shall pay an additional fixed charge of up to £200 (“the East Lancashire Railway Additional Fixed Charge”) payable by the Train Operator to Network Rail subject to the same terms as apply to the payment of the Fixed Track Charge.

1.2 All provisions of the contract relating to the invoicing and payment of Track Charges (both fixed and variable)

(including interest on late payments, VAT and failure to pay), shall apply to this payment of the Track Charges in respect of the East Lancashire Railway Additional Fixed Charge."

**15 Track Access Agreement between Network Rail and Stagecoach South Western Trains Limited**

**15.1 In the South Western TAA:**

(a) in Schedule 7 Part 1 paragraph 1, insert the following new definitions in alphabetical order:

**"Salisbury East Carriage Holding Sidings Project Charge"** has the meaning ascribed to it in paragraph 1.1 of Part 5 of Schedule 7;

**"Salisbury East Carriage Holding Sidings Project Indexation"** has the meaning ascribed to it in paragraph 1.3 of Part 5 of Schedule 7;" and

(b) the following text shall be added to Part 5 of Schedule 7:

**"1 Additional Fixed Charge for Salisbury East Carriage Holding Sidings Project**

1.1 In each Relevant Year commencing on 1 April 2009 until the earlier of termination of this contract for any reason and the Relevant Year commencing on 1 April 2028, the Train Operator shall pay an additional fixed charge of £75,773 (the **"Salisbury East Carriage Holding Sidings Project Charge"**), multiplied by the Salisbury East Carriage Holding Sidings Project Charge Indexation for that year.



1.2 In all Relevant Years the Salisbury East Carriage Holding Sidings Project Charge shall be payable after the expiry of the relevant Period in accordance with paragraph 10.1 of Part 2 of this Schedule 7.

1.3 Salisbury East Carriage Holding Sidings Project Charge Indexation

The Salisbury East Carriage Holding Sidings Project Charge Indexation in Relevant Year t shall be derived from the following formula:

$$\text{SECHSCI}_t = 1 + \left( \frac{\text{RPI}_{t-1} - \text{RPI}_{2008}}{\text{RPI}_{2008}} \right)$$

where:

$\text{SECHSCI}_t$  means the Salisbury East Carriage Holding Sidings Project Charge Indexation in Relevant Year t;

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

$\text{RPI}_{2008}$  means the Retail Prices Index published or determined with respect to November 2008."

## **16 Track Access Agreement between Network Rail and West Coast Trains Limited**

16.1 In the **West Coast TAA**:

- (a) in Part 1, paragraph 1 of Schedule 7, insert the following definitions in alphabetical order:

“**Facility Charge**” means the fixed annual facility charge payable by the Train Operator to Network Rail in respect of the capital cost of the Facility Charge Works, calculated in accordance with paragraph 8A of Part 2;

“**Facility Charge Indexation**” has the meaning ascribed to it in paragraph 8A.3 of Part 2;

“**Facility Charge Works**” means the works in relation to the platform lengthening to permit eleven car pendolinos to operate on the West Coast Main Line”;

“**Lone Class 57/3 Locomotives**” means any Class 57/3 locomotives running on their own not hauling a train operating under Train Service Code 22112005;

- (b) in Part 2, paragraph 6 of Schedule 7, delete the definition of  $Pg_{twdi}$  and replace it with the following:

“ $Pg_{twdi}$  means in respect of Lone Class 57/3 Locomotives 20.31 pence and in respect of any other Service Coded Group i the Weekday rate in respect of Relevant Year t shown in the List of Capacity Charge Rates, in each case indexed in accordance with the following formula:

$$Pg_{twdi} = Pg_{t-1wdi} \cdot \left( 1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right)$$

where:

$RPI_{t-1}$  has the meaning set out in paragraph 2.2 above; and

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

but so that in relation to the Relevant Year t commencing on 1 April 2014,  $Pg_{twdi}$  shall have the value:

- (i) in respect of Lone Class 57/3 Locomotives, 20.31 pence; and
- (ii) in respect any other Service Coded Group i the Weekday rate shown for the Train Operator in the List of Capacity Charge Rates,

in each case multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year,  $Pg_{t-1wdi}$  shall have the same value;”;

- (c) in Part 2, paragraph 6 of Schedule 7, delete the definition of  $Pg_{twei}$  and replace it with the following:

“ $Pg_{twei}$  means in respect of Lone Class 57/3 Locomotives 15.23 pence and in respect of any other Service Coded Group i the weekend rate per Service Coded Group i in respect of Relevant Year t shown in the List of Capacity Charge Rates, in each case indexed in accordance with the following formula:

$$Pg_{twei} = Pg_{t-1wwei} \cdot \left( 1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right)$$

where:

$RPI_{t-1}$  has the meaning set out in paragraph 2.2 above; and

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

but so that in relation to the Relevant Year t commencing on 1 April 2014,  $Pg_{twei}$  shall have the value:

- (i) in respect of Lone Class 57/3 Locomotives, 15.23 pence; and
- (ii) in respect of any other Service Coded Group i the weekend rate per Service Coded Group i shown for the Train Operator in the List of Capacity Charge Rates,

in each case multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year,  $Pg_{t-1wwei}$  shall have the same value;”;

(d) in Part 2 of Schedule 7 after paragraph 8 insert the following paragraph:

**"8A Facility Charge**

8A.1 During each Relevant Year, Network Rail shall levy and the Train Operator shall pay the Facility Charge as calculated in accordance with paragraph 8A.2.

8A.2 The Facility Charge due and payable in Relevant Year t shall be:

(a) in respect of the Relevant Year commencing on 01 April 2012, the amount of £1,255,000.00 (one million two hundred and fifty-five thousand pounds sterling); and

(b) in respect of any other Relevant Year t, the amount of £1,255,000.00 (one million two hundred and fifty-five thousand pounds sterling) multiplied by the Facility Charge Indexation for that Relevant Year calculated in accordance with paragraph 8A.3.

8A.3 The Facility Charge Indexation in Relevant Year t shall be derived from the following formula:

$$FCI_t = 1 + \left( \frac{RPI_{t-1} - RPI_{2012}}{RPI_{2012}} \right)$$

where:

$FCI_t$  means the Facility Charge Indexation in Relevant Year t;

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

RPI<sub>2012</sub> means the Retail Prices Index published or determined with respect to November 2012."; and

(e) in Part 2 to Schedule 7 delete paragraph 10.1(b) and replace it with the following paragraph:

"(b) The Train Operator shall pay or procure the payment to Network Rail of that part of the Fixed Track Charge or that part of the Facility Charge attributable to any Period as invoiced by Network Rail on or after the expiry of each such Period within 7 days of the invoice date or 7 days after the end of the Period, whichever is later."

**APPENDIX 1 TO ANNEX 3, PART 1**

**APPENDIX 7D TO SCHEDULE 7 IN THE FCC TAA, THE LONDON &  
BIRMINGHAM TAA, THE SOUTHERN TAA AND THE WEST COAST  
TAA**

**APPENDIX 7D – "METERED TRAINS M" FOR THE PURPOSES OF  
PARAGRAPH 4.1.1 OF PART 2**

**The FCC TAA:**

| <b>Train Type</b> | <b>Train ID</b> | <b>Traction Type</b> |
|-------------------|-----------------|----------------------|
| 319               | 319004          | AC/DC                |
| 319               | 319366          | AC/DC                |
| 365               | 365504          | AC                   |
| 365               | 365537          | AC                   |
| 365               | 365539          | AC                   |

**The London & Birmingham TAA:**

| <b>Train Type</b> | <b>Train ID</b> | <b>Traction Type</b> |
|-------------------|-----------------|----------------------|
| 321               | All             | AC                   |
| 323               | All             | AC                   |
| 350               | All             | AC                   |

**The Southern TAA:**

| <b>Train Type</b> | <b>Train ID</b> | <b>Traction Type</b> |
|-------------------|-----------------|----------------------|
| 313               | 313210          | DC                   |
| 313               | 313217          | DC                   |

| <b>Train Type</b> | <b>Train ID</b> | <b>Traction Type</b> |
|-------------------|-----------------|----------------------|
| 377               | 377110          | DC                   |
| 377               | 377131          | DC                   |
| 377               | 377134          | DC                   |
| 377               | 377140          | DC                   |
| 377               | 377141          | DC                   |
| 377               | 377142          | DC                   |
| 377               | 377146          | DC                   |
| 377               | 377152          | DC                   |
| 377               | 377159          | DC                   |
| 377               | 377402          | DC                   |
| 377               | 377411          | DC                   |
| 377               | 377420          | DC                   |
| 377               | 377424          | DC                   |
| 377               | 377427          | DC                   |
| 377               | 377443          | DC                   |
| 377               | 377450          | DC                   |
| 377               | 377470          | DC                   |
| 442               | 442409          | DC                   |
| 442               | 442414          | DC                   |
| 455               | 455801          | DC                   |
| 455               | 455818          | DC                   |
| 455               | 455827          | DC                   |
| 455               | 455831          | DC                   |
| 455               | 455846          | DC                   |

**The West Coast TAA:**

| <b>Train Type</b> | <b>Train ID</b> | <b>Traction Type</b> |
|-------------------|-----------------|----------------------|
| 390               | All             | AC                   |

## APPENDIX 2 TO ANNEX 3, PART 1

### ATW TAA: APPENDIX 2 TO SCHEDULE 8 - CHARTER DESTINATION POINTS

#### Charter Destination Points:

|                       |                      |                     |
|-----------------------|----------------------|---------------------|
| Aberdare              | Barry                | Pembroke Dock       |
| Bargoed               | Barry Island         | Maesteg             |
| Bristol Temple Meads  | Caerphilly           | Swansea             |
| Gloucester            | Chepstow             | Tenby               |
| Cardiff Central       | Cardiff Bay          | Haverfordwest       |
| Liskeard              | Cardiff Queen Street | Milford Haven       |
| Merthyr Tydfil        | Coryton              | Radyr               |
| Penarth               | Rhymney              | Carmarthen          |
| Paignton              | Treherbert           | Taffs Well          |
| Manchester Piccadilly | Plymouth             | Ystrad Mynach       |
| Liverpool Lime Street | Abergavenny          | Bangor              |
| Newport               | Crewe                | Llandudno           |
| Stockport             | Holyhead             | Exeter St Davids    |
| Southampton           | Shrewsbury           | Penzance            |
| Wrexham General       | Barmouth             | Wolverhampton       |
| Waterloo              | Aberystwyth          | Llandudno Junction  |
| Port Talbot Parkway   | Machynlleth          | Chester             |
| Bidston               | Pwllheli             | Whitland            |
| Bridgend              | Llanelli             | Birmingham New St   |
| Hereford              | Blaenau Ffestiniog   | Manchester Victoria |
| Wrexham Central       | Pontypridd           | Fishguard Harbour   |



**APPENDIX 3 TO ANNEX 3, PART 1**

**C2C TAA: APPENDIX 2 TO SCHEDULE 8 - CHARTER DESTINATION  
POINTS**

Charter Destination Points:

Fenchurch Street  
Southend Central  
Shoeburyness  
Grays  
Pitsea  
Laindon  
Leigh-on-Sea  
Stanford-le-Hope  
Thorpe Bay  
Benfleet

**APPENDIX 4 TO ANNEX 3, PART 1**

**CHILTERN TAA: APPENDIX 2 TO SCHEDULE 8 - CHARTER  
DESTINATION POINTS**

Charter Destination Points:

Aylesbury

Amersham

Marylebone

High Wycombe

Princes Risborough

Gerrards Cross

Banbury

Leamington Spa

Birmingham Snow Hill

Bicester North

Warwick Parkway

Stourbridge Junction

Kidderminster

## APPENDIX 5 TO ANNEX 3, PART 1

### FGW TAA: APPENDIX 2 TO SCHEDULE 8 - CHARTER DESTINATION POINTS

#### Charter Destination Points:

|                      |                         |                     |
|----------------------|-------------------------|---------------------|
| London Paddington    | Oxford                  |                     |
| Swindon              | Gloucester              |                     |
| Cheltenham Spa       | Worcester Shrub Hill    |                     |
| Great Malvern        | Hereford                |                     |
| Bristol Temple Meads | Bristol Parkway         |                     |
| Cardiff Central      | Swansea High Street     |                     |
| Carmarthen           | Pembroke Dock           |                     |
| Fishguard Harbour    | Weston-super-Mare       |                     |
| Taunton              | Exeter St Davids        |                     |
| Paignton             | Plymouth                |                     |
| Newquay              | Penzance                |                     |
| Didcot Parkway       | Banbury                 |                     |
| Newbury              |                         |                     |
| Severn Beach         | Portsmouth and Southsea | Avonmouth           |
| Bath Spa             | Portsmouth Harbour      | Exmouth             |
| Filton Abbey Wood    | Crediton                | Warminster          |
| Newport              | Looe                    | St Erth             |
| St Ives              | Barnstaple              | Southampton Central |
| Liskeard             | Yeovil Pen Mill         | Romsey              |
| Salisbury            | Castle Cary             | Westbury            |
| Calstock             | Frome                   | Brighton            |
| Totnes               | Exeter Central          | Falmouth Docks      |
| Gunnislake           | Truro                   | Par                 |
| Weymouth             | Newton Abbot            |                     |
| Highbridge & Burnham |                         |                     |

## APPENDIX 6 TO ANNEX 3, PART 1

### SCOTRAIL TAA: APPENDIX 2 TO SCHEDULE 8 - CHARTER DESTINATION POINTS

#### Charter Destination Points:

|                             |                          |                    |
|-----------------------------|--------------------------|--------------------|
| Shotts for Livingston South | Glasgow Central          | Edinburgh          |
| Slateford for Kirknewton    | Drem for North Berwick   | West Calder        |
| Motherwell                  | Perth                    | Stirling           |
| Dunblane                    | Oban                     | Haymarket          |
| Bathgate                    | Kirkcaldy                | Cowdenbeath        |
| Inverkeithing               | Glenrothes with Thornton | Wick               |
| Inverness                   | Aberdeen                 | Kyle of Lochalsh   |
| Mallaig                     | Crianlarich              | Fort William       |
| Elgin                       | Dyce                     | Keith              |
| Dundee                      | Montrose                 | Carnoustie         |
| Ladybank                    | Stranraer                | Ayr                |
| Newcastle Central           | Girvan                   | Carlisle           |
| Dumfries                    | Glasgow Queen Street     | Falkirk Grahamston |

**APPENDIX 7 TO ANNEX 3, PART 1**

**MERSEYRAIL TAA: APPENDIX 2 TO SCHEDULE 8 - CHARTER  
DESTINATION POINTS**

Charter Destination Points:

Merseyrail PTE – Northern Line

Liverpool Central  
Southport  
Hunts Cross  
Ormskirk  
Kirkby  
Sandhills

Merseyrail PTE – Wirral Line

Chester  
Ellesmere Port  
New Brighton  
West Kirby  
Rock Ferry  
Hooton  
Liverpool Central  
Hamilton Square

## APPENDIX 8 TO ANNEX 3, PART 1

### NORTHERN TAA: APPENDIX 2 TO SCHEDULE 8 - CHARTER DESTINATION POINTS

#### Charter Destination Points

|                        |                                      |
|------------------------|--------------------------------------|
| Barton-on-Humber       | Beverley                             |
| Bishop Auckland        |                                      |
| Bridlington            |                                      |
| Darlington             | Cleethorpes                          |
| Metrocentre            | Doncaster                            |
| Hartlepool             | Filey                                |
| Hexham                 | Hebden Bridge                        |
| Kirkby Stephen         | Hull                                 |
| Leeds                  |                                      |
| Liverpool Lime Street  | Lincoln                              |
| Middlesbrough          | Meadowhall                           |
| Morpeth                | Morecambe (based on Bare Lane times) |
| Nunthorpe              | Newcastle                            |
| Retford (Low level)    | Retford (ECML)                       |
| Saltburn               | Ribblehead                           |
| Selby                  | Scarborough                          |
| Skipton                |                                      |
| Whitby                 | Sunderland                           |
| York                   | Worksop                              |
| Alderley Edge          | Chathill                             |
| Blackburn              | Barrow                               |
| Blackpool South        | Blackpool North                      |
| Buxton                 | Bolton                               |
| Chester                | Carlisle                             |
| Clitheroe              | Chinley                              |
| Crewe                  | Colne                                |
| Ellesmere Port         | Deansgate                            |
| Greenbank              | Glossop                              |
| Hadfield               | Greenfield                           |
| Helsby                 | Hazel Grove                          |
| Huddersfield           | Heysham Port                         |
| Kirkby                 | Irlam                                |
| Liverpool Lime Street  | Lancaster                            |
| Manchester Oxford Road | Manchester Airport                   |
| Manchester Victoria    | Manchester Piccadilly                |
| Millom                 | Marple                               |
| New Mills Central      | Morecambe                            |
| Ormskirk               | Oldham Mumps                         |
| Rochdale               | Preston                              |
| Runcorn                | Rose Hill                            |
| Sellafield             | Salford Crescent                     |
| Sheffield              | Shaw & Crompton                      |

St Annes  
Stockport  
Todmorden  
Warrington Central  
Wigan North Western  
Wilmslow

Southport  
Stalybridge  
Stoke-on-Trent  
Warrington Bank Quay  
Whitehaven  
Wigan Wallgate

**APPENDIX 9 TO ANNEX 3, PART 1**

**FGW TAA: SCHEDULE 7, PART 5**

**PART 5: ADDITIONAL CHARGES**

**"1 Additional Fixed Charge for Reading - Paddington Relief Line Project 2008**

1.1 In each Relevant Year commencing on or after 1 April 2008 until the Expiry Date, the Train Operator shall pay an additional fixed charge (the "**Remaining Years' Relief Line Charge**") at the rate for that Relevant Year set out in the Schedule of Reading - Paddington Relief Line Project 2008 Charges, multiplied by the Linespeed Improvement Charge Indexation for that year. In the Relevant Year containing the Expiry Date the Remaining Years' Relief Line Charge shall be reduced pro rata by the number of days in that Relevant Year up to the Expiry Date compared with the number of days in that Relevant Year;

1.2 In all Relevant Years the charge shall be payable after the expiry of the relevant Period in accordance with paragraph 10.1 of Part 2 of this Schedule 7 except that the charge for the Periods prior to the Effective Date of the 39th Supplemental Agreement to this Access Agreement shall be payable 10 days after the Effective Date of the 39th Supplemental Agreement to this Access Agreement or 21 days after receipt of the relevant Invoice whichever is later;

1.3 In this paragraph 1, Schedule of Reading-Paddington Relief Linespeed Project 2008 Charges means:

|         |          |
|---------|----------|
| 2008/09 | £313,000 |
|---------|----------|



|         |          |
|---------|----------|
| 2009/10 | £303,000 |
| 2010/11 | £292,000 |
| 2011/12 | £282,000 |
| 2012/13 | £271,000 |
| 2013/14 | £261,000 |
| 2014/15 | £250,000 |
| 2015/16 | £240,000 |
| 2016/17 | £229,000 |
| 2017/18 | £219,000 |
| 2018/19 | £209,000 |
| 2019/20 | £198,000 |
| 2020/21 | £188,000 |
| 2021/22 | £177,000 |
| 2022/23 | £167,000 |

#### 1.4 *Linespeed Improvement Charge Indexation*

The Linespeed Improvement Charge Indexation in Relevant Year t shall be derived from the following formula:

$$LICI_t = 1 + \left( \frac{RPI_{t-1} - RPI_{2007}}{RPI_{2007}} \right)$$

where:

LICI<sub>t</sub> means the Linespeed Improvement Charge Indexation in Relevant Year t;

RPI<sub>t-1</sub> means the Retail Prices Index published or determined with respect to November in Relevant Year t-1; and

RPI<sub>2007</sub> means the Retail Prices Index published or determined with respect to November 2007.”.

## **ANNEX 3, PART 2 (CONFIDENTIAL INFORMATION)**

### ***Explanatory Note:***

*As explained above, the confidential information is attached to this Review Notice in the following pages. Copies will be sent only to the parties to the relevant Track Access Agreement, the Secretary of State for Transport, the Scottish Ministers and the Treasury and any relevant parties listed in Part 2 of Annex 1 to this Review Notice. The publication of that information would or might, in the opinion of ORR, seriously and prejudicially affect the interests of each Train Operator and/or Network Rail for the purpose of section 71(2) of the Act, and it is therefore not being published.*