

# RAILWAYS ACT 1993

## 2018 PERIODIC REVIEW

### REVIEW NOTICE: FREIGHT 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 and Road (“**ORR**”) has undertaken a review of:
  - (a) the amounts payable by Network Rail and each of the Train Operators to each other under each of the track 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 series of documents referenced in the document entitled “**2018 periodic review final determination: Overview of approach and decisions –**

**October 2018**” and published by ORR on 31 October 2018, and in particular those documents referenced in Chapter 1 of that document<sup>1</sup>; 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 2019.

## **3 Regulated Amendments**

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

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

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

(each a “**regulated amendment**”), then:

(i) the proposed relevant changes shall come into operation in relation to that Track Access Agreement subject to the regulated amendments; and

(ii) if there is any conflict between the proposed relevant changes and the regulated amendments, the regulated amendments shall take precedence.

---

<sup>1</sup> This further includes all documents referenced and/or linked to in the document entitled “2018 periodic review final determination: Supplementary document: Overview of charges and incentives decisions – October 2018”.

## 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 2019; and
- (c) addressed to ORR as follows:

Carl Hetherington  
Office of Rail and Road  
One Kemble Street  
London  
WC2B 4AN

## 5 Definitions and Interpretation

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

- (a) references to “**this Review Notice**” include the Annexes to this Review Notice;
- (b) references to the singular include the plural and *vice versa*;
- (c) words and phrases defined in:
  - (i) the Act;
  - (ii) the Network Code (formerly known as the Railtrack Track Access Conditions 1995 (as amended)); or

(iii) each Track Access Agreement,

shall have the same meanings in this Review Notice; and

(d) any general rules of interpretation contained in:

(i) Condition A1 of the Network Code; or

(ii) each Track Access Agreement,

shall also apply to this Review Notice.



**John Larkinson**  
**Chief Executive**  
**FOR AND ON BEHALF OF**  
**THE OFFICE OF RAIL AND ROAD**  
Dated 20 December 2018



## ANNEX 1

### TRAIN OPERATORS AND TRACK ACCESS AGREEMENTS

<b>Train Operator Name</b>	<b>Train Operator Company Number</b>	<b>Original Date of Track Access Agreement</b>
Colas Rail Limited	02995525	11 December 2016
DB Cargo (UK) Limited	02938988	11 December 2016
Devon and Cornwall Railways Limited	04973992	28 July 2016
Direct Rail Services Limited	03020822	8 January 2010
Freightliner Limited	03118392	11 December 2016
Freightliner Heavy Haul Limited	03831229	11 December 2016
GB Railfreight Limited	03707899	11 December 2016
Harsco Rail Limited	00977100	17 April 2015 <sup>2</sup>
Loram UK Limited	06031483	12 January 2017
Rail Operations (UK) Limited	08556176	21 March 2015
Victa Railfreight Limited	03017321	17 April 2015
Vintage Trains Limited	10436785	5 September 2018
West Coast Railway Company Ltd	03066109	5 April 2016

<sup>2</sup> ORR holds a copy of a contract dated 17 April 2015. However, versions of this contract exist on line with different dates. Notwithstanding this ambiguity, it is ORR's proposal that the track access agreement held by Harsco Rail Limited be amended in line with this Review Notice.

## ANNEX 2

### STANDARD AMENDMENTS

***Explanatory Note:***

*In order to give effect to the ORR's conclusions on the Review, this Annex 2 sets out the standard form proposed relevant changes to be made to Schedules 4, 7, 8 and 9 and the clauses of each Track Access Agreement (the "standard amendments").*

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

*In certain instances, the publication of certain proposed relevant changes would or might, in the opinion of the 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 set out in Annex 3:

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

1.1 In clause 1.1 (Definitions) of each Track Access Agreement, delete the definition of “Service Variation Sum” and replace it with the following definition:

“**Service Variation Sum**” means the Service Variation Sum of £665, as adjusted under paragraphs 2.7.1 and 2.7.2 of Schedule 7;”

1.2 With the exception of the track access agreement between Network Rail and Vintage Trains Limited (the “**Vintage Trains TAA**”), in clause 11.6 (Claims Allocation and Handling Agreement) of each Track Access Agreement, delete clause 11.6.5 (Indexation of the Indemnity Incident Cap) and replace it with the following new clause 11.6.5 (and replace the empty square brackets in this new clause 11.6.5 and sub-clause (ii) with the sum which was set out in the equivalent clause and sub-paragraph (i) in the version of that Train Operator’s Track Access Agreement which was in place immediately prior to 1 April 2019):

“11.6.5 Indexation of the Indemnity Incident Cap

The Indemnity Incident Cap for the first Contract Year shall mean the sum of £ [ ] and in relation to any subsequent Contract Year, the sum calculated in accordance with the following formula:

$$C_n = C_{2017-18} \times \left[ \frac{CPI_n}{CPI_{2017-18}} \right]$$

where:

(i)  $C_{2017-18} = C_1 \times \left[ \frac{RPI_{2017-18}}{RPI_1} \right]$

(ii)  $C_1$  is the sum of £ [ ];

(iii)  $C_n$  is the Indemnity Incident Cap in the nth subsequent Contract Year;

- (iv)  $CPI_n$  is the Consumer Prices Index (defined as CPI in Schedule 7) published or determined with respect to the first month of the subsequent Contract Year n; and
- (v)  $CPI_{2017-18}$  is the Consumer Prices Index (defined as CPI in Schedule 7) published or determined with respect to that month in which a Contract Year starts in the Relevant Year commencing on 1 April 2017 and ending on 31 March 2018;
- (vi)  $RPI_{2017-18}$  is the Retail Prices Index (defined as RPI in Schedule 7) published or determined with respect to that month in which a Contract Year starts in the Relevant Year commencing on 1 April 2017 and ending on 31 March 2018; and
- (vii)  $RPI_1$  is the Retail Prices Index (defined as RPI in Schedule 7) published or determined with respect to the month in which this contract became effective under Clause 3.1.”

1.3 In clause 11.6 (Claims Allocation and Handling Agreement) of the **Vintage Trains TAA**, delete clause 11.6.5 (Indexation of the Indemnity Incident Cap) and replace it with the following new clause 11.6.5 (and replace the empty square brackets in this new clause 11.6.5 and sub-clause (i) with the sum which was set out in the equivalent clause and sub-paragraph (i) in the version of that Train Operator’s Track Access Agreement which was in place immediately prior to 1 April 2019):

“11.6.5 Indexation of the Indemnity Incident Cap

The Indemnity Incident Cap for the first Contract Year shall mean the sum of £ [ ] and in relation to any subsequent Contract Year, the sum calculated in accordance with the following formula:

$$C_n = C_1 \times \left( \frac{CPI_n}{CPI_1} \right)$$

where:

- (i)  $C_1$  is the sum of £ [ ];



- (ii)  $C_n$  is the Indemnity Incident Cap in the  $n$ th subsequent Contract Year;
- (iii)  $CPI_n$  is the Consumer Prices Index (defined as CPI in Schedule 7) published or determined with respect to the first month of the subsequent Contract Year  $n$ ; and
- (iv)  $CPI_1$  is the Consumer Prices Index (defined as CPI in Schedule 7) published or determined with respect to the first month of the first Contract Year.”

1.4 In clause 16 (Payments, interest and VAT) of each Track Access Agreement, delete clause 16.1.2 (Delivery of invoices) and replace it with the following:

“16.1.2 *Delivery of invoices*

All invoices or statements of amounts payable issued under any provision of this contract shall be delivered by hand at, or sent by prepaid first class post, or by facsimile transmission (with confirmation copy by prepaid first class post) or by email (where both parties agree) to the address for service for the recipient specified in Schedule 1 and shall be deemed to have been received by the addressee in accordance with Clause 18.4.3.”

1.5 In clause 18.4 (Notices) of each Track Access Agreement, delete sub-clause 18.4.1(b) and replace it with the following:

“(b) shall be duly given if signed by or on behalf of a person duly authorised to do so by the party giving the notice and delivered by hand at, or by sending it by prepaid first class post, recorded delivery, or by facsimile transmission (with confirmation copy by prepaid first class post) or by email (where the parties agree), to the relevant address or email address or facsimile number as set out in Schedule 1.”

1.6 In clause 18.4 (Notices) of each Track Access Agreement, delete sub-clause 18.4.3(b) and (c), and replace them with the following:

“(b) if sent by prepaid first class post from and to any place within the United Kingdom, 3 Working Days after posting unless otherwise proven;

- (c) if sent by facsimile (subject to confirmation of uninterrupted transmission by a transmission report) before 1700 hours on a Working Day, on the day of transmission and, in any other case, at 0900 hours on the next following Working Day; and
- (d) if sent by email (subject to confirmation of receipt of delivery) before 1700 hours on a Working Day, on the day of transmission and, in any other case, at 0900 hours on the next Working Day.”

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

2.1 In paragraph 1.1 (Definitions) of Part 1 of Schedule 4 to each Track Access Agreement:

- (a) delete the definition of “Enhanced Planned Disruption Sum” and replace it with the following definition:

“**Enhanced Planned Disruption Sum**” means the Enhanced Planned Disruption Sum specified in Appendix 1;”;

- (b) delete the definition of “Freight Capacity Charge”;

- (c) delete the definition of “Normal Planned Disruption Sum” and replace it with the following definition:

“**Normal Planned Disruption Sum**” means the Normal Planned Disruption Sum specified in Appendix 1;”;

- (d) delete the definition of “Round Trip” and replace it with the following definition:

“**Round Trip**” means any Service conveying loaded wagons and any Empty Services and Ancillary Movements associated with that Service;”;

- (e) delete the definition of “Variable Costs” and replace it with the following definition:

“**Variable Costs**” means the Train Operator’s costs which vary as a result of a Category 3 Disruption, a Relevant Cancellation or a Relevant Service Variation (as the case may be) arising directly from changes in train mileage including staff, maintenance, fuel or electricity costs, and the Variable Charge.”

2.2 In paragraph 9.4 (Late Notice Actual Costs Claim Process) of Part 7 of Schedule 4 to each Track Access Agreement, delete the two sub-paragraphs of paragraph 9.4(c), and replace them with the following:

- “(i) (if it has not already done so) commence negotiations with the Train Operator in respect of its Late Notice Actual Costs and shall continue such negotiations in good faith until they are concluded or until the Late Notice Actual Costs are determined in accordance with Clause 13; and
- (ii) pay to the Train Operator such Late Notice Actual Costs within 28 days of those Late Notice Actual Costs being agreed or determined in accordance with Clause 13 (as the case may be).”

2.3 In each Track Access Agreement, insert a new Appendix 1 of Schedule 4 as follows:

**“Appendix 1**

The Normal Planned Disruption Sum shall be £336 (amount to be expressed in pounds sterling and rounded to zero decimal places).

The Enhanced Planned Disruption Sum shall be £894 (amount to be expressed in pounds sterling and rounded to zero decimal places).”

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

3.1 In each Track Access Agreement, with the exception of Appendix 3 (“Metered Trains M” for the purposes of paragraph 2.4.1.1 of Part 2) to Schedule 7 (which shall not be deleted and which shall continue to remain in full force), delete Schedule 7 and replace it in its entirety with the Schedule 7 set out in Appendix 1 to this Annex 2.

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

4.1 In paragraph 1 (Definitions) of Schedule 8 to each Track Access Agreement:

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

“**30% Exposure**” has the meaning ascribed to it in paragraph 11.1.1;”

- (b) delete the definition of “Adjusted Train Operator Benchmark”;

- (c) delete the definition of “Baseline Annual Contract Mileage” and replace it with the following definition:

“**Baseline Annual Contract Mileage**” has the meaning ascribed to it in paragraph 10.2.2(b);”;

- (d) delete the definition of “Baseline Network Mileage”;

- (e) delete the definition of “Disruption Sum” and replace it with the following definition:

“**Disruption Sum**” means the Disruption Sum specified in Appendix 1, as adjusted under paragraphs 2.7.1 and 2.7.2 of Schedule 7, expressed in pounds sterling and rounded to zero decimal places;”

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

“**Exposure Level**” has the meaning ascribed to it in paragraph 11.1.1;”

- (g) delete the definition of “Financial Year t+1” and replace it with the following definition:

“**Financial Year t+1**” has the meaning ascribed to it in paragraph 10.2.2;”;

- (h) delete the definition of “Late Notice Cancellation Sum” and replace it with the following definition:

“**Late Notice Cancellation Sum**” means the Late Notice Cancellation Sum specified in Appendix 1, as adjusted under paragraphs 2.7.1 and 2.7.2 of Schedule 7, expressed in pounds sterling and rounded to zero decimal places;”

- (i) delete the definition of “Network Rail Cap” and replace it with the following definition:

“**Network Rail Cap**” means the Network Rail Cap specified in Appendix 1 and in respect of the first and last Financial Year means the Network Rail Cap specified in Appendix 1 multiplied by the Adjustment Fraction, as adjusted under paragraphs 2.7.1 and 2.7.2 of Schedule 7 and paragraph 10.2 of this Schedule 8, expressed in pounds sterling and rounded to zero decimal places;”

- (j) delete the definition of “Prolonged Disruption Amount” and replace it with the following definition:

“**Prolonged Disruption Amount**” means the Prolonged Disruption Amount specified in Appendix 1, as adjusted under paragraphs 2.7.1 and 2.7.2 of Schedule 7, expressed in pounds sterling and rounded to zero decimal places;”

- (k) delete the definition of “Relevant Train Operator Mileage”;
- (l) delete the definition of “Third Party Train Mileage”;
- (m) delete the definition of “Total Actual Operated Mileage”;
- (n) delete the definition of “Traffic Growth”;
- (o) delete the definition of “Traffic Reduction”;
- (p) delete the definition of “Train Operator Benchmark” and replace it with the following definition:

“**Train Operator Benchmark**” or “**TOB**” means the Train Operator Benchmark in Minutes Delay per 100 Train Operator Miles in relation to each Charging Period, as specified in Appendix 1;”

- (q) delete the definition of “Train Operator Cap” and replace it with the following definition:

“**Train Operator Cap**” means the Train Operator Cap specified in Appendix 1 and in respect of the first and last Financial Year means the Train Operator Cap specified in Appendix 1 multiplied by the Adjustment Fraction, as adjusted under paragraphs 2.7.1 and 2.7.2 of Schedule 7 and paragraph 10.2 of this Schedule 8, expressed in pounds sterling and rounded to zero decimal places;”

- (r) delete the definition of “Trigger” and replace it with the following definition:

“**Trigger**” means the act of a train arriving at, passing or departing from a Recording Point; and”

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

“**Zero Exposure**” has the meaning ascribed to it in paragraph 11.1.1.”

4.2 In paragraph 4 (Minutes Delay in respect of Train Operator performance) of Schedule 8 to each Track Access Agreement, delete paragraph 4.1.1 and replace it with the following:

“4.1.1 For the purposes of this paragraph 4, the aggregate Minutes Delay to Third Party Trains Attributable to the Train Operator arising as a result of any one incident or event shall be capped as follows:

- (a) where the Train Operator has elected to have no exposure above the Incident Cap in accordance with paragraph 11, any such minutes in excess of the Incident Cap shall be disregarded; or
- (b) where the Train Operator has elected to have 30% exposure above the Incident Cap in accordance with paragraph 11, 70% of such minutes in excess of the Incident Cap shall be disregarded.”

4.3 In paragraph 9 (Payment) of Schedule 8 to each Track Access Agreement, delete paragraph 9.2 (Issue of invoice or credit note) and replace it with the following:

“9.2 ***Issue of invoice or credit note***

9.2.1 In respect of each Charging Period, subject to paragraph 9.1, Network Rail shall:

- (a) issue an invoice or credit note as appropriate in respect of the balance, if any, shown on the period final statement provided in accordance with paragraph 11 of Appendix 3 within 28 days after the provision of such period final statement;
- (b) issue an invoice or credit note as appropriate in respect of the balance, if any, shown on the period final statement provided in accordance with paragraph 12 of Appendix 3, within 28 days after the provision of such period final statement;
- (c) issue a credit note in respect of the aggregate of all Normal Planned Disruption Sums and Enhanced Planned Disruption Sums for which Network Rail is liable in accordance with Schedule 4, if any, within 28 days after agreement of such liability.

9.2.2 In the event that (i) any of the period final statements referred to in subparagraphs 9.2.1(a) and 9.2.1(b) have not been provided within 28 days after the end of the Charging Period to which they relate or (ii) agreement referred to in subparagraph 9.2.1(c) has not been reached within those same 28 days, in both cases Network Rail may agree with the Train Operator that an interim payment be made. If such agreement is reached then the invoice or credit note (as appropriate) issued shall detail which of the relevant sums are thus settled and which remain outstanding; and any subsequent invoice or credit note (as appropriate) issued in respect of the same Charging Period under subparagraphs 9.2.1(a), 9.2.1(b) or 9.2.1(c) shall take account of the interim payments as well as remaining subject to paragraph 9.1.”

4.4 In paragraph 10 (Reviews of Benchmarks, Network Rail Cap and Train Operator Cap) of Schedule 8 to each Track Access Agreement:

(a) delete the paragraph 10 heading which reads “Reviews of Benchmarks, Network Rail Cap and Train Operator Cap” and replace it with:

**“10     Reviews of Network Rail Cap and Train Operator Cap”;**

(b) delete paragraph 10.1 (Adjustments to the Train Operator Benchmark) and replace it with the following:

*“10.1   Not used”*

(c) in paragraph 10.2 (Adjustments to the Network Rail Cap and Train Operator Cap):

(1) in paragraph 10.2.1, delete the words “1 April 2015” and replace them with “1 April 2020”;

(2) delete subparagraphs 10.2.2(b) and (c), and replace them with the following:

**“(b)   Network Rail’s determination as to whether or not the Annual Contract Mileage for Financial Year t exceeds or is less than the Baseline Annual Contract Mileage (as determined in accordance with paragraph 10.2.3 below (“Baseline Annual Contract**

**Mileage**”)) by, in each case, an amount equal to or greater than 2.5% of the Baseline Annual Contract Mileage (the “**Annual Contract Mileage Variation**”); and

- (c) if Network Rail determines that there has been an Annual Contract Mileage Variation, Network Rail’s proposal for an adjusted Network Rail Cap and/or Train Operator Cap in respect of the Financial Year immediately following Financial Year t (“**Financial Year t+1**”), in each case having regard to any relevant criteria and/or policy statement most recently issued by ORR.”

4.5 Delete paragraph 11 (Selection by the Train Operator of the Incident Cap) of Schedule 8 to each Track Access Agreement, and replace it with the following:

**“11 Selection by the Train Operator of the Incident Cap and Exposure Level**

**11.1 *Selection by the Train Operator of the Incident Cap and Exposure Level***

11.1.1 Subject to paragraph 11.1.3, on or before the date on which this paragraph 11.1 takes effect, the Train Operator shall notify Network Rail in writing of the level of Incident Cap and the level of exposure above the Incident Cap (the “**Exposure Level**”) it wishes to apply, being either no exposure above the Incident Cap, as described in paragraph 4.1.1(a) (“**Zero Exposure**”), or 30% exposure above the Incident Cap, as described in paragraph 4.1.1(b) (“**30% Exposure**”) (such notification being the “**Initial Incident Cap Notice**”). The Incident Cap Access Charge Supplement Rate applicable to the Train Operator under this contract shall be the rate set out in that part of column B (if the Train Operator selects Zero Exposure) or column C (if the Train Operator selects 30% Exposure) adjacent to the level of Incident Cap selected by the Train Operator in the Initial Incident Cap Notice until it is replaced by a different level of Incident Cap and Exposure Level selected by the Train Operator in an Incident Cap Notice issued pursuant to paragraph 11.1.2.

11.1.2 Subject to paragraph 11.1.3, the Train Operator may change the level of Incident Cap and Exposure Level previously selected by it (either in the Initial Incident Cap Notice or any subsequent Incident Cap Notice issued pursuant to this



paragraph 11.1.2) with effect from 1 April in any Financial Year by notifying Network Rail in writing of the level of Incident Cap and Exposure Level it wishes to apply for that Financial Year (the “Incident Cap Notice”). Any such Incident Cap Notice must be served by the Train Operator on Network Rail by no later than 6 weeks prior to 1 April in the Financial Year from which the Train Operator wishes the new level of Incident Cap and Exposure Level to apply, and the Incident Cap Access Charge Supplement Rate applicable for that and each subsequent Financial Year shall be the rate set out in that part of column B (if the Train Operator selects Zero Exposure) or column C (if the Train Operator selects 30% Exposure) adjacent to the level of Incident Cap selected by the Train Operator in the Incident Cap Notice until it is replaced by a different level of Incident Cap and Exposure Level selected by the Train Operator in an Incident Cap Notice issued pursuant to this paragraph 11.1.2.

11.1.3 For the avoidance of doubt, if the Train Operator selected an Incident Cap prior to Financial Year 2019/20, and did not issue a subsequent Incident Cap Notice in respect of Financial Year 2019/20 selecting 30% Exposure, the Train Operator shall be deemed, for the purposes of paragraphs 11.1.1 and 11.1.2, to have selected Zero Exposure for Financial Year 2019/20.

**11.2 Level of Incident Cap, Exposure Level and Incident Cap Access Charge Supplement Rate**

For the purposes of paragraph 11.1, the Train Operator shall select one of the following Incident Caps and, in respect of the relevant Incident Cap, the Exposure Level as set out in either Column B or C:

A	B	C
<b>Incident Cap</b>	<b>Incident Cap Access Charge Supplement Rate (£ per Contract Mile operated in a Charging Period)</b> expressed in pounds sterling and rounded to four decimal places – Zero Exposure above the Incident Cap	<b>Incident Cap Access Charge Supplement Rate (£ per Contract Mile operated in a Charging Period)</b> expressed in pounds sterling and rounded to four decimal places – 30% Exposure above the Incident Cap
1,000 Minutes	0.2045	0.1432
2,000 Minutes	0.1057	0.0740
3,000 Minutes	0.0623	0.0436
4,000 Minutes	0.0403	0.0282
5,000 Minutes	0.0280	0.0196
6,000 Minutes	0.0217	0.0152
7,000 Minutes	0.0172	0.0121
8,000 Minutes	0.0135	0.0095
9,000 Minutes	0.0101	0.0071
10,000 Minutes	0.0067	0.0047
No Incident Cap	None	None

“

4.6 Delete Appendix 1 (Performance) of Schedule 8 to each Track Access Agreement, and replace it with the Appendix 1 set out in Appendix 2 to this Annex 2, with the following modifications:

(a) in the following Track Access Agreements:

- (i) the track access agreement between Network Rail and Colas Rail Limited (the “**Colas TAA**”);
- (ii) the track access agreement between Network Rail and Devon and Cornwall Railways Limited (the “**Devon and Cornwall TAA**”);
- (iii) the track access agreement between Network Rail and Harsco Rail Limited (the “**Harsco TAA**”);
- (iv) the track access agreement between Network Rail and Loram UK Limited (the “**Loram TAA**”);
- (v) the track access agreement between Network Rail and Rail Operations (UK) Limited (the “**Rail Operations TAA**”);
- (vi) the track access agreement between Network Rail and Victa Railfreight Limited (the “**Victa TAA**”);
- (vii) the **Vintage Trains TAA**; and
- (viii) the track access agreement between Network Rail and West Coast Railway Company Limited (the “**West Coast Railway TAA**”),

replace the empty square brackets in the table entry for “Train Operator Cap” and the table entry for “Network Rail Cap” with, in each case, the sum of £695,394;

- (b) in the following Track Access Agreements:
  - (i) the track access agreement between Network Rail and GB Railfreight Limited (the “**GB Railfreight TAA**”);
  - (ii) the track access agreement between Network Rail and DB Cargo (UK) Limited (the “**DB Cargo TAA**”); and
  - (iii) the track access agreement between Network Rail and Freightliner Limited (the “**Freightliner TAA**”),

replace the empty square brackets in the table entry for “Train Operator Cap” and the table entry for “Network Rail Cap” with, in each case, the words “to be determined by ORR”;

- (c) in the track access agreement between Network Rail and Freightliner Heavy Haul Limited (the “**Freightliner Heavy Haul TAA**”), replace the empty square brackets in the table entry for “Train Operator Cap” and the table entry for “Network Rail Cap” with the corresponding sums specified in Appendix 1 of Part 2 of Annex 3 to this Review Notice;
- (d) in the track access agreement between Network Rail and Direct Rail Services Limited (the “**DRS TAA**”):
  - (i) replace the empty square brackets in the table entry for “Train Operator Cap” and the table entry for “Network Rail Cap” with, in each case, the sum of £695,394;
  - (ii) in the table headed “Train Operator Performance”, insert a fourth row, entitled “Cancellation Charge Access Charge Supplement”, and insert the corresponding sum specified in Appendix 1 of Part 2 of Annex 3 to this Review Notice;
  - (iii) under the heading “Cancellation Sum”, delete sub-paragraph (c), and replace it with the following:
    - “(c) the Cancellation Sum shall be £[ ] for each HCS Cancellation (whether or not such HCS Cancellation is a Cancellation which is below equal to or above the Cancellation Threshold);
    - (d) “**HCS Cancellation**” means a Cancellation within any of the following groups:
      - (i) 6620;
      - (ii) 6623;
      - (iii) 6625;

- (iv) 6626;
- (v) 6627;
- (vi) 6628;
- (vii) 6629;
- (viii) 6640;
- (ix) 6641; and
- (x) 6642,

If, in accordance with Schedule 7, the Train Operator has paid the Cancellation Charge Access Charge Supplement for the charging Period in which the relevant Cancellation occurs; and

- (e) the “**Cancellation Threshold**” in any Charging Period shall be 0.40 per cent of the total number of Services operated by the Train Operator in that Charging Period.”

and replace the empty square brackets in sub-paragraph (c) set out in this sub-paragraph (d)(iii) with the corresponding sum specified in Appendix 1 of Part 2 of Annex 3 to this Review Notice.

- 4.7 Delete Appendix 3 (Performance Statements) of Schedule 8 of each Track Access Agreement, and replace it with the following:

**“Appendix 3**

Performance Statements

**Interim statements provided by Network Rail**

- 1 Using all reasonable endeavours, Network Rail shall provide to the Train Operator an interim statement listing all incidents which are in connection with Services which were Planned to depart from their Origin during each day. Such interim statements shall be issued on the eighth day after the end of each particular day

(or, if the eighth day is not a Working Day, on the next Working Day thereafter) indicating:

- (a) which incidents are Attributable to the Train Operator and, in respect of such incidents, the Minutes Delay to Third Party Trains;
- (b) which incidents are Attributable to Network Rail and, in respect of such incidents, the Minutes Delay to Services;
- (c) which incidents are Attributable to both the Train Operator and Network Rail, and in respect of such incidents (i) that portion of Minutes Delay to Third Party Trains which is allocated to the Train Operator and (ii) that portion of Minutes Delay to Services which is allocated to Network Rail; and
- (d) which incidents in categories (a) to (c) above remain, at the time of production of the interim statement, under further investigation following a referral by the Train Operator under Condition B2.3.2 of the Network Code.

2 As soon as reasonably practicable after the end of each Week, and using all reasonable endeavours to provide such interim statement within two Working Days after the end of each Week, Network Rail shall provide to the Train Operator an interim statement listing all Disruption Sums arising during that Week for which it believes the Train Operator is liable under paragraph 5 of Schedule 8.

3 As soon as reasonably practicable after the end of each Charging Period, and using all reasonable endeavours to provide such interim statement within six Working Days after the end of each Charging Period, Network Rail shall provide to the Train Operator an interim statement listing:

- (a) the total Contract Miles; and
- (b) the total number of Services,

in each case operated by the Train Operator during that Charging Period.

### **Interim statements provided by the Train Operator**

- 4 As soon as reasonably practicable after the end of each Week, and using all reasonable endeavours to provide such interim statement within two Working Days after the end of each Week, the Train Operator shall provide to Network Rail the following interim statements:
- (a) an interim statement listing (i) all Cancellations occurring during that Week for which the Train Operator considers it is entitled to a Cancellation Sum, and (ii) any Late Notice Cancellations for which the Train Operator considers it is entitled to a Late Notice Cancellation Sum, in each case under paragraph 8 of Schedule 8;
  - (b) an interim statement listing all Prolonged Disruptions occurring or continuing during that Week for which the Train Operator considers it is entitled to a Prolonged Disruption Sum under paragraph 7 of Schedule 8; and
  - (c) an interim statement listing all Service Variations arising during that Week for which the Train Operator considers it is entitled to a Service Variation Sum under Schedule 4.

#### **Dispute of interim statement**

- 5 Within two Working Days of receipt of any interim statement under paragraph 1, 2, 3 or 4 of this Appendix the recipient shall notify the provider of the interim statement of any reason why it disputes the interim statement by endorsing the interim statement and returning it to the provider of such statement.
- 6 Within the next five Working Days after notification of any dispute under paragraph 5 above, nominated representatives of the parties shall meet and attempt to resolve that dispute.
- 7 If any matter is still in dispute ten Working Days after the meeting held under paragraph 6 above, either party may refer such matter for resolution under paragraph 9.3.1 of Schedule 8.

#### **Deemed agreement**

- 8 Except to the extent that it has, within two Working Days of receipt, notified the provider of an interim statement under paragraph 5 above that it disputes the contents of such interim statement, the recipient shall be deemed to have agreed the contents of that statement.

**Period final statements**

- 9 After the resolution of any investigations listed in an interim statement in accordance with paragraph 1(d) above, and of any disputes notified under paragraph 5 above, Network Rail shall provide to the Train Operator a final statement in respect of each Charging Period, listing:

- (a) the total Cancellations and the aggregate of the Cancellation Sums payable under Schedule 8;
- (b) the total Late Notice Cancellations and the aggregate of the Late Notice Cancellation Sums payable under Schedule 8;
- (c) the total Service Variations and the aggregate of the Service Variation Sums payable under Schedule 4;
- (d) the aggregate of the Disruption Sums payable under Schedule 8; and
- (e) the aggregate of the Prolonged Disruption Sums payable under Schedule 8,

in each case applicable to Services Planned to depart from their Origin during that Charging Period.

- 10 After the resolution of any incidents referred for further investigation under Condition B2.3.2 of the Network Code, Network Rail shall provide to the Train Operator a final statement in respect of each Charging Period, listing:

- (a) the total Performance Sum for which Network Rail is liable under Schedule 8; and
- (b) the total Performance Sum for which the Train Operator is liable under Schedule 8,



in each case including such relevant calculations as the parties shall agree from time to time.

### Statement of adjustment

- 11 If Condition B3.3 of the Network Code (Adjustment to prior results) applies in respect of all or part of a Charging Period, Network Rail shall promptly issue to the Train Operator a statement showing the necessary adjustments (if any) to any Performance Sums, Cancellation Sums, Late Notice Cancellation Sums, Normal Planned Disruption Sums, Enhanced Planned Disruption Sums, Disruption Sums and Prolonged Disruption Sums already paid in respect of the Charging Period.
- 12 Any statement issued by Network Rail under paragraph 11 above shall be accompanied by an adjusting invoice or credit note.”

## 5 Schedule 9 to each Track Access Agreement

- 5.1 With the exception of the **Vintage Trains TAA**, in paragraph 1 (Definitions) of Schedule 9 to each Track Access Agreement, delete the definition of “Liability Cap” and replace it with the following new definition (and replace the empty square brackets in sub-paragraphs (a) and (b)(ii) of the new definition with the sum which is set out in the equivalent sub-paragraphs (a) and (b)(i) in the version of that Train Operator’s Track Access Agreement which was in place immediately prior to 1 April 2019):

“**Liability Cap**” means:

- (a) in relation to the first Contract Year, the sum of £ [ ]; and
- (b) in relation to any subsequent Contract Year, the sum calculated in accordance with the following formula:

$$C_n = C_{2017-18} \times \left[ \frac{CPI_n}{CPI_{2017-18}} \right]$$

where:

(i)  $C_{2017-18} = C_1 \times \left[ \frac{RPI_{2017-18}}{RPI_1} \right]$

- (ii)  $C_1$  is the sum of £ [ ];
- (iii)  $C_n$  is the Liability Cap in the nth subsequent Contract Year;
- (iv)  $CPI_n$  is the Consumer Prices Index (defined as CPI in Schedule 7) published or determined with respect to the first month of the subsequent Contract Year n;
- (v)  $CPI_{2017-18}$  is the Consumer Prices Index (defined as CPI in Schedule 7) published or determined with respect to that month in which a Contract Year starts in the Relevant Year commencing on 1 April 2017 and ending on 31 March 2018;
- (vi)  $RPI_{2017-18}$  is the Retail Prices Index (defined as RPI in Schedule 7) published or determined with respect to that month in which a Contract Year starts in the Relevant Year commencing on 1 April 2017 and ending on 31 March 2018; and
- (vii)  $RPI_1$  is the Retail Prices Index (defined as RPI in Schedule 7) published or determined with respect to the month in which this contract became effective under Clause 3.1.”

5.2 In paragraph 1 (Definitions) of Schedule 9 to the **Vintage Trains TAA**, delete the definition of “Liability Cap” and replace it with the following new definition (and replace the empty square brackets in sub-paragraphs (a) and (b)(i) of the new definition with the sum which was set out in the equivalent sub-paragraphs (a) and (b)(i) in the version of that Train Operator’s Track Access Agreement which was in place immediately prior to 1 April 2019):

“**Liability Cap**” means:

- (a) in relation to the first Contract Year, the sum of £ [ ]; and
- (b) in relation to any subsequent Contract Year, the sum calculated in accordance with the following formula:

$$C_n = C_1 \times \left( \frac{CPI_n}{CPI_1} \right)$$

where:

- (i)  $C_1$  is the sum of £ [ ];
- (ii)  $C_n$  is the Liability Cap in the nth subsequent Contract Year;
- (iii)  $CPI_n$  is the Consumer Prices Index (as defined in Schedule 7) published or determined with respect to the first month of the subsequent Contract Year n; and
- (iv)  $CPI_1$  is the Consumer Prices Index (as defined in Schedule 7) published or determined with respect to the month in which this contract became effective under Clause 3.1.”



**APPENDIX 1 TO ANNEX 2**

**Model Schedule 7 (to each Track Access Agreement)**



## Schedule 7

(Track Charges and other payments)

### 1. Definitions

In this Schedule 7 unless the context otherwise requires:

**"access charges review"** has the meaning ascribed to it in Schedule 4A to the Act;

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

**"Adjustment Factor"** means the factor calculated in accordance with paragraph 2.7.2;

**"Attributable to Network Rail"** has the meaning attributed to it in Schedule 8 of this contract;

**"Bimodal Electric Multiple Unit"** means an electric multiple unit that is capable of drawing current from the AC System and/or DC System and, in addition, being powered by an alternative source of energy, including but not limited to diesel;

**"Bimodal Locomotive"** means a train hauled by a locomotive that is capable of drawing current from the AC System and/or DC System, and, in addition, being powered by an alternative source of energy, including but not limited to diesel;

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

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

**"Coal Spillage Charge Rate"** means, in respect of each Coal Vehicle used in a Service, the coal spillage charge rate per kgtm for that Coal Vehicle, for the Relevant Year ending 31 March 2019 only, as set out in the track usage price list published by Network Rail on or around 20 December 2013 and adjusted in accordance with paragraph 2.7.2 of the version of this contract that was in force up until 31 March 2019;

**"Coal Vehicle"** means any vehicle in respect of which the applicable Commodity is coal;

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

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

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

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

**"CPI"** means the Consumer Prices Index (all items) whose value is published each month by the Office for National Statistics in its statistical bulletin on consumer price inflation, or:

- (a) if the Consumer Prices 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 Consumer Prices 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;

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

**"Electrification Asset Usage Charge"** means the charge calculated in accordance with paragraph 2.4.12;

**"Electrification Asset Usage Rate"** means, in respect of electrification asset usage, the rate per electrified kgtm on route type k as set out in the Track Usage Price List and, being an Indexed Figure, adjusted in accordance with paragraph 2.7.1 and 2.7.2;

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

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

**"ESI Biomass Vehicle"** means any vehicle in respect of which the Commodity is electricity supply industry biomass;

**"ESI Coal Vehicle"** means any vehicle in respect of which the applicable Commodity is electricity supply industry coal;

**"Freight Capacity Charge"** means the charge calculated in accordance with paragraph 2.3;

**"Freight Capacity Charge Wash-Up"** means the charge calculated in accordance with paragraph 2.3;

**"Freight Only Line Charge Rate"** means, in respect of each ESI Coal Vehicle, IO Vehicle and/or SNF Vehicle used in a Service, the rate per kgtm for that ESI Coal Vehicle, IO Vehicle and/or SNF Vehicle, for the Relevant Year ending 31 March 2019 only, which shall be the total of the amount set out in the track usage price list published by Network Rail on or around 20 December 2013 relating to the freight only line charge rate for an ESI Coal Vehicle, IO Vehicle or SNF Vehicle for that year multiplied by the Phased in Charges Indexation Adjustment for that year calculated in accordance with paragraph 2.7.3(b) of the version of this contract that was in force up until 31 March 2019;

**"Freight Specific Charge Rate"** means:

- (a) in respect of each ESI Coal Vehicle, IO Vehicle and/or SNF Vehicle used in a Service the rate per kgtm for that ESI Coal Vehicle, IO Vehicle and/or SNF Vehicle (as applicable) which shall be the amount set out in the Track Usage Price List relating to the freight specific charge rate for an ESI Coal Vehicle, IO Vehicle or SNF Vehicle and, being an Indexed Figure, adjusted in accordance with paragraph 2.7.2:
- (b) in respect of each ESI Biomass Vehicle used in a Service the rate per kgtm for that ESI Biomass Vehicle which shall be:
  - (i) in respect of the Relevant Year commencing on 1 April 2019 the total of the amount set out in the Track Usage Price List relating to the freight specific charge rate for an ESI Biomass Vehicle for that year, multiplied by the Phased in Charges Indexation Adjustment calculated in accordance with paragraph 2.7.3(a); and



- (ii) in respect of any other Relevant Year t, the total of the amount set out in the Track Usage Price List relating to the freight specific charge rate for an ESI Biomass Vehicle for that year multiplied by the Phased in Charges Indexation Adjustment for that year calculated in accordance with paragraph 2.7.3(b);

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

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

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

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

**"Indexed Figures"** means the Cancellation Sum, the VUC Default Rate, the Disruption Sum, the Electrification Asset Usage Rate, the Enhanced Planned Disruption Sum, the Freight Specific Charge Rate for the vehicles specified in paragraph (a) of the definition of "Freight Specific Charge Rate", the Incident Cap Access Charge Supplement Rate, the Late Notice Cancellation Sum, the Network Rail Cap, the Network Rail Payment Rate, the Normal Planned Disruption Sum, the Prolonged Disruption Amount, the Service Variation Sum, the Train Operator Cap and the Train Operator Payment Rate;

**"Initial Indexation Factor"** is derived from the following formula:

$$IIF = \left(1 + \frac{CPI_{2018} - CPI_{2017}}{CPI_{2017}}\right)^2$$

where:

IIF means the Initial Indexation Factor;

CPI<sub>2017</sub> means the average value of the monthly CPI figures for the 12 months up to and including the month of December 2017; and

CPI<sub>2018</sub> means the average value of the monthly CPI figures for the 12 months up to and including the month of December 2018.

The value derived from this formula shall be rounded to three decimal places;

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

**"kgtm"** means 1000 Gross Tonne Miles;

**"kWh"** means kilowatt hours;

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

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

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

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

**"Metered Train m"** means, as the context requires, either:

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

as specified in Appendix 3 of this Schedule 7;

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

**"New Registered Equipment"** means a type of railway vehicle or vehicle commodity combination not incorporated in the section of the Track Usage Price List entitled "Freight Variable Usage Charge rates";

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

**"ORR's Qualifying Modification Criteria"** means the criteria issued by ORR as described in paragraph 2.9.1;

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

**"Proposed Review Notice"** means the most recently proposed Review Notice given by ORR, in accordance with Schedule 4A of the Act;

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

**"Qualifying Modification"** means a modification to the Operating Constraints in excess of their level as at 1 April 2019, which:

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

**"Qualifying Modification Benefit Charge"** means, in relation to any Qualifying Modification, a charge which shall:

- (a) take account of:
  - (i) the use made or to be made of the Qualifying Modification, where such modification increased the capacity of the Network; or
  - (ii) in any other case, the benefit which is likely to be derived from the Qualifying Modification by the Train Operator compared to the benefit derived from such modification by the Contributing Train Operator; and

(b) reflect any relevant guidance in relation to the funding of modifications to the Operating Constraints published in ORR's Qualifying Modification Criteria;

**"Relevant Year"** means a year commencing at 00:00 hours on 1 April and ending at 23:59 hours on the following 31 March;

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

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

**"Review Implementation Notice"** has the meaning given to "review implementation notice" in paragraph 7 of Schedule 4A of the Act;

**"Review Notice"** has the meaning given to "review notice" in paragraph 4 of Schedule 4A of the Act;

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

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

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

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

**"tariff band j"** means the tariff zone and time band in which the train in question is operated;

**"Track Usage Price List"** means the document entitled "Track Usage Price List" published by Network Rail on or about 20 December 2018 which, for the purposes of this contract, shall be deemed to incorporate any supplements to that document consented to or determined pursuant to paragraph 2.2.10 of Schedule 7 to this contract or a freight track access contract previously held by the Train Operator;

**"Traction Electricity Charge"** means the charge calculated in accordance with paragraph 2.4;

**"Traction Electricity Modelled Consumption Rates List"** means the document entitled "Traction Electricity Modelled Consumption Rates List" published by Network Rail on or about 20 December 2018 and specifying freight and passenger traction electricity modelled consumption rates which, for the purposes of this contract, shall be deemed to incorporate any supplements to that document consented to or determined pursuant to paragraph 2.2.10 of Schedule 7 of this contract or a freight track access contract previously held by the Train Operator;

**"Traction Electricity Usage Occurrence Data"** means information as to when a Bimodal Electric Multiple Unit or Bimodal Locomotive is either drawing current from the AC System and/or DC System, or is being powered by an alternative source of energy;

**"Traction-Train Compatible"** means a situation in which a Bimodal Electric Multiple Unit or Bimodal Locomotive is located on the Network with a system of electricity traction supply that the Bimodal Electric Multiple Unit or Bimodal Locomotive is capable of drawing current from;

**"train category"** means train category i as identified in the table in the Traction Electricity Modelled Consumption Rates List entitled "Freight Traction Electricity Modelled Consumption Rates for CP6";

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

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

**"Vehicle Mile"** in relation to a railway vehicle, means a mile travelled by that vehicle on the Network;

**"VUC Default Period"** means the period from the later of:

- (a) the date on which the New Registered Equipment is first used on the Network by the Train Operator; or
- (b) 1 April 2019,

until the date on which ORR consents to or determines a supplement to the Track Usage Price List under paragraph 2.2.10 in respect of that New Registered Equipment;

**"VUC Default Rate"** means, in respect of any New Registered Equipment used on the Network by the Train Operator, the corresponding freight default rate for that type of vehicle (locomotive, empty wagon or loaded wagon) set out in the section of the Track Usage Price List entitled "Freight Variable Usage Charge default rates" and, being an Indexed Figure, adjusted in accordance with paragraphs 2.7.1 and 2.7.2;

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

- (a) in respect of the Relevant Year commencing on 1 April 2019 the total of the amount set out in the Track Usage Price List relating to the freight variable usage charge rate for the corresponding vehicle type and commodity for that year, multiplied by the Phased in Charges Indexation Adjustment calculated in accordance with paragraph 2.7.3(a); and
- (b) in respect of any other Relevant Year t, the total of the amount set out in the Track Usage Price List relating to the freight variable usage charge rate for the corresponding vehicle type and commodity for that year multiplied by the Phased in Charges Indexation Adjustment for that year calculated in accordance with paragraph 2.7.3(b); and

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

## 2. Track Charges and invoices

### 2.1 *Obligation on Train Operator to pay*

- 2.1.1 In respect of each Charging Period, the Train Operator shall pay or procure payment of the Variable Charge, the Freight Capacity Charge (where applicable, for the Relevant Year ending 31 March 2019), the Traction Electricity Charge, the Electrification Asset Usage Charge, the Incremental Costs, the Incident Cap Access Charge Supplement and the Qualifying Modification Benefit Charge. In respect of each Relevant Year t, the Train Operator shall pay the amount of any sum  $S_{1,tw}$  and/or  $S_{2,tw}$  and/or any Charge Correction Amount payable, as provided in paragraph 18 of the Traction Electricity Rules. The charges will be rounded to the nearest penny. Where a calculation ends up exactly half way between whole numbers it will be adjusted upward.

- 2.1.2 No Track Charges shall be payable by the Train Operator in respect of a Train Slot when the train has not reached its Planned Destination for a reason which is Attributable to Network Rail.
- 2.1.3 Network Rail shall issue to the Train Operator an invoice as soon as practicable, or as otherwise agreed, following the expiry of each Charging Period in respect of the Variable Charge, the Freight Capacity Charge (where applicable, in respect of the Relevant Year ending 31 March 2019), the Traction Electricity Charge, the Electrification Asset Usage Charge, the Incident Cap Access Charge Supplement and any Incremental Costs or Qualifying Modification Benefit Charge which is or are payable in respect of that Charging Period.
- 2.1.4 If, at the time that Network Rail issues any invoice pursuant to paragraph 2.1.3, any Route-Level Efficiency Benefit Share is payable by Network Rail to the Train Operator or any amount under the Traction Electricity Rules is payable by either party to the other, that invoice shall also reflect that Route-Level Efficiency Benefit Share payable by Network Rail or any amount under the Traction Electricity Rules payable by either party to the other.

## 2.2 **Variable Charges**

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

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

where:

1 means, in respect of each locomotive, the VUC Rate, expressed in pounds sterling per 1000 Gross Tonne Mile and rounded to four decimal places, for the relevant locomotive type multiplied by the kgtm for that locomotive type relating to the relevant Service;

2 means, in respect of each empty wagon, the VUC Rate, expressed in pounds sterling per 1000 Gross Tonne Mile and rounded to four decimal places, for the relevant empty wagon type multiplied by the kgtm for that empty wagon type relating to the relevant Service;

3 means, in respect of each loaded wagon, the VUC Rate, expressed in pounds sterling per 1000 Gross Tonne Mile and rounded to four decimal places, for the relevant loaded wagon type multiplied by the kgtm for that loaded wagon type relating to the relevant Service;

4 means, in respect of each unit of coaching stock, the VUC Rate, expressed in pounds sterling per 1000 Gross Tonne Mile and rounded to four decimal places, for the relevant coaching stock type multiplied by the kgtm for that coaching stock type relating to the relevant Service;

5 is to have a value of zero for any Relevant Year starting on or after 1 April 2019; in respect of the Relevant Year ending 31 March 2019, it means, in respect of each ESI Coal Vehicle, IO Vehicle and each SNF Vehicle, the Freight Only Line Charge Rate for that ESI Coal Vehicle, IO Vehicle or SNF Vehicle (as the case may be) multiplied by the kgtm for that ESI Coal Vehicle, IO Vehicle or SNF Vehicle (as the case may be) relating to the relevant Service;

6 is to have a value of zero for any Relevant Year starting on or after 1 April 2019; in respect of the Relevant Year ending 31 March 2019, it means, in respect of each Coal Vehicle, the Coal Spillage Charge Rate multiplied by the kgtm for that Coal Vehicle relating to the relevant Service;

7 has a value of zero;

8 means, in respect of each ESI Coal Vehicle, ESI Biomass Vehicle, IO Vehicle and each SNF Vehicle, the Freight Specific Charge Rate, expressed in pounds sterling per 1000 Gross Tonne Mile and rounded to four decimal places, for that ESI Coal Vehicle, ESI Biomass Vehicle, IO Vehicle or SNF Vehicle (as the case may be) multiplied by the kgtm for that ESI Coal Vehicle, ESI Biomass Vehicle, IO Vehicle or SNF Vehicle (as the case may be) relating to the relevant Service; and

9 means, in respect of New Registered Equipment during the VUC Default Period, the VUC Default Rate, expressed in pounds sterling per 1000 Gross Tonne Mile and rounded to four decimal places, multiplied by the kgm for that New Registered Equipment relating to the relevant Service.

*Bilateral supplements to the Track Usage Price List and Traction Electricity Modelled Consumption Rates List*

- 2.2.2 Where the Train Operator intends to use New Registered 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.
- 2.2.3 No supplement to the Traction Electricity Modelled Consumption Rates List or Track Usage Price List shall have effect unless it has been:
- (a) agreed between the parties and ORR has consented to it; or
  - (b) determined by ORR.
- 2.2.4 Either the Train Operator or Network Rail shall be entitled to propose that:
- (a) the Traction Electricity Modelled Consumption Rates List be supplemented as necessary to include a new train category and corresponding rate; or
  - (b) the Track Usage Price List be supplemented as necessary to include a new vehicle type and corresponding rate.
- 2.2.5 Any proposal of a kind referred to in paragraph 2.2.4 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.
- 2.2.6 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.
- 2.2.7 Where the parties agree to a supplement following a proposal under paragraph 2.2.4, 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.
- 2.2.8 If the parties fail to reach agreement within 45 days of the date of the notice given under paragraph 2.2.5, at any point thereafter either party shall be entitled to refer the matter to ORR for determination.
- 2.2.9 Following a reference to ORR under paragraph 2.2.8, 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.
- 2.2.10 ORR may:
- (a) consent to any supplement that is agreed by the parties and submitted to it under paragraph 2.2.7, or following consultation with the parties, determine that a different supplement should apply; or
  - (b) following a referral to ORR under paragraph 2.2.8, determine the supplement that should apply.

- 2.2.11 In the case of a supplement to the Traction Electricity Modelled Consumption Rates List, 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 the start of the Relevant Year in which ORR consented to or determined the supplement.
- 2.2.12 In the case of a supplement to the Track Usage Price List, the supplement shall have retrospective effect from the first day of the VUC Default Period.
- 2.2.13 Following ORR's consent or determination under paragraph 2.2.10 Network Rail shall:
- (a) apply the supplement from the date in accordance with paragraph 2.2.11 or 2.2.12 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:
      - (A) the total amount paid by the Train Operator during the VUC Default Period under item '9' of the formula in paragraph 2.2.1; and
      - (B) the amount the Train Operator would have paid during this period under items '1' to '4' of the formula in paragraph 2.2.1 had the supplement been in place when the Train Operator first used the relevant railway vehicle on the Network; and
    - (ii) publish on its website details of the supplement alongside the details of any other such supplements to which ORR has consented or determined pursuant to this or any other track access contract to which Network Rail is a party.
- 2.2.14 Any supplement to the Traction Electricity Modelled Consumption Rates List or Track Usage Price List ORR has consented to or determined pursuant to a freight track access contract previously held by the Train Operator shall also apply to this contract.

### 2.3 **Freight Capacity Charge and Freight Capacity Charge Wash-Up**

- 2.3.1 For the purposes of calculating the Freight Capacity Charge and Freight Capacity Charge Wash-Up for the Relevant Year ending 31 March 2019, paragraph 2.3 of Schedule 7 of the version of this contract that was in force up until 31 March 2019 shall continue to apply.
- 2.3.2 Where Network Rail calculates that the Freight Capacity Charge Wash-up for the Relevant Year ending 31 March 2019 is a positive amount then, as soon as practicable, it shall issue to the Train Operator an invoice for that amount and the Train Operator shall pay or procure payment of it.

### 2.4 **Traction Electricity Charge**

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

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

where:

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

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

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

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

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

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

*Calculation of modelled consumption*

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

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

where:

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

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

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

where:

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

$C_i$  means the modelled consumption rate:

- (a) in kWh per electrified Train Mile in relation to passenger electric multiple units (using the rate for the relevant number of units); and
- (b) in kWh per electrified kgm in relation to locomotive-hauled units and all freight traffic,

for train category i shown in the Traction Electricity Modelled Consumption Rates List;

$EF_{gjt}$  means the charge for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g, in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 19 of the Traction Electricity Rules; and

$UE_{igt}$  means the actual volume of usage (in electrified Vehicle Miles in relation to passenger electric multiple units or electrified kgm in relation to locomotive hauled units and all freight traffic), if any, of trains operated by or on behalf of the Train Operator in train category i, in Geographic Area g, in tariff band j and in Relevant Year t, pursuant to this contract; provided that where train category i is a Bimodal Electric Multiple Unit or Bimodal Locomotive operating in a Traction-Train Compatible situation, it shall be deemed that all mileage (in Vehicle Miles in relation to passenger electric multiple units or kgm in relation to locomotive-hauled units and all freight traffic), if any, of such trains is electrified.

*Calculation of consumption using metered consumption data*

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



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

where:

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

$E_{tme g}$  is derived from the following formula:

$$E_{tme g} = \sum \left( (CME_{mgjt} \cdot EF_{gjt}) - (RGB_{mgjt} \cdot EF_{gjt}) \right)$$

where:

$\sum$  means the summation across all relevant Metered Trains m (determined in accordance with paragraph 2.4.1.1 above) and tariff bands j, as appropriate;

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

$EF_{gjt}$  means the charge for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g, in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 19 of the Traction Electricity Rules; and

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

#### 2.4.1.4

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

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

where:

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

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

$$E_{tmugAC} = \sum (CME_{mgjtAC} \cdot EF_{gjt}) \cdot \lambda_{ACg}$$

where:

$\sum$  means the summation across all Metered Trains m (determined in accordance with paragraph 2.4.1.1 above) and tariff bands j, as appropriate;

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

$EF_{gjt}$  means the charge for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g, in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 19 of the Traction Electricity Rules; and

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

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

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

where:

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

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

$$E_{tmugDC} = \sum (CME_{mgtDC} \cdot EF_{gjt}) \cdot \lambda_{DCg}$$

where:

$\sum$  means the summation across all relevant Metered Trains m (determined in accordance with paragraph 2.4.1.1 above) and tariff bands j, as appropriate;

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

$EF_{gjt}$  means the charge for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g, in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 19 of the Traction Electricity Rules; and

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

#### *Metered Bimodal Electric Multiple Units and Bimodal Locomotives – deemed electrified mileage*

##### 2.4.1.5

- (a) Where Metered Train m is a Bimodal Electric Multiple Unit or Bimodal Locomotive, the Train Operator shall, as a minimum, within seven days of the end of each of the third, sixth, tenth and thirteenth Periods, provide to Network Rail the Traction Electricity Usage Occurrence Data for such Metered Train m. The Traction Electricity Usage Occurrence Data provided: within seven days of the end of the third Period shall cover Periods one, two and three; within seven days of the sixth Period shall cover Periods four, five and six; within seven days of the tenth Period shall cover Periods seven, eight, nine and ten; and within seven days of the thirteenth Period shall cover Periods eleven, twelve and thirteen.
- (b) Where, after seven days, any Traction Electricity Usage Occurrence Data is missing in respect of any such Bimodal Electric Multiple Unit or Bimodal Locomotive, all mileage, if any, of such Bimodal Electric Multiple Unit or Bimodal Locomotive operated by or on behalf of the Train Operator shall be deemed, for billing purposes, to be electrified in Traction-Train Compatible situations, and paragraphs 2.4.1.3 and 2.4.1.4 shall apply in respect of all such mileage.

2.4.2 Not used.

2.4.3 *Not used.*

2.4.4 *Not used.*

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

- 2.4.5 If the Train Operator wishes to propose the introduction of On-Train Metering to measure traction electricity consumption for a vehicle or vehicles of a vehicle type that the Train Operator operates for the purposes of being invoiced by Network Rail for traction electricity, it shall notify Network Rail of any required changes to the contract in connection with that proposal.
- 2.4.6 Any notice under paragraph 2.4.5 shall be accompanied by information and evidence in reasonable detail supporting the changes proposed and setting out the reasons for those changes, and Network Rail shall respond in writing within 56 days of service of any such notice.
- 2.4.7 Promptly following any response served by Network Rail under paragraph 2.4.6, the parties shall endeavour to agree whether the contract should be amended in connection with that proposal and, if so, the amendments.
- 2.4.8 If the parties agree an amendment to the contract in connection with the proposal referred to in paragraph 2.4.5, that amendment shall take effect only when it has been approved by ORR under section 22 of the Act. Accordingly, as soon as reasonably practicable after any such amendment is agreed, the parties shall ensure that ORR is furnished with such amendment and such information and evidence as it shall require to determine whether or not to approve the amendment.
- 2.4.9 Any agreed amendment to the contract in connection with the proposal referred to in paragraph 2.4.5, which is approved by ORR under section 22 of the Act, shall apply with effect from the date agreed by the parties.
- 2.4.10 If the parties fail to reach agreement within 90 days after service of a notice under paragraph 2.4.5, or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, either party may notify ORR and request that ORR determines the matter. The parties shall, within such timescales as ORR may specify, furnish ORR with such information and evidence as ORR shall require to determine the matter. If a party fails to furnish such information and evidence within the specified timescale, ORR shall be entitled to determine the matter without that information and evidence and the party in default shall have no grounds for complaint in that respect.
- 2.4.11 Where ORR determines the matter pursuant to paragraph 2.4.10, it may issue a notice to the parties setting out the amendments to be made to the contract and the date, which may be retrospective, from which they shall take effect.
- 2.4.12 *Electrification Asset Usage Charge*

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

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

where:

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

$EV_{tk}$  means an amount in respect of the Electrification Asset Usage Rate, expressed in pounds sterling per electrified kgm and rounded to four decimal places;

$UV_{tk}$  means the actual number of electrified kgm on route type k in the relevant Charging Period in Relevant Year t operated by or on behalf of the Train Operator. Where the Train Operator operates a Bimodal Electric Multiple Unit or Bimodal Locomotive, the actual number of electrified kgm on route type k in Relevant Year t shall be calculated:

- (i) where the Bimodal Electric Multiple Unit or Bimodal Locomotive is operating in a Traction-Train Compatible situation and is not a Metered Train m, in

accordance with the proviso to the definition of UE<sub>igjt</sub> in paragraph 2.4.1.2 above; or

- (ii) where the Bimodal Electric Multiple Unit or Bimodal Locomotive is a Metered Train m, in accordance with paragraph 2.4.1.5 above.

**2.5 Not used.**

**2.6 Incident Cap Access Charge Supplement**

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

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

where:

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

ICACSR means the Incident Cap Access Charge Supplement Rate.

**2.7 Price variation**

2.7.1 For each Relevant Year commencing on and from 1 April 2019, the Indexed Figures shall be adjusted in accordance with paragraph 2.7.2.

2.7.2

- (a) For the Relevant Year commencing on and from 1 April 2019, the Indexed Figures shall be adjusted as at 1 April 2019 by multiplying them by the Initial Indexation Factor.
- (b) For the Relevant Year commencing on and from 1 April 2020, and for each subsequent Relevant Year, the adjusted Indexed Figures from the preceding Relevant Year shall be further adjusted as at the applicable 1 April by multiplying them by the Adjustment Factor for the Relevant Year in question (rounded to three decimal places).

For the purposes of this paragraph 2.7.2(b), the Adjustment Factor in respect of a Relevant Year shall be calculated in accordance with the following formula:

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

where:

CPI<sub>t-1</sub> means the average value of the monthly CPI figures for the 12 months up to and including the month of December immediately preceding 1 April in the Relevant Year in question; and

CPI<sub>t-2</sub> means the average value of the monthly CPI figures for the 12 months up to and including the month of December which falls 16 months before 1 April in the Relevant Year in question.

- (c) If this contract takes effect after 1 April 2019, the Indexed Figures shall be adjusted in accordance with paragraphs 2.7.2(a) and (b) as if this contract had been in effect on and from 1 April 2019.

2.7.3 The Phased in Charges Indexation Adjustment shall be derived:

- (a) in respect of the Relevant Year commencing on 1 April 2019, from the following formula:

$$PCIA_{2019} = \text{Initial Indexation Factor}$$

where:

$PCIA_{2019}$  means the Phased in Charges Indexation Adjustment in respect of the Relevant Year commencing on 1 April 2019; and

- (b) in respect of any Relevant Year  $t$  commencing on or after 1 April 2020, from the following formula:

$$PCIA_t = \left(1 + \frac{CPI_{t-1} - CPI_{2018}}{CPI_{2018}}\right) \bullet \text{Initial Indexation Factor}$$

where:

$PCIA_t$  means the Phased in Charges Indexation Adjustment in respect of the Relevant Year  $t$ ;

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

$CPI_{2018}$  means the average value of the monthly CPI figures for the 12 months up to and including the month of December 2018.

The value derived from this formula shall be rounded to three decimal places.

## 2.8 **Incremental Costs**

### 2.8.1 Where:

- (a) the Train Operator makes an Access Proposal, Rolled Over Access Proposal or Train Operator Variation Request;
- (b) the operation of the Service requested would exceed the Operating Constraints applying as at 1 April 2019;
- (c) the Train Operator notifies Network Rail at the time of requesting the Service that it wishes Network Rail to modify the Operating Constraints applying as at 1 April 2019 in a manner so as to permit the operation of the Service requested under this contract;
- (d) Network Rail is reasonably able to effect such modifications in a timescale that meets the Train Operator's requirements; and
- (e) the Incremental Costs of any such modifications are not estimated by Network Rail to exceed £300,000 in any Financial Year,

then paragraph 2.8.2 shall apply.

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

- (a) it shall effect the modification to the Operating Constraints requested by the Train Operator under paragraph 2.8.1(c); or
- (b) it shall not effect the modification to the Operating Constraints requested by the Train Operator under paragraph 2.8.1(c) for one of the following reasons:

- (i) it is not reasonably able to effect such modification in a timescale that meets the Train Operator's requirements; or
- (ii) the Incremental Costs of such modification are estimated by Network Rail to exceed £300,000 in any Financial Year.

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

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

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

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

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

2.8.7 Where:

- (a) the Train Operator makes an Access Proposal, Rolled Over Access Proposal or Train Operator Variation Request; and
- (b) the operation of the Service requested:
  - (i) would exceed the Operating Constraints applying as at 1 April 2019; and
  - (ii) is permitted under the Operating Constraints applying as at the date of the request by reason of a Qualifying Modification,

then paragraph 2.8.8 shall apply.

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

2.8.9 Where:

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

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

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

2.8.11 If the Train Operator disputes:

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

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

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

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

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

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

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

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

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

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

## 2.9 **Office of Rail and Road's Qualifying Modification Criteria**

2.9.1 ORR may at any time issue criteria:

- (a) specifying how the QM Threshold for any Qualifying Modification shall be determined, which may vary for different types of Qualifying Modification; and
- (b) setting out any guidance in relation to the funding of modifications to the Operating Constraints.

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

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

2.10 **Not used**

2.11 **Not used.**

2.12 **Not used.**

## 3. **Freight charging review**

3.1 ORR may carry out one or more access charges reviews of all or part of this contract such that amendments to this contract to give effect to the conclusions of such an access charges review come into operation on and from 1 April 2024 or such later date as may be specified in that review.

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

### 3.3 *Interim treatment prior to implementation*

If the terms of a Proposed Review Notice proposing amendments to the contract are not implemented in accordance with paragraph 7 of Schedule 4A to the Act on the date stipulated that they will come into operation in the Proposed Review Notice for any reason, then, irrespective of such terms not having been so implemented, each proposed amendment to the contract set out in the Proposed Review Notice shall have effect for the period (the "Interim Period") commencing on that date (or from any later date (or dates) specified in the Proposed Review Notice in respect of any individual amendment), in each case until such time as:

- (a) following the service of a Review Implementation Notice relating to the Proposed Review Notice, the changes specified in that Review Implementation Notice come into operation; or
- (b) following a reference to the Competition and Markets Authority in accordance with paragraph 9 of Schedule 4A to the Act, any amendments to the contract, made in accordance with paragraphs 12(8), 12(9) or 14(3) of Schedule 4A to the Act, come into operation.

### 3.4 *Reconciliation payment*

- (a) Within 28 days after the end of the Interim Period, Network Rail shall calculate whether a reconciliation payment is due to or from the Train Operator. In order to calculate such



reconciliation payment, Network Rail shall compare (i) the sums paid by the Train Operator during the interim period, with (ii) the sums which would have been payable if the amendments required by either paragraphs 3.3(a) or (b) above had taken effect on the date(s) stipulated in the Proposed Review Notice, and shall provide to the Train Operator:

- (i) a statement of the amount due to or from the Train Operator; and
  - (ii) such background data and workings as may reasonably be required for a proper understanding of the calculation.
- (b) Within 14 days after the date upon which Network Rail shall have provided to the Train Operator the information referred to in paragraph 3.4(a) above, 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.
- (c) If any dispute is notified under paragraph 3.4(b) above it shall be resolved according to the following procedure:
- (i) within seven days of service of the relevant notice, the parties shall meet to discuss the disputed aspects with a view to resolving all disputes in good faith;
  - (ii) if, for any reason, within seven days of the meeting referred to in paragraph 3.4(c)(i) above, 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;
  - (iii) 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
  - (iv) 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.
- (d) Within 28 days after the date upon which Network Rail shall have provided to the Train Operator the information referred to in paragraph 3.4(a) above (if not disputed) or 28 days of resolution or determination of any dispute in accordance with paragraph 3.4(c) above, any amount due shall be invoiced (or presented in a credit note, as the case may be) for payment, and payable, as provided under this contract.

#### **4. Route-Level Efficiency Benefit Share Mechanism**

##### *Calculation of the Route-Level Efficiency Benefit Share*

- 4.1 For the purposes of the calculation and payment of any Route-Level Efficiency Benefit Share for the Relevant Year ending 31 March 2019, paragraph 4 and Appendices 1 and 2 of Schedule 7 of the version of this contract that was in force up until 31 March 2019 shall continue to apply.

**Appendix 1**

(Not used)

**Appendix 2**

(Not used)

### Appendix 3

"Metered Trains M" for the purposes of paragraph 2.4.1.1 of Part 2

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

**APPENDIX 2 TO ANNEX 2**

**Appendix 1 (Performance) to Schedule 8 (to each Track Access Agreement)**



**Appendix 1**  
Performance

**Train Operator Performance**

<b>Train Operator Payment Rate</b>	£54.04 per Minutes Delay to Third Party Trains which are Attributable to the Train Operator.
<b>Train Operator Cap</b>	£ [ ]
<b>Disruption Sum</b>	£2,375

**Network Rail Performance**

<b>Network Rail Payment Rate</b>	£21.38 per Minutes Delay to Services which are Attributable to Network Rail.
<b>Network Rail Cap</b>	£ [ ]
<b>Prolonged Disruption Amount</b>	means an amount equal to the Late Notice Cancellation Sum.

## **Benchmarks**

### **Train Operator Benchmark**

The Train Operator Benchmark (TOB) in relation to each Charging Period shall be 3.10 Minutes Delay per 100 Train Operator Miles.

### **Network Rail Benchmark**

The Network Rail Benchmark (NRB) in relation to a Charging Period shall be 7.82 Minutes Delay per 100 Train Operator Miles;

### **Cancellation Sum**

The Cancellation Sum shall be calculated as follows:

- (a) the Cancellation Sum shall be £2,025 for each Cancellation below the Cancellation Threshold;
- (b) the Cancellation Sum shall be £5,401 for each Cancellation equal to or above the Cancellation Threshold; and
- (c) the "**Cancellation Threshold**" in any Charging Period shall be 0.40 per cent of the total number of Services operated by the Train Operator in that Charging Period.

### **Late Notice Cancellation Sum**

The Late Notice Cancellation Sum in respect of each Late Notice Cancellation shall be £1,749.

### **Baseline Annual Contract Mileage**

The Baseline Annual Contract Mileage shall be that number approved or determined by ORR in due course.



## **ANNEX 3**

### **BESPOKE AMENDMENTS**

#### **PART 1 (MODIFICATIONS TO STANDARD AMENDMENTS AND OTHER BESPOKE AMENDMENTS)**

***Explanatory Note:***

*There are no modifications to any Track Access Agreement set out in this Part 1 of Annex 3.*



**NONE**



## ANNEX 3

### PART 2 (CONFIDENTIAL INFORMATION)

***Explanatory Note:***

*As explained above, the confidential information is attached to this Review Notice in the following pages. Copies will be sent only to the parties to the relevant Track Access Agreement, the Secretary of State for Transport, the Scottish Ministers and the Treasury and any relevant parties listed in Part 2 of Annex 1 to this Review Notice. The publication of that information would or might, in the opinion of ORR, seriously and prejudicially affect the interest 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.*



**APPENDIX 1 TO PART 2 OF ANNEX 3**

**(Sums to be inserted into Appendix 1 of Schedule 8 of each of:**

- **the DRS TAA; and**
- **the Freightliner Heavy Haul TAA)**