

RAILWAYS ACT 1993

2013 PERIODIC REVIEW

REVIEW NOTICE: OPEN ACCESS PASSENGER OPERATOR TRACK ACCESS AGREEMENTS

TO:

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

together “the **Addressees**”.

1 GENERAL

1.1 This review notice (the “**Review Notice**”) is given in accordance with paragraph 4 of Schedule 4A to the Railways Act 1993 (the “**Act**”).

1.2 The Office of Rail Regulation (“**ORR**”) has undertaken, in accordance with paragraph 1 of Schedule 4A to the Act, a review of:

(a) the amounts payable by Network Rail and each of the Train Operators to each other under each of the access agreements listed in Annex 1 to this Review Notice (the “**Track Access Agreements**”); and

(b) the times at which, and the manner in which, those amounts are payable,

(the “**Review**”).

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

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

(b) hereby incorporated into this Review Notice.

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

2 Proposed Relevant Changes

2.1 For or in connection with giving effect to ORR's conclusions on the Review, ORR proposes to direct the parties to each of the Track Access Agreements to amend their Track Access Agreement on the terms specified in 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 shall come into operation.

4.2 Any objection made under paragraph 4.1 must be:

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

John Larkinson
Office of Rail Regulation
One Kemble Street

5 Definitions and Interpretation

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

- (a) references to “this Review Notice” include the Annexes to this Review Notice;
- (b) references to the singular include the plural and *vice versa*;
- (c) words and phrases defined in:
 - (i) the Act;
 - (ii) the Network Code (formerly known as the Railtrack Track Access Conditions 1995 (as amended)); or
 - (iii) each Track Access Agreement,shall have the same meanings in this Review Notice; and
- (d) any general rules of interpretation contained in:
 - (i) Condition A1 of the Network Code; or
 - (ii) each Track Access Agreement,shall also apply to this Review Notice.



Richard Price

Chief Executive

FOR AND ON BEHALF OF

THE OFFICE OF RAIL REGULATION

Dated 20 December 2013



ANNEX 1

TRAIN OPERATORS AND TRACK ACCESS AGREEMENTS

Train Operator Name	Train Operator Company Number	Original Date of Track Access Agreement
Eurostar International Limited	02462001	31 October 2008
Grand Central Railway Company Limited	03979826	18 January 2007
Grand Central Railway Company Limited	03979826	12 February 2010
Heathrow Express Operating Company Limited	03145133	27 May 2005
Hull Trains Company Limited	03715410	12 February 2010
North Yorkshire Moors Railway Enterprises PLC	02490244	17 January 2007

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 and 8 and various clauses in each Track Access Agreement (the "**standard amendments**"). If there is no direction within Annex 2 in relation to a particular Track Access Agreement, ORR's intention is that the current arrangements in that Track Access Agreement will remain in force unchanged.*

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 4 for Heathrow Express Operating Company 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.

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

1 Amendments to the clauses in each Track Access Agreement

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

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

"13.2 Unpaid sums

If either party fails to pay:

(a) any invoice issued to it under this contract in respect of Track Charges; or

(b) any other sum which has fallen due in accordance with any provision of this contract,

then:

(i) the amount invoiced or sum due, as referred to in Clause 13.2(a) or (b), shall immediately constitute a debt due and owing from the party who has failed to pay the invoice or sum due to the other party (and to any assignee of a party's right to payment in respect of any invoice or other sum due);

(ii) such debt shall be recoverable by any means available under the laws of England and Wales; and

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

2 Amendments to Schedule 4 to the relevant Track Access Agreements

2.1 In the following Track Access Agreements:

- (a) the Track Access Agreement between Network Rail and Grand Central Railway Company Limited dated 18 January 2007 (the “**Grand Central (Sunderland) TAA**”);
- (b) the Track Access Agreement between Network Rail and Grand Central Railway Company Limited dated 12 February 2010 (the “**Grand Central (West Riding) TAA**”); and
- (c) the Track Access Agreement between Network Rail and Hull Trains Company Limited (the “**Hull Trains TAA**”),

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 and replace it with the model Schedule 4 set out in Appendix 1 to this Annex 2. In Annex C of Part 3 to Schedule 4 (Payment Rate per train mile) of the **Grand Central (Sunderland) TAA**, the **Grand Central (West Riding) TAA** and the **Hull Trains TAA**, complete the table using the information relating to Annex C of Part 3 to Schedule 4 specific to that Track Access Agreement which is attached separately in Part 2 of Annex 3 to this Review Notice.

2.2 In the Track Access Agreement between Network Rail and Heathrow Express Operating Company Limited (the “**Heathrow Express TAA**”), 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 and replace it with the Schedule 4 set out in Appendix 2 to this Annex 2. In Annex C of Part 3 to Schedule 4 (Payment Rate per train mile), complete the table using the information relating to Annex C of Part 3 to Schedule 4 specific to the Heathrow Express TAA which is attached separately in Part 2 of Annex 3 to this Review Notice.

2.3 In the Track Access Agreement between Network Rail and Eurostar International Limited (the “**Eurostar TAA**”), delete Schedule 4 and replace it in its entirety with the Schedule 4 set out in Appendix 3 to this Annex 2.

3 Amendments to Schedule 7 to each Track Access Agreement

3.1 In the following Track Access Agreements:

- (a) the **Grand Central (Sunderland) TAA**;
- (b) the **Grand Central (West Riding) TAA**;
- (c) the **Heathrow Express TAA**; and
- (d) the **Hull Trains 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 4 to this Annex 2.

3.2 In the **Eurostar 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 5 to this Annex 2.

3.3 In the Track Access Agreement between Network Rail and North Yorkshire Moors Railway Enterprises PLC (the “**NYMR 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 6 to this Annex 2.

4 Amendments to Schedule 8 to each Track Access Agreement

4.1 In each Track Access Agreement, other than the **NYMR TAA** and the **Eurostar TAA**, with the exception of Appendix 1 to Schedule 8, which shall not be deleted, delete Schedule 8 and replace it with the Schedule 8 set out in Appendix 7 to this Annex 2.

Appendix 1 to Annex 2

**Model Schedule 4 (for the Grand Central (Sunderland) TAA, the
Grand Central (West Riding) TAA and the Hull Trains TAA)**

**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);
“High Speed Diversion”	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;
“Initial Indexation Factor”	shall have the meaning ascribed to it in Schedule 7;
“Journey Time”	shall have the meaning ascribed to it in Schedule 8;
“Monitoring Point”	shall have the meaning ascribed to it in Schedule 8;
“Network Rail Restriction of Use”	means any Restriction of Use other than an Operator Restriction of Use;
“Notification Factor” or “NF”	shall have the meaning ascribed to it in paragraph 9;
“Off Peak”	where applicable, has the meaning ascribed to it in Schedule 5;
“Operator Restriction of Use”	means a Restriction of Use of the type referred to in paragraph 2.3;
“Over-run”	shall have the meaning ascribed to it in paragraph 2.12(a);
“Peak”	where applicable, has the meaning ascribed to it in Schedule 5;
“Period”	shall have the meaning ascribed to it in Schedule 8;
“Public Holiday”	means any day other than Saturday or Sunday on which the banks in the City of London are not open for business;
“Recovery Allowance”	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;

“Restriction of Use”

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:

- (a) a difference between the Applicable Timetable on that day as compared with the New Working Timetable in respect of that day; and/or
- (b) a difference between the New Working Timetable on that day as compared with the Corresponding Day Timetable in respect of the Corresponding Day;

“Restriction of Use Day”

means a day on which a Network Rail Restriction of Use is taken or deemed to be taken;

“RoU Claim Notice”

means a notice issued by either party pursuant to paragraph 2.8;

“RoU Liability”

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;

“RoU Variable Costs”

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);
“RPI”	shall have the meaning ascribed to it in Schedule 7;
“SPD Claim”	has the meaning specified in paragraph 2.10(d);
“SPD Notice”	means a notice issued by either party pursuant to paragraph 2.10(a);
“SPD Period”	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;
“SPD Cost Threshold No.1”	means £304,750;
“SPD Cost Threshold No.2”	means £609,500;
“SPD Revenue Threshold No.1”	means 20% of a figure to be determined and published by ORR;
“SPD Revenue Threshold No.2”	means 15% of a figure to be determined and published by ORR;
“SPD Termination Notice”	has the meaning specified in paragraph 2.10(c);
“Sustained Planned Disruption” or “SPD”	means a circumstance where: <ul style="list-style-type: none"> (a) the aggregate of all of the Train Operator’s notional revenue losses calculated in accordance with paragraph 3 for any one or more Restrictions of Use during: <ul style="list-style-type: none"> (i) 3 consecutive Periods is equal to or exceeds SPD Revenue Threshold No.1; or (ii) 7 consecutive Periods is equal to or

exceeds SPD Revenue Threshold No.2,

and that the difference between the RoU Liability calculated in accordance with paragraph 8 and the Train Operator's notional revenue losses calculated in accordance with paragraph 3 and paragraph 4 for such Restrictions of Use during that period would be more than £10,000; or

(b) in respect of any one or more Restrictions of Use during :

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

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

“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 notional revenue loss being calculated in accordance with paragraph 3.

1.2 *Suspension Notices*

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

1.3 *Possession*

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

1.4 *White Period*

In respect of any Type 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.

2.1 *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:
- (b) arises wholly or mainly from the operations of the Train Operator or its failure to comply with its obligations under this contract; and

- (c) Network Rail demonstrates is in excess of fair wear and tear arising from use of the Network by the Train Operator;
- (d) requested by the Train Operator (other than for the purposes of inspection, maintenance, renewal or repair of the Network); or
- (e) 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 paragraph 2.7 and 2.10 where applicable.

2.5 NOT USED

2.6 NOT USED

2.7 *Type 3 Restriction of Use*

Where a Train Operator's RoU Liability exceeds £10,000 in respect of any Type 3 Restriction of Use Network Rail shall make payments to the Train Operator (in accordance with the procedure in paragraph 13) calculated in accordance with paragraph 7.

2.8 *RoU Claim Notice*

- (a) A Train Operator wishing to make a request for payments from Network Rail pursuant to Clause 2.7 must notify Network Rail that a Restriction of Use is a Type 3 Restriction of Use and that the circumstances in paragraph 2.7 apply within 56 days of the date of the end of such Type 3 Restriction of Use
- (b) The notice referred to in paragraph 2.8(a) must include details of the estimate of the RoU Liability 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 a Type 3 Restriction of Use and there is a change which means that no Restriction of Use occurs or that the Restriction of Use no longer falls within the definition of a Type 3 Restriction of Use, then that Restriction

of Use shall be treated, for the purposes of the calculation and payment of compensation, as if it had never been a Type 3 Restriction of Use (or, where applicable, as if it had not been a Restriction of Use).

- (b) Where a single Restriction of Use does not fall within the definition of a *Type 3 Restriction of Use* and there is a change which means that the Restriction of Use then falls within the definition of a Type 3 Restriction of Use, then that Restriction of Use shall be treated, for the purposes of the calculation and payment of compensation, as if it had always been a Type 3 Restriction of Use
- (c) For the purposes of paragraph 2.9(d), a Restriction of Use shall be deemed to be taken if and to the extent that it results in any difference between timetables of the type referred to in the definition of “Restriction of Use” when notified, whether or not the restriction giving rise to that Restriction of Use was subsequently cancelled in whole or in part.
- (d) Where a change to a Type 3 Restriction of Use reduces the impact of that Restriction of Use and accordingly changes it so that it no longer falls within the definition of a Type 3 Restriction of Use or means that there is no Restriction of Use in accordance with paragraph 2.9(a), the Train Operator may, within 28 days of the date on which the change to the Type 3 Restriction of Use was notified to the Train Operator by Network Rail, serve a notice on Network Rail which sets out any costs to which the Train Operator is already committed or has already incurred and any costs associated with responding to the Type 3 Restriction of Use (both before and after the change). The Train Operator shall be entitled to recover such costs provided that such costs are reasonable and were properly committed or incurred in the circumstances.

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 13th 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 Liability*

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

would reasonably be expected to facilitate the mitigation of the contemplated disruption. Nothing in this 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 Liability shall still apply.

2.12 *Over-runs*

- (a) An over-run (“Over-run”) occurs where:
- (i) there is a Restriction of Use which is not an Operator Restriction of Use (the "First Restriction"); and
 - (ii) following the end of the relevant period of difference between timetables referred to in sub-paragraphs (a) and (b) of the definition of Restriction of Use which served to establish the existence of that Restriction of Use (the "First Restriction Period"), there is either:
 - (A) a further period of at least one hour during which Services are Disrupted due to (1) any incident attributed under Schedule 8 to circumstances arising from any restriction of operation of the Network which are a consequence of the First Restriction or (2) any act or omission in connection with any activities planned or undertaken which are directly attributable to the First Restriction (including any failure to remove the First Restriction by the time scheduled for its removal in the Applicable 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) 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. Notional revenue loss for Network Rail Restrictions of Use

3.1 *Basis for calculations*

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

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

where:

- (z) NRP is the Network Rail Payment;
- (a) Σ 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;

Σ is the sum across all Monitoring Points in the Service Group;

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

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

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

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

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

where:

Σ , 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:

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

$\text{AJT} \cdot ((u-v)/v)$,

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

where:

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

- u is the average speed of Trains in the Service Group scheduled for that day in T1, and shall be equal to the aggregate of the number of miles scheduled to be run in T1 by such Trains divided by the aggregate of the Journey Times scheduled in T1 in respect of such Trains; and
- v is the speed to which the average speed of Trains in the Service Group scheduled for that day in T2 is reduced as a result of the Network Rail Restrictions of Use (calculated by reference to the aggregate of the number of miles which such Trains are scheduled to run in T2 divided by the aggregate of the end to end Journey Times scheduled in T2 in respect of such Trains),

and for the purposes of this paragraph 3.4:

“Journey”

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

“Journey Time”

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

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

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

where:

AS is the average number of stops at the Monitoring Point (being the Monitoring Point referred to in the definition of MPW) per day scheduled in the 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:

$$\text{ANRP} = \frac{\text{TDR}_{\text{SG}}}{\text{TDT}_{\text{SG}}} \bullet (\text{CM} - \text{NRPP}) \bullet \text{NRPR} \bullet \text{BF} \bullet \text{NF}$$

where:

ANRP is the additional Network Rail payment;

TDR_{SG} 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:

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

where:

ANRP is the additional Network Rail payment;

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

TTR_{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 $\frac{\text{TTS}_{\text{SG}}}{\text{TTR}_{\text{SG}}}$ shall be deemed to have the value of one.

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

In default of agreement, in relation to the adequacy of such evidence, between the Train Operator and Network Rail within 28 days after the 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. Notional costs consequent on Network Rail Restrictions of Use

4.1 *Basis for calculations*

For each Period and for each Service Group, Network Rail shall calculate the notional costs of all Network Rail Restrictions of Use on each Restriction of Use Day in that Period by applying the formulae in paragraph 4.2. For the purposes of determining for this paragraph 4 to which Service Group a particular Train is allocated, a Train (or portion of a Train) shall be treated as allocated to a particular Service Group by reference to its Service Code, 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 *Notional cost calculation formula*

The formula referred to in paragraph 4.1 is as follows:

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

where:

- (a) \sum 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 $\text{EBMW} = 50\%$; 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. Not Used

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 Network Rail to the Train Operator in respect of the Type 3 Restriction of Use and, subject to paragraph 10, shall continue such negotiations in good faith until they are concluded.
- (b) Once the compensation referred to in paragraph 7.1(a) has been agreed or determined 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 received by the Train Operator from Network Rail in respect of such Restriction of Use (including in respect of the period of any Unplanned Over-run Period as referred to in paragraph 2.12(a)(ii) (A) any amounts under Schedule 8).
- (c) 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 Network Rail to the Train Operator in respect of the Restrictions of Use during the relevant SPD Period and, subject to paragraph 10, shall continue such negotiations in good faith until they are concluded.
- (b) Once the compensation referred to in paragraph 8.1(a) has been agreed or determined 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 received by the Train Operator from Network Rail in respect of such Restrictions of Use (including in respect of the period of any Unplanned Over-run Period as referred to in paragraph 2.12(a)(ii)(A) any amounts under Schedule 8)
- (c) Following any agreement or determination of an amount to be paid by Network Rail to the Train Operator in respect of a Sustained Planned Disruption that amount shall (subject to the terms of any compensation arrangements agreed in writing between the parties) be due and payable by Network Rail to the Train Operator 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 2.10 (g), 2.11, 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 paragraphs 2.12).

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

12.1 *Information provision*

In respect of any Restriction of Use Day for which there is either notional revenue loss or notional costs to be calculated in a Period under paragraphs 3 and 4, Network Rail shall accurately record such information as it uses and as may properly and reasonably be required to make the calculations required under paragraphs 3 and 4 (including the determination of NF and the relevant version of the Working Timetable referred to in paragraph 9.1(b)(ii) or paragraph 9.2(b)(i). Network Rail shall maintain that information until the

calculations required under paragraphs 3 and 4 in respect of that Period are finally agreed or determined and provide such information to the Train Operator at its reasonable request.

12.2 *Corresponding Day*

- (a) If, for the purpose of identifying a Corresponding Day, no day is found under paragraph (a), (b) or (c) of the definition “Corresponding Day” and the parties have failed to reach agreement on the Corresponding Day by the date falling eight Weeks before the relevant 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 notional revenue losses and notional costs calculated in accordance with paragraphs 3 and/or 4 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 Liability in respect of a Type 3 Restriction of Use or a Sustained Planned Disruption (as applicable), any payment to be made by Network Rail to the Train Operator,

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

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;

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

	A	B	C	D	E
Service Group Description	Service Group Code	Type	By D-26	By TW-22	After TW-22
First/Keolis Transpennine Limited					
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
Abellio Greater Anglia Limited					
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
Northern Rail Limited					
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
Heathrow Express Operating Company Limited					
Hayes & Harlington Shuttle	EE02	All Trains	0.55	0.7	0.85
First Greater Western Limited					
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
First Capital Connect Limited					
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
XC Trains Limited					
CrossCountry Inter City	EH01	All Trains	0.45	0.65	0.85
CrossCountry Local & Provincial	EH02	All Trains	0.45	0.65	0.85
London & Birmingham Railway Limited					
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
London Overground Rail Operations Limited					
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
East Midlands Trains Limited					
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
First ScotRail Limited					
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
East Coast Main Line Company Limited					
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
Merseyrail Electrics 2002 Limited					
Northern Lines	HE01	All Trains	0.5	0.68	0.85
Wirral Lines	HE02	All Trains	0.55	0.7	0.85
West Coast Trains Limited					
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
Arriva Trains Wales/Trenau Arriva Cymru Limited					
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
The Chiltern Railway Company Limited					
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
c2c Rail Limited					
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
London & South Eastern Railway Limited					
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
Southern Railway Limited					
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
Stagecoach South Western Trains Limited					
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
Hull Trains Company Limited					
Kings Cross - Hull	PF01	All Trains	0.5	0.68	0.85
Grand Central Railway Company Limited					
Kings X - Sunderland	EC01	All Trains	0.5	0.68	0.85
Kings X - Bradford	EC02	All Trains	0.5	0.68	0.85
Nexus					
Metro	PG01	All Trains	0.55	0.7	0.85
Eurostar International Limited					
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

Service Group	Description	Compensation Rate	Total Train Cost per Mile (Pence)

PART 4: NOT USED

PART 5: NOT USED

Appendix 2 to Annex 2

Schedule 4 for the Heathrow Express TAA

**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: <ul style="list-style-type: none"> (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);
“High Speed Diversion”	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;
“Initial Indexation Factor”	shall have the meaning ascribed to it in Schedule 7;
“Monitoring Point”	shall have the meaning ascribed to it in Schedule 8;
“Network Rail Restriction of Use”	means any Restriction of Use other than an Operator Restriction of Use;

“Notification Factor” or “NF”	shall have the meaning ascribed to it in paragraph 9;
“Off-Peak”	where applicable, has the meaning ascribed to it in Schedule 5;
“Operator Restriction of Use”	means a Restriction of Use of the type referred to in paragraph 2.3;
“Over-run”	shall have the meaning ascribed to it in paragraph 2.12(a);
“Peak”	where applicable, has the meaning ascribed to it in Schedule 5;
“Period”	shall have the meaning ascribed to it in Schedule 8;
“Public Holiday”	means any day other than Saturday or Sunday on which the banks in the City of London are not open for business;
“Recovery Allowance”	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;
“Restriction of Use”	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"> (a) a difference between the Applicable Timetable on that day as compared with the New Working Timetable in respect of that day; and/or (b) a difference between the New Working Timetable on that day as compared with the Corresponding Day Timetable in respect of the Corresponding Day;
“Restriction of Use Day”	means a day on which a Network Rail Restriction of Use is taken or deemed to be taken;
“RoU Claim Notice”	means a notice issued by either party pursuant to

“RoU Direct Costs”	<p>paragraph 2.8; means the aggregate amount of:</p> <ul style="list-style-type: none"> (a) bus and taxi hire costs; (b) publicity costs; (c) train planning and diagramming costs; and (d) other costs directly related to the organisation and management of the Train Operator’s response to a Type 2 Restriction of Use, <p>reasonably incurred by the Train Operator as a result of a Type 2 Restriction of Use, adjusted by:</p> <ul style="list-style-type: none"> (i) adding any increase in RoU Variable Costs; and (ii) deducting any decrease in RoU Variable Costs;
“RoU Liability”	<p>means any costs, direct losses and expenses (including any loss of revenue) reasonably incurred or reasonably expected to be incurred by the Train Operator (including any increase in RoU Variable Costs but net of any benefit arising from the 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;</p>
“RoU Losses”	<p>means any RoU Direct Costs or RoU Liability (as applicable);</p>
“RoU Trigger Date”	<p>means, in respect of any Period, the later to occur of the following:</p> <ul style="list-style-type: none"> (a) the date on which Network Rail issues a Day 42 Statement; and (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;
“RoU Variable Costs”	<p>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);</p>

“RPI”	shall have the meaning ascribed to it in Schedule 7 of this contract;
“SPD Claim”	has the meaning specified in paragraph 2.10(d);
“SPD Notice”	means a notice issued by either party pursuant to paragraph 2.10(a);
“SPD Period”	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;
“SPD Cost Threshold No.1”	means £304,750;
“SPD Cost Threshold No.2”	means £609,500;
“SPD Revenue Threshold No.1”	means 20% of a figure to be determined and published by ORR;
“SPD Revenue Threshold No.2”	means 15% of a figure to be determined and published by ORR;
“SPD Termination Notice”	has the meaning specified in paragraph 2.10(c);
“Sustained Planned Disruption” or “SPD”	<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"> (i) 3 consecutive Periods is equal to or exceeds SPD Revenue Threshold No.1; or (i) 7 consecutive Periods is equal to or exceeds SPD Revenue Threshold No.2, <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>

- (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 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: <ul style="list-style-type: none"> (a) a Restriction of Use occurs on any section of track between: <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (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 13th 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) Σ 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:

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

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;

Σ 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:

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

where:

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

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

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

if otherwise,

EJT is the lesser of:

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

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

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:

$$\text{ANRP} = \frac{\text{TDR}_{\text{SG}} \bullet (\text{CM} - \text{NRPP}) \bullet \text{NRPR} \bullet \text{BF} \bullet \text{NF}}{\text{TDT}_{\text{SG}}}$$

where:

ANRP is the additional Network Rail payment;

TDR_{SG} 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:

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

where:

ANRP is the additional Network Rail payment;

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

TTR_{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 TTSSG then $\frac{\text{TTS}_{\text{SG}}}{\text{TTR}_{\text{SG}}}$ shall be deemed to have the value of one.

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

In default of agreement, in relation to the adequacy of such evidence, between the Train Operator and Network Rail within 28 days after the 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) \sum 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:

$$TMC = TM \times TMPR$$

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

	A	B	C	D	E
Service Group Description	Service Group Code	Type	By D-26	By TW-22	After TW-22
First/Keolis Transpennine Limited					
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
Abellio Greater Anglia Limited					
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
Northern Rail Limited					
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
Heathrow Express Operating Company Limited					
Hayes & Harlington Shuttle	EE02	All Trains	0.55	0.7	0.85
First Greater Western Limited					
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
First Capital Connect Limited					
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
XC Trains Limited					
CrossCountry Inter City	EH01	All Trains	0.45	0.65	0.85
CrossCountry Local & Provincial	EH02	All Trains	0.45	0.65	0.85
London & Birmingham Railway Limited					
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
London Overground Rail Operations Limited					
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
East Midlands Trains Limited					
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
First ScotRail Limited					
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
East Coast Main Line Company Limited					
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
Merseyrail Electrics 2002 Limited					
Northern Lines	HE01	All Trains	0.5	0.68	0.85
Wirral Lines	HE02	All Trains	0.55	0.7	0.85
West Coast Trains Limited					
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
Arriva Trains Wales/Trenau Arriva Cymru Limited					
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
The Chiltern Railway Company Limited					
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
c2c Rail Limited					
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
London & South Eastern Railway Limited					
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
Southern Railway Limited					
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
Stagecoach South Western Trains Limited					
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
Hull Trains Company Limited					
Kings Cross - Hull	PF01	All Trains	0.5	0.68	0.85
Grand Central Railway Company Limited					
Kings X - Sunderland	EC01	All Trains	0.5	0.68	0.85
Kings X - Bradford	EC02	All Trains	0.5	0.68	0.85
Nexus					
Metro	PG01	All Trains	0.55	0.7	0.85
Eurostar International Limited					
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

Service Group	Description	Compensation Rate	Total Train Cost per Mile (Pence)

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:

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

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

RPI_{t-1} has the meaning set out in paragraph 14.1 of Part 3 of this Schedule 4; and

RPI_{2013} 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 3 to Annex 2

Schedule 4 for the Eurostar TAA

**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;

“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);

“Network Rail Restriction of Use”

means any Restriction of Use other than an Operator Restriction of Use;

“Operator Restriction of Use”	means a Restriction of Use of the type referred to in paragraph 2.3;
“Over-run”	shall have the meaning ascribed to it in paragraph 2.12(a);
“Period”	shall have the meaning ascribed to it in Schedule 8;
“Public Holiday”	means any day other than Saturday or Sunday on which the banks in the City of London are not open for business;
“Recovery Allowance”	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;
“Restriction of Use”	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"> (a) a difference between the Applicable Timetable on that day as compared with the New Working Timetable in respect of that day; and/or (b) a difference between the New Working Timetable on that day as compared with the Corresponding Day Timetable in respect of the Corresponding Day;
“Restriction of Use Day”	means a day on which a Network Rail Restriction of Use is taken or deemed to be taken;
“RoU Claim Notice”	means a notice issued by either party pursuant to

	paragraph 2.8;
“RoU Liability”	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;
“RoU Variable Costs”	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);
“Train”	shall have the meaning ascribed to it in Schedule 8;
“Type 3 Restriction of Use”	means a single Restriction of Use (including any Over-run) of more than 120 consecutive hours (including any part of that Restriction of Use which occurs during a Public Holiday);
“Unplanned Over-run Period”	shall have the meaning ascribed to it in paragraph 2.12(a)(ii)(A); and
“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.

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 NOT USED

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:
- (b) arises wholly or mainly from the operations of the Train Operator or its failure to comply with its obligations under this contract; and
- (c) Network Rail demonstrates is in excess of fair wear and tear arising from use of the Network by the Train Operator;
- (d) requested by the Train Operator (other than for the purposes of inspection, maintenance, renewal or repair of the Network); or
- (e) 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 paragraph 2.7 where applicable.

2.5 NOT USED

2.6 NOT USED

2.7 *Type 3 Restriction of Use*

Where a Train Operator's RoU Liability exceeds £10,000 in respect of any Type 3 Restriction of Use Network Rail shall make payments to the Train Operator (in accordance with the procedure in paragraph 13) calculated in accordance with paragraph 7.

2.8 *RoU Claim Notice*

- (a) A Train Operator wishing to make a request for payments from Network Rail pursuant to Clause 2.7 must notify Network Rail that a Restriction of Use is a Type 3 Restriction of Use and that the circumstances in paragraph 2.7 apply within 56 days of the date of the end of such Type 3 Restriction of Use
- (b) The notice referred to in paragraph 2.8(a) must include details of the estimate of the RoU Liability 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 a Type 3 Restriction of Use and there is a change which means that no Restriction of Use occurs or that the Restriction of Use no longer falls within the definition of a Type 3 Restriction of Use, then that Restriction of Use shall be treated, for the purposes of the calculation and payment of compensation, as if it had never been a Type 3 Restriction of Use (or, where applicable, as if it had not been a Restriction of Use).
- (b) Where a single Restriction of Use does not fall within the definition of a *Type 3 Restriction of Use* and there is a change which means that the Restriction of Use then falls within the definition of a Type 3 Restriction of Use, then that Restriction of Use shall be treated, for the purposes of the calculation and payment of compensation, as if it had always been a Type 3 Restriction of Use

- (c) For the purposes of paragraph 2.9(d), a Restriction of Use shall be deemed to be taken if and to the extent that it results in any difference between timetables of the type referred to in the definition of “Restriction of Use” when notified, whether or not the restriction giving rise to that Restriction of Use was subsequently cancelled in whole or in part.
- (d) Where a change to a Type 3 Restriction of Use reduces the impact of that Restriction of Use and accordingly changes it so that it no longer falls within the definition of a Type 3 Restriction of Use or means that there is no Restriction of Use in accordance with paragraph 2.9(a), the Train Operator may, within 28 days of the date on which the change to the Type 3 Restriction of Use was notified to the Train Operator by Network Rail, serve a notice on Network Rail which sets out any costs to which the Train Operator is already committed or has already incurred and any costs associated with responding to the Type 3 Restriction of Use (both before and after the change). The Train Operator shall be entitled to recover such costs provided that such costs are reasonable and were properly committed or incurred in the circumstances.

2.10 NOT USED

2.11 *Early notice of RoU Liability*

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

2.12 *Over-runs*

- (a) An over-run ("Over-run") occurs where:
- (i) there is a Restriction of Use which is not an Operator Restriction of Use (the "First Restriction"); and
 - (ii) following the end of the relevant period of difference between timetables referred to in sub-paragraphs (a) and (b) of the definition of Restriction of Use which served to establish the existence of that Restriction of Use (the "First Restriction Period"), there is either:
 - (A) a further period of at least one hour during which Services are Disrupted due to (1) any incident attributed under Schedule 8 to circumstances arising from any restriction of operation of the Network which are a consequence of the First Restriction or (2) any act or omission in connection with any activities planned or undertaken which are directly attributable to the First Restriction (including any failure to remove the First Restriction by the time scheduled for its removal in the Applicable 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 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.

3. NOT USED

4. NOT USED

5. NOT USED

6. NOT USED

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 Network Rail to the Train Operator in respect of the Type 3 Restriction of Use and, subject to paragraph 10, shall continue such negotiations in good faith until they are concluded.
- (b) Once the compensation referred to in paragraph 7.1(a) has been agreed or determined 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 received by the Train Operator from Network Rail in respect of such Restriction of Use (including in respect of the period of any Unplanned Over-run Period as referred to in paragraph 2.12(a)(ii) (A) any amounts under Schedule 8).
- (c) 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. NOT USED

9. NOT USED

10. Dispute resolution

If the Train Operator and Network Rail fail to reach agreement as required under paragraph 2.11 or 7 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 paragraphs 2.12).

12. Restriction of Use Day and Corresponding Day

12.1 NOT USED

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) NOT USED; and
 - (iii) following any agreement or determination in the Period referred to in paragraph 13.1(a) of any RoU Liability in respect of a Type 3 Restriction of Use, any payment to be made by Network Rail to the Train Operator,

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

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. **NOT USED**

PART 4: NOT USED

PART 5: NOT USED

Appendix 4 to Annex 2

Schedule 7 for the Grand Central (Sunderland) TAA, the Grand Central (West Riding) TAA, the Heathrow Express TAA and the Hull Trains 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;
“Capacity Charge”	means a variable charge, calculated in accordance with paragraph 6 of Part 2;
“Capacity Charge Wash-up”	means the charge calculated in accordance with paragraph 6.2;
“Capacity Charge Wash-up Weekday Rate”	has the meaning as ascribed to it in paragraph 6.4;
“Capacity Charge Wash-up Weekend Rate”	has the meaning as ascribed to it in paragraph 6.4;
“Default Charge”	means a variable charge calculated in accordance with paragraph 3.3 of Part 2;
“Default Period”	means the period from the later of: (a) the date on which the New Specified Equipment is first used on the Network by the Train Operator; or (b) 1 April 2014, until the date on which ORR consents to or determines a supplement to the Track Usage Price List under paragraph 9.10 of Part 2 in respect of that New Specified Equipment;

“Default Rate”	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”;
“Default Train Consist Data”	means the data listed in Appendix 7C as amended from time to time in accordance with paragraph 10.4 of Part 2;
“Delivery Plan”	means the document, 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;
“Efficiency Benefit Share”	means the amount determined in accordance with paragraph 5.1 of Part 2;
“Existing Service Codes”	means each of the following Service Coded Groups:
“Initial Indexation Factor”	is derived from the following formula: $\text{IIF} = \left(1 + \frac{(\text{RPI}_{2013} - \text{RPI}_{2012})}{\text{RPI}_{2012}} \right)^2$ <p>where:</p> <p>IIF means Initial Indexation Factor;</p> <p>RPI₂₀₁₂ means the RPI published or determined with respect to the month of November 2012; and</p> <p>RPI₂₀₁₃ means the RPI published or determined with respect to the month of November 2013;</p>
“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;

“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;

“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”;

“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;

“Outperformance Sum”

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;

“Period”

has the meaning ascribed to it in Schedule 8;

“REBS Outperformance”

means the situation where ORR’s annual efficiency and finance assessment of Network Rail in respect of the REBS Route in Relevant Year t has identified, in accordance with the methodology and principles set out in 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;

“REBS Route”	means a route specified in the table in Appendix 7A for the purposes of the Route-Level Efficiency Benefit Share Mechanism;
“REBS Underperformance”	means the situation where ORR’s annual efficiency and finance assessment of Network Rail in respect of the REBS Route in Relevant Year t has identified, in accordance with the methodology and principles set out in 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 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;
“Route-Level Efficiency Benefit Share Mechanism”	means the provisions for the calculation and payment of the Route-Level Efficiency Benefit Share in respect of one or more REBS Routes as described in paragraph 1 of Part 3;
“RPI”	means the General Index of Retail Prices All Items measured by CHAW and published each month, or: <ul style="list-style-type: none"> (a) if the index for any month in any year shall not have been published on or before the last day of the third month after such month, such index for such month or months as ORR may (after consultation with the parties and such other persons as it considers appropriate) determine to be appropriate in the circumstances; or

- (b) if there is a material change in the basis of the index, such other index as ORR may (after consultation with the parties and such other persons as it considers appropriate) determine to be appropriate in the circumstances;

“Service Coded Group”

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;

“Track Usage Price List”

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;

“Train Consist Data”

means the information relating to the number(s) and type(s) of railway vehicle comprised in a train movement;

“Train Mile”

in relation to a train, means a mile travelled by that train on the Network;

“Underperformance Cap”

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;

“Underperformance Sum”

means the lower of:

- (a) the Underperformance Cap as indexed in accordance with paragraph 1.11 of Part 3; and
- (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;

“Variable Charges”

means the Capacity Charge, the Default Charge and the Variable Usage Charge;

“Variable Usage Charge”

means a variable charge, calculated in accordance with paragraph 3.1 of Part 2;

“Vehicle Mile”

in relation to a railway vehicle, means a mile travelled by that vehicle on the Network; and

“Weekday”

has the meaning ascribed to it in paragraph 1.1 of Schedule 5.

PART 2: TRACK CHARGES

1 Principal formula

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

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

where:

T_t means Track Charges in Relevant Year t;

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

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

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

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

BS_t means an amount (which shall not be a negative value) in respect of the Efficiency Benefit Share in Relevant Year t which is determined in accordance with paragraph 5.1.

2 Not used.

3 Variable Usage Charge

3.1 Variable Usage Charge

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

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

where:

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

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

where:

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

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

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

3.2 Not used

3.3 *Default Charge*

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

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

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 3.1 above;

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

Σ means the summation across all relevant New Specified Equipment.

4 Not used.

5. Efficiency benefit share

5.1 The Efficiency Benefit Share:

(a) is an amount (which shall not be a negative value) representing a return of Track Charges which shall be identified in the ORR's annual assessment of Network Rail as the "Efficiency Benefit Share", if any, to be rebated to the Train Operator, such amount to be determined in accordance with the methodology and principles set out in paragraphs 27.34 to 27.53 (inclusive) of the 2008 Final Determinations; and

(b) shall only be payable in respect of Relevant Years ending on or before 31 March 2014.

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

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

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

where:

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

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

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

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

provided that, in each case:

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

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

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

6 Capacity Charge and Capacity Charge Wash-up

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 3.1 above; and

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

but so that in relation to the Relevant Year 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 3.1 above; and

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

but so that in relation to the Relevant Year 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, 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.

6.2 Within 90 days after the end of Relevant Year t, Network Rail shall calculate any Capacity Charge Wash-up for the Train Operator (KW_t) in accordance with paragraph 6.3 and provide the Train Operator such background data and workings as may reasonably be required for a proper understanding of Network Rail's calculations. If KW_t is a positive sum then it shall be payable by the Train Operator. If KW_t is a negative sum or equal to zero then no sum shall be payable by the Train Operator or by Network Rail.

6.3 KW_t is derived from the following formula:

$$KW_t = \sum KW_{te}$$

Where \sum means the summation across all the Existing Service Codes e.

6.4 For each Existing Service Code e, KW_{te} is derived from the following formula:

$$KW_{te} = (M_{te} - B_{te} - A_{te})$$

where:

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

B_{te} means a baseline value in pounds for Existing Service Code e for the Train Operator (BV_t) in Relevant Year t which shall be derived from the following formula:

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

where:

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

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

but so that in relation to the Relevant Year t commencing on 1 April 2014, BV_t , shall be the baseline value in pounds for Existing Service Code e for the Train Operator as set out in Network Rail's List of Capacity Charge Baselines for CP5, approved or directed by ORR and published on or before 10 February 2014 multiplied by the Initial Indexation Factor and in relation to the next following Relevant Year BV_{t-1} shall have the same value.

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

If KW_{te} is a negative sum, then for the purposes of paragraph 6.3 above, it shall be zero.

7 Not used.

8 Not used.

9 Bilateral supplements to the List of Capacity Charge Rates 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 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 Track Usage Price List be supplemented as necessary to include a new vehicle type and corresponding rate; or
- (b) 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 List of Capacity Charge Rates, the supplement shall have effect from such date as ORR shall determine by notice to the parties, provided that 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.

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) not used;
 - (iii) the Capacity Charge;
 - (iv) the Default Charge; and
 - (v) any other sums which have fallen due in accordance with any provision of this contract,

attributable to any Period as invoiced by Network Rail on or after expiry of each such Period within 21 days of the invoice date or 28 days after the end of the Period, whichever is later.

- (b) Not used.
- (c) Not used.

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) Not used.
- (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.

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 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 these circumstances 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: NOT USED

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) not used;
- (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) not used;
- (d) not used;
- (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) not used;
- (i) not used;
- (j) the amount of any sum K_t payable as provided in paragraph 6 of Part 2; and
- (k) in respect of any other sums which have fallen due in accordance with any provisions of this contract, separately the amount payable in respect of each head of charge.

PART 7: FUTURE ACCESS CHARGES REVIEWS

1 General

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

- (a) an access charges review such that amendments to this contract to give effect to the conclusions of such an access charges review come into operation on and from 1 April 2019 or such later date as may be specified in that review; and
- (b) not used.

2 Not used.

3 Interpretation

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

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

Route	Route definition	Opt-out (please mark with an '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 5 to Annex 2

Schedule 7 for the Eurostar 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;
- “Capacity Charge”** means a variable charge, calculated in accordance with paragraph 6 of Part 2;
- “Capacity Charge Wash-up”** means the charge calculated in accordance with paragraph 6.2;
- “Capacity Charge Wash-up Weekday Rate”** has the meaning as ascribed to it in paragraph 6.4;
- “Capacity Charge Wash-up Weekend Rate”** has the meaning as ascribed to it in paragraph 6.4;
- “Default Charge”** means a variable charge calculated in accordance with paragraph 3.3 of Part 2;
- “Default Period”** means the period from the later of:
- (a) the date on which the New Specified Equipment is first used on the Network by the Train Operator; or
 - (b) 1 April 2014,
- until the date on which ORR consents to or determines a supplement to the Track Usage Price List under paragraph 9.10 of Part 2 in respect of that New Specified Equipment;

“Default Rate”	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”;
“Default Train Consist Data”	means the data listed in Appendix 7C as amended from time to time in accordance with paragraph 10.4 of Part 2;
“Delivery Plan”	means the document, 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;
“Electrification Asset Usage Charge”	means a charge for electrification asset usage, calculated in accordance with paragraph 8 of Part 2;
“Existing Service Codes”	means each of the following Service Coded Groups: 24638004, 81001009, 81002009 and 81003109;
“Initial Indexation Factor”	is derived from the following formula: $IIF = \left(1 + \frac{(RPI_{2013} - RPI_{2012})}{RPI_{2012}} \right)^2$ <p>where:</p> <p>IIF means Initial Indexation Factor;</p> <p>RPI_{2012} means the RPI published or determined with respect to the month of November 2012; and</p> <p>RPI_{2013} means the RPI published or determined with respect to the month of November 2013;</p>
“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;

“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;

“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”;

“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;

“Outperformance Sum”

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;

“Period”

has the meaning ascribed to it in Schedule 8;

“REBS Outperformance”

means the situation where ORR’s annual efficiency and finance assessment of Network Rail in respect of the REBS Route in Relevant Year t has identified, in accordance with the methodology and principles set out in 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;

“REBS Route”	means a route specified in the table in Appendix 7A for the purposes of the Route-Level Efficiency Benefit Share Mechanism;
“REBS Underperformance”	means the situation where ORR’s annual efficiency and finance assessment of Network Rail in respect of the REBS Route in Relevant Year t has identified, in accordance with the methodology and principles set out in 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 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;
“Route-Level Efficiency Benefit Share Mechanism”	means the provisions for the calculation and payment of the Route-Level Efficiency Benefit Share in respect of one or more REBS Routes as described in paragraph 1 of Part 3;
“RPI”	means the General Index of Retail Prices All Items measured by CHAW and published each month, or: <ul style="list-style-type: none"> (a) if the index for any month in any year shall not have been published on or before the last day of the third month after such month, such index for such month or months as ORR may (after consultation with the parties and such other persons as it considers appropriate) determine to be appropriate in the circumstances; or

- (b) if there is a material change in the basis of the index, such other index as ORR may (after consultation with the parties and such other persons as it considers appropriate) determine to be appropriate in the circumstances;

“Service Coded Group”

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;

“Track Usage Price List”

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;

“Train Consist Data”

means the information relating to the number(s) and type(s) of railway vehicle comprised in a train movement;

“Train Mile”

in relation to a train, means a mile travelled by that train on the Network;

“Underperformance Cap”

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;

“Underperformance Sum”

means the lower of:

- (a) the Underperformance Cap as indexed in accordance with paragraph 1.11 of Part 3; and
- (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;

“Variable Charges”

means the Capacity Charge, the Default Charge, the Electrification Asset Usage Charge and the Variable Usage Charge;

“Variable Usage Charge”

means a variable charge, calculated in accordance with paragraph 3.1 of Part 2;

“Vehicle Mile”

in relation to a railway vehicle, means a mile travelled by that vehicle on the Network; and

“Weekday”

has the meaning ascribed to it in paragraph 1.1 of Schedule 5.

PART 2: TRACK CHARGES

1 Principal formula

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

$$T_t = V_t + K_t + KW_t + D_t + EAV_t$$

where:

T_t means Track Charges in Relevant Year t;

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

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

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

EAV_t means an amount in respect of the Electrification Asset Usage Charge, calculated in accordance with the formula in paragraph 8; and

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.

2 Not used.

3 Variable Usage Charge

3.1 Variable Usage Charge

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

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

where:

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

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

where:

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

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

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

3.2 Not used

3.3 *Default Charge*

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

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

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 3.1 above;

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

Σ means the summation across all relevant New Specified Equipment.

4 Not used.

5. Not used.

6 Capacity Charge and Capacity Charge Wash-up

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:

Σ 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 3.1 above; and

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

but so that in relation to the Relevant Year 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, $P_{g_{t-1}w_{di}}$ 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 3.1 above; and

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

but so that in relation to the Relevant Year 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.

6.2 Within 90 days after the end of Relevant Year t, Network Rail shall calculate any Capacity Charge Wash-up for the Train Operator (KW_t) in accordance with paragraph 6.3 and provide the Train Operator such background data and workings as may reasonably be required for a proper understanding of Network Rail's calculations. If KW_t is a positive sum then it shall be payable by the Train Operator. If KW_t is a negative sum or equal to zero then no sum shall be payable by the Train Operator or by Network Rail.

6.3 KW_t is derived from the following formula:

$$KW_t = \sum KW_{te}$$

Where \sum means the summation across all the Existing Service Codes e.

6.4 For each Existing Service Code e, KW_{te} is derived from the following formula:

$$KW_{te} = (M_{te} - B_{te} - A_{te})$$

where:

M_{te} means Network Rail's reasonable estimate of the aggregate revenue it would have been entitled to receive during Relevant Year t from the

Capacity Charge for Services or Ancillary Movements operating under Existing Service Code e under this track access agreement if, in the calculation of the Capacity Charge under paragraph 6.1 above, the weekday rate and weekend rate for any Existing Service Code e were interpreted to mean the Capacity Charge Wash-up Weekday Rate and Capacity Charge Wash-up Weekend Rate respectively, as set out in the corresponding columns in the List of Capacity Charge Rates, and had been applied as such for all Services or Ancillary Movements relating to the Existing Service Code e that had operated on the Network during Relevant Year t;

B_{te} means a baseline value in pounds for Existing Service Code e for the Train Operator (BV_t) in Relevant Year t which shall be derived from the following formula:

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

where:

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

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

but so that in relation to the Relevant Year t commencing on 1 April 2014, BV_t , shall be the baseline value in pounds for Existing Service Code e for the Train Operator as set out in Network Rail's List of Capacity Charge Baselines for CP5, approved or directed by ORR and published on or before 10 February 2014 multiplied by the Initial Indexation Factor and in relation to the next following Relevant Year BV_{t-1} shall have the same value.

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

If KW_{te} is a negative sum, then for the purposes of paragraph 6.3 above, it shall be zero.

7 Not used.

8 Electrification Asset Usage Charge

8.1 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:

Σ 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.

- 8.2 The parties acknowledge that traction current charges incurred by the Services between Ashford West Boundary and Ashford East Boundary are paid by the Train Operator direct to CTRL(UK) Limited under a separate agreement.

9 Bilateral supplements to the List of Capacity Charge Rates 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 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 Track Usage Price List be supplemented as necessary to include a new vehicle type and corresponding rate; or

- (b) 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 List of Capacity Charge Rates, the supplement shall have effect from such date as ORR shall determine by notice to the parties, provided that 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.

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) not used;
 - (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) Not used.
- (c) Not used.

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) Not used.
- (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.

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 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 these circumstances 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 Value Added Tax Regulations 1995 (the “**VAT Regulations**”)) that continues in force then the party making the REBS payment shall produce for itself a self-billed invoice (within the meaning of regulation 13(3) of the VAT Regulations) in respect of the relevant amount.

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

RPI₂₀₁₂ has the meaning set out in paragraph 1.10 above.

PART 3A: NOT USED

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) not used;
- (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 amount of the Electrification Asset Usage Charge and the number of days covered by the invoice;
- (d) not used;
- (e) not used;
- (f) not used;
- (g) not used;
- (h) not used;
- (i) not used;

- (j) the amount of any sum K_t payable as provided in paragraph 6 of Part 2; and
- (k) in respect of any other sums which have fallen due in accordance with any provisions of this contract, separately the amount payable in respect of each head of charge.

PART 7: FUTURE ACCESS CHARGES REVIEWS

1 General

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

- (a) an access charges review such that amendments to this contract to give effect to the conclusions of such an access charges review come into operation on and from 1 April 2019 or such later date as may be specified in that review; and
- (b) not used.

2 Not used.

3 Interpretation

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

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

Route	Route definition	Opt-out (please mark with an '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 6 to Annex 2

Schedule 7 for the NYMR 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;
- “Actual Train Movements”** means:
- (a) the dates on which trains ran;
 - (b) the times at which trains ran; and
 - (c) the stations between which trains ran;
- “Capacity Charge”** means a variable charge, calculated in accordance with paragraph 6 of Part 2;
- “Default Charge”** means a variable charge calculated in accordance with paragraph 3.3 of Part 2;
- “Default Period”** means the period from the later of:
- (a) the date on which the New Specified Equipment is first used on the Network by the Train Operator; or
 - (b) 1 April 2014,
- until the date on which ORR consents to or determines a supplement to the Track Usage Price List under paragraph 9.10 of Part 2 in respect of that New Specified Equipment;

“Default Rate” 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”;

“Default Train Consist Data” means the data listed in Appendix 7C as amended from time to time in accordance with paragraph 10.4 of Part 2;

“Delivery Plan” means the document, 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;

“Efficiency Benefit Share” means the amount determined in accordance with paragraph 5.1 of Part 2;

“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 Initial Indexation Factor;

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

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

“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;

“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;

“New Specified Equipment”

means a type of railway vehicle that is not:

- (a) a steam locomotive, with or without a tender; or
- (b) a diesel locomotive,

and is not included in the section of the Track Usage Price List entitled “Passenger Variable Usage Charge rates”;

“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;

“Outperformance Sum”

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;

“Period”

means each consecutive period for 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 7 days on reasonable prior notice from Network Rail to the Train Operator;

“Planned Train Movements	means: <ul style="list-style-type: none"> (a) the dates on which trains are planned to run; (b) the times at which trains are planned to run; and (c) the stations between which trains are planned to run;
“REBS Outperformance”	means the situation where ORR’s annual efficiency and finance assessment of Network Rail in respect of the REBS Route in Relevant Year t has identified, in accordance with the methodology and principles set out in 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;
“REBS Route”	means a route specified in the table in Appendix 7A for the purposes of the Route-Level Efficiency Benefit Share Mechanism;
“REBS Underperformance”	means the situation where ORR’s annual efficiency and finance assessment of Network Rail in respect of the REBS Route in Relevant Year t has identified, in accordance with the methodology and principles set out in 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 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;

“Route-Level Efficiency Benefit Share Mechanism”

means the provisions for the calculation and payment of the Route-Level Efficiency Benefit Share in respect of one or more REBS Routes as described in paragraph 1 of Part 3;

“RPI”

means the General Index of Retail Prices All Items measured by CHAW and published each month, or:

- (a) if the index for any month in any year shall not have been published on or before the last day of the third month after such month, such index for such month or months as ORR may (after consultation with the parties and such other persons as it considers appropriate) determine to be appropriate in the circumstances; or
- (b) if there is a material change in the basis of the index, such other index as ORR may (after consultation with the parties and such other persons as it considers appropriate) determine to be appropriate in the circumstances;

“Service Coded Group”

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;

“Track Usage Price List”

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;

“Train Consist Data”

means the information relating to the number(s) and type(s) of railway vehicle comprised in a train movement;

“Train Mile”

in relation to a train, means a mile travelled by that train on the Network;

“Underperformance Cap”	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;
“Underperformance Sum”	means the lower of: <ul style="list-style-type: none"> (a) the Underperformance Cap as indexed in accordance with paragraph 1.11 of Part 3; and (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;
“Variable Charges”	means the Capacity Charge, the Default Charge and the Variable Usage Charge;
“Variable Usage Charge”	means a variable charge, calculated in accordance with paragraph 3.1 of Part 2;
“Vehicle Mile”	in relation to a railway vehicle, means a mile travelled by that vehicle on the Network; and
“Weekday”	has the meaning ascribed to it in paragraph 1.1 of Schedule 5.

PART 2: TRACK CHARGES

1 Principal formula

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

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

where:

T_t means Track Charges in Relevant Year t;

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

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

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

BS_t means an amount (which shall not be a negative value) in respect of the Efficiency Benefit Share in Relevant Year t which is determined in accordance with paragraph 5.1.

2 Not used.

3 Variable Usage Charge

3.1 Variable Usage Charge

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

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

where:

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

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

where:

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

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 be:

- (a) for any steam locomotive and any tender, the corresponding variable usage charge rate per Vehicle Mile as set out in the section of the Track Usage Price List entitled “North Yorkshire Moors Railway Enterprises PLC Variable Usage Charge rates”;
- (b) for any diesel locomotive, the corresponding variable usage charge rate per Vehicle Mile as set out in the section of the Track Usage Price List entitled “Passenger Variable Usage Charge rates”, unless there is no applicable rate in that section in which case the rate for vehicle type “Diesel locomotive” in the section entitled “North Yorkshire Moors Railway Enterprises PLC Variable Usage Charge rates” shall apply; and
- (c) for any other vehicle type i, the corresponding variable usage charge rate per Vehicle Mile as set out in the section of the Track Usage Price List entitled “Passenger Variable Usage Charge rates”,

in each case 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

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

3.2 Not used

3.3 *Default Charge*

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

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

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 3.1 above;

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

Σ means the summation across all relevant New Specified Equipment.

4 Not used.

5. Efficiency benefit share

5.1 The Efficiency Benefit Share:

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

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

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

Benefit Share payable in respect of that Relevant Year t. Such pro rata payment (which shall be payable in accordance with paragraph 5.2) shall be calculated as follows:

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

where:

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

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

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

provided that, in each case:

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

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

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

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

6 Capacity Charge

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 3.1 above; and

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

but so that in relation to the Relevant Year 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:

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

where:

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

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

but so that in relation to the Relevant Year 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 Not used.

8 Not used.

9 Bilateral supplements to the List of Capacity Charge Rates 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 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 Track Usage Price List be supplemented as necessary to include a new vehicle type and corresponding rate; or
- (b) 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 List of Capacity Charge Rates, the supplement shall have effect from such date as ORR shall determine by notice to the parties, provided that 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.

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) not used;
 - (iii) the Capacity Charge;
 - (iv) the Default Charge; and
 - (v) any other sums which have fallen due in accordance with any provision of this contract,

attributable to any Period as invoiced by Network Rail on or after expiry of each such Period within 21 days of the invoice date or 28 days after the end of the Period, whichever is later.

- (b) Not used.
- (c) Not used.

10.2 Train Consist Data

- (a) The Train Operator shall, 28 days before the start of each Period, provide to Network Rail details of its Planned Train Movements for that period, including the Planned Train Consist Data for each train movement (the "Period Plan");
- (b) Network Rail shall, within 14 days of receiving the Period Plan, calculate the Variable Usage Charge payable by the Train Operator in respect of the Period Plan (the "VTUCP") 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;
- (c) The Train Operator shall pay the Variable Usage Charge in accordance with the provisions of paragraph 10.1 of this Schedule 7;
- (d) The Train Operator shall, within 7 days of the end of each Period, provide to Network Rail details of its Actual Train Movements for that

Period, including the Train Consist Data for each train movement (the "Period Actual");

- (e) Network Rail shall, within 14 days of receiving the Period Actual, calculate the Variable Usage Charge payable by the Train Operator in respect of the Period Actual (the "VTUCA") 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; and
- (f) Network Rail shall, each period, compare the VTUCP with the VTUCA for the same period and:
 - (i) if the VTUCP exceeds the VTUCA, shall credit the Train Operator with the difference between the VTUCP and the VTUCA on the next following invoice issued in accordance with paragraph 10.1 of this Schedule 7; or
 - (ii) if the VTUCA exceeds the VTUCP, shall debit the Train Operator with the difference between the VTUCA and the VTUCP on the next following invoice issued in accordance with paragraph 10.1 of this Schedule 7.

10.3 *Invoices and right to object to invoices*

- (a) For each period, Network Rail shall be entitled to invoice the Train Operator for Variable Charges in respect of any and all train movements to be operated by the Train Operator during the following Period based on either:
 - (i) Planned Train Movements provided by the Train Operator in respect of any train movement prior to the time that such train movement is completed; or
 - (ii) (to the extent that (i) above does not apply) Default Train Consist Data. Each such invoice will be payable in accordance with the provisions of paragraph 10.1.
- (b) Either party shall be entitled, at any time prior to the later of 2359 hours on the seventh day 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.
- (c) 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.

- (d) Within seven days of any Train Consist Data being agreed or determined in accordance with paragraph 10.3(c), 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.
- (e) 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.

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 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 these circumstances 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
- RPI₂₀₁₂ 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: NOT USED

PART 4: NOT USED

PART 5: ADDITIONAL CHARGES

1. The Training Charge

In respect of Network Rail providing training in the use of signalling equipment to the Train Operator's nominated staff, the Train Operator shall pay to Network Rail a signalling training charge (the "**Training Charge**"). The Training Charge shall be £552 and shall be applied to each group of two staff nominated by the Train Operator for the said signalling training. The Training Charge shall apply in circumstances where Network Rail, acting reasonably, requires the Train Operator's staff to be trained in the use of signalling equipment. While the Training Charge shall not be index linked, the parties hereby agree that the charge may be increased by Network Rail by such amount as is necessary to the cover any reasonable additional costs incurred by Network Rail such as, but not limited to, salary increases, outsourcing of training and changes in technology. The Training Charge shall not represent any additional costs related to refresher training and or additional training required due to the overall level of competency of the Train Operator's staff member at the time of the training;

2. The Monitoring Charge

Network Rail shall carry out random monitoring (“**Monitoring**”) to observe staff of the Train Operator who have previously had training in the use of signalling equipment. Network Rail may carry out Monitoring on up to 12 occasions in any Relevant Year where Network Rail has required further of the Train Operator’s staff to be trained in the use of signalling equipment, and the Train Operator shall pay to Network Rail a charge (the “**Monitoring Charge**”). A Monitoring Charge of £276 shall apply on each occasion that Monitoring is carried out; and

3. Additional Weekend Passenger Train Slots Costs

Such costs in respect of those additional Passenger Train Slots provided for in paragraph 2.4 and Table 2.2 to Schedule 5 incurred by Network Rail for the purpose of enabling the Train Operator to operate those additional Passenger Train Slots on Weekends, for example but not limited to, all costs relating to the opening of signal boxes. Such costs shall be in addition to any other amount payable by the Train Operator to Network Rail under the contract. All provisions of the contract relating to invoicing and payment of Track Charges shall apply to the payment of Track Charges in respect of the additional passenger Train Slots.

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) not used;
- (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) not used;
- (d) not used;
- (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) not used;
- (i) not used;
- (j) the amount of any sum K_t payable as provided in paragraph 6 of Part 2; and

- (k) in respect of any other sums which have fallen due in accordance with any provisions of this contract, separately the amount payable in respect of each head of charge.

PART 7: FUTURE ACCESS CHARGES REVIEWS

1 General

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

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

- (b) not used.

2 Not used.

3 Interpretation

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

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

Route	Route definition	Opt-out (please mark with an '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 7 to Annex 2

Schedule 8

SCHEDULE 8: PERFORMANCE REGIME

1 Interpretation

1.1 Definitions

In this Schedule 8 and its Appendices 1 and 2, 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);

“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;

“Minutes Delay”	means, in relation to a Train and a Recording Point, the delay at that Recording Point, calculated in accordance with paragraph 3;
“Minutes Late”	means, in relation to a day and a Monitoring Point, the lateness at that Monitoring Point, calculated in accordance with paragraph 2;
“Monitoring Point”	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;
“Network Rail Performance Point”	means, in relation to a Service Group, the Network Rail performance point specified in column B of Appendix 1;
“Off-Peak”	where applicable, has the meaning ascribed to it in Schedule 5;
“Passenger Timetable”	means the timetable referred to within the Performance Monitoring System as the passenger timetable and which reflects the Applicable Timetable;
“Peak”	Where applicable, has the meaning ascribed to it in Schedule 5;
“Performance Data Accuracy Code”	means the version of the Performance Data Accuracy Code referred to in Part B of the Network Code;
“Performance Monitoring System”	means the recording system which Network Rail is required to operate under Part B of the Network Code;
“Performance Sum”	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;
“Period”	means each consecutive period of 28 days during the term of this contract commencing at 0000 hours on 1 April in each year, provided that the length of the first and last such Period in any year may be varied by up to seven days on reasonable prior notice from Network Rail to the Train Operator;
“Recording Point”	means a point at which Network Rail records Trains using the Performance Monitoring System;

“Recovery Time”	means additional time incorporated in the Applicable Timetable to allow for a Train to regain time lost during an earlier part of its journey;
“Relevant Year”	has the meaning ascribed to it in Schedule 7;
“Restriction of Use”	has the meaning ascribed to it in Schedule 4;
“RPI”	has the meaning ascribed to it in Schedule 7;
“Season Ticket”	means any ticket valid for unlimited travel on a Service for not less than a period of one calendar month;
“Service Code”	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;
“Service Group”	means a collection of Services contained within the service groups specified in column A of Appendix 1;
“Train”	means each train operating a Service which is: <ul style="list-style-type: none"> (a) operated by or on behalf of the Train Operator pursuant to the permission to use the Routes granted under this contract; and (b) used to provide services for the carriage of passengers by railway, but excludes any and all trains making an Ancillary Movement; and
“Train Operator Performance Point”	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

Σ 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:

- A₁ 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);
- A₂ 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; and
- (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,

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_t means the CV 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
- RPI₂₀₁₃ 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 shall equal zero;

$$\frac{(MLT \cdot MPW)}{SP}$$

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 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;

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 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.

18 ETCS Amendments

18.1 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 18.3.

18.2 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 182(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 18.2(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 18.2(c); or
 - (ii) the parties fail to reach agreement within 50 Working Days of service of a notice under paragraph 18.2(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.

18.3 *ORR right to approve, determine or make ETCS Amendments*

- (a) If ORR:
 - (i) receives a notification under paragraph 18.2(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 18.3(a), and such information shall be provided in accordance with any timescales and to the standard required by ORR.

Appendix 1

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	
Service Group	Network Rail				TOC										
	Performance Point	Payment Rate			Performance Point	Payment Rate			Cancellation Minutes	Cap	Service Code		Direction	Monitoring Point	Weighting
		(Not Used)	(Not Used)	Total		(Not Used)	(Not Used)	Total							

Appendix 2

Not Used.

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, the standard amendments are to 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 Annex B to Part 3 of Schedule 4: Lookup Table for EBM Weights

1.1 In the following Track Access Agreements:

- (a) the **Grand Central (Sunderland) TAA**;
- (b) the **Grand Central (West Riding) TAA**; and
- (c) the **Hull Trains TAA**,

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.

2 Schedule 7

2.1 In the **Grand Central (Sunderland) TAA**, in Schedule 7, Part 1, paragraph 1 (Definitions), in the definition of “Existing Service Codes”, immediately following the words “means each of the following Service Coded Groups:”, insert the following: “21755001 and 21755005”.

2.2 In the **Grand Central (West Riding) TAA**, in Schedule 7, Part 1, paragraph 1 (Definitions), in the definition of “Existing Service Codes”, immediately following the words “means each of the following Service Coded Groups:”, insert the following: “21756006 and 21755005”.

2.3 In the **Heathrow Express TAA**, in Schedule 7, Part 1, paragraph 1 (Definitions), in the definition of “Existing Service Codes”, immediately following the words “means each of the following Service Coded Groups:”, insert the following: “25503003”.

2.4 In the **Hull Trains TAA**, in Schedule 7, Part 1, paragraph 1 (Definitions), in the definition of “Existing Service Codes”, immediately following the words “means each of the following Service Coded Groups:”, insert the following: “21750001”.

3 Appendix 1 to Schedule 8

3.1 In each Track Access Agreement, other than the **NYMR TAA** and the **Eurostar TAA**, delete Columns B to I (inclusive) of Appendix 1 to Schedule 8 and replace them in their entirety with the Columns B to I (inclusive) of Appendix 1 to Schedule 8, specific to each Track Access Agreement and attached separately in Part 2 of Annex 3 to this Review Notice.

4 Schedule 11

4.1 In the **Eurostar TAA**, delete Schedule 11 and replace it in its entirety with the new Schedule 11 set out in Appendix 1 to this Annex 3, Part 1.

5 Schedule 12

5.1 In the **Eurostar TAA**, delete Schedule 12 and replace it in its entirety with the new Schedule 12 set out in Appendix 2 to this Annex 3, Part 1.

Appendix 1 to Annex 3, Part 1

Schedule 11 for the Eurostar TAA

SCHEDULE 11: RELEVANT SCHEDULE 8 MODIFICATIONS

1. Automatic Effect

1.1 General

This contract shall have effect:

- (a) with the Relevant Schedule 8 Modifications; and
- (b) from the date,

specified by ORR in a Notice of Consent or Notice of Determined Relevant Schedule 8 Modifications.

1.2 Retrospective effect

ORR's Notice of Consent or Notice of Determined Relevant Schedule 8 Modifications may have retrospective effect provided that such modifications shall not take effect earlier than 1 April 2014.

2. Procedures Governing Relevant Schedule 8 Modifications

2.1 Negotiation of Relevant Schedule 8 Modifications

In respect of the Relevant Schedule 8 Modifications:

- (a) the parties shall, within 8 weeks from the Start Date, meet and negotiate and attempt to agree the Relevant Schedule 8 Modifications;
- (b) each party shall ensure that:
 - (i) such negotiations are conducted 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.

2.2 Relevant Schedule 8 Modifications – failure to agree

If the parties fail to agree the Relevant Schedule 8 Modifications on or before the Backstop Date:

- (a) Network Rail shall notify ORR; and
- (b) ORR may, within 56 days of receipt of the notification under paragraph 2.2(a), elect to determine the Relevant Schedule 8 Modifications itself.

2.3 *ORR's determination of Relevant Schedule 8 Modifications*

If ORR elects to determine the Relevant Schedule 8 Modifications itself in accordance with paragraph 2.2(b), then, following such consultation with the parties as it considers necessary, ORR may determine the Relevant Schedule 8 Modifications and give a notice specifying such Relevant Schedule 8 Modifications.

2.4 *Use of ORR's Criteria by the relevant ADRR Forum*

If ORR does not elect to determine the Relevant Schedule 8 Modifications within 56 days of receipt by ORR of notification in accordance with paragraph 2.2(a), 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 the relevant ADRR Forum shall:

- (a) have regard to ORR's Criteria and make such orders in its award as it considers necessary to establish the requisite Relevant Schedule 8 Modifications;
- (b) provide reasons for its award; and
- (c) state the extent to which and ways in which ORR's Criteria have been applied in determining the Relevant Schedule 8 Modifications and, in any case where they have not been applied, give the reasons.

2.5 Relevant Schedule 8 Modifications – notice to the Office of Rail Regulation

Not later than seven days after the Backstop Date or the determination by the relevant ADRR Forum, as the case may be, the Relevant Schedule 8 Modifications 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 Relevant Schedule 8 Modifications;
- (b) stating the extent to which and ways in which ORR's Criteria have been applied in determining the Relevant Schedule 8 Modifications and, in any case where they have not been applied, the reasons; and
- (c) giving such other information as ORR may have requested.

2.6 Relevant Schedule 8 Modifications – ORR's consent

If ORR is satisfied with the Relevant Schedule 8 Modifications submitted to it pursuant to paragraph 2.5, and it gives a notice to that effect, such modifications shall have effect as provided for in paragraph 1.1.

2.7 Relevant Schedule 8 Modifications – ORR's refusal of consent

If ORR gives notice to the parties that it is not satisfied with any or all of the proposed Relevant Schedule 8 Modifications, it may:

- (a) require the parties again to follow the procedure or any part of the procedure set out in paragraphs 2.1 to 2.5 for agreeing Relevant Schedule 8 Modifications (with such modifications as to time limits as it specifies), in which case they shall do so; or
- (b) following such consultation with the parties as it considers necessary, determine the Relevant Schedule 8 Modifications itself and give a notice specifying such Relevant Schedule 8 Modifications.

2.8 Payment adjustments

Within 10 Working Days of the date of any notice referred to in paragraph 1.1 the parties shall make such adjustments to the payments made under Schedule 8 as are necessary to ensure that the parties are in the financial position in respect of the Relevant Schedule 8 Modifications as if those modifications had had effect from the date specified in the notice given under paragraph 1.1.

3. **Procedural Matters**

3.1 *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 the Relevant Schedule 8 Modifications or proposed Relevant Schedule 8 Modifications:

- (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.

3.2 *ORR's Criteria*

Any Relevant Schedule 8 Modifications shall:

- (a) ensure that Schedule 8 will provide appropriate incentives on both parties in relation to Services, such that both parties are appropriately encouraged to maintain and improve operational performance, seeking to minimise lateness and cancellations;
- (b) be consistent with the Railways Infrastructure (Access and Management) Regulations 2005;
- (c) be drafted to meet a high standard of simplicity, clarity and legal precision;
- (d) use definitions, terminology and numbering, including any bespoke provisions based on previous track access contracts, which are consistent with the defined terms, terminology and numbering used in this contract;
- (e) take account, where relevant, of the document named 'Criteria and procedures for the approval of track access contracts' published by ORR, as may be re-issued from time to time;
- (f) take account, where relevant, of ORR's latest policy statements on the performance regime; and
- (g) take account of the duties of ORR under section 4 of the Act.

3.3 *Procedural modifications*

In relation to the procedure in paragraph 2 for the Relevant Schedule 8 Modifications (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 Modifications; but
- (b) 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.

3.4 *Dates*

In this Schedule:

- (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.

3.5 *Consolidated contract*

Not later than 28 days after the giving of a Notice of Consent or Notice of Determined Relevant Schedule 8 Modifications, Network Rail shall prepare and send to the Train Operator and ORR a copy of this contract as so modified.

3.6 *Saving*

Nothing in this Schedule affects the right of either party to approach and obtain from ORR guidance in relation to Relevant Schedule 8 Modifications.

4. **Definitions**

In this Schedule 11:

“Backstop Date” means 27 May 2014 (or such later date as may be established under paragraph 2.6(a) or 3.3);

“Notice of Consent” means a notice given by ORR to the parties under paragraph 2.5;

“Notice of Determined Relevant Schedule 8 Modifications” means a notice given by ORR to the parties under either paragraph 2.3 or paragraph 2.6(b);

“Notice of Procedural Modifications” means a notice given by ORR to the parties under paragraph 3.3 modifying any aspect of the procedures in this Schedule;

“ORR’s Criteria” means the criteria set out in paragraph 3.2;

“Start Date” means 1 April 2014;

“Relevant Schedule 8 Modifications” means:

- (a) any modifications required to Schedule 8; and
- (b) any modifications to any other part of this Contract which are necessary as a consequence of any modifications under paragraph (a),

to reflect the alterations which are necessary or desirable to achieve the objectives set out in ORR’s Criteria in the most efficient and economic manner.

Appendix 2 to Annex 3, Part 1

Schedule 12 for the Eurostar TAA

SCHEDULE 12: RELEVANT SCHEDULE 4 MODIFICATIONS

1. Automatic Effect

1.1 General

This contract shall have effect:

- (a) with the Relevant Schedule 4 Modifications; and
- (b) from the date,

specified by ORR in a Notice of Consent or Notice of Determined Relevant Schedule 4 Modifications.

1.2 Retrospective effect

ORR's Notice of Consent or Notice of Determined Relevant Schedule 4 Modifications may have retrospective effect provided that such modifications shall not take effect earlier than 1 April 2014.

2. Procedures Governing Relevant Schedule 4 Modifications

2.1 Negotiation of Relevant Schedule 4 Modifications

In respect of the Relevant Schedule 4 Modifications:

- (a) the parties shall, within 8 weeks from the Start Date, meet and negotiate and attempt to agree the Relevant Schedule 4 Modifications;
- (b) each party shall ensure that:
 - (i) such negotiations are conducted 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.

2.2 *Relevant Schedule 4 Modifications – failure to agree*

If the parties fail to agree the Relevant Schedule 4 Modifications on or before the Backstop Date:

- (a) Network Rail shall notify ORR; and
- (b) ORR may, within 56 days of receipt of the notification under paragraph 2.2(a), elect to determine the Relevant Schedule 4 Modifications itself.

2.3 *ORR's determination of Relevant Schedule 4 Modifications*

If ORR elects to determine the Relevant Schedule 4 Modifications itself in accordance with paragraph 2.2(b), then, following such consultation with the parties as it considers necessary, ORR may determine the Relevant Schedule 4 Modifications and give a notice specifying such Relevant Schedule 4 Modifications.

2.4 *Use of ORR's Criteria by the relevant ADRR Forum*

If ORR does not elect to determine the Relevant Schedule 4 Modifications within 56 days of receipt by ORR of notification in accordance with paragraph 2.2(a), 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 the relevant ADRR Forum shall:

- (a) have regard to ORR's Criteria and make such orders in its award as it considers necessary to establish the requisite Relevant Schedule 4 Modifications;
- (b) provide reasons for its award; and
- (c) state the extent to which and ways in which ORR's Criteria have been applied in determining the Relevant Schedule 4 Modifications and, in any case where they have not been applied, give the reasons.

2.5 *Relevant Schedule 4 Modifications – notice to the Office of Rail Regulation*

Not later than seven days after the Backstop Date or the determination by the relevant ADRR Forum, as the case may be, the Relevant Schedule 4 Modifications 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 Relevant Schedule 4 Modifications;
- (b) stating the extent to which and ways in which ORR's Criteria have been applied in determining the Relevant Schedule 4 Modifications and, in any case where they have not been applied, the reasons; and
- (c) giving such other information as ORR may have requested.

2.6 *Relevant Schedule 4 Modifications – ORR's consent*

If ORR is satisfied with the Relevant Schedule 4 Modifications submitted to it pursuant to paragraph 2.5, and it gives a notice to that effect, such modifications shall have effect as provided for in paragraph 1.1.

2.7 *Relevant Schedule 4 Modifications – ORR's refusal of consent*

If ORR gives notice to the parties that it is not satisfied with any or all of the proposed Relevant Schedule 4 Modifications, it may:

- (a) require the parties again to follow the procedure or any part of the procedure set out in paragraphs 2.1 to 2.5 for agreeing Relevant Schedule 4 Modifications (with such modifications as to time limits as it specifies), in which case they shall do so; or
- (b) following such consultation with the parties as it considers necessary, determine the Relevant Schedule 4 Modifications itself and give a notice specifying such Relevant Schedule 4 Modifications.

2.8 *Payment adjustments*

Within 10 Working Days of the date of any notice referred to in paragraph 1.1 the parties shall make such adjustments to the payments made under Schedule 4 as are necessary to ensure that the parties are in the financial position in respect of the Relevant Schedule 4 Modifications as if those modifications had had effect from the date specified in the notice given under paragraph 1.1.

3. **Procedural Matters**

3.1 *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 the Relevant Schedule 4 Modifications or proposed Relevant Schedule 4 Modifications:

- (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.

3.2 *ORR's Criteria*

Any Relevant Schedule 4 Modifications shall:

- (a) provide protection to the Train Operator that is reasonably equivalent to the Standard Sustained Planned Disruption Arrangements;
- (b) take account, where relevant, of Chapter 20 of the document named "Periodic Review 2013: Final Determination of Network Rail's outputs and funding for 2014-19" published by ORR on 31 October 2013, in relation to Sustained Planned Disruption;
- (c) be drafted to meet a high standard of simplicity, clarity and legal precision;
- (d) use definitions, terminology and numbering, including any bespoke provisions based on previous track access contracts, which are consistent with the defined terms, terminology and numbering used in this contract;
- (e) take account, where relevant, of the document named 'Criteria and procedures for the approval of track access contracts' published by ORR, as may be re-issued from time to time; and
- (f) take account of the duties of ORR under section 4 of the Act.

3.3 *Procedural modifications*

In relation to the procedure in paragraph 2 for the Relevant Schedule 4 Modifications (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 Modifications; but
- (b) 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.

3.4 *Dates*

In this Schedule:

- (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.

3.5 *Consolidated contract*

Not later than 28 days after the giving of a Notice of Consent or Notice of Determined Relevant Schedule 4 Modifications, Network Rail shall prepare and send to the Train Operator and ORR a copy of this contract as so modified.

3.6 *Saving*

Nothing in this Schedule affects the right of either party to approach and obtain from ORR guidance in relation to Relevant Schedule 4 Modifications.

4. **Definitions**

In this Schedule 12:

“Backstop Date” means 27 May 2014 (or such later date as may be established under paragraph 2.6(a) or 3.3);

“Notice of Consent” means a notice given by ORR to the parties under paragraph 2.5;

“Notice of Determined Relevant Schedule 4 Modifications” means a notice given by ORR to the parties under either paragraph 2.3 or paragraph 2.6(b);

“Notice of Procedural Modifications” means a notice given by ORR to the parties under paragraph 3.3 modifying any aspect of the procedures in this Schedule;

“ORR’s Criteria” means the criteria set out in paragraph 3.2;

“Standard Sustained Planned Disruption Arrangements” means the Sustained Planned Disruption compensation arrangements that are typically available to operators of regular scheduled non-franchised passenger services and which are set out in Part 3 to Schedule 4 to the track access agreements between those operators and Network Rail;

“Start Date” means 1 April 2014; “Relevant Schedule 4 Modifications” means:

- (a) any modifications required to Schedule 4; and
- (b) any modifications to any other part of this Contract which are necessary as a consequence of any modifications under paragraph (a),

to reflect the alterations which are necessary or desirable to achieve the objectives set out in ORR’s Criteria in the most efficient and economic manner.

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. 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.