

RAILWAYS ACT 1993

2018 PERIODIC REVIEW

REVIEW NOTICE: OPEN ACCESS PASSENGER 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 document¹; 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

3.1 Subject to paragraph 3.2 below, if, before the proposed relevant changes come into operation in relation to any Track Access Agreement, such Track Access Agreement is amended in a manner which is:

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

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

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

¹ 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”.

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

- (a) amendments made to any provision within Schedule 7, other than Appendix 7C, of a Track Access Agreement under the Passenger Access (Short Term Timetable and Miscellaneous Changes) General Approval 2009 issued by ORR on 25 November 2009; and
- (b) amendments made to any provision within Schedule 8 of a Track Access Agreement under the Passenger Access (Short Term Timetable and Miscellaneous Changes) General Approval 2009 issued by ORR on 25 November 2009.

4 Objections

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

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

4.2 Any objection made under paragraph 4.1 must be:

- (a) made in writing;
- (b) received by ORR on or before 7 February 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

Train Operator Name	Train Operator Company Number	Original Date of Track Access Agreement
East Coast Trains Limited	08765536	3 October 2016
Eurostar International Limited	02462001	31 October 2008
Grand Central Railway Company Limited	03979826	1 August 2014
Hull Trains Company Limited	03715410	17 March 2016
North Yorkshire Moors Railway Enterprises PLC	02490244	17 January 2007
South Yorkshire Supertram Limited	02634683	4 May 2018
West Coast Railway Company Ltd	03066109	11 May 2015

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 proposed relevant changes to be made to Schedules 4, 8, 9, 10 (in respect of the Grand Central Railway Company Limited Track Access Agreement only), 11 (in respect of the East Coast Trains Limited Track Access Agreement only) and 12 (in respect of the South Yorkshire Supertram Limited Track Access Agreement only) and the clauses of each Track Access Agreement and the standard form proposed relevant changes to be made to Schedule 7 (together, the "**standard amendments**").*

In some Track Access Agreements, the Schedule 7s are not in standard form. Where this is the case, Annex 2 to this Review Notice also sets out the appropriate amendments in the form of a new Schedule 7 for a particular Train Operator.

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:

- (a) delete the definition of “access charges review” and replace it with the following definition:

“**access charges review**” has the meaning ascribed to it by Schedule 4A to the Act;”

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

“**Relevant Year**” has the meaning ascribed to it in Schedule 7;”

1.2 In the track access agreement between Network Rail and Grand Central Railway Company Limited (the “**Grand Central TAA**”):

- (a) in clause 1.1 (Definitions), delete the definition of “contract” and replace it with the following definition:

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

- (b) in clause 1.1 (Definitions), delete the definition of “Track Charges” and replace it with the following definition:

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

- (c) in clause 1.1 (Definitions), insert the following new definition in alphabetical order:

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

(d) in clause 1.2 (Interpretation), delete sub-clauses (n) and (o), and insert the following:

“(n) words and expressions defined in the Network Code shall have the same meanings in this contract;

(o) if there is any conflict of interpretation between this contract and the Network Code, the Network Code shall prevail;

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

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

(e) in clause 2 (Network Code), delete the title and clauses 2.1 and 2.2, and replace them with the following:

“2 Network Code and Traction Electricity Rules

2.1 *Incorporation*

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

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

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

(f) in clause 11.5 (Limitation of liability), delete sub-clause 11.5(a) and replace it with the following:

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

(g) in clause 13.1 (ADRR), delete sub-clause 13.1(a) and replace it with the following:

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

(h) delete clause 14.6 (Network Code and Schedule 7) and replace it with the following:

“14.6 **Network Code, Schedule 7 and the Traction Electricity Rules**

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

(i) in clause 16.1 (Payments), delete clause 16.1.1 and replace it with the following:

“16.1.1 *No deduction*

All sums due or payable by either party under this contract shall be paid free and clear of any deduction, withholding or set off except only as may be required by law or as expressly provided in any Schedule to this contract, in the Network Code or under the Traction Electricity Rules.”

1.3 In the track access agreement between Network Rail and South Yorkshire Supertram Limited (the “**Supertram TAA**”):

(a) in clause 13.1 (ADRR), delete sub-clause 13.1(a) and replace it with the following:

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

(b) in clause 16.1 (Payments), delete clause 16.1.1 and replace it with the following:

“16.1.1 *No deduction*

All sums due or payable by either party under this contract shall be paid free and clear of any deduction, withholding or set off except only as may be required by law or as expressly provided in any Schedule to this contract, in the Network Code or under the Traction Electricity Rules.”

1.4 In the following Track Access Agreements:

- (i) the track access agreement between Network Rail and West Coast Railway Company Ltd (the “**WCRC Jacobite TAA**”);
- (ii) the track access agreement between Network Rail and North Yorkshire Moors Railway Enterprises PLC (the “**North Yorkshire Moors TAA**”);
- (iii) the track access agreement between Network Rail and Eurostar International Limited (the “**Eurostar TAA**”); and
- (iv) the **Supertram TAA**,

in clause 16 (Payments, interest and VAT), delete clause 16.1.2 and replace it with the following:

“16.1.2 *Delivery of invoices*

All invoices issued under Schedule 7, or statements of amounts payable under Schedule 4, Schedule 5 or Schedule 8, or the Network Code, 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 the following Track Access Agreements:

- (i) the **Grand Central TAA**;
- (ii) the track access agreement between Network Rail and Hull Trains Company Limited (the “**Hull Trains TAA**”); and

- (iii) the track access agreement between Network Rail and East Coast Trains Limited (the “**East Coast TAA**”),

in clause 16 (Payments, interest and VAT), delete clause 16.1.2 and replace it with the following:

“16.1.2 *Delivery of invoices*

All invoices issued under Schedule 7, or statements of amounts payable under Schedule 4, Schedule 5 or Schedule 8, or the Network Code, or under the Traction Electricity Rules, 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.”

1.6 In the following Track Access Agreements:

- (i) the **Grand Central TAA**; and
- (ii) the **Supertram TAA**,
- (a) in clause 17.2 (Nature and extent of relief for Force Majeure), delete sub-clause 17.2(b)(i) and replace it with the following:
 - “(i) any obligation to pay money under Schedule 4, Schedule 5, Schedule 7 and Schedule 8 or the Traction Electricity Rules; or”
- (b) in clause 18.2 (Variations), delete sub-clause 18.2.3(b) and replace it with the following:
 - “(b) modifications effected by virtue of the Network Code or the Traction Electricity Rules,”

1.7 In clause 18.4 (Notices) of each Track Access Agreement:

- (a) delete 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.”

(b) delete clause 18.4.3 (Deemed receipt), and replace it with the following:

“18.4.3 *Deemed receipt*

A notice shall be deemed to have been given and received:

- (a) if sent by hand or recorded delivery, at the time of delivery;
- (b) if sent by prepaid first class post from and to any place within the United Kingdom, three 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 following Working Day.”

1.8 In clause 18.7 (Contracts (Rights of Third Parties) Act 1999) of the **Grand Central TAA**, insert sub-clause 18.7.4 in number order, as follows:

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

Any Metered Train Operator, Prospective Metered Train Operator or Modelled Train Operator (as defined in the Traction Electricity Rules) shall have the right under the Contracts (Rights of Third Parties) Act 1999 directly to enforce such rights as have been granted to it under the Traction Electricity Rules.”

1.9 In the **Supertram TAA**, delete clause 20 (Treatment of future periodic reviews).

2 Schedule 4 to each Track Access Agreement

2.1 In Schedule 4 of the following Track Access Agreements:

- (i) the **Grand Central TAA**;
- (ii) the **Hull Trains TAA**;
- (iii) the **East Coast TAA**; and
- (iv) the **Supertram TAA**,

in paragraph 1.1 (Definitions) of Part 3:

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

“**CPI**” shall have the meaning ascribed to it in Schedule 7;”;

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

“**Defined Service Group Revenue**” shall have the relevant value as set out in Annex D to Part 3 of this Schedule 4;”

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

“**Performance Monitoring System**” shall have the meaning ascribed to it in Schedule 8;”;

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

“**Restriction of Use**” means, in respect of any day, any difference from the normal capability of all or any part of the Routes (where the normal capability of the Routes is expressed in the Applicable Timetable Planning Rules relevant to that day notified to each Timetable Participant on or before D-26) which results in:

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

- (b) a difference between the New Working Timetable on that day as compared with the Corresponding Day Timetable in respect of the Corresponding Day;”;
- (e) delete the definition of “RoU Variable Costs” and replace it with the following definition:

“**RoU Variable Costs**” means any Train Operator costs which vary as a result of a Restriction of Use or where applicable an Over-run arising directly from changes in train mileage including maintenance, fuel or the Traction Electricity Charge, the VUC Default Charge and the Variable Usage Charge (as such terms are defined in Schedule 7);”;
- (f) delete the definition of “RPI”;
- (g) delete the definition of “SPD Revenue Threshold No.1” and replace it with the following definition:

“**SPD Revenue Threshold No.1**” means 20% of 1/13th of the relevant Defined Service Group Revenue over three consecutive Periods;”
- (h) delete the definition of “SPD Revenue Threshold No.2” and replace it with the following definition:

“**SPD Revenue Threshold No.2**” means 15% of 1/13th of the relevant Defined Service Group Revenue over seven consecutive Periods;”

2.2 In Schedule 4 of the following Track Access Agreements:

- (i) the **Grand Central TAA**;
- (ii) the **Hull Trains TAA**; and
- (iii) the **Supertram TAA**,

delete the definitions of “SPD Cost Threshold No.1” and “SPD Cost Threshold No.2”, and replace them with the definitions specific to that Train Operator’s Track Access Agreement as set out in paragraph 1 of Part 1 of Annex 3 to this Review Notice.

2.3 In Schedule 4 of the following Track Access Agreements:

- (i) the **Eurostar TAA**; and
- (ii) the **WCRC Jacobite TAA**,

in paragraph 1.1 (Definitions) of Part 3:

- (a) delete the definition of “Restriction of Use” and replace it with the following definition:

“**Restriction of Use**” means, in respect of any day, any difference from the normal capability of all or any part of the Routes (where the normal capability of the Routes is expressed in the Applicable Timetable Planning Rules relevant to that day notified to each Timetable Participant on or before D-26) which results in:

- (a) a difference between the Applicable Timetable on that day as compared with the New Working Timetable in respect of that day; and/or
 - (b) a difference between the New Working Timetable on that day as compared with the Corresponding Day Timetable in respect of the Corresponding Day;”
- (b) delete the definition of “RoU Variable Costs” and replace it with the following definition:

“**RoU Variable Costs**” means any Train Operator costs which vary as a result of a Restriction of Use or where applicable an Over-run arising directly from changes in train mileage including maintenance, fuel or the Traction Electricity Charge, the VUC Default Charge and the Variable Usage Charge (as such terms are defined in Schedule 7);”

2.4 In paragraph 3.4 (Formula) of Part 3 to Schedule 4 of the following Track Access Agreements:

- (i) the **Grand Central TAA**;
- (ii) the **Hull Trains TAA**; and

- (iii) the **East Coast TAA**,
- (a) in sub-paragraph 3.4(b), delete the words “CM is the Cancellation Minutes for the Service Group in question specified in column J of Appendix 1 to Schedule 8;” and replace them with the following:

“CM is the Cancellation Minutes for the Service Group in question specified in column F of Appendix 1 to Schedule 8;”;
- (b) in sub-paragraph 3.4(b), delete the words “MPW is the weighting attributable to the Monitoring Point, as specified in column O of Appendix 1 to Schedule 8;” and replace them with the following:

“MPW is the weighting attributable to the Monitoring Point, as specified in column K of Appendix 1 to Schedule 8;”;
- (c) in sub-paragraph 3.4(c), delete the words “the number of minutes specified as the Cap for the Service Group in column K of Appendix 1 to Schedule 8; and” and replace them with the following:

“the number of minutes specified as the Cap for the Service Group in column G of Appendix 1 to Schedule 8; and”;
- (d) delete sub-paragraph 3.4(e) and replace it with the following:

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

2.5 In Schedule 4 of the following Track Access Agreements:

- (i) the **Grand Central TAA**;
- (ii) the **Hull Trains TAA**;
- (iii) the **Supertram TAA**,
- (a) in sub-paragraph 4.2(b) (Cost Compensation Formula) of Part 3, delete the definition of EBMPR and replace it with the definition specific to that Train

Operator's Track Access Agreement as set out in paragraph 2 of Part 1 of Annex 3 to this Review Notice; and

- (b) delete paragraph 4.2(c) (Cost Compensation Formula) of Part 3 of each Track Access Agreement, and replace it with the following:

“(c) TMC is the cost or saving, expressed in pence per train mile and rounded to two decimal places, resulting from train mileage change, for the Service(s) (or part(s) thereof) in that Service Group as a result of a Network Rail Restriction of Use, calculated according to the following formula:

$$TMC = TM \times TMPR$$

where:

TM is the change in train mileage; and

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

- 2.6 In Schedule 4 of the Supertram **TAA**, delete sub-paragraph 5.2(c) of Part 3, and replace it with the following:

“(c) If the parties fail to reach agreement within 90 days after service of the relevant notice, or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, the matter may be referred for resolution in accordance with the ADRR. In respect of any such dispute which is referred for resolution under the ADRR the parties shall agree in a Procedure Agreement, as defined in the ADRR, that the relevant ADRR Forum shall have regard to any relevant criteria and/or policy statement most recently issued by ORR.”

- 2.7 In Schedule 4 of the following Track Access Agreements:

- (i) the **Grand Central TAA**;
- (ii) the **Hull Trains TAA**;
- (iii) the **East Coast TAA**; and

- (iv) the **Supertram TAA**,
- (a) in paragraph 9.1 (Early notification) of Part 3, delete sub-paragraph 9.1(b)(ii) and replace it with the following:
- “(ii) subject to paragraph 9.1(b)(iii), the Network Rail Restriction of Use is reflected in the Working Timetable as set out in the Performance Monitoring System at 2200 hours on the day which is 12 Weeks before the Restriction of Use Day; or”
- (b) in paragraph 9.2 (Notification by TW-22) of Part 3, delete sub-paragraph 9.2(b)(i) and replace it with the following:
- “(i) the Network Rail Restriction of Use is reflected in the Working Timetable as set out in the Performance Monitoring System at 2200 hours on the day which is 12 Weeks before the Restriction of Use Day; or”
- (c) in paragraph 14 (Indexation) of Part 3:
- (1) delete paragraphs 14.1 and 14.2 and replace them with the following:

“14.1 The formula applicable to this paragraph 14 is:

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

where:

R_t is the relevant value in the Relevant Year t ;

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

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

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

14.2 Each of the EBMPR and TMPR (respectively defined in paragraph 4.2) and Defined Service Group Revenues shall be adjusted in respect of Periods in Relevant Year t in accordance with the formula set out in paragraph 14.1 except that in relation to the Relevant Year commencing on 1 April 2019, R_t shall have the value specified in:

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

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

- (2) in paragraph 14.3, delete the words “1 April 2014,” and replace them with “1 April 2019,”.

2.8 In Schedule 4 of the following Track Access Agreements:

- (i) the **Grand Central TAA**; and
 - (ii) the **Hull Trains TAA**,
- (a) delete Annex A (Notification Factors) to Part 3, and replace it with the new Annex A (Notification Factors) set out in Appendix 1 of this Annex 2 of this Review Notice; and
 - (b) delete Annex C (Payment Rate per train mile) to Part 3, and replace it with the new Annex C (Payment Rate per train mile) specific to that Track Access Agreement, which is attached separately in Appendix 1 of Part 2 of Annex 3 to this Review Notice.

2.9 In Schedule 4 of the **Supertram TAA**:

(a) delete Annex A (Notification Factors) to Part 3, and replace it with the following:

“Annex A to Part 3 of Schedule 4 (Notification Factors)

The contents of this Annex A will be determined and published by ORR after consultation with the parties.”

(b) delete Annex C (Payment Rate per train mile) to Part 3, and replace it with the new Annex C (Payment Rate per train mile) specific to that Track Access Agreement, which is attached separately in Appendix 1 of Part 2 of Annex 3 to this Review Notice.

2.10 In the following Track Access Agreements:

(i) the **Grand Central TAA**; and

(ii) the **Supertram TAA**,

after Annex C (Payment Rate per train mile) to Part 3 of Schedule 4, insert a new Annex D (Defined Service Group Revenue) as set out in the Annex D to Part 3 of Schedule 4 specific to that Track Access Agreement, which is attached separately in Appendix 2 of Part 2 of Annex 3 to this Review Notice.

2.11 In Schedule 4 of the **Hull Trains TAA**, delete Annex D (Defined Service Group Revenue) to Part 3, and replace it with the new Annex D to Part 3 of Schedule 4 specific to that Track Access Agreement, which is attached separately in Appendix 2 of Part 2 of Annex 3 to this Review Notice.

3 Schedule 7 to each Track Access Agreement

3.1 In the following Track Access Agreements:

(i) the **Hull Trains TAA**; and

(ii) the **East Coast TAA**,

with the exception of Appendix 7C (Default Train Consist Data) and Appendix 7D (“Metered Trains M” for the purposes of paragraph 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 with the Schedule 7 set out in Appendix 2 to this Annex 2.

3.2 In the **Grand Central TAA**, with the exception of Appendix 7C (Default Train Consist Data) to Schedule 7 (which shall not be deleted and which shall continue to remain in full force), delete Schedule 7 and replace it with the Schedule 7 set out in Appendix 2 to this Annex 2, and make the following additional amendments:

(a) in paragraph 1 (Definitions) of Part 1 of that new Schedule 7, insert the following definition in alphabetical order:

“**Capacity Charge Wash-up**” means the charge calculated in accordance with paragraph 6.2;”

(b) delete paragraph 1 (Principal formula) of Part 2 of that new Schedule 7 and replace it with the following:

“1 **Principal formula**

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

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

where:

T_t means Track Charges in Relevant Year t;

F_t means an amount in respect of the ICC in Relevant Year t which is calculated in accordance with paragraph 2;

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

K_t means an amount in respect of the Capacity Charge in Relevant Year t which is calculated in accordance with paragraph 6;

KW_t means an amount, if any, in respect of the Capacity Charge Wash-up in Relevant Year t which shall be calculated in accordance with paragraph 6;

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

E_t means an amount in respect of the Traction Electricity Charge in Relevant Year t which is derived from the formula in paragraph 4; and

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

- (c) delete paragraph 6 (Capacity Charge) of Part 2 of that new Schedule 7 and replace it with the following:

“6 Capacity Charge and Capacity Charge Wash-up

6.1 In respect of the Relevant Year ending 31 March 2019, the terms K_t and KW_t respectively mean an amount in respect of the Capacity Charge and the Capacity Charge Wash-up in Relevant Year t which shall be derived from the formulae that were contained in paragraph 6 of Part 2 of Schedule 7 of the version of this contract that was in force up until 31 March 2019. For subsequent Relevant Years, K_t and KW_t shall each have a value of zero.

6.2 In respect of the Relevant Year ending 31 March 2019, if KW_t is a positive sum then it shall be payable by the Train Operator. If KW_t is a negative sum or equal to zero then no sum shall be payable by the Train Operator or by Network Rail.”

- 3.3 In the **North Yorkshire Moors TAA**, with the exception of Appendix 7C to Schedule 7 (which shall not be deleted and which shall continue to remain in full force), delete Schedule 7 and replace it with the Schedule 7 set out in Appendix 3 to this Annex 2.

- 3.4 In the **WCRC Jacobite TAA**, with the exception of Appendix 7C to Schedule 7 (which shall not be deleted and which shall continue to remain in full force), delete Schedule 7

and replace it with the Schedule 7 set out in Appendix 3 to this Annex 2, and make the following additional amendments to that new Schedule 7:

(a) in paragraph 1 (Definitions) of Part 2:

- (1) delete the definition of “New Specified Equipment” and replace it with the following new definition:

“**New Specified Equipment**” means a type of railway vehicle that is not included in the section of the Track Usage Price List entitled “West Coast Railway Company Limited Variable Usage Charge rates (Jacobite);” and

- (2) delete the definition of “VUC Default Rate” and replace it with the following new definition:

“**VUC Default Rate**” means, in respect of any New Specified Equipment used on the Network by the Train Operator, the corresponding passenger default rate for that type of vehicle set out in the section of the Track Usage Price List entitled “Passenger Variable Usage Charge default rates”; and”

(b) in paragraph 3.1 (Variable Charge) of Part 2:

- (1) delete the words “but so that in relation to the Relevant Year commencing on 1 April 2019, V_{it} shall be:”;
- (2) delete sub-paragraphs 3.1(a) and 3.1(b); and
- (3) delete the words “in each case multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year t V_{it-1} shall have the same value;” and
- (4) replace them with the following:

“but so that in relation to the Relevant Year commencing on 1 April 2019, for any vehicle type i , V_{it} shall be the corresponding variable usage charge rate per Vehicle Mile as set out in the section of the Track Usage Price List entitled “West Coast Railway Company Limited Variable Usage Charge

rates (Jacobite)” multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year V_{it-1} shall have the same value;”

(c) delete Part 5 (Additional Charges) and insert the words “**PART 5: NOT USED**”.

3.5 In the **Supertram TAA**, with the exception of Appendix 7C (Default Train Consist Data) to Schedule 7 (which shall not be deleted and which shall continue to remain in full force), delete Schedule 7 and replace it with the Schedule 7 set out in Appendix 4 to this Annex 2.

3.6 In the **Eurostar TAA**, with the exception of Appendix 7C to Schedule 7 (which shall not be deleted and which shall continue to remain in full force), delete Schedule 7 and replace it with the Schedule 7 set out in Appendix 5 to this Annex 2.

4 Schedule 8 to each Track Access Agreement

4.1 In Schedule 8 of the following Track Access Agreements:

(i) the **Grand Central TAA**;

(ii) the **Hull Trains TAA**; and

(iii) the **East Coast TAA**,

(a) in paragraph 1.1 (Definitions):

(1) delete the definition of “Cancellation Minutes” and replace it with the following definition:

“**Cancellation Minutes**” means, in relation to a Cancelled Stop, the number of Cancellation Minutes specified in column F of Appendix 1 for the Service Group which includes that Train;”;

(2) delete the definition of “Cap” and replace it with the following definition:

“**Cap**” means, in relation to a Monitoring Point, or a Train, the cap for the relevant Service Group in column G of Appendix 1;”;

(3) insert the following new definition in alphabetical order:

“**CPI**” has the meaning ascribed to it in Schedule 7;”;

- (4) delete the definition of “Monitoring Point” and replace it with the following:

“**Monitoring Point**” means, in relation to a direction of a Service, a point listed in column J of Appendix 1 as a point to be used for recording lateness of Trains in accordance with paragraph 2, and each such Monitoring Point shall be treated as a separate Monitoring Point notwithstanding that it may also be a Monitoring Point for the same Service in the opposite direction and/or for other Services”;

- (5) delete the definition of “Network Rail Performance Point” and replace it with the following:

“**Network Rail Performance Point**” or “**NRPP**” means, in relation to a Service Group, the Network Rail performance point specified in column B of Appendix 1;”;

- (6) delete the definition of “Passenger Timetable” and replace it with the following:

“**Passenger Timetable**” means those elements of the Applicable Timetable which are intended to be advertised to the public;”;

- (7) delete the definition of “RPI”; and

- (8) delete the definition of “Train Operator Performance Point” and replace it with the following:

“**Train Operator Performance Point**” means, in relation to a Service Group, the Train Operator performance point specified in column D of Appendix 1.”

- (b) in paragraph 1.2 (Interpretation), delete sub-paragraph 1.2(a) and replace it with the following:

- “(a) a Train shall be treated as being in a Service Group for that part of its journey during which it satisfies the characteristics specified in columns A,

H and J of Appendix 1 as forming a Service which is included in that Service Group;”

- (c) in paragraph 3 (Calculation of Minutes Delay) of Schedule 8, delete subparagraph 3(b)(ii)(2) and replace it with the following:

“(2) if for any Train the aggregate Minutes Delay in respect of all Recording Points caused by a single incident are in excess of the Cap specified in column G of Appendix 1 for that Service Group, then such excess shall be disregarded.”

- (d) in paragraph 7 (Allocation of Minutes Late to Network Rail):

- (1) delete the words “MD is the aggregate Minutes Delay on that day in respect of the Service Group under which that Monitoring Point is listed in column N of Appendix 1, calculated in accordance with paragraph 5.8;” and replace them with the following:

“MD is the aggregate Minutes Delay on that day in respect of the Service Group under which that Monitoring Point is listed in column J of Appendix 1, calculated in accordance with paragraph 5.8;” and

- (2) delete the words “CM is the Cancellation Minutes for that Service Group set out in column J of Appendix 1.” and replace them with the following:

“CM is the Cancellation Minutes for that Service Group set out in column F of Appendix 1.”

- (e) in paragraph 8 (Allocation of Minutes Late to the Train Operator):

- (1) delete the words “MD is the aggregate Minutes Delay on that day in respect of the Service Group under which that Monitoring Point is listed in column N of Appendix 1, calculated in accordance with paragraph 5.8;” and replace them with the following:

“MD is the aggregate Minutes Delay on that day in respect of the Service Group under which that Monitoring Point is listed in column J of Appendix 1, calculated in accordance with paragraph 5.8;” and

- (2) delete the words “CM is the Cancellation Minutes for that Service Group set out in column J of Appendix 1.” and replace them with the following:

“CM is the Cancellation Minutes for that Service Group set out in column F of Appendix 1.”

- (f) in paragraph 9.1 (Network Rail Performance Sums):

- (1) delete the words “MPW is the weighting attributable to that Monitoring Point, as specified in column O of Appendix 1; and”, and replace them with the following:

“MPW is the weighting attributable to that Monitoring Point, as specified in column K of Appendix 1; and”;

- (2) delete the words “MPW is the weighting attributable to that Monitoring Point, as specified in column O of Appendix 1;”, and replace them with the following:

“MPW is the weighting attributable to that Monitoring Point, as specified in column K of Appendix 1;”;

- (3) delete the words “NRPR is the relevant Network Rail payment rate for that Service Group specified in column E of Appendix 1 as indexed in accordance with paragraph 13,” and replace them with the following:

“NRPR is the relevant Network Rail payment rate for that Service Group specified in column C of Appendix 1 as indexed in accordance with paragraph 13,”; and

- (4) delete sub-paragraph 9.1(iii) and insert the following:

“(iii) the CV indexation figure in Relevant Year t shall be derived from the following formula:

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

where:

CV_t means the CV indexation in Relevant Year t;

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

CPI_{2018} means the CPI published or determined with respect to the month of November 2018,

except that in relation to the Relevant Year commencing on 1 April 2019, CV_t shall equal $1 \times$ Initial Indexation Factor.”

- (g) in paragraph 10.1 (Train Operator Performance Sums) of Schedule 8:
- (1) delete the words “TPP is the Train Operator Performance Point for the Service Group specified in column F of Appendix 1;” and replace them with the following:

“TPP is the Train Operator Performance Point for the Service Group specified in column D of Appendix 1;”;
 - (2) delete the words “MPW is the weighting attributable to that Monitoring Point, as specified in column O of Appendix 1; and”, and replace them with the following:

“MPW is the weighting attributable to that Monitoring Point, as specified in column K of Appendix 1; and”;
 - (3) delete the words “MPW is the weighting attributable to that Monitoring Point, as specified in column O of Appendix 1;”, and replace them with the following:

“MPW is the weighting attributable to that Monitoring Point, as specified in column K of Appendix 1;” and
 - (4) delete the words “TPR is the relevant Train Operator payment rate for that Service Group specified in column I of Appendix 1 as indexed in accordance with the provisions in paragraph 13.” and replace them with the following:

“TPR is the relevant Train Operator payment rate for that Service Group specified in column E of Appendix 1 as indexed in accordance with the provisions in paragraph 13.”

- (h) delete paragraph 13.1 (Payment Rates) of Schedule 8, and replace it with the following:

“13.1 Each payment rate in columns C and E of Appendix 1, expressed in pounds sterling and rounded to two decimal places, shall be adjusted in respect of Periods in Relevant Year t in accordance with the following formula:

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

where:

R_t is the relevant rate in the Relevant Year t;

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

CPI_{t-1} has the same meaning as set out in paragraph 9.1 above of this Schedule 8; and

CPI_{t-2} means the CPI published or determined with respect to the month of November in Relevant Year t-2,

but so that in relation to the Relevant Year commencing on 1 April 2019, R_t shall have the relevant value specified in the relevant column (either C or E) of Appendix 1, multiplied by the Initial Indexation Factor and in the next following Relevant Year, R_{t-1} shall have the same value.”

- (i) in paragraph 15 (Notices) of Schedule 8, delete sub-paragraph 15.2(c) and replace it with the following:

“(c) if sent by facsimile, (subject to confirmation of uninterrupted transmission by a transmission report) before 1700 hours on a business day, on the day of transmission and, in any other case, at 0900 hours on the next following business day (“business day” for these purposes being a day which is not

a Saturday, Sunday or a Public Holiday in the place where the transmission is to be received); and”

- (j) delete Appendix 1 to Schedule 8, and replace it with the new Appendix 1 to Schedule 8 specific to that Track Access Agreement which is attached separately in Appendix 3 of Part 2 of Annex 3 to this Review Notice.

4.2 In Schedule 8 of the **East Coast TAA**:

- (a) in paragraph 18 (Compensation for sustained poor performance), delete paragraph 18.2 (Indemnity) and replace it with the following:

“18.2 ***Indemnity***

Network Rail shall indemnify the Train Operator against all Relevant Losses in accordance with this paragraph 18 if, and to the extent that, the Average Periodic Liability shows Network Rail has exceeded (that is, equalled or been worse than) the relevant SPP Threshold. For the avoidance of doubt, Relevant Losses for the purpose of providing compensation for sustained poor performance under this paragraph are to be measured in comparison to the position the Train Operator would have been in had Network Rail met the NRPP.”

- (b) delete paragraph 19 (SPP Indexation), and replace it with the following:

“19 **SPP Indexation**

19.1 ***SPP Indexation***

Each value specified in Appendix 3, expressed in pounds sterling and rounded to two decimal places, shall be multiplied by the SPP indexation figure for the Relevant Year.

19.2 ***Application of SPP Indexation***

The SPP indexation figure in Relevant Year t shall be derived from the following formula:

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

where:

SPPI_t means the SPP indexation in Relevant Year t;

CPI_{t-1} has the meaning as set out in paragraph 9.1 above of this Schedule 8; and

CPI₂₀₁₈ has the meaning as set out in paragraph 9.1 above of this Schedule 8;

except that in relation to the Relevant Year commencing on 1 April 2019, CV_t shall equal 1 x Initial Indexation Factor.”

- (c) in Appendix 3 (SPP Threshold), in the first column of the table, make the following amendments:
- (i) delete the text “2014/15” where it appears, and replace it with “2019/20”;
 - (ii) delete the text “2015/16” where it appears, and replace it with “2020/21”;
 - (iii) delete the text “2016/17” where it appears, and replace it with “2021/22”;
 - (iv) delete the text “2017/18” where it appears, and replace it with “2022/23”;
and
 - (v) delete the text “2018/19” where it appears, and replace it with “2023/24”.

4.3 In the **WCRC Jacobite TAA**, delete Schedule 8 and replace it with the Schedule 8 set out in Appendix 6 to this Annex 2, with the following modification: in Appendix 8A of that new Schedule 8 replace the empty square brackets in the table entry for “Train Operator Payment Rate” with the corresponding sum specified in Appendix 4 of Part 2 of Annex 3 to this Review Notice.

4.4 In Schedule 8 of the **North Yorkshire Moors TAA**:

- (a) in paragraph 1.1 (Definitions):

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

““**CPI**” has the meaning ascribed to it in Schedule 7;”
 - (2) insert the following new definition in alphabetical order:

““**Initial Indexation Factor**” has the meaning ascribed to it in Schedule 7;”
 - (3) delete the definition of “RPI”;
- (b) in paragraph 7.3 and paragraph 11, make the amendments set out in Appendix 7 of this Annex 2; and
 - (c) delete Appendix 1 to Schedule 8, and replace it with the new Appendix 1 to Schedule 8 specific to that Track Access Agreement which is attached separately in Appendix 3 of Part 2 of Annex 3 to this Review Notice.

4.5 In Schedule 8 of the **Supertram TAA**:

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

““**Initial Indexation Factor**” has the meaning ascribed to it in Schedule 7;”
- (b) delete paragraph 7 (Indexation) and replace it with the following:

“7 **Indexation**

7.1 *CPI Uplift in relation to Rates and Caps in Appendix 1*

The Network Rail Payment Rate, the Train Operator Payment Rate, the Network Rail Cap and the Train Operator Cap in Appendix 1 to this Schedule 8 shall be adjusted in respect of Periods in Relevant Year t in accordance with the following formula:

$$R_t = R_{t-1} \times (1 + CPI_{t-1})$$

where:

R_t is the relevant rate in the Relevant Year t;

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

CPI_{t-1} means the percentage change (whether of a positive or negative value) in the Consumer Prices Index published or determined with respect to November in the Relevant Year t-1 and the index published or determined with respect to November in the Relevant Year t-2,

but so that in relation to the Relevant Year commencing on 1 April 2019, R_t shall have the relevant value specified in the relevant payment rate of Appendix 1 multiplied by the Initial Indexation Factor, and in the next following Relevant Year t-1 shall have the same value.”

- (c) delete Appendix 1, and replace it with the new Appendix 1 to Schedule 8 specific to that Track Access Agreement which is attached separately in Appendix 3 of Part 2 of Annex 3 to this Review Notice.

5 Schedule 9 to each Track Access Agreement

- 5.1 With the exception of the **Supertram 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 definition (and replace the empty square brackets in sub-paragraphs (a) and (b)(ii) with the sum which is set out in the equivalent sub-paragraphs (a) and (b)(i) (or, in the case of the Eurostar TAA, replace sub-paragraph (a) words entirely with the words “Not used”, and replace the empty square brackets in sub-paragraph (b)(ii) with the sum set out in the equivalent sub-paragraph (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 (as defined 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 (as defined 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 (as defined 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 (as defined 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 **Supertram TAA**, delete the definition of “Liability Cap” and replace it with the following definition (and replace the empty square brackets in sub-paragraphs (a) and (b)(i) 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:

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

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.”

6 Schedule 10 to the Grand Central TAA

6.1 In Schedule 10 to the Grand Central TAA:

- (a) delete the heading and replace it with the following new heading:

“SCHEDULE 10: NETWORK CODE AND TRACTION ELECTRICITY RULES MODIFICATIONS”

- (b) delete paragraph 2.1 and replace it with the following:

“2.1 *Meaning*

A modification notice is a notice given by ORR to the parties for the purposes of this contract which modifies specified provisions of this contract (other than this Schedule 10) by making such modifications as are consequential upon, or necessary to give full effect to, any change to the Network Code or the Traction Electricity Rules.”

- (c) delete sub-paragraph 4.9(b), and replace it with the following:

“(b) the right of ORR at any time to effect modifications to either the Network Code under Condition C8 of that code, or the Traction Electricity Rules pursuant to the provisions contained therein.”

7 Schedule 11 to the East Coast TAA

7.1 In Schedule 11 to the **East Coast TAA**, in paragraph 4 (Definitions), in the definition of “Relevant Schedule 4 and 8 Modifications”, delete sub-paragraph (c) and replace it with the following:

“(c) any modifications required to Part 3 of Schedule 4 in respect of the definitions of “SPD Cost Threshold No.1” and “SPD Cost Threshold No.2” in paragraph 1.1, the definition of “EBMPR” in paragraph 4.2(b), and to Annexes A, B, C and D of Part 3 of Schedule 4; and”

8 Schedule 12 to the Supertram TAA

8.1 In Schedule 12 to the **Supertram TAA**, in paragraph 4 (Definitions), in the definition of “Relevant Schedule 8 Modifications”, delete sub-paragraph (a) and replace it with the following:

“(a) any modifications required to the Network Rail Benchmark per Train, Network Rail Lower Review Level, Network Rail Upper Review Level and Network Rail Payment Rate and Train Operator Benchmark per Train, Train Operator Lower Review Level, Train Operator Upper Review Level and Train Operator Payment Rate in Appendix 1 to Schedule 8 following a review against ORR’s Criteria; and”

APPENDIX 1 TO ANNEX 2

**Annex A (Notification Factors) to Part 3 of Schedule 4
(for the Grand Central TAA and the Hull Trains TAA)**

Annex A to Part 3 of Schedule 4 – Notification Factors

	A	B	C	D	E
Service Group Description	Service Group Code	Type	By D-26	By TW-22	After TW-22
First Transpennine Express Limited					
North Trans Pennine	EA01	All Trains	0.36	0.36	0.93
South Trans Pennine	EA02	All Trains	0.36	0.36	0.93
Preston - Scotland	EA07	All Trains	0.36	0.36	0.93
Abellio East Anglia Limited					
Southend & Southminster	EB02	Off-Peak	0.44	0.44	0.92
Southend & Southminster	EB02	Peak	0.44	0.44	0.92
Great Eastern Outers	EB03	Off-Peak	0.44	0.44	0.92
Great Eastern Outers	EB03	Peak	0.44	0.44	0.92
Anglia Inter City	EB04	Off-Peak	0.44	0.44	0.92
Anglia Inter City	EB04	Peak	0.44	0.44	0.92
Anglia Locals	EB05	All Trains	0.36	0.36	0.93
West Anglia Outers	EB06	Off-Peak	0.44	0.44	0.92
West Anglia Outers	EB06	Peak	0.44	0.44	0.92
West Anglia Inners	EB07	Off-Peak	0.69	0.69	0.90
West Anglia Inners	EB07	Peak	0.69	0.69	0.90
Grand Central Railway Company Limited					
Kings x - Sunderland	EC01	All Trains	0.44	0.44	0.92
Kings x - Bradford	EC02	All Trains	0.44	0.44	0.92
Arriva Rail North Limited					
Tyne, Tees & Wear	ED01	All Trains	0.36	0.36	0.93

	A	B	C	D	E
Service Group Description	Service Group Code	Type	By D-26	By TW-22	After TW-22
Lancashire & Cumbria	ED02	All Trains	0.36	0.36	0.93
West & North Yorkshire Inter Urban	ED04	All Trains	0.36	0.36	0.93
West & North Yorkshire Local	ED05	All Trains	0.60	0.60	0.88
South & East Yorkshire Inter Urban	ED06	All Trains	0.36	0.36	0.93
South & East Yorkshire Local	ED07	All Trains	0.36	0.36	0.93
North Manchester	ED08	Off-Peak	0.36	0.36	0.93
North Manchester	ED08	Peak	0.36	0.36	0.93
Merseyrail City Lines	ED09	All Trains	0.36	0.36	0.93
South Manchester	ED10	Off-Peak	0.36	0.36	0.93
South Manchester	ED10	Peak	0.36	0.36	0.93
Lancashire & Cumbria Inter Urban	ED11	All Trains	0.36	0.36	0.93
First Greater Western Limited					
London - Bristol	EF01	All Trains	0.44	0.44	0.92
London - South Wales	EF02	All Trains	0.44	0.44	0.92
London - Cotswolds	EF03	All Trains	0.44	0.44	0.92
London - West Of England	EF04	All Trains	0.44	0.44	0.92
Outer Thames Valley - London	EF05	Off-Peak	0.44	0.44	0.92
Outer Thames Valley - London	EF05	Peak	0.44	0.44	0.92
Inner Thames Valley - London	EF06	Off-Peak	0.69	0.69	0.90
Inner Thames Valley - London	EF06	Peak	0.69	0.69	0.90
Reading & Oxford Suburban	EF07	All Trains	0.69	0.69	0.90
Thames Valley Branches	EF08	All Trains	0.69	0.69	0.90

	A	B	C	D	E
Service Group Description	Service Group Code	Type	By D-26	By TW-22	After TW-22
North Downs	EF09	All Trains	0.44	0.44	0.92
Bristol Suburban	EF10	All Trains	0.36	0.36	0.93
Devon	EF11	All Trains	0.36	0.36	0.93
Plymouth & Cornwall	EF12	All Trains	0.36	0.36	0.93
South Wales - South Coast	EF13	All Trains	0.36	0.36	0.93
XC Trains Limited					
CrossCountry Inter City	EH01	All Trains	0.36	0.36	0.93
CrossCountry Local & Provincial	EH02	All Trains	0.36	0.36	0.93
West Midlands Trains Limited					
West Midlands - Snow Hill	EJ01	Off-Peak	0.36	0.36	0.93
West Midlands - Snow Hill	EJ01	Peak	0.36	0.36	0.93
Trent Valley	EJ02	All Trains	0.36	0.36	0.93
West Midlands - New Street (Local)	EJ03	Off-Peak	0.60	0.60	0.88
West Midlands - New Street (Local)	EJ03	Peak	0.60	0.60	0.88
West Midlands Inter Urban	EJ04	All Trains	0.36	0.36	0.93
WCML: London - Northampton	EJ05	Off-Peak	0.44	0.44	0.92
WCML: London - Northampton	EJ05	Peak	0.44	0.44	0.92
WCML: Branches	EJ06	All Trains	0.60	0.60	0.88
Arriva Rail London Limited					
Orbitals	EK01	Off-Peak	0.69	0.69	0.90
Orbitals	EK01	Peak	0.69	0.69	0.90
London - Watford (D.C Lines)	EK02	Off-Peak	0.69	0.69	0.90

	A	B	C	D	E
Service Group Description	Service Group Code	Type	By D-26	By TW-22	After TW-22
London - Watford (D.C Lines)	EK02	Peak	0.69	0.69	0.90
East London Lines	EK03	Off-Peak	0.69	0.69	0.90
East London Lines	EK03	Peak	0.69	0.69	0.90
ARL West Anglia	EK04	Off-Peak	0.69	0.69	0.90
ARL West Anglia	EK04	Peak	0.69	0.69	0.90
Romford – Upminster	EK05	All Trains	0.69	0.69	0.90
East Midlands Trains Limited					
East Midlands Local	EM01	All Trains	0.36	0.36	0.93
East Midlands Regional	EM02	All Trains	0.36	0.36	0.93
Liverpool - Norwich	EM03	All Trains	0.36	0.36	0.93
East Midlands Inter City	EM04	All Trains	0.44	0.44	0.92
East Midlands Inter Urban	EM05	All Trains	0.44	0.44	0.92
Sercos Caledonian Sleepers Limited					
Sleepers	ES01	All Trains	0.44	0.44	0.92
Govia Thameslink Railway Limited					
Thameslink North Outer (MML)	ET01	Off Peak	0.44	0.44	0.92
Thameslink North Outer (MML)	ET01	Peak	0.44	0.44	0.92
Thameslink Sussex Outer	ET02	Off Peak	0.44	0.44	0.92
Thameslink Sussex Outer	ET02	Peak	0.44	0.44	0.92
Thameslink South Metro	ET03	Off Peak	0.69	0.69	0.90
Thameslink South Metro	ET03	Peak	0.69	0.69	0.90
Great Northern Metro	ET04	Off Peak	0.69	0.69	0.90

	A	B	C	D	E
Service Group Description	Service Group Code	Type	By D-26	By TW-22	After TW-22
Great Northern Metro	ET04	Peak	0.69	0.69	0.90
Great Northern Outer	ET05	Off Peak	0.44	0.44	0.92
Great Northern Outer	ET05	Peak	0.44	0.44	0.92
Southern Coastway	ET07	All Trains	0.44	0.44	0.92
Southern Outer	ET08	Off Peak	0.44	0.44	0.92
Southern Outer	ET08	Peak	0.44	0.44	0.92
Southern Metro	ET09	Off Peak	0.69	0.69	0.90
Southern Metro	ET09	Peak	0.69	0.69	0.90
Southern West London Line	ET10	Off Peak	0.44	0.44	0.92
Southern West London Line	ET10	Peak	0.44	0.44	0.92
Gatwick Express	ET11	Off Peak	0.31	0.31	0.90
Gatwick Express	ET11	Peak	0.31	0.31	0.90
Thameslink North Metro (MML)	ET12	Off Peak	0.69	0.69	0.90
Thameslink North Metro (MML)	ET12	Peak	0.69	0.69	0.90
Thameslink Kent Outer	ET13	Off Peak	0.44	0.44	0.92
Thameslink Kent Outer	ET13	Peak	0.44	0.44	0.92
MTR Corporation (Crossrail) Limited					
Crossrail East	EX01	Off-Peak	0.69	0.69	0.90
Crossrail East	EX01	Peak	0.69	0.69	0.90
Crossrail West	EX02	Off-Peak	0.31	0.31	0.90
Crossrail West	EX02	Peak	0.31	0.31	0.90
Abellio ScotRail Limited					

	A	B	C	D	E
Service Group Description	Service Group Code	Type	By D-26	By TW-22	After TW-22
Express	HA01	All Trains	0.36	0.36	0.93
East Coast Suburban	HA02	All Trains	0.36	0.36	0.93
South West Rural	HA03	All Trains	0.36	0.36	0.93
Highland Rural	HA04	All Trains	0.36	0.36	0.93
Ayrshire and Inverclyde	HA05	All Trains	0.36	0.36	0.93
Glasgow Suburban South	HA06	All Trains	0.36	0.36	0.93
Glasgow Suburban North	HA07	All Trains	0.36	0.36	0.93
North Electrics & Argyle Line	HA08	All Trains	0.36	0.36	0.93
London North Eastern Railway Limited					
ANGLO - SCOTTISH	HB01	All Trains	0.44	0.44	0.92
WEST YORKSHIRE	HB02	All Trains	0.44	0.44	0.92
WEST YORKSHIRE (Kings X - Bradford / Hull)	HB04	All Trains	0.44	0.44	0.92
ANGLO - SCOT (Aberdeen / Inverness)	HB05	All Trains	0.44	0.44	0.92
East Coast Trains Limited					
London - Edinburgh		All Trains	0.44	0.44	0.92
Merseyrail Electrics 2002 Limited					
Northern Lines	HE01	All Trains	0.60	0.60	0.88
Wirral Lines	HE02	All Trains	0.60	0.60	0.88
West Coast Trains Limited					
London Euston - Birmingham/Wolverhampton	HF01	All Trains	0.44	0.44	0.92
London Euston - North Wales	HF02	All Trains	0.44	0.44	0.92

	A	B	C	D	E
Service Group Description	Service Group Code	Type	By D-26	By TW-22	After TW-22
London Euston - Manchester	HF03	All Trains	0.44	0.44	0.92
London Euston - Liverpool	HF04	All Trains	0.44	0.44	0.92
London Euston - Carlisle/Scotland	HF06	All Trains	0.44	0.44	0.92
London - Scotland via West Midlands	HF08	All Trains	0.44	0.44	0.92
Keolis Amey Operations / Gweithrediadau Keolis Amey Limited					
South, West & Central Wales	HL02	All Trains	0.36	0.36	0.93
Wales to England	HL03	All Trains	0.36	0.36	0.93
Cambrian	HL04	All Trains	0.36	0.36	0.93
Cardiff Valleys	HL05	Off-Peak	0.60	0.60	0.88
Cardiff Valleys	HL05	Peak	0.60	0.60	0.88
Marches	HL06	All Trains	0.36	0.36	0.93
North Wales Rural	HL07	All Trains	0.36	0.36	0.93
Inter Urban North Wales	HL08	All Trains	0.36	0.36	0.93
The Chiltern Railway Company Limited					
Met	HO01	Off-Peak	0.69	0.69	0.90
Met	HO01	Peak	0.69	0.69	0.90
Birmingham	HO02	Off-Peak	0.44	0.44	0.92
Birmingham	HO02	Peak	0.44	0.44	0.92
Joint	HO03	Off-Peak	0.69	0.69	0.90
Joint	HO03	Peak	0.69	0.69	0.90
Oxford	HO04	Off-Peak	0.44	0.44	0.92
Oxford	HO04	Peak	0.44	0.44	0.92

	A	B	C	D	E
Service Group Description	Service Group Code	Type	By D-26	By TW-22	After TW-22
Trenitalia c2c Limited					
London-Southend/Shoeburyness (HT02op)	HT01	Off-Peak	0.44	0.44	0.92
London-Southend/Shoeburyness (HT01p)	HT01	Peak	0.44	0.44	0.92
London & South Eastern Railway Limited					
Kent Mainline (Off Peak)	HU01	All Trains	0.44	0.44	0.92
Kent Metro (Off Peak)	HU02	All Trains	0.44	0.44	0.92
Kent Rural	HU03	All Trains	0.69	0.69	0.90
Kent Mainline (Peak)	HU04	All Trains	0.44	0.44	0.92
Kent Metro (Peak)	HU05	All Trains	0.44	0.44	0.92
Kent High Speed (Peak)	HU06	All Trains	0.44	0.44	0.92
Kent High Speed (Off Peak)	HU07	All Trains	0.44	0.44	0.92
First MTR South Western Trains Limited					
Main Suburban	HY01	Off-Peak	0.69	0.69	0.90
Main Suburban	HY01	Peak	0.69	0.69	0.90
South Hampshire Locals	HY02	All Trains	0.44	0.44	0.92
Waterloo - West England	HY03	Off-Peak	0.44	0.44	0.92
Waterloo - West England	HY03	Peak	0.44	0.44	0.92
Waterloo - Farnham / Alton	HY04	Off-Peak	0.44	0.44	0.92
Waterloo - Farnham / Alton	HY04	Peak	0.44	0.44	0.92
Windsor Inners	HY05	Off-Peak	0.69	0.69	0.90
Windsor Inners	HY05	Peak	0.69	0.69	0.90
Windsor Outers	HY06	Off-Peak	0.69	0.69	0.90

	A	B	C	D	E
Service Group Description	Service Group Code	Type	By D-26	By TW-22	After TW-22
Windsor Outers	HY06	Peak	0.69	0.69	0.90
Waterloo - Portsmouth	HY07	Off-Peak	0.44	0.44	0.92
Waterloo - Portsmouth	HY07	Peak	0.44	0.44	0.92
Waterloo - Weymouth	HY08	Off-Peak	0.44	0.44	0.92
Waterloo - Weymouth	HY08	Peak	0.44	0.44	0.92
Hull Trains Company Limited					
Kings Cross - Hull	PF01	All Trains	0.44	0.44	0.92

APPENDIX 2 TO ANNEX 2

**Model Schedule 7 (for the Grand Central TAA, the Hull Trains TAA,
and the East Coast TAA)**

Schedule 7

(Track Charges and Other Payments)

Part 1

(Interpretation)

1. Definitions

In Part 1 – Part 7 inclusive, unless the context otherwise requires:

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

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

"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;

"Capacity Charge" means a variable charge, calculated in accordance with paragraph 6 of Part 2;

"Capacity Charge Wash-up" means the charge calculated in accordance with paragraph 6.2;

"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;

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

"Electrification Asset Usage Charge" means a charge for electrification asset usage, calculated in accordance with paragraph 8 of Part 2;

"Geographic Area g" means, for the purposes of performing the calculations set out in paragraph 4 of Part 2 and paragraph 18 of the Traction Electricity Rules, the relevant geographic section of the Network, as set out in Appendix 5 of the Traction Electricity Rules;

"Gross Tonne Mile" in relation to a train, means a mile travelled on the Network, multiplied by each tonne of the aggregate weight of the train in question;

"Infrastructure Cost Charge" or "ICC" means the charge calculated in accordance with paragraph 2 of Part 2;

"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_{2017} means the CPI published or determined with respect to the month of November 2017;
and

CPI_{2018} means the CPI published or determined with respect to the month of November 2018.

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

"kgtm" means 1000 Gross Tonne Miles;

"kWh" means kilowatt hours;

"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 7D 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 Modelled Train" means a type of train for which E_{tmo} is to be calculated for the purposes of paragraph 4.1.1 of Part 2 but in relation to which no train category i, and no modelled consumption rate, is shown in either the Passenger Traction Electricity Modelled Consumption Rates for CP6 or Generic Traction Electricity Modelled Consumption Rates for CP6 tables in the Traction Electricity Modelled Consumption Rates List, or the PFM Rates List;

"New Specified Equipment" means a type of railway vehicle not included in the section of the Track Usage Price List entitled "Passenger Variable Usage Charge rates";

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

"Open Access ICC Rates List" means the document entitled "Open Access ICC Rates 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 9.10 of Part 2 of Schedule 7 to this contract or a passenger track access contract previously held by the Train Operator;

"Period" has the meaning ascribed to it in Schedule 8;

"PFM Rate" has the meaning ascribed to it in paragraph 1 of the Traction Electricity Rules;

"PFM Rates List" has the meaning ascribed to it in paragraph 1 of the Traction Electricity Rules;

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

"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;

"Relevant Year" means a year commencing at 0000 hours on 1 April and ending at 2359 hours on the following 31 March;

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

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

"Route-Level Efficiency Benefit Share" has the meaning ascribed to it in paragraph 1 of Part 3;

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

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

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

"Service Coded Group" means any Service or collection of Services operating under a service code specified in the Open Access ICC Rates List, and any Ancillary Movements relating to such Services;

"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 9.10 of Part 2 of Schedule 7 to this contract or a passenger track access contract previously held by the Train Operator;

"Traction Electricity Charge" means a variable charge for traction current calculated in accordance with paragraph 4 of Part 2;

"Traction Electricity Modelled Consumption Rates List" means the document entitled "Traction Electricity Modelled Consumption Rates List" published by Network Rail on or about 20 December 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 9.10 of Part 2

of Schedule 7 to this contract or a passenger track access contract previously held by the Train Operator;

"Traction Electricity Modelled Default Rate" means, in respect of any New Modelled Train used on the Network by the Train Operator, the corresponding default consumption rate for that type of vehicle set out in the section of the Traction Electricity Modelled Consumption Rates List entitled "Traction Electricity Modelled Default Rates for CP6";

"Traction Electricity Modelled Default Rate Period" means the period from the date on which the New Modelled Train is first used on the Network by the Train Operator until the date on which ORR consents to or determines a supplement to the Traction Electricity Modelled Consumption Rates List under paragraph 9.10 of Part 2 in respect of that New Modelled Train or the train in question has been added to Appendix 7D of this Schedule 7;

"Traction Electricity Modelled Default Rate Reconciliation Period" means the period from the later of:

- (a) the date on which the New Modelled Train is first used on the Network by the Train Operator; or
- (b) 1 April of the Relevant Year in which ORR consents to or determines a supplement to the Traction Electricity Modelled Consumption Rates List under paragraph 9.10 of Part 2 in respect of that New Modelled Train,

until the date on which ORR consents to or determines a supplement to the Traction Electricity Modelled Consumption Rates List under paragraph 9.10 of Part 2 in respect of that New Modelled Train;

"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 the DC System, or is 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 i" means train category i as identified in the relevant section of the Traction Electricity Modelled Consumption Rates List or PFM Rates List, being either:

- (a) where there is no PFM Rate for a particular passenger vehicle type operating on a particular Train Service Code:
 - (i) where there is a modelled consumption rate for a particular passenger vehicle type operating on a particular Train Service Code, the relevant category set out in the table entitled "Passenger Traction Electricity Modelled Consumption Rates for CP6"; or
 - (ii) where there is a generic consumption rate for a passenger vehicle type not referred to in paragraph (a)(i), the relevant category set out in the table entitled "Generic Traction Electricity Modelled Consumption Rates for CP6"; or
- (b) where there is a PFM Rate for a particular passenger vehicle type operating on a particular Train Service Code, the relevant category set out in the PFM Rates List;

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

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

"Train Service Code" has the meaning ascribed to it in paragraph 1.1 of Schedule 5;

"Variable Charges" means the Capacity Charge, the VUC Default Charge, the Electrification Asset Usage Charge, the Variable Usage Charge and the Traction Electricity Charge;

"Variable Usage Charge" means a variable charge, calculated in accordance with paragraph 3.1 of Part 2;

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

"VUC Default Charge" means a variable charge calculated in accordance with paragraph 3.3 of Part 2;

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

(a) the date on which the New Specified Equipment is first used on the Network by the Train Operator; or

(b) 1 April 2019,

until the date on which ORR consents to or determines a supplement to the Track Usage Price List under paragraph 9.10 of Part 2 in respect of that New Specified Equipment;

"VUC Default Rate" means, in respect of any New Specified Equipment used on the Network by the Train Operator, the corresponding passenger default rate for that type of vehicle set out in the section of the Track Usage Price List entitled "Passenger Variable Usage Charge default rates"; and

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

Part 2

(Track Charges)

1. Principal formula

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

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

where:

T_t means Track Charges in Relevant Year t ;

F_t means an amount in respect of the ICC in Relevant Year t which is calculated in accordance with paragraph 2;

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

K_t means an amount in respect of the Capacity Charge in Relevant Year t which is calculated in accordance with paragraph 6;

KW_t means an amount, if any, in respect of the Capacity Charge Wash-up in Relevant Year t which shall be calculated in accordance with paragraph 6;

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

E_t means an amount in respect of the Traction Electricity Charge in Relevant Year t which is derived from the formula in paragraph 4; and

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

2. **Infrastructure Cost Charge**

For the purposes of paragraph 1, the term F_t means an amount in respect of the ICC in Relevant Year t which shall be calculated in accordance with the following formula:

$$F_t = \sum R_{ti} \times TM_{ti}$$

where:

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

R_{ti} means the rate per Service Coded Group i in respect of Relevant Year t as shown in the Open Access ICC Rates List, expressed in pounds sterling per Train Mile and rounded to four decimal places, and indexed as follows:

- (a) in relation to the Relevant Year t commencing on 1 April 2019, R_{ti} shall have the value for the rate per Service Coded Group i shown for the Train Operator in the Open Access ICC Rates List, multiplied by the Initial Indexation Factor; and
- (b) in relation to any Relevant Year t commencing on or after 1 April 2020, R_{ti} shall have the value for the rate per Service Coded Group i shown for the Train Operator in the Open Access ICC Rates List, multiplied by the phased-in charges indexation adjustment derived from the following formula:

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

where:

$PCIA_t$ means the phased-in charges indexation adjustment in respect of Relevant Year t ;

CPI_{t-1} means the CPI published or determined with respect to November in Relevant Year $t-1$; and

CPI_{2018} means the CPI published or determined with respect to November 2018,

TM_{ti} means Train Miles run by Services or Ancillary Movements in Service Coded Group i in the Relevant Year t .

3. **Variable Usage Charge**

3.1 **Variable Usage Charge**

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

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

where:

V_{it} means an amount for a type of vehicle i for Relevant Year t , expressed in pence per Vehicle Mile and rounded to two decimal places, which is derived from the following formula:

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

where:

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

CPI_{t-2} means the CPI published or determined with respect to the month of November in Relevant Year $t-2$,

but so that in relation to the Relevant Year commencing on 1 April 2019, V_{it} shall have, in respect of vehicle type i , the corresponding variable usage charge rate per Vehicle Mile for that vehicle type i set out in the Track Usage Price List; multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year V_{it-1} shall have the same value;

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

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

3.2 **Not used**

3.3 **VUC Default Charge**

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

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

where:

D_{nt} means the VUC Default Rate for that New Specified Equipment for Relevant Year t , expressed in pence per Vehicle Mile and rounded to two decimal places, which is derived from the following formula:

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

where:

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

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

but so that in relation to the Relevant Year commencing on 1 April 2019, D_{nt} shall have, in respect of New Specified Equipment, the corresponding VUC Default Rate for that New Specified Equipment, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year D_{nt-1} shall have the same value;

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

Σ means the summation across all relevant New Specified Equipment.

4. Traction Electricity Charge

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

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

where:

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

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

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

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

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

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

Calculation of modelled consumption (including using PFM Rates)

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

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

where:

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

E_{tmog} is derived from the following formula:

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

where:

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

C_i means, as appropriate:

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

for train category i shown in the Traction Electricity Modelled Consumption Rates List, taking into account any Regenerative

Braking Discount applied in accordance with the Traction Electricity Rules or, if a PFM Rate applies in accordance with the Traction Electricity Rules, the PFM Rates List; or

- (b) for New Modelled Trains, the Traction Electricity Modelled Default Rate shown in the Traction Electricity Modelled Consumption Rates List, taking into account any Regenerative Braking Discount applied in accordance with the Traction Electricity Rules;

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

UE_{igt} means the actual volume of usage (in electrified Vehicle Miles in relation to passenger electric multiple units or electrified kgm in relation to locomotive-hauled units and all freight traffic), if any, of trains operated by or on behalf of the Train Operator in train category i and New Modelled Trains operated by or on behalf of the Train Operator, in Geographic Area g , in tariff band j and in Relevant Year t , pursuant to this contract, provided that where train category i or a New Modelled Train 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

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:

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

where:

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

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

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 .

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:

$$E_{tmugAC} = \sum (CME_{m,j,t,AC} \bullet EF_{g,j,t}) \bullet \lambda_{AC,g}$$

where:

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

$CME_{m,j,t,AC}$ 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 ;

$EF_{g,j,t}$ 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

$\lambda_{AC,g}$ 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:

$$E_{tmugDC} = \sum (CME_{m,j,t,DC} \bullet EF_{g,j,t}) \bullet \lambda_{DC,g}$$

where:

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

$CME_{m,j,t,DC}$ 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 ;

$EF_{g,j,t}$ 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

λ_{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

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 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 end of the sixth Period shall cover Periods four, five and six; within seven days of the end of the tenth Period shall cover Periods seven, eight, nine and ten; and within seven days of the end 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 4.1.3 and 4.1.4 shall apply in respect of all such mileage.

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

4.2

- (a) If the Train Operator wishes to propose the introduction of On-Train Metering to measure traction electricity consumption for a vehicle or vehicles of a vehicle type that the Train Operator operates for the purposes of being invoiced by Network Rail for traction electricity, it shall notify Network Rail of any required changes to the contract in connection with that proposal.
- (b) Any notice under sub-paragraph 4.2(a) shall be accompanied by information and evidence in reasonable detail supporting the changes proposed and setting out the reasons for those changes, and Network Rail shall respond in writing within 56 days of service of any such notice.
- (c) Promptly following any response served by Network Rail under sub-paragraph 4.2(b), the parties shall endeavour to agree whether the contract should be amended in connection with that proposal and, if so, the amendments.
- (d) If the parties agree an amendment to the contract in connection with the proposal referred to in sub-paragraph 4.2(a), that amendment shall take effect only when it has been approved by ORR under section 22 of the Act. Accordingly, as soon as reasonably practicable after any such amendment is agreed, the parties shall ensure that ORR is furnished with such amendment and such information and evidence as it shall require to determine whether or not to approve the amendment.
- (e) Any agreed amendment to the contract in connection with the proposal referred to in sub-paragraph 4.2(a) which is approved by ORR under section 22 of the Act shall apply with effect from the date agreed by the parties.

- (f) If the parties fail to reach agreement within 90 days after service of a notice under sub-paragraph 4.2(a), or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, either party may notify ORR and request that ORR determines the matter. The parties shall, within such timescales as ORR may specify, furnish ORR with such information and evidence as ORR shall require to determine the matter. If a party fails to furnish such information and evidence within the specified timescale, ORR shall be entitled to determine the matter without that information and evidence and the party in default shall have no grounds for complaint in that respect.
- (g) Where ORR determines the matter pursuant to sub-paragraph 4.2(f), it may issue a notice to the parties setting out the amendments to be made to the contract and the date, which may be retrospective, from which they shall take effect.

5. Not used.

6. Capacity Charge and Capacity Charge Wash-up

6.1 In respect of the Relevant Year ending 31 March 2019, the terms K_t and KW_t respectively mean an amount in respect of the Capacity Charge and the Capacity Charge Wash-Up in Relevant Year t which shall be derived from the formulae that were contained in paragraph 6 of Part 2 of Schedule 7 of the version of this contract that was in force up until 31 March 2019. For subsequent Relevant Years, K_t and KW_t shall each have a value of zero.

6.2 In respect of the Relevant Year ending 31 March 2019, if KW_t is a positive sum then it shall be payable by the Train Operator. If KW_t is a negative sum or equal to zero then no sum shall be payable by the Train Operator or by Network Rail.

7. Not used.

8. Electrification Asset Usage Charge

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

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

where:

\sum means the summation across all route types;

EV_{tk} means an amount in respect of the Electrification Asset Usage Charge per electrified Vehicle Mile on route type k for Relevant Year t , expressed in pence per electrified Vehicle Mile and rounded to two decimal places, which is derived from the following formula:

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

where:

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

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

but so that in relation to the Relevant Year commencing on 1 April 2019, EV_{tk} shall have, in respect of each electrified Vehicle Mile on route type k , the value per electrified Vehicle Mile for the Electrification Asset Usage Charge set out in the Track Usage Price List, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year EV_{t-1k} shall have the same value; and

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

- (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 , it shall be deemed that all mileage, if any, of such train is electrified; or
- (ii) where the Bimodal Electric Multiple Unit or Bimodal Locomotive is a Metered Train m , in accordance with paragraph 4.1.5 above.

9. Bilateral supplements to the Open Access ICC Rates List, Traction Electricity Modelled Consumption Rates List and Track Usage Price List

9.1 Where the Train Operator intends to use New Specified Equipment on the Network, it shall where reasonably practicable inform Network Rail in writing of the date or likely date from which it intends to do so.

9.2 Where the Train Operator uses New Specified Equipment on the Network, the Train Operator shall pay Network Rail the relevant VUC Default Charge during the VUC Default Period.

9.2A Where the Train Operator uses a New Modelled Train on the Network, Network Rail shall apply the Traction Electricity Modelled Default Rate in order to calculate the Traction Electricity Charge for the purposes of paragraph 4.1.2 above, during the Traction Electricity Modelled Default Rate Period.

9.3 No supplement to the Traction Electricity Modelled Consumption Rates List, Track Usage Price List or Open Access ICC Rates List shall have effect unless it has been:

- (a) agreed between the parties and ORR has consented to it; or
- (b) determined by ORR.

9.4 Either the Train Operator or Network Rail shall be entitled to propose that:

- (a) the Track Usage Price List be supplemented as necessary to include a new vehicle type and corresponding rate;
- (b) the Open Access ICC Rates List be amended or supplemented as necessary to take account of any changes to the Services or to include rates in respect of new Services (and in this instance an amendment to the Open Access ICC Rates List shall be treated as a supplement for the purposes of this paragraph 9); or
- (c) the Traction Electricity Modelled Consumption Rates List be supplemented as necessary to include a rate in respect of a new train category.

9.5 Any proposal of a kind referred to in paragraph 9.4 shall be made by notice to the other party and shall be accompanied by a specification of the proposal in reasonable detail and the reasons for it. The parties shall thereafter seek to agree in good faith the necessary supplement to the list in question.

9.6 Either party may request from the other such information that it reasonably requires in connection with the proposal and the party from whom the information was requested shall use reasonable endeavours to provide this information promptly.

9.7 Where the parties agree to a supplement following a proposal under paragraph 9.4, they shall request ORR's consent to it and provide such information as ORR reasonably requires in order to decide whether to give its consent.

- 9.8 If the parties fail to reach agreement within 45 days of the date of the notice given under paragraph 9.5, at any point thereafter either party shall be entitled to refer the matter to ORR for determination.
- 9.9 Following a reference to ORR under paragraph 9.8, the parties shall, within such timescales as ORR may reasonably specify, furnish ORR with such information and evidence as ORR shall reasonably require to determine the matter. If a party fails to furnish such information and evidence within the specified timescale, ORR shall be entitled to determine the matter without that information and evidence and the party in default shall have no grounds for complaint in that respect.
- 9.10 ORR may:
- (a) consent to any supplement that is agreed by the parties and submitted to it under paragraph 9.7, or following consultation with the parties, determine that a different supplement should apply; or
 - (b) following a referral to ORR under paragraph 9.8, determine the supplement that should apply.
- 9.11 In the case of a supplement to the Traction Electricity Modelled Consumption Rates List or Open Access ICC Rates List, the supplement shall have effect from such date as ORR shall determine by notice to the parties, provided that:
- (a) in the case of a supplement to the Traction Electricity Modelled Consumption Rates List, such date shall not be a date falling prior to the start of the Relevant Year in which ORR consented to or determined the supplement; and
 - (b) in the case of a supplement to the Open Access ICC Rates List, such date shall not be a date falling prior to 1 April 2019.
- 9.12 In the case of a supplement to the Track Usage Price List, the supplement shall have retrospective effect from the first day of the VUC Default Period.
- 9.13 Following ORR's consent or determination under paragraph 9.10 Network Rail shall:
- (a) apply the supplement from the date in accordance with paragraph 9.11 or 9.12 above as applicable; and
 - (b) within 28 days of the date of ORR's consent or determination:
 - (i) issue any adjusting invoice or credit note to the Train Operator -
 - (A) in the case of a supplement to the Track Usage Price List this will reflect the difference between the amount paid by the Train Operator for the VUC Default Charge during the VUC Default Period and the amount that it would have paid during the VUC Default Period in respect of the Variable Usage Charge had the supplement been in place at the time the Train Operator first used the relevant railway vehicle on the Network;
 - (B) in the case of a supplement to the Traction Electricity Modelled Consumption Rates List, this will reflect the difference between: (i) the amount paid by the Train Operator in respect of any New Modelled Train to which the Traction Electricity Modelled Default Rate has been applied during the Traction Electricity Modelled Default Rate Reconciliation Period; and (ii) the amount that it would have paid during the Traction Electricity Modelled Default Rate Reconciliation Period in

respect of the Traction Electricity Charge had the supplement been in place at the start of that period;

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.

9.14 Any supplement to the Traction Electricity Modelled Consumption Rates List, Track Usage Price List or Open Access ICC Rates List which ORR has consented to or determined pursuant to a passenger track access contract previously held by the Train Operator shall also apply to this contract.

10. Payment of Track Charges and other sums due under the contract

10.1 *Payment of Track Charges and other sums due under the contract*

(a) Save where the contract provides otherwise, the Train Operator shall pay or procure the payment to Network Rail of:

- (i) the Variable Usage Charge;
- (ii) the Infrastructure Cost Charge;
- (iii) the Capacity Charge;
- (iv) the VUC Default Charge;
- (v) the Traction Electricity Charge;
- (vi) the Electrification Asset Usage Charge; and
- (vii) any other sums which have fallen due in accordance with any provision of this contract,

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

- (b) Not used.
- (c) Any invoice issued by Network Rail under paragraph 18.5 of the Traction Electricity Rules (relating to modelled and actual rates of electricity consumption) shall be payable by the Train Operator within 21 days of the relevant invoice date.

10.2 *Train Consist Data*

Network Rail shall calculate the Variable Charges payable by the Train Operator in respect of each Period using the Train Consist Data supplied by the Train Operator and, to the extent such Train Consist Data is not available to Network Rail, the Default Train Consist Data.

10.3 *Invoices and right to object to invoices*

- (a) Network Rail will notify the Train Operator on a weekly basis of the train movements for which Default Train Consist Data has been used to establish the Variable Charges payable by the Train Operator. At either party's request, the parties shall consult with a view to substituting Train Consist Data for Default Train Consist Data but such

consultation shall not delay the issue by Network Rail of the invoice for the Variable Charges in respect of the Period concerned.

- (b) For each Period, Network Rail shall be entitled to invoice the Train Operator for Variable Charges in respect of any and all train movements operated by the Train Operator during that Period based on either:
 - (i) Train Consist Data provided by the Train Operator in respect of any train movement at or prior to the time that such train movement is completed; or
 - (ii) Train Consist Data agreed by the parties under paragraph 10.3(a) in respect of any train movement; or
 - (iii) Train Consist Data provided by the Train Operator in respect of any train movement (other than any train movement where the Specified Equipment used in operating the relevant movement is loco hauled) by the end of the day on which such train movement has been completed,

or (to the extent that (i) or (ii) or (iii) above do not apply) Default Train Consist Data. Each such invoice will be payable in accordance with the provisions of paragraph 10.1.

- (c) Either party shall be entitled, at any time prior to the later of 2359 hours on the fourteenth day following the expiration of the relevant Period and 7 days following receipt by the Train Operator of the relevant invoice or credit note, to notify the other that it objects to any Train Consist Data (including, where applicable, the use of Default Train Consist Data) on which the whole or any part of the Variable Charges included in the relevant invoice or credit note are based and any such notice shall specify in reasonable detail what that party believes to be the Train Consist Data for the relevant train movement(s) ("**notice of objection**"). In the absence of any notice of objection being served within such time the Train Consist Data used in the relevant invoice or credit note shall be final and binding on the parties. The Train Operator shall supply data to Network Rail in the format:

Train ID	Start date & time	Train Slot origin	Train slot destination	Train Consist (actual): Specified Equipment used

- (d) The parties shall seek to agree the Train Consist Data specified in any notice of objection and any consequential financial adjustment required to the relevant invoice or credit note. If the parties are unable to agree such Train Consist Data within 14 days following receipt of a notice of objection, either party may refer the matter for resolution in accordance with the ADRR.
- (e) Within 14 days of any Train Consist Data being agreed or determined in accordance with paragraph 10.3(d), Network Rail shall, if any consequential or financial adjustment of the relevant invoice is required, issue a further invoice to, or (as the case may be) a credit note in favour of, the Train Operator in the amount of the relevant adjustment. The invoice or credit note shall be payable at the same time as the invoice for Variable Charges for the relevant Period or, if issued later than 21 days after the end of the relevant Period, within 7 days after the date of its issue.
- (f) The actual volume of usage used to calculate any supplementary amount payable under paragraph 18 of the Traction Electricity Rules shall be established on the basis of the Train Consist Data and the Default Train Consist Data applied in calculating the Variable Charges for each of the Periods in Relevant Year t as adjusted in accordance with paragraph 10.3(d) on or before 90 days after the end of Relevant Year t.

- (g) Where, as a result of any invoice or credit note issued pursuant to paragraph 10.3, any sum of money which has been paid shall become repayable or any sum of money which has been unpaid shall become payable the party to whom such sum shall be paid shall be paid or allowed interest at the Default Interest Rate on such sum from the date when it (if repayable) was paid or the date when such sum (if payable) ought to have been paid until the date of payment or repayment.

10.4 **Unrepresentative Train Consist Data**

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

10.5 **Disputed amounts repayment and interest rate**

- (a) Where a party wishes to contest any invoice issued to it under this Schedule 7 (including any invoice in respect of Track Charges) it shall, within 14 days of receipt of the invoice, notify the other party in writing of the amount which is in dispute but shall pay the full amount of the invoice, including the disputed amount, in accordance with the terms of the invoice.
- (b) Where a party has given notice under paragraph 10.5(a) that it disputes part of any invoiced amount:
 - (i) payment of such sum shall be without prejudice to the determination of whether such sum is properly due or not; and
 - (ii) if it is subsequently determined that the disputed sum, or part of it, was not properly due the payee shall repay the disputed sum, or relevant part, to the payer together with interest (to accrue daily and be compounded monthly) at the Default Interest Rate from the date of payment until the actual date of repayment.

Part 3

(Route level Efficiency Benefit Share Mechanism)

1. For the purposes of the calculation and payment of the Route-Level Efficiency Benefit Share for the Relevant Year ending 31 March 2019, Part 3 and Appendix 7A and Appendix 7B of Schedule 7 of the version of this contract that was in force up until 31 March 2019 shall continue to apply.

Part 3A

(Not used)

Part 4

(Not used)

Part 5

(Additional Charges)

(Not used)

Part 6

(Supplemental Provisions)

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

- (a) not used;
- (b) the rate of Variable Usage Charge, Infrastructure Cost Charge and any VUC Default Charge and the relevant number of Vehicle Miles or Train Miles applicable to vehicles for each service so charged;
- (c) the rate of Traction Electricity Charge and the number of Vehicle Miles applicable to vehicles for each service or Gross Tonne Miles applicable to units for each service so charged, for the purposes of calculating E_{tmo} in accordance with paragraph 4.1.2 of Part 2;
- (d) the amount of the Electrification Asset Usage Charge and the number of days covered by the invoice;
- (e) not used;
- (f) not used;
- (g) not used;
- (h) not used;
- (i) the amount of any sum $S1_{tw}$ and/or $S2_{tw}$ and/or any Charge Correction Amount payable as provided in paragraph 18 of the Traction Electricity Rules;
- (j) the amount of any sum K_i payable as provided in paragraph 6 of Part 2; and

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

Part 7

(Future Access Charges Reviews)

1. General

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

- (a) an access charges review such that amendments to this contract to give effect to the conclusions of such an access charges review come into operation on and from 1 April 2024 or such later date as may be specified in that review; and
- (b) not used.

2. Not used.

3. Interpretation

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

4. Interim treatment of future access charges reviews

4.1 *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.

4.2 *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 a 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 4.1(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 4.2(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 4.2(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 4.2(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 4.2(a) above (if not disputed) or 28 days of resolution or determination of any dispute in accordance with paragraph 4.2(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.

Appendix 7A

(Not used)

Appendix 7B

(Not used)

Appendix 7C

Default Train Consist Data

Train Service Code	Description of Journey	Default Train Consist Data

Appendix 7D

"Metered Trains M" for the purposes of paragraph 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 3 TO ANNEX 2

Schedule 7 (for the North Yorkshire Moors TAA and the WCRC Jacobite TAA)

Schedule 7
(Track Charges and Other Payments)

Part 1
(Interpretation)

1. **Definitions**

In Part 1 – Part 7 inclusive, unless the context otherwise requires:

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

"Actual Train Movements" means:

- (a) the dates on which trains ran;
- (b) the times at which trains ran; and
- (c) the stations between which trains ran;

"Capacity Charge" means a variable charge, calculated in accordance with paragraph 6 of Part 2;

"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;

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

"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_{2017} means the CPI published or determined with respect to the month of November 2017; and

CPI_{2018} means the CPI published or determined with respect to the month of November 2018.

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

"New Specified Equipment" means a type of railway vehicle that is not:

- (a) a steam locomotive, with or without a tender;
- (b) a Mk1 coach; or
- (c) a 25/3 diesel locomotive,

and is not included in the section of the Track Usage Price List entitled "North Yorkshire Moors Railway Enterprises PLC Variable Usage Charge rates";

"Period" means each consecutive period for 28 days during the term of this contract commencing on 0000 hours on 1 April in each year, provided that the length of the first and last such period in any year may be varied by up to 7 days on reasonable prior notice from Network Rail to the Train Operator;

"Planned Train Movements" means:

- (a) the dates on which trains are planned to run;
- (b) the times at which trains are planned to run; and
- (c) the stations between which trains are planned to run;

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

"Relevant Year" means a year commencing at 0000 hours on 1 April and ending at 2359 hours on the following 31 March;

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

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

"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 1 of Part 3;

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

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

"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 9.10 of Part 2 of Schedule 7 to this contract or a passenger track access contract previously held by the Train Operator;

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

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

"Variable Charges" means the Capacity Charge, the VUC Default Charge and the Variable Usage Charge;

"Variable Usage Charge" means a variable charge, calculated in accordance with paragraph 3.1 of Part 2;

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

"VUC Default Charge" means a variable charge calculated in accordance with paragraph 3.3 of Part 2;

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

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

until the date on which ORR consents to or determines a supplement to the Track Usage Price List under paragraph 9.10 of Part 2 in respect of that New Specified Equipment;

"VUC Default Rate" means, in respect of any New Specified Equipment used on the Network by the Train Operator:

- (a) for any diesel locomotive, the rate per Vehicle Mile for vehicle type "Diesel locomotive" as set out in the section of the Track Usage Price List entitled "North Yorkshire Moors Railway Enterprises PLC Variable Usage Charge diesel default rate"; or
- (b) in respect of any other vehicle, the corresponding passenger default rate for that type of vehicle set out in the section of the Track Usage Price List entitled "Passenger Variable Usage Charge default rates"; and

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

Part 2

(Track Charges)

1. Principal formula

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

$$T_t = V_t + K_t + D_t$$

where:

T_t means Track Charges in Relevant Year t ;

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

K_t means an amount in respect of the Capacity Charge in Relevant Year t which is calculated in accordance with paragraph 6; and

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

2. Not used

3. Variable Usage Charge

3.1 Variable Usage Charge

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

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

where:

V_{it} means an amount for a type of vehicle i for Relevant Year t , expressed in pence per Vehicle Mile and rounded to two decimal places, which is derived from the following formula:

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

where:

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

CPI_{t-2} means the CPI published or determined with respect to the month of November in Relevant Year $t-2$,

but so that in relation to the Relevant Year t commencing on 1 April 2019, V_{it} shall be:

- (a) for any steam locomotive and any tender, the corresponding variable usage charge rate per Vehicle Mile as set out in the section of the Track Usage Price List entitled "North Yorkshire Moors Railway Enterprises PLC Variable Usage Charge rates"; and
- (b) for any other vehicle type i , the corresponding variable usage charge rate per Vehicle Mile as set out in the section of the Track Usage Price List entitled "North Yorkshire Moors Railway Enterprises PLC Variable Usage Charge rates",

in each case multiplied by the Initial Indexation Factor, and in relation to the next following Relevant Year V_{it-1} shall have the same value;

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

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

3.2 **Not used**

3.3 **VUC Default Charge**

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

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

where:

D_{nt} means the VUC Default Rate for that New Specified Equipment for Relevant Year t , expressed in pence per Vehicle Mile and rounded to two decimal places, which is derived from the following formula:

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

where:

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

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

but so that in relation to the Relevant Year commencing on 1 April 2019, D_{nt} shall have, in respect of New Specified Equipment, the corresponding VUC Default Rate for that New Specified Equipment, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year D_{nt-1} shall have the same value;

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

\sum means the summation across all relevant New Specified Equipment.

4. **Not used.**

5. **Not used.**

6. **Capacity Charge**

6.1 In respect of the Relevant Year ending 31 March 2019, the term K_t means an amount in respect of the Capacity Charge in Relevant Year t which shall be derived from the formula that was contained in paragraph 6 of Part 2 of Schedule 7 of the version of this contract that was in force up until 31 March 2019. For subsequent Relevant Years, K_t shall have a value of zero.

6.2 Not used.

7. **Not used.**

8. **Not used.**

9. **Bilateral supplements to the Track Usage Price List**

9.1 Where the Train Operator intends to use New Specified Equipment on the Network, it shall where reasonably practicable inform Network Rail in writing of the date or likely date from which it intends to do so.

9.2 Where the Train Operator uses New Specified Equipment on the Network, the Train Operator shall pay Network Rail the relevant VUC Default Charge during the VUC Default Period.

9.3 No supplement to the 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.

9.4 Either the Train Operator or Network Rail shall be entitled to propose that the Track Usage Price List be supplemented as necessary to include a new vehicle type and corresponding rate.

9.5 Any proposal of a kind referred to in paragraph 9.4 shall be made by notice to the other party and shall be accompanied by a specification of the proposal in reasonable detail and the reasons for it. The parties shall thereafter seek to agree in good faith the necessary supplement to the list in question.

9.6 Either party may request from the other such information that it reasonably requires in connection with the proposal and the party from whom the information was requested shall use reasonable endeavours to provide this information promptly.

9.7 Where the parties agree to a supplement following a proposal under paragraph 9.4, they shall request ORR's consent to it and provide such information as ORR reasonably requires in order to decide whether to give its consent.

9.8 If the parties fail to reach agreement within 45 days of the date of the notice given under paragraph 9.5, at any point thereafter either party shall be entitled to refer the matter to ORR for determination.

9.9 Following a reference to ORR under paragraph 9.8, the parties shall, within such timescales as ORR may reasonably specify, furnish ORR with such information and evidence as ORR shall reasonably require to determine the matter. If a party fails to furnish such information and evidence within the specified timescale, ORR shall be entitled to determine the matter without that information and evidence and the party in default shall have no grounds for complaint in that respect.

9.10 ORR may:

- (a) consent to any supplement that is agreed by the parties and submitted to it under paragraph 9.7, or following consultation with the parties, determine that a different supplement should apply; or
 - (b) following a referral to ORR under paragraph 9.8, determine the supplement that should apply.
- 9.11 Not used.
- 9.12 In the case of a supplement to the Track Usage Price List, the supplement shall have retrospective effect from the first day of the VUC Default Period.
- 9.13 Following ORR's consent or determination under paragraph 9.10 Network Rail shall:
 - (a) apply the supplement from the date in accordance with paragraph 9.11 or 9.12 above as applicable; and
 - (b) within 28 days of the date of ORR's consent or determination:
 - (i) issue any adjusting invoice or credit note to the Train Operator. In the case of a supplement to the Track Usage Price List this will reflect the difference between the amount paid by the Train Operator for the VUC Default Charge during the VUC Default Period and the amount that it would have paid during the VUC Default Period in respect of the Variable Usage Charge had the supplement been in place at the time the Train Operator first used the relevant railway vehicle on the Network; and
 - (ii) publish on its website details of the supplement alongside the details of any other such supplements to which ORR has consented or determined pursuant to this or any other track access contract to which Network Rail is a party.
- 9.14 Any supplement to the Track Usage Price List which ORR has consented to or determined pursuant to a passenger track access contract previously held by the Train Operator shall also apply to this contract.

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

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

- (a) Save where the contract provides otherwise, the Train Operator shall pay or procure the payment to Network Rail of:
 - (i) the Variable Usage Charge;
 - (ii) not used;
 - (iii) the Capacity Charge;
 - (iv) the VUC Default Charge; and
 - (v) any other sums which have fallen due in accordance with any provision of this contract,

attributable to any Period as invoiced by Network Rail on or after expiry of each such Period within 21 days of the invoice date or 28 days after the end of the Period, whichever is later.
- (b) Not used.
- (c) Not used.

10.2 **Train Consist Data**

- (a) The Train Operator shall, 28 days before the start of each Period, provide to Network Rail details of its Planned Train Movements for that Period, including the Planned Train Consist Data for each train movement (the "Period Plan");
- (b) Network Rail shall, within 14 days of receiving the Period Plan, calculate the Variable Charge payable by the Train Operator in respect of the Period Plan (the "VTUCP") using the Train Consist Data supplied by the Train Operator and, to the extent such Train Consist Data is not available to Network Rail, the Default Train Consist Data;
- (c) The Train Operator shall pay the Variable Usage Charge in accordance with the provisions of paragraph 10.1 of this Schedule 7;
- (d) The Train Operator shall, within 7 days of the end of each Period, provide to Network Rail details of its Actual Train Movements for that Period, including the Train Consist Data for each train movement (the "Period Actual");
- (e) Network Rail shall, within 14 days of receiving the Period Actual, calculate the Variable Usage Charge payable by the Train Operator in respect of the Period Actual (the "VTUCA") using the Train Consist Data supplied by the Train Operator and, to the extent such Train Consist Data is not available to Network Rail, the Default Train Consist Data; and
- (f) Network Rail shall, each period, compare the VTUCP with the VTUCA for the same period and:
 - (i) if the VTUCP exceeds the VTUCA, shall credit the Train Operator with the difference between the VTUCP and the VTUCA on the next following invoice issued in accordance with paragraph 10.1 of this Schedule 7; or
 - (ii) if the VTUCA exceeds the VTUCP, shall debit the Train Operator with the difference between the VTUCA and the VTUCP on the next following invoice issued in accordance with paragraph 10.1 of this Schedule 7.

10.3 **Invoices and right to object to invoices**

- (a) For each Period, Network Rail shall be entitled to invoice the Train Operator for Variable Charges in respect of any and all train movements operated by the Train Operator during the following Period based on either:
 - (i) Train Consist Data provided by the Train Operator in respect of any train movement at or prior to the time that such train movement is completed; or
 - (ii) (to the extent that (i) above does not apply) Default Train Consist Data.

Each such invoice will be payable in accordance with the provisions of paragraph 10.1.

- (b) Either party shall be entitled, at any time prior to the later of 2359 hours on the fourteenth day following receipt by the Train Operator of the relevant invoice or credit note, to notify the other that it objects to any Train Consist Data (including, where applicable, the use of Default Train Consist Data) on which the whole or any part of the Variable Charges included in the relevant invoice or credit note are based and any such notice shall specify in reasonable detail what that party believes to be the Train Consist Data for the relevant train movement(s) ("**notice of objection**"). In the absence of any notice of objection being served within such time the Train Consist Data used in the relevant invoice or credit note shall be final and binding on the parties. The Train Operator shall supply data to Network Rail in the format:

Train ID	Start date & time	Train Slot origin	Train slot destination	Train Consist (actual): Specified Equipment used

- (c) The parties shall seek to agree the Train Consist Data specified in any notice of objection and any consequential financial adjustment required to the relevant invoice or credit note. If the parties are unable to agree such Train Consist Data within 14 days following receipt of a notice of objection, either party may refer the matter for resolution in accordance with the ADRR.
- (d) Within 14 days of any Train Consist Data being agreed or determined in accordance with paragraph 10.3(d), Network Rail shall, if any consequential or financial adjustment of the relevant invoice is required, issue a further invoice to, or (as the case may be) a credit note in favour of, the Train Operator in the amount of the relevant adjustment. The invoice or credit note shall be payable at the same time as the invoice for Variable Charges for the relevant Period or, if issued later than 21 days after the end of the relevant Period, within 7 days after the date of its issue.
- (e) Where, as a result of any invoice or credit note issued pursuant to paragraph 10.3, any sum of money which has been paid shall become repayable or any sum of money which has been unpaid shall become payable the party to whom such sum shall be paid shall be paid or allowed interest at the Default Interest Rate on such sum from the date when it (if repayable) was paid or the date when such sum (if payable) ought to have been paid until the date of payment or repayment.

10.4 ***Unrepresentative Train Consist Data***

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

10.5 ***Disputed amounts repayment and interest rate***

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

- (i) payment of such sum shall be without prejudice to the determination of whether such sum is properly due or not; and
- (ii) if it is subsequently determined that the disputed sum, or part of it, was not properly due the payee shall repay the disputed sum, or relevant part, to the payer together with interest (to accrue daily and be compounded monthly) at the Default Interest Rate from the date of payment until the actual date of repayment.

Part 3

(Route level Efficiency Benefit Share Mechanism)

1. For the purposes of the calculation and payment of the Route-Level Efficiency Benefit Share for the Relevant Year ending 31 March 2019, Part 3 and Appendix 7A and Appendix 7B of Schedule 7 of the version of this contract that was in force up until 31 March 2019 shall continue to apply.

Part 3A

(Not used)

Part 4

(Not used)

Part 5

(Additional Charges)

1 The Training Charge

In respect of Network Rail providing training in the use of signalling equipment to the Train Operator's nominated staff, the Train Operator shall pay to Network Rail a signalling training charge (the "**Training Charge**"). The Training Charge shall be £522 and shall be applied to each group of two staff nominated by the Train Operator for the said signalling training. The Training Charge shall apply in circumstances where Network Rail, acting reasonably, requires the Train Operator's staff to be trained in the use of signalling equipment. While the Training Charge shall not be index linked, the parties hereby agree that the charge may be increased by Network Rail by such amount as is necessary to cover any reasonable additional costs incurred by Network Rail such as, but not limited to, salary increases, outsourcing of training and changes in technology. The Training Charge shall not represent any additional costs related to refresher training and/or additional training required due to the overall level of competency of the Train Operator's staff members at the time of the training.

2 The Monitoring Charge

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

3 Additional Weekend Passenger Train Slots Costs

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

Part 6

(Supplemental Provisions)

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

- (a) not used;
- (b) the rate of Variable Usage Charge, Infrastructure Cost Charge and any VUC Default Charge and the relevant number of Vehicle Miles or Train Miles applicable to vehicles for each service so charged;
- (c) not used;
- (d) not used;
- (e) not used;
- (f) not used;
- (g) not used;
- (h) not used;
- (i) not used;
- (j) the amount of any sum K_t payable as provided in paragraph 6 of Part 2; and
- (k) in respect of any other sums which have fallen due in accordance with any provisions of this contract, separately the amount payable in respect of each head of charge.

Part 7

(Future Access Charges Reviews)

1. **General**

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

- (a) an access charges review such that amendments to this contract to give effect to the conclusions of such an access charges review come into operation on and from 1 April 2024 or such later date as may be specified in that review; and
- (b) not used.

2. **Not used.**

3. **Interpretation**

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

4. **Interim treatment of future access charges reviews**

4.1 ***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.

4.2 **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 a 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 4.1(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 4.2(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 4.2(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, with seven days of the meeting referred to in paragraph 4.2(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 4.2(a) above (if not disputed) or 28 days of resolution or determination if any dispute in accordance with paragraph 4.2(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.

Appendix 7A
(Not used)

Appendix 7B
(Not used)

Appendix 7C
Default Train Consist Data

Train Service Code	Description of Journey	Default Train Consist Data

APPENDIX 4 TO ANNEX 2

Schedule 7 (for the Supertram TAA)

Schedule 7

(Track Charges and Other Payments)

Part 1

(Interpretation)

1. Definitions

In Part 1 – Part 7 inclusive, unless the context otherwise requires:

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

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

"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;

"Capacity Charge" means a variable charge, calculated in accordance with paragraph 6 of Part 2;

"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;

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

"Electrification Asset Usage Charge" means a charge for electrification asset usage, calculated in accordance with paragraph 8 of Part 2;

"Geographic Area g" means, for the purposes of performing the calculations set out in paragraph 4 of Part 2 and paragraph 18 of the Traction Electricity Rules, the relevant geographic section of the Network, as set out in Appendix 5 of the Traction Electricity Rules;

"Gross Tonne Mile" in relation to a train, means a mile travelled on the Network, multiplied by each tonne of the aggregate weight of the train in question;

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

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

where:

IIF means the Initial Indexation Factor;

CPI_{2017} means the CPI published or determined with respect to the month of November 2017;
and

CPI_{2018} means the CPI published or determined with respect to the month of November 2018.

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

"kgtm" means 1000 Gross Tonne Miles;

"kWh" means kilowatt hours;

"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 7D 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 Modelled Train" means a type of train for which E_{tmo} is to be calculated for the purposes of paragraph 4.1.1 of Part 2 but in relation to which no train category i, and no modelled consumption rate, is shown in either the Passenger Traction Electricity Modelled Consumption Rates for CP6 or Generic Traction Electricity Modelled Consumption Rates for CP6 tables in the Traction Electricity Modelled Consumption Rates List, or the PFM Rates List;

"New Specified Equipment" means a type of railway vehicle not included in the section of the Track Usage Price List entitled "Passenger Variable Usage Charge rates";

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

"Period" has the meaning ascribed to it in Schedule 8;

"PFM Rate" has the meaning ascribed to it in paragraph 1 of the Traction Electricity Rules;

"PFM Rates List" has the meaning ascribed to it in paragraph 1 of the Traction Electricity Rules;

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

"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;

"Relevant Year" means a year commencing at 0000 hours on 1 April and ending at 2359 hours on the following 31 March;

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

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

"Route-Level Efficiency Benefit Share" has the meaning ascribed to it in paragraph 1 of Part 3;

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

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

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

"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 9.10 of Part 2 of Schedule 7 to this contract or a passenger track access contract previously held by the Train Operator;

"Traction Electricity Charge" means a variable charge for traction current calculated in accordance with paragraph 4 of Part 2;

"Traction Electricity Modelled Consumption Rates List" means the document entitled "Traction Electricity Modelled Consumption Rates List" published by Network Rail on or about 20 December 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 9.10 of Part 2 of Schedule 7 to this contract or a passenger track access contract previously held by the Train Operator;

"Traction Electricity Modelled Default Rate" means, in respect of any New Modelled Train used on the Network by the Train Operator, the corresponding default consumption rate for that type of vehicle set out in the section of the Traction Electricity Modelled Consumption Rates List entitled "Traction Electricity Modelled Default Rates for CP6";

"Traction Electricity Modelled Default Rate Period" means the period from the date on which the New Modelled Train is first used on the Network by the Train Operator until the date on which ORR consents to or determines a supplement to the Traction Electricity Modelled Consumption Rates List under paragraph 9.10 of Part 2 in respect of that New Modelled Train or the train in question has been added to Appendix 7D of this Schedule 7;

"Traction Electricity Modelled Default Rate Reconciliation Period" means the period from the later of:

- (a) the date on which the New Modelled Train is first used on the Network by the Train Operator; or
- (b) 1 April of the Relevant Year in which ORR consents to or determines a supplement to the Traction Electricity Modelled Consumption Rates List under paragraph 9.10 of Part 2 in respect of that New Modelled Train,

until the date on which ORR consents to or determines a supplement to the Traction Electricity Modelled Consumption Rates List under paragraph 9.10 of Part 2 in respect of that New Modelled Train;

"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 the DC System, or is 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 i" means train category i as identified in the relevant section of the Traction Electricity Modelled Consumption Rates List or PFM Rates List, being either:

- (a) where there is no PFM Rate for a particular passenger vehicle type operating on a particular Train Service Code:
 - (i) where there is a modelled consumption rate for a particular passenger vehicle type operating on a particular Train Service Code, the relevant category set out in the table entitled "Passenger Traction Electricity Modelled Consumption Rates for CP6"; or
 - (ii) where there is a generic consumption rate for a passenger vehicle type not referred to in paragraph (a)(i), the relevant category set out in the table entitled "Generic Traction Electricity Modelled Consumption Rates for CP6"; or
- (b) where there is a PFM Rate for a particular passenger vehicle type operating on a particular Train Service Code, the relevant category set out in the PFM Rates List;

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

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

"Train Service Code" has the meaning ascribed to it in paragraph 1.1 of Schedule 5;

"Variable Charges" means the Capacity Charge, the VUC Default Charge, the Electrification Asset Usage Charge, the Variable Usage Charge and the Traction Electricity Charge;

"Variable Usage Charge" means a variable charge, calculated in accordance with paragraph 3.1 of Part 2;

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

"VUC Default Charge" means a variable charge calculated in accordance with paragraph 3.3 of Part 2;

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

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

until the date on which ORR consents to or determines a supplement to the Track Usage Price List under paragraph 9.10 of Part 2 in respect of that New Specified Equipment;

"VUC Default Rate" means, in respect of any New Specified Equipment used on the Network by the Train Operator, the corresponding passenger default rate for that type of vehicle set out in the section of the Track Usage Price List entitled "Passenger Variable Usage Charge default rates"; and

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

Part 2

(Track Charges)

1. **Principal formula**

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

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

where:

T_t means Track Charges in Relevant Year t ;

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

K_t means an amount in respect of the Capacity Charge in Relevant Year t which is calculated in accordance with paragraph 6;

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

E_t means an amount in respect of the Traction Electricity Charge in Relevant Year t which is derived from the formula in paragraph 4; and

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

2. **Not used**

3. **Variable Usage Charge**

3.1 **Variable Usage Charge**

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

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

where:

V_{it} means an amount for a type of vehicle i for Relevant Year t , expressed in pence per Vehicle Mile and rounded to two decimal places, which is derived from the following formula:

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

where:

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

CPI_{t-2} means the CPI published or determined with respect to the month of November in Relevant Year $t-2$,

but so that in relation to the Relevant Year commencing on 1 April 2019, V_{it} shall have, in respect of vehicle type i , the corresponding variable usage charge rate per Vehicle Mile for that vehicle type i set out in the Track Usage Price List, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year V_{it-1} shall have the same value;

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

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

3.2 **Not used**

3.3 **VUC Default Charge**

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

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

where:

D_{nt} means the VUC Default Rate for that New Specified Equipment for Relevant Year t , expressed in pence per Vehicle Mile and rounded to two decimal places, which is derived from the following formula:

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

where:

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

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

but so that in relation to the Relevant Year commencing on 1 April 2019, D_{nt} shall have, in respect of New Specified Equipment, the corresponding VUC Default Rate for that New Specified Equipment, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year D_{nt-1} shall have the same value;

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

∑ means the summation across all relevant New Specified Equipment.

4. Traction Electricity Charge

4A For the purposes of paragraph 1, the term E_t means an amount in respect of the Traction Electricity Charge in Relevant Year t which is derived from the total costs and expenses to Network Rail of supplying or procuring the DC System supply of traction electricity to the Route in relevant year t, provided that:

- (a) in the event that, in any Relevant Year t, the Train Operator supplies or procures the supply of all traction current to the Route at no cost to Network Rail, E_t shall be nil;
- (b) in the event that, in any Relevant Year t, any other train operator(s) should operate services on the Route using traction electricity, the parties shall determine a fair and equitable apportionment between the Train Operator and such other train operator(s) of the total costs and expenses to Network Rail and/or the Train Operator (as the case may be) of supplying or procuring the supply of traction electricity to the Route and E_t shall reflect such fair and equitable apportionment and if the parties fail to determine such apportionment within 90 days of Network Rail notifying the Train Operator in writing that such other train operator(s) will be operating railway services on the Route using traction electricity, either party shall be entitled to refer the matter for determination in accordance with the Access Dispute Resolution Rules; and
- (c) in the event that any part of the Route shall be electrified to a 25kV AC System, for the purposes of paragraph 1, the term E_t means an amount in respect of the Traction Electricity Charge in Relevant Year t as calculated in accordance with paragraph 4.1 for that part of the Route plus an amount for any part of the Route not electrified to a 25kV AC System calculated in accordance with paragraph 4.1.

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

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

where:

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

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

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

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

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

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

Calculation of modelled consumption (including using PFM Rates)

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

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

where:

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

E_{tmog} is derived from the following formula:

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

where:

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

C_i means, as appropriate:

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

for train category i shown in the Traction Electricity Modelled Consumption Rates List, taking into account any Regenerative Braking Discount applied in accordance with the Traction Electricity Rules or, if a PFM Rate applies in accordance with the Traction Electricity Rules, the PFM Rates List; or
- (b) for New Modelled Trains, the Traction Electricity Modelled Default Rate shown in the Traction Electricity Modelled Consumption Rates List, taking into account any Regenerative Braking Discount applied in accordance with the Traction Electricity Rules;

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

UE_{igt} means the actual volume of usage (in electrified Vehicle Miles in relation to passenger electric multiple units or electrified kgm in relation to locomotive-hauled units and all freight traffic), if any, of trains operated by or on behalf of the Train Operator in train category i and New Modelled Trains operated by or on behalf of the Train Operator, in Geographic Area g, in tariff band j and in Relevant Year t, pursuant to this contract, provided that where train category i or a New Modelled Train 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

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

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

where:

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

E_{tmeg} is derived from the following formula:

$$E_{tmeg} = \Sigma \left((CME_{mgjt} \bullet EF_{gjt}) - (RGB_{mgjt} \bullet EF_{gjt}) \right)$$

where:

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

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

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.

4.1.4

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

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

where:

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

E_{tmugAC} is derived from the following formula:

$$E_{tmugAC} = \Sigma (CME_{mgjtAC} \bullet EF_{gjt}) \bullet \lambda_{ACg}$$

where:

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

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

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

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

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

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

where:

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

E_{tmugDC} is derived from the following formula:

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

where:

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

CME_{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

λ_{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

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 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 end of the sixth Period shall cover Periods four, five and six; within seven days of the end of the tenth Period shall cover Periods seven, eight, nine and ten; and within seven days of the end 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 4.1.3 and 4.1.4 shall apply in respect of all such mileage.

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

4.2

- (a) If the Train Operator wishes to propose the introduction of On-Train Metering to measure traction electricity consumption for a vehicle or vehicles of a vehicle type that the Train Operator operates for the purposes of being invoiced by Network Rail for traction electricity, it shall notify Network Rail of any required changes to the contract in connection with that proposal.
- (b) Any notice under sub-paragraph 4.2(a) shall be accompanied by information and evidence in reasonable detail supporting the changes proposed and setting out the reasons for those changes, and Network Rail shall respond in writing within 56 days of service of any such notice.
- (c) Promptly following any response served by Network Rail under sub-paragraph 4.2(b), the parties shall endeavour to agree whether the contract should be amended in connection with that proposal and, if so, the amendments.
- (d) If the parties agree an amendment to the contract in connection with the proposal referred to in sub-paragraph 4.2(a), that amendment shall take effect only when it has been approved by ORR under section 22 of the Act. Accordingly, as soon as reasonably practicable after any such amendment is agreed, the parties shall ensure that ORR is furnished with such amendment and such information and evidence as it shall require to determine whether or not to approve the amendment.
- (e) Any agreed amendment to the contract in connection with the proposal referred to in sub-paragraph 4.2(a) which is approved by ORR under section 22 of the Act shall apply with effect from the date agreed by the parties.
- (f) If the parties fail to reach agreement within 90 days after service of a notice under sub-paragraph 4.2(a), or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, either party may notify ORR and request that ORR determines the matter. The parties shall, within such timescales as ORR may specify, furnish ORR with such information and evidence as ORR shall require to determine the matter. If a party fails to furnish such information and evidence within the specified timescale, ORR shall be entitled to determine the matter without that information and evidence and the party in default shall have no grounds for complaint in that respect.
- (g) Where ORR determines the matter pursuant to sub-paragraph 4.2(f), it may issue a notice to the parties setting out the amendments to be made to the contract and the date, which may be retrospective, from which they shall take effect.

5. Not used.

6. Capacity Charge

6.1 In respect of the Relevant Year ending 31 March 2019, the term K_t means an amount in respect of the Capacity Charge in Relevant Year t which shall be derived from the formula that was contained in paragraph 6 of Part 2 of Schedule 7 of the version of this contract that was in force up until 31 March 2019. For subsequent Relevant Years, K_t shall have a value of zero.

6.2 Not used.

7. **Not used.**

8. **Electrification Asset Usage Charge**

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

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

where:

\sum means the summation across all route types;

EV_{tk} means an amount in respect of the Electrification Asset Usage Charge per electrified Vehicle Mile on route type k for Relevant Year t, expressed in pence per electrified Vehicle Mile and rounded to two decimal places, which is derived from the following formula:

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

where:

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

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

but so that in relation to the Relevant Year commencing on 1 April 2019, EV_{tk} shall have, in respect of each electrified Vehicle Mile on route type k, the value per electrified Vehicle Mile for the Electrification Asset Usage Charge set out in the Track Usage Price List, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year EV_{t-1k} shall have the same value; and

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

- (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, it shall be deemed that all mileage, if any, of such train is electrified; or
- (ii) where the Bimodal Electric Multiple Unit or Bimodal Locomotive is a Metered Train m, in accordance with paragraph 4.1.5 above.

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

9.1 Where the Train Operator intends to use New Specified Equipment on the Network, it shall where reasonably practicable inform Network Rail in writing of the date or likely date from which it intends to do so.

9.2 Where the Train Operator uses New Specified Equipment on the Network, the Train Operator shall pay Network Rail the relevant VUC Default Charge during the VUC Default Period.

9.2A Where the Train Operator uses a New Modelled Train on the Network, Network Rail shall apply the Traction Electricity Modelled Default Rate in order to calculate the Traction Electricity Charge for the purposes of paragraph 4.1.2 above, during the Traction Electricity Modelled Default Rate Period.

- 9.3 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.
- 9.4 Either the Train Operator or Network Rail shall be entitled to propose that:
- (a) the Track Usage Price List be supplemented as necessary to include a new vehicle type and corresponding rate; or
 - (b) the Traction Electricity Modelled Consumption Rates List be supplemented as necessary to include a rate in respect of a new train category.
- 9.5 Any proposal of a kind referred to in paragraph 9.4 shall be made by notice to the other party and shall be accompanied by a specification of the proposal in reasonable detail and the reasons for it. The parties shall thereafter seek to agree in good faith the necessary supplement to the list in question.
- 9.6 Either party may request from the other such information that it reasonably requires in connection with the proposal and the party from whom the information was requested shall use reasonable endeavours to provide this information promptly.
- 9.7 Where the parties agree to a supplement following a proposal under paragraph 9.4, they shall request ORR's consent to it and provide such information as ORR reasonably requires in order to decide whether to give its consent.
- 9.8 If the parties fail to reach agreement within 45 days of the date of the notice given under paragraph 9.5, at any point thereafter either party shall be entitled to refer the matter to ORR for determination.
- 9.9 Following a reference to ORR under paragraph 9.8, the parties shall, within such timescales as ORR may reasonably specify, furnish ORR with such information and evidence as ORR shall reasonably require to determine the matter. If a party fails to furnish such information and evidence within the specified timescale, ORR shall be entitled to determine the matter without that information and evidence and the party in default shall have no grounds for complaint in that respect.
- 9.10 ORR may:
- (a) consent to any supplement that is agreed by the parties and submitted to it under paragraph 9.7, or following consultation with the parties, determine that a different supplement should apply; or
 - (b) following a referral to ORR under paragraph 9.8, determine the supplement that should apply.
- 9.11 In the case of a supplement to the Traction Electricity Modelled Consumption Rates List, 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.
- 9.12 In the case of a supplement to the Track Usage Price List, the supplement shall have retrospective effect from the first day of the VUC Default Period.
- 9.13 Following ORR's consent or determination under paragraph 9.10 Network Rail shall:

- (a) apply the supplement from the date in accordance with paragraph 9.11 or 9.12 above as applicable; and
 - (b) within 28 days of the date of ORR's consent or determination:
 - (i) issue any adjusting invoice or credit note to the Train Operator -
 - (A) in the case of a supplement to the Track Usage Price List this will reflect the difference between the amount paid by the Train Operator for the VUC Default Charge during the VUC Default Period and the amount that it would have paid during the VUC Default Period in respect of the Variable Usage Charge had the supplement been in place at the time the Train Operator first used the relevant railway vehicle on the Network;
 - (B) in the case of a supplement to the Traction Electricity Modelled Consumption Rates List, this will reflect the difference between: (i) the new amount paid by the Train Operator in respect of any New Modelled Train to which the Traction Electricity Modelled Default Rate has been applied during the Traction Electricity Modelled Default Rate Reconciliation Period; and (ii) the amount that it would have paid during the Traction Electricity Modelled Default Rate Reconciliation Period in respect of the Traction Electricity Charge had the supplement been in place at the start of that period;
- 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.

9.14 Any supplement to the Traction Electricity Modelled Consumption Rates List or Track Usage Price List which ORR has consented to or determined pursuant to a passenger track access contract previously held by the Train Operator shall also apply to this contract.

10. Payment of Track Charges and other sums due under the contract

10.1 *Payment of Track Charges and other sums due under the contract*

- (a) Save where the contract provides otherwise, the Train Operator shall pay or procure the payment to Network Rail of:
 - (i) the Variable Usage Charge;
 - (ii) not used;
 - (iii) the Capacity Charge;
 - (iv) the VUC Default Charge;
 - (v) the Traction Electricity Charge;
 - (vi) the Electrification Asset Usage Charge; and
 - (vii) any other sums which have fallen due in accordance with any provision of this contract,

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

- (b) Not used.
- (c) Any invoice issued by Network Rail under paragraph 18.5 of the Traction Electricity Rules (relating to modelled and actual rates of electricity consumption) shall be payable by the Train Operator within 21 days of the relevant invoice date.

10.2 Train Consist Data

Network Rail shall calculate the Variable Charges payable by the Train Operator in respect of each Period using the Train Consist Data supplied by the Train Operator and, to the extent such Train Consist Data is not available to Network Rail, the Default Train Consist Data.

10.3 Invoices and right to object to invoices

- (a) Network Rail will notify the Train Operator on a weekly basis of the train movements for which Default Train Consist Data has been used to establish the Variable Charges payable by the Train Operator. At either party's request, the parties shall consult with a view to substituting Train Consist Data for Default Train Consist Data but such consultation shall not delay the issue by Network Rail of the invoice for the Variable Charges in respect of the Period concerned.
- (b) For each Period, Network Rail shall be entitled to invoice the Train Operator for Variable Charges in respect of any and all train movements operated by the Train Operator during that Period based on either:
 - (i) Train Consist Data provided by the Train Operator in respect of any train movement at or prior to the time that such train movement is completed; or
 - (ii) Train Consist Data agreed by the parties under paragraph 10.3(a) in respect of any train movement; or
 - (iii) Train Consist Data provided by the Train Operator in respect of any train movement (other than any train movement where the Specified Equipment used in operating the relevant movement is loco hauled) by the end of the day on which such train movement has been completed,

or (to the extent that (i) or (ii) or (iii) above do not apply) Default Train Consist Data. Each such invoice will be payable in accordance with the provisions of paragraph 10.1.

- (c) Either party shall be entitled, at any time prior to the later of 2359 hours on the fourteenth day following the expiration of the relevant Period and 7 days following receipt by the Train Operator of the relevant invoice or credit note, to notify the other that it objects to any Train Consist Data (including, where applicable, the use of Default Train Consist Data) on which the whole or any part of the Variable Charges included in the relevant invoice or credit note are based and any such notice shall specify in reasonable detail what that party believes to be the Train Consist Data for the relevant train movement(s) ("**notice of objection**"). In the absence of any notice of objection being served within such time the Train Consist Data used in the relevant invoice or credit note shall be final and binding on the parties. The Train Operator shall supply data to Network Rail in the format:

Train ID	Start date & time	Train Slot origin	Train slot destination	Train Consist (actual): Specified Equipment used

- (d) The parties shall seek to agree the Train Consist Data specified in any notice of objection and any consequential financial adjustment required to the relevant invoice or credit note. If the parties are unable to agree such Train Consist Data within 14 days following receipt of a notice of objection, either party may refer the matter for resolution in accordance with the ADRR.
- (e) Within 14 days of any Train Consist Data being agreed or determined in accordance with paragraph 10.3(d), Network Rail shall, if any consequential or financial adjustment of the relevant invoice is required, issue a further invoice to, or (as the case may be) a credit note in favour of, the Train Operator in the amount of the relevant adjustment. The invoice or credit note shall be payable at the same time as the invoice for Variable Charges for the relevant Period or, if issued later than 21 days after the end of the relevant Period, within 7 days after the date of its issue.
- (f) The actual volume of usage used to calculate any supplementary amount payable under paragraph 18 of the Traction Electricity Rules shall be established on the basis of the Train Consist Data and the Default Train Consist Data applied in calculating the Variable Charges for each of the Periods in Relevant Year t as adjusted in accordance with paragraph 10.3(d) on or before 90 days after the end of Relevant Year t.
- (g) Where, as a result of any invoice or credit note issued pursuant to paragraph 10.3, any sum of money which has been paid shall become repayable or any sum of money which has been unpaid shall become payable the party to whom such sum shall be paid shall be paid or allowed interest at the Default Interest Rate on such sum from the date when it (if repayable) was paid or the date when such sum (if payable) ought to have been paid until the date of payment or repayment.

10.4 ***Unrepresentative Train Consist Data***

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

10.5 ***Disputed amounts repayment and interest rate***

- (a) Where a party wishes to contest any invoice issued to it under this Schedule 7 (including any invoice in respect of Track Charges) it shall, within 14 days of receipt of the invoice, notify the other party in writing of the amount which is in dispute but shall pay the full amount of the invoice, including the disputed amount, in accordance with the terms of the invoice.
- (b) Where a party has given notice under paragraph 10.5(a) that it disputes part of any invoiced amount:
 - (i) payment of such sum shall be without prejudice to the determination of whether such sum is properly due or not; and
 - (ii) if it is subsequently determined that the disputed sum, or part of it, was not properly due the payee shall repay the disputed sum, or relevant part, to the payer together with interest (to accrue daily and be compounded monthly) at the Default Interest Rate from the date of payment until the actual date of repayment.

Part 3

(Route level Efficiency Benefit Share Mechanism)

1. For the purposes of the calculation and payment of the Route-Level Efficiency Benefit Share for the Relevant Year ending 31 March 2019, Part 3 and Appendix 7A and Appendix 7B of Schedule 7 of the version of this contract that was in force up until 31 March 2019 shall continue to apply.

Part 3A

(Not used)

Part 4

(Not used)

Part 5

(Additional Charges)

1 Additional Boxing Day Passenger Train Slots

Such costs in respect of those additional Passenger Train Slots provided for in paragraph 2.9 to Schedule 5 incurred by Network Rail for the purpose of enabling the Train Operator to operate those additional Passenger Train Slots on Boxing Day, for example but not limited to, all costs relating to the opening of signal boxes. Such costs shall be in addition to any other amount payable by the Train Operator to Network Rail under the contract. All provisions of the contract relating to invoicing and payment of Track Charges shall apply to the payment of Track Charges in respect of the additional Passenger Train Slots.

Part 6

(Supplemental Provisions)

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

- (a) not used;
- (b) the rate of Variable Usage Charge, Infrastructure Cost Charge and any VUC Default Charge and the relevant number of Vehicle Miles or Train Miles applicable to vehicles for each service so charged;
- (c) the rate of Traction Electricity Charge and the number of Vehicle Miles applicable to vehicles for each service or Gross Tonne Miles applicable to units for each service so charged, for the purposes of calculating E_{tmo} in accordance with paragraph 4.1.2 of Part 2;
- (d) the amount of the Electrification Asset Usage Charge and the number of days covered by the invoice;
- (e) not used;
- (f) not used;
- (g) not used;
- (h) not used;
- (i) the amount of any sum S_{1tw} and/or S_{2tw} and/or any Charge Correction Amount payable as provided in paragraph 18 of the Traction Electricity Rules;
- (j) the amount of any sum K_i payable as provided in paragraph 6 of Part 2; and
- (k) in respect of any other sums which have fallen due in accordance with any provisions of this contract, separately the amount payable in respect of each head of charge.

Part 7

(Future Access Charges Reviews)

1. **General**

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

- (a) an access charges review such that amendments to this contract to give effect to the conclusions of such an access charges review come into operation on and from 1 April 2024 or such later date as may be specified in that review; and
- (b) not used.

2. **Not used.**

3. **Interpretation**

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

4. **Interim treatment of future access charges reviews**

4.1 ***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.

4.2 **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 a 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 4.1(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 4.2(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 4.2(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 4.2(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 4.2(a) above (if not disputed) or 28 days of resolution or determination of any dispute in accordance with paragraph 4.2(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.

Appendix 7A

(Not used)

Appendix 7B

(Not used)

Appendix 7C

Default Train Consist Data

Train Service Code	Description of Journey	Default Train Consist Data

Appendix 7D

"Metered Trains M" for the purposes of paragraph 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 5 TO ANNEX 2

Schedule 7 (for the Eurostar TAA)

Schedule 7

(Track Charges and Other Payments)

Part 1

(Interpretation)

1. Definitions

In Part 1 – Part 7 inclusive, unless the context otherwise requires:

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

"Capacity Charge" means a variable charge, calculated in accordance with paragraph 6 of Part 2;

"Capacity Charge Wash-up" means the charge calculated in accordance with paragraph 6.2;

"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;

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

"Electrification Asset Usage Charge" means a charge for electrification asset usage, calculated in accordance with paragraph 8 of Part 2;

"Infrastructure Cost Charge" or **"ICC"** means the charge calculated in accordance with paragraph 2 of Part 2;

"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;

CPI₂₀₁₇ means the CPI published or determined with respect to the month of November 2017; and

CPI₂₀₁₈ means the CPI published or determined with respect to the month of November 2018.

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

"New Specified Equipment" means a type of railway vehicle not included in the section of the Track Usage Price List entitled "Passenger Variable Usage Charge rates";

"Open Access ICC Rates List" means the document entitled "Open Access ICC Rates 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 9.10 of Part 2 of Schedule 7 to this contract or a passenger track access contract previously held by the Train Operator;

"Period" has the meaning ascribed to it in Schedule 8;

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

"Relevant Year" means a year commencing at 0000 hours on 1 April and ending at 2359 hours on the following 31 March;

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

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

"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 1 of Part 3;

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

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

"Service Coded Group" means any Service or collection of Services operating under a service code specified in the Open Access ICC Rates List, and any Ancillary Movements relating to such Services;

"Track Usage Price List" means the document entitled "Track Usage Price List" published by Network Rail on or about 20 December 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 9.10 of Part 2 of Schedule 7 to this contract or a passenger track access contract previously held by the Train Operator;

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

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

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

"Variable Usage Charge" means a variable charge, calculated in accordance with paragraph 3.1 of Part 2;

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

"VUC Default Charge" means a variable charge calculated in accordance with paragraph 3.3 of Part 2;

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

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

until the date on which ORR consents to or determines a supplement to the Track Usage Price List under paragraph 9.10 of Part 2 in respect of that New Specified Equipment;

"VUC Default Rate" means, in respect of any New Specified Equipment used on the Network by the Train Operator, the corresponding passenger default rate for that type of vehicle set out in the section of the Track Usage Price List entitled "Passenger Variable Usage Charge default rates"; and

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

Part 2

(Track Charges)

1. Principal formula

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

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

where:

T_t means Track Charges in Relevant Year t ;

F_t means an amount in respect of the ICC in Relevant Year t which is calculated in accordance with paragraph 2;

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

K_t means an amount in respect of the Capacity Charge in Relevant Year t which is calculated in accordance with paragraph 6;

KW_t means an amount, if any, in respect of the Capacity Charge Wash-up in Relevant Year t which shall be calculated in accordance with paragraph 6;

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

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

2. **Infrastructure Cost Charge**

For the purposes of paragraph 1, the term F_t means an amount in respect of the ICC in Relevant Year t which shall be calculated in accordance with the following formula:

$$F_t = \sum R_{ti} \times TM_{ti}$$

where:

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

R_{ti} means the rate per Service Coded Group i in respect of Relevant Year t as shown in the Open Access ICC Rates List, expressed in pounds sterling per Train Mile and rounded to four decimal places, and indexed as follows:

- (a) in relation to the Relevant Year t commencing on 1 April 2019, R_{ti} shall have the value for the rate per Service Coded Group i shown for the Train Operator in the Open Access ICC Rates List, multiplied by the Initial Indexation Factor; and
- (b) in relation to any Relevant Year t commencing on or after 1 April 2020, R_{ti} shall have the value for the rate per Service Coded Group i shown for the Train Operator in the Open Access ICC Rates List, multiplied by the phased-in charges indexation adjustment derived from the following formula:

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

where:

$PCIA_t$ means the phased-in charges indexation adjustment in respect of Relevant Year t ;

CPI_{t-1} means the CPI published or determined with respect to November in Relevant Year $t-1$; and

CPI_{2018} means the CPI published or determined with respect to November 2018,

TM_{ti} means Train Miles run by Services or Ancillary Movements in Service Coded Group i in the Relevant Year t .

3. **Variable Usage Charge**

3.1 **Variable Usage Charge**

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

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

where:

V_{it} means an amount for a type of vehicle i for Relevant Year t , expressed in pence per Vehicle Mile and rounded to two decimal places, which is derived from the following formula:

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

where:

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

CPI_{t-2} means the CPI published or determined with respect to the month of November in Relevant Year t-2,

but so that in relation to the Relevant Year commencing on 1 April 2019, V_{it} shall have, in respect of vehicle type i, the corresponding variable usage charge rate per Vehicle Mile for that vehicle type i set out in the Track Usage Price List; multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year V_{it-1} shall have the same value;

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

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

3.2 **Not used**

3.3 **VUC Default Charge**

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

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

where:

D_{nt} means the VUC Default Rate for that New Specified Equipment for Relevant Year t, expressed in pence per Vehicle Mile and rounded to two decimal places, which is derived from the following formula:

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

where:

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

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

but so that in relation to the Relevant Year commencing on 1 April 2019, D_{nt} shall have, in respect of New Specified Equipment, the corresponding VUC Default Rate for that New Specified Equipment, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year D_{nt-1} shall have the same value;

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

Σ means the summation across all relevant New Specified Equipment.

4. **Not used.**

5. **Not used.**

6. Capacity Charge and Capacity Charge Wash-up

6.1 In respect of the Relevant Year ending 31 March 2019, the terms K_t and KW_t respectively mean an amount in respect of the Capacity Charge and the Capacity Charge Wash-Up in Relevant Year t which shall be derived from the formulae that were contained in paragraph 6 of Part 2 of Schedule 7 of the version of this contract that was in force up until 31 March 2019. For subsequent Relevant Years, K_t and KW_t shall each have a value of zero.

6.2 In respect of the Relevant Year ending 31 March 2019, if KW_t is a positive sum then it shall be payable by the Train Operator. If KW_t is a negative sum or equal to zero then no sum shall be payable by the Train Operator or by Network Rail.

7. Not used.

8. Electrification Asset Usage Charge

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

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

where:

\sum means the summation across all route types;

EV_{tk} means an amount in respect of the Electrification Asset Usage Charge per electrified Vehicle Mile on route type k for Relevant Year t , expressed in pence per electrified Vehicle Mile and rounded to two decimal places, which is derived from the following formula:

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

where:

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

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

but so that in relation to the Relevant Year commencing on 1 April 2019, EV_{tk} shall have, in respect of each electrified Vehicle Mile on route type k , the value per electrified Vehicle Mile for the Electrification Asset Usage Charge set out in the Track Usage Price List, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year EV_{t-1k} shall have the same value; and

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

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

9. Bilateral supplements to the Open Access ICC Rates List and Track Usage Price List

- 9.1 Where the Train Operator intends to use New Specified Equipment on the Network, it shall where reasonably practicable inform Network Rail in writing of the date or likely date from which it intends to do so.
- 9.2 Where the Train Operator uses New Specified Equipment on the Network, the Train Operator shall pay Network Rail the relevant VUC Default Charge during the VUC Default Period.
- 9.3 No supplement to the Track Usage Price List or Open Access ICC Rates List shall have effect unless it has been:
- (a) agreed between the parties and ORR has consented to it; or
 - (b) determined by ORR.
- 9.4 Either the Train Operator or Network Rail shall be entitled to propose that:
- (a) the Track Usage Price List be supplemented as necessary to include a new vehicle type and corresponding rate; or
 - (b) the Open Access ICC Rates List be supplemented as necessary to take account of any changes to the Services or to include rates in respect of new Services (and in this instance an amendment to the Open Access ICC Rates List shall be treated as a supplement for the purposes of this paragraph 9).
- 9.5 Any proposal of a kind referred to in paragraph 9.4 shall be made by notice to the other party and shall be accompanied by a specification of the proposal in reasonable detail and the reasons for it. The parties shall thereafter seek to agree in good faith the necessary supplement to the list in question.
- 9.6 Either party may request from the other such information that it reasonably requires in connection with the proposal and the party from whom the information was requested shall use reasonable endeavours to provide this information promptly.
- 9.7 Where the parties agree to a supplement following a proposal under paragraph 9.4, they shall request ORR's consent to it and provide such information as ORR reasonably requires in order to decide whether to give its consent.
- 9.8 If the parties fail to reach agreement within 45 days of the date of the notice given under paragraph 9.5, at any point thereafter either party shall be entitled to refer the matter to ORR for determination.
- 9.9 Following a reference to ORR under paragraph 9.8, the parties shall, within such timescales as ORR may reasonably specify, furnish ORR with such information and evidence as ORR shall reasonably require to determine the matter. If a party fails to furnish such information and evidence within the specified timescale, ORR shall be entitled to determine the matter without that information and evidence and the party in default shall have no grounds for complaint in that respect.
- 9.10 ORR may:
- (a) consent to any supplement that is agreed by the parties and submitted to it under paragraph 9.7, or following consultation with the parties, determine that a different supplement should apply; or
 - (b) following a referral to ORR under paragraph 9.8, determine the supplement that should apply.

- 9.11 In the case of a supplement to the Open Access ICC 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 1 April 2019.
- 9.12 In the case of a supplement to the Track Usage Price List, the supplement shall have retrospective effect from the first day of the VUC Default Period.
- 9.13 Following ORR's consent or determination under paragraph 9.10 Network Rail shall:
- (a) apply the supplement from the date in accordance with paragraph 9.11 or 9.12 above as applicable; and
 - (b) within 28 days of the date of ORR's consent or determination:
 - (i) issue any adjusting invoice or credit note to the Train Operator. In the case of a supplement to the Track Usage Price List this will reflect the difference between the amount paid by the Train Operator for the VUC Default Charge during the VUC Default Period and the amount that it would have paid during the VUC Default Period in respect of the Variable Usage Charge had the supplement been in place at the time the Train Operator first used the relevant railway vehicle on the Network; and
 - (ii) publish on its website details of the supplement alongside the details of any other such supplements to which ORR has consented or determined pursuant to this or any other track access contract to which Network Rail is a party.
- 9.14 Any supplement to the Track Usage Price List or Open Access ICC Rates List which ORR has consented to or determined pursuant to a passenger track access contract previously held by the Train Operator shall also apply to this contract.

10. **Payment of Track Charges and other sums due under the contract**

10.1 ***Payment of Track Charges and other sums due under the contract***

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

attributable to any Period as invoiced by Network Rail on or after expiry of each such Period within 21 days of the invoice date or 28 days after the end of the Period, whichever is later.
- (b) Not used.
- (c) Not used.

10.2 **Train Consist Data**

Network Rail shall calculate the Variable Charges payable by the Train Operator in respect of each Period using the Train Consist Data supplied by the Train Operator and, to the extent such Train Consist Data is not available to Network Rail, the Default Train Consist Data.

10.3 **Invoices and right to object to invoices**

- (a) Network Rail will notify the Train Operator on a weekly basis of the train movements for which Default Train Consist Data has been used to establish the Variable Charges payable by the Train Operator. At either party's request, the parties shall consult with a view to substituting Train Consist Data for Default Train Consist Data but such consultation shall not delay the issue by Network Rail of the invoice for the Variable Charges in respect of the Period concerned.
- (b) For each Period, Network Rail shall be entitled to invoice the Train Operator for Variable Charges in respect of any and all train movements operated by the Train Operator during that Period based on either:
 - (i) Train Consist Data provided by the Train Operator in respect of any train movement at or prior to the time that such train movement is completed; or
 - (ii) Train Consist Data agreed by the parties under paragraph 10.3(a) in respect of any train movement; or
 - (iii) Train Consist Data provided by the Train Operator in respect of any train movement (other than any train movement where the Specified Equipment used in operating the relevant movement is loco hauled) by the end of the day on which such train movement has been completed,

or (to the extent that (i) or (ii) or (iii) above do not apply) Default Train Consist Data. Each such invoice will be payable in accordance with the provisions of paragraph 10.1.

- (c) Either party shall be entitled, at any time prior to the later of 2359 hours on the fourteenth day following the expiration of the relevant Period and 7 days following receipt by the Train Operator of the relevant invoice or credit note, to notify the other that it objects to any Train Consist Data (including, where applicable, the use of Default Train Consist Data) on which the whole or any part of the Variable Charges included in the relevant invoice or credit note are based and any such notice shall specify in reasonable detail what that party believes to be the Train Consist Data for the relevant train movement(s) ("**notice of objection**"). In the absence of any notice of objection being served within such time the Train Consist Data used in the relevant invoice or credit note shall be final and binding on the parties. The Train Operator shall supply data to Network Rail in the format:

Train ID	Start date & time	Train Slot origin	Train slot destination	Train Consist (actual): Specified Equipment used

- (d) The parties shall seek to agree the Train Consist Data specified in any notice of objection and any consequential financial adjustment required to the relevant invoice or credit note. If the parties are unable to agree such Train Consist Data within 14 days following receipt of a notice of objection, either party may refer the matter for resolution in accordance with the ADRR.

- (e) Within 14 days of any Train Consist Data being agreed or determined in accordance with paragraph 10.3(d), Network Rail shall, if any consequential or financial adjustment of the relevant invoice is required, issue a further invoice to, or (as the case may be) a credit note in favour of, the Train Operator in the amount of the relevant adjustment. The invoice or credit note shall be payable at the same time as the invoice for Variable Charges for the relevant Period or, if issued later than 21 days after the end of the relevant Period, within 7 days after the date of its issue.
- (f) Not used.
- (g) Where, as a result of any invoice or credit note issued pursuant to paragraph 10.3, any sum of money which has been paid shall become repayable or any sum of money which has been unpaid shall become payable the party to whom such sum shall be paid shall be paid or allowed interest at the Default Interest Rate on such sum from the date when it (if repayable) was paid or the date when such sum (if payable) ought to have been paid until the date of payment or repayment.

10.4 ***Unrepresentative Train Consist Data***

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

10.5 ***Disputed amounts repayment and interest rate***

- (a) Where a party wishes to contest any invoice issued to it under this Schedule 7 (including any invoice in respect of Track Charges) it shall, within 14 days of receipt of the invoice, notify the other party in writing of the amount which is in dispute but shall pay the full amount of the invoice, including the disputed amount, in accordance with the terms of the invoice.
- (b) Where a party has given notice under paragraph 10.5(a) that it disputes part of any invoiced amount:
 - (i) payment of such sum shall be without prejudice to the determination of whether such sum is properly due or not; and

- (ii) if it is subsequently determined that the disputed sum, or part of it, was not properly due the payee shall repay the disputed sum, or relevant part, to the payer together with interest (to accrue daily and be compounded monthly) at the Default Interest Rate from the date of payment until the actual date of repayment.

Part 3

(Route level Efficiency Benefit Share Mechanism)

1. For the purposes of the calculation and payment of the Route-Level Efficiency Benefit Share for the Relevant Year ending 31 March 2019, Part 3 and Appendix 7A and Appendix 7B of Schedule 7 of the version of this contract that was in force up until 31 March 2019 shall continue to apply.

Part 3A

(Not used)

Part 4

(Not used)

Part 5

(Additional Charges)

(Not used)

Part 6

(Supplemental Provisions)

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

- (a) not used;
- (b) the rate of Variable Usage Charge, Infrastructure Cost Charge and any VUC Default Charge and the relevant number of Vehicle Miles or Train Miles applicable to vehicles for each service so charged;
- (c) the amount of the Electrification Asset Usage Charge and the number of days covered by the invoice;
- (d) not used;
- (e) not used;
- (f) not used;
- (g) not used;
- (h) not used;
- (i) not used;

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

Part 7

(Future Access Charges Reviews)

1. General

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

- (a) an access charges review such that amendments to this contract to give effect to the conclusions of such an access charges review come into operation on and from 1 April 2024 or such later date as may be specified in that review; and
- (b) not used.

2. Not used.

3. Interpretation

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

4. Interim treatment of future access charges reviews

4.1 *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.

4.2 *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 a 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 4.1(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 4.2(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 4.2(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, with seven days of the meeting referred to in paragraph 4.2(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 4.2(a) above (if not disputed) or 28 days of resolution or determination if any dispute in accordance with paragraph 4.2(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.

Appendix 7A

(Not used)

Appendix 7B

(Not used)

Appendix 7C

Default Train Consist Data

Train Service Code	Description of Journey	Default Train Consist Data

APPENDIX 6 TO ANNEX 2

Schedule 8 (for the WCRC Jacobite TAA)

Schedule 8

(Performance regime)

1. Interpretation

1.1 Definitions

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

"100 Train Operator Miles" means the distance travelled by the Services operated by the Train Operator on the Network in any Period as recorded in Network Rail's billing systems (unless there is a manifest error in such figure), divided by 100;

"30% Exposure" has the meaning ascribed to it in paragraph 9.1.1;

"Adjustment Fraction" means the number of Periods or parts of a Period in the first or final Financial Year, divided by 13;

"Applicable Timetable" means, in respect of a day, that part of the Working Timetable in respect of that day which is required to be drawn up in accordance with Condition D2.1.1 of the Network Code as at 22:00 hours on the day prior to that day, and which is applicable to the Service or other trains;

"Baseline Annual Train Mileage" has the meaning ascribed to it in paragraph 8.2.2(b);

"Cancellation" means, in respect of any Service, the failure to operate at all and "Cancelled" shall be construed accordingly;

"Charter Service Variation Sum" means, in respect of paragraphs 3.4 and 4.4, the amount specified in Appendix 8A as the Charter Service Variation Sum, expressed in pounds sterling and rounded to zero decimal places;

"CPI" has the meaning ascribed to it in Schedule 7;

"Diversion" means a Service which operates but which is diverted off its Planned route and for these purposes, running on different lines on the same route shall not constitute such a Diversion;

"ETCS" means the European Train Control System;

"Exposure Level" has the meaning ascribed to it in paragraph 9.1.1;

"Failure to Stop" means a Service which, whether or not it is the subject of a Diversion, fails to call at one or more of the intermediate stations at which it is Planned to call;

"Financial Year" means a year commencing at 00:00 hours on 1 April and ending immediately before 00:00 hours on the next succeeding 1 April save that:

- (a) the first such period shall commence on the date upon which all the provisions of this contract come into effect in accordance with Clause 3; and
- (b) the last such period shall end on the Expiry Date;

"Initial Indexation Factor" has the meaning ascribed to it in Schedule 7;

"Initial Planned Service Incident Cap Notice" has the meaning ascribed to it in paragraph 9.1.1;

"Interim Statement" means a written summary showing, in respect of Network Rail performance, the information required under paragraph 3.5 and, in respect of Train Operator performance, the information required under paragraph 4.5;

"Joint Cancellation Sum" means, in the event of a Planned Service Cancellation for which Network Rail is allocated joint responsibility under paragraph 6.5, the amount specified in Appendix 8A as the Joint Cancellation Sum for that Planned Service Cancellation, expressed in pounds sterling and rounded to zero decimal places;

"Minutes Delay" means the number of minutes of delay in respect of a Trigger of a Recording Point calculated in accordance with paragraph 5;

"Network Rail Annual Cap" means the Network Rail Annual Cap specified in Appendix 8A, as adjusted in accordance with paragraphs 7 and 8.2 of this Schedule 8, expressed in pounds sterling and rounded to zero decimal places, save that in respect of the first and last Financial Year, the Network Rail Annual Cap shall be that specified in Appendix 8A, multiplied by the Adjustment Fraction;

"Network Rail Benchmark" or **"NRB"** means the Network Rail Benchmark in Minutes Delay per 100 Train Operator Miles in relation to each Period, as specified in Appendix 8A;

"Network Rail Cancellation Sum" means, in the event of a Planned Service Cancellation for which Network Rail is allocated responsibility under paragraphs 2.6(b) and/or 6.3, the amount specified in Appendix 8A as the Network Rail Cancellation Sum for that Planned Service Cancellation, expressed in pounds sterling and rounded to zero decimal places;

"Network Rail Payment Rate" means, in respect of a Planned Service, the rate, expressed as pounds per NR Performance Minute, specified in Appendix 8A as the Network Rail Payment Rate for that Planned Service (as adjusted in accordance with paragraph 7), expressed in pounds sterling and rounded to two decimal places;

"NR Performance Minute" has the meaning set out in paragraph 3.1;

"Performance Sum" means an amount for which Network Rail or the Train Operator is liable under paragraphs 3 or 4 following a Period in relation to Minutes Delay in that Period and the preceding Periods, as adjusted in accordance with paragraph 8;

"Period" means each consecutive period of 28 days during the term of this contract commencing at 00:00 hours on 1 April in each year, provided that the length of the first and last such Period in any year may be varied by up to 7 days on reasonable prior notice from Network Rail to the Train Operator;

"Planned" means entered into the Applicable Timetable;

"Planned Incident" means an incident described as such in paragraph 6.6;

"Planned Service" means a passenger carrying Service (excluding any Ancillary Movement) of the Train Operator under this contract which is entered in the Applicable Timetable;

"Planned Service Cancellation" means the Cancellation or Termination of a Planned Service;

"Planned Service Incident Cap" means, in respect of a Planned Service (and its associated Ancillary Movements) operated by or on behalf of the Train Operator, the Planned Service Incident Cap selected by the Train Operator in accordance with paragraph 9.1;

"Planned Service Incident Cap Notice" has the meaning ascribed to it in paragraph 9.1.2;

"Recording Point" means a location at which Network Rail records the times at which trains arrive, pass or depart that location;

"Recovery Time" means additional time incorporated into the Applicable Timetable to allow a train to regain time lost earlier in its journey as a result of a Restriction of Use;

"Relevant Year" has the meaning ascribed to it in Schedule 7;

"Restriction of Use" means any restriction of use of all or any part of the Network for the purposes of, or in connection with, inspection, maintenance, renewal or repair of the Network or any other works carried out in relation to the Network or any other railway asset or any other works in relation to it;

"Service Characteristics" means, in relation to any Service, the characteristics of that Service specified in any Train Operator Variation Request;

"Service Incident" means an incident which arises from, is caused by or results from a Planned Service or any of its associated Ancillary Movements;

"Termination" means, in respect of any Service, the operation of such train in such a way that it:

- (a) fails to reach its Planned final destination station; or
- (b) commences at a point other than its Planned station start point and does not call at its Planned station start point

and which is not a Cancellation;

"Third Party Train Cancellation" means the Cancellation or Termination of any train excluding any Ancillary Movements and excluding any Planned Service;

"Third Party User" means the operator (including the Train Operator) of any train excluding any Ancillary Movements and excluding any Planned Service;

"Third Party User Cancellation Minutes" means, in respect of a Third Party Train Cancellation, the number of minutes specified in Appendix 8A as the Third Party User Cancellation Minutes;

"TO Performance Minute" has the meaning set out in paragraph 4.1;

"Train Mile" has the meaning ascribed to it in Schedule 7;

"Train Operator Annual Cap" means the Train Operator Annual Cap specified in Appendix 8A, as adjusted in accordance with paragraphs 7 and 8.2 of this Schedule 8, expressed in pounds sterling and rounded to zero decimal places, save that in respect of the first and last Financial Year, the Train Operator Annual Cap shall be that specified in Appendix 8A, multiplied by the Adjustment Fraction;

"Train Operator Benchmark" or **"TOB"** means the Train Operator Benchmark in Minutes Delay per 100 Train Operator Miles in relation to each Period, as specified in Appendix 8A;

"Train Operator Payment Rate" means, in relation to delay caused to a Third Party User, the rate, expressed as pounds per TO Performance Minute, specified in Appendix 8A (as adjusted in accordance with paragraph 7), expressed in pounds sterling and rounded to two decimal places;

"Trigger" means the act of a train arriving at, passing or departing from a Recording Point;

"Week" means a period of 7 days beginning on Sunday and ending on the immediately following Saturday (both days inclusive), save that where that period of 7 days would otherwise fall within two Periods ("Period A" and "Period B") for the purposes of this Schedule each of the following shall constitute a Week:

- (a) Sunday to the last day of Period A (both days inclusive); and
- (b) the first day of Period B to the immediately following Saturday (both days inclusive);

"Zero Exposure" has the meaning ascribed to it in paragraph 9.1.1.

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

2. **General principles and performance information**

2.1 In respect of Cancellation, this Schedule 8 shall only apply to any Planned Service Cancellation for which Network Rail is responsible or jointly responsible with the Train Operator and which occurs after 22:00 on the day before such Planned Service is due to run.

2.2 Each of the Train Operator and Network Rail shall use all reasonable endeavours to keep the other of them informed of any known or anticipated delay to, or Cancellation, Termination or Diversion of, Planned Services or any Ancillary Movements associated therewith.

2.3 Each of Network Rail and the Train Operator shall take reasonable steps to avoid and mitigate the effects of:

- (a) any incidents upon the Planned Services; and
- (b) any Service Incident affecting other trains.

2.4 Network Rail shall use recordings made using the Performance Monitoring System for the purposes of this Schedule 8 including the times at which the Services and other trains Trigger Recording Points. Where appropriate Network Rail may require the Train Operator, in respect of Services only, to make the relevant entry, to record such times on the Performance Monitoring System. Network Rail and the Train Operator shall each comply with and be bound by the provisions of the Performance Data Accuracy Code referred to in Part B of the Network Code and the provisions of that Code shall apply to this contract. Accordingly, the provisions of this Schedule 8 concerning the recording of train performance information or which refer to information regarding train performance (including references to the time at which a train Triggers a Recording Point), and the rights and remedies of the Train Operator in respect of the same, shall be subject to and interpreted in accordance with the provisions of that Code.

2.5 In respect of each Trigger of a Recording Point Network Rail shall use its reasonable endeavours to record separately, as unexplained delay, those minutes of delay of three minutes or more included in Minutes Delay for which it is unable to identify the incident(s) which caused that delay. The Train Operator shall co-operate with Network Rail on request by providing all such information as it has in its possession regarding the identification of the incident(s) which caused that delay.

2.6 All unexplained delay recorded in accordance with paragraph 2.5 shall, notwithstanding the provisions of paragraph 6.3(b) be allocated between the parties as follows:

- (a) any Minutes Delay or Cancellation Minutes in respect of Service Incidents arising either off the Network or at stations at which the Train Operator's Services are Planned to call shall be included in the TO Performance Minutes; and
- (b) any Minutes Delay to a Service or Planned Service Cancellation arising on the Network and which are not allocated to the Train Operator under this Schedule (including paragraph 2.6(a)) shall be included in the NR Performance Minutes.

2.7

- (a) Network Rail shall provide to the Train Operator through the Performance Monitoring System as soon as reasonably practicable, and in any event no later than the following Working Day, the information recorded or provided to it under paragraphs 2.4 or 2.5.
 - (b) the Train Operator shall be deemed to have agreed the information recorded by Network Rail and Network Rail shall be deemed to have agreed the information recorded by the Train Operator except, in either case, to the extent that it has, within 2 clear Working Days of the information being provided, notified the other that it disputes the information. Any such notification shall specify the reasons for the dispute, so as to assist resolution of the dispute. The parties shall endeavour to resolve each such dispute within 2 Working Days of its notification.
- 2.8 Within 5 Working Days of a Trigger occurring, Network Rail shall be entitled to re-allocate responsibility to the Train Operator for each minute of delay included in Minutes Delay where further information becomes available to Network Rail which would otherwise result in responsibility for the relevant incident being allocated to the Train Operator in accordance with paragraph 6.4. Paragraph 2.7(b) shall apply to the allocation of responsibility under this paragraph 2.8.
- 2.9 Network Rail shall have no liability to the Train Operator under the terms of this Schedule in respect of Minutes Delay to a Planned Service or a Planned Service Cancellation to the extent that it is caused, in either case, by that Planned Service being presented to Network Rail on the Network after the time Planned for such presentation. In such circumstances, Network Rail shall use its reasonable endeavours to facilitate the movement of the Planned Service as expeditiously as possible subject to
- (a) any access rights which it may have granted to third parties; and
 - (b) any Restrictions of Use of the Network in the Applicable Engineering Access Statement or the Applicable Timetable Planning Rules.

3. Network Rail performance

- 3.1 The performance minutes allocated to Network Rail in respect of any Planned Service (the "**NR Performance Minutes**") shall be equal to the sum of:
- (a) the number of Minutes Delay caused to that Planned Service by one or more Service Incidents for which Network Rail is allocated responsibility under paragraphs 2.6(b) and 6.3; and/or
 - (b) 50% of the number of Minutes Delay caused to that Planned Service by one or more Service Incidents for which Network Rail is allocated joint responsibility with the Train Operator under paragraph 6.5.

3.2

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

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

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

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

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

where:

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

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

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

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

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

3.3 In the event of a Planned Service Cancellation for which Network Rail is allocated responsibility under paragraphs 2.6(b) and/or 6.3, Network Rail shall, in respect of that Planned Service be liable to pay to the Train Operator (in substitution for and to the exclusion of any liability under paragraph 3.4) the Network Rail Cancellation Sum. In the event of a Planned Service Cancellation for which Network Rail is allocated joint responsibility under paragraph 6.5, then in respect of that Planned Service Network Rail shall be liable to pay to the Train Operator (in substitution for and to the exclusion of any liability under paragraph 3.4) the Joint Cancellation Sum.

3.4 If a Planned Service is the subject of a Diversion or Failure to Stop due to a Service Incident for which Network Rail is allocated responsibility under paragraph 6.3 and, as a result, the Train Operator incurs, in relation to such Planned Service, additional costs which but for the Diversion or Failure to Stop it would not have incurred, Network Rail shall, in addition to any liability under paragraph 3.2, pay the Train Operator the Charter Service Variation Sum in respect of the Planned Service provided that the Train Operator shall have notified to and supplied Network Rail with evidence (to its reasonable satisfaction) of such costs on or before the end of the Period following the Period in which such Service Incident occurred.

3.5 Within 5 Working Days after the end of each Week, Network Rail shall provide the Train Operator with an Interim Statement showing in respect of each Planned Service which was Planned to depart from its point of origin during that Week and for which Network Rail is liable to make payment under this paragraph 3 either:

- (a) the Performance Sum calculated in accordance with paragraph 3.2; or
- (b) whether it is a Planned Service Cancellation for which Network Rail is liable to the Train Operator under paragraph 3.3.

Any unresolved dispute under paragraph 2.7 in relation to a Planned Service the subject of an Interim Statement shall be indicated as such on the Interim Statement. Within 2 Working Days of receipt of the Interim Statement the Train Operator shall sign and return a copy thereof to Network Rail and indicate on the copy any aspects of the Interim Statement which it disputes, giving reasons for any dispute. Save to the extent that any disputes are so notified or if the Train Operator fails to sign and return to Network Rail a copy of the Interim Statement, the Train Operator shall be deemed to have agreed the contents of the Interim Statement.

4. Train Operator performance

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

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

where:

A = the total number of Minutes Delay in respect of all Triggers by each train operated by that Third Party User caused by one or more Service Incidents for which the Train Operator is allocated responsibility under paragraphs 2.6(a) and 6.4; and

B = 50% of the total number of Minutes Delay in respect of all Triggers by each train operated by that Third Party User caused by one or more Service Incidents for which the Train Operator is allocated joint responsibility with Network Rail under paragraph 6.5;

C = the Third Party User Cancellation Minutes in respect of each Third Party Train Cancellation due to a Service Incident for which the Train Operator is allocated sole responsibility under paragraphs 2.6(a) and 6.4, provided that there shall be disregarded any Minutes Delay caused as a result of such Service Incident occurring after the time at which the train of the Third Party User arrives at the point on or off the Network where it subsequently becomes a Third Party Train Cancellation; and

D = 50% of the Third Party User Cancellation Minutes in respect of each Third Party Train Cancellation due to a Service Incident for which the Train Operator is allocated joint responsibility with Network Rail under paragraph 6.5 provided that there shall be disregarded any Minutes Delay caused as a result of such Service Incident occurring after the time at which the train of the Third Party User arrives at the point on or off the Network where it subsequently becomes a Third Party Train Cancellation.

4.2 For the avoidance of doubt, in the event of a Planned Service Cancellation for which the Train Operator is allocated sole responsibility under paragraph 6.4, then in respect of that Cancellation the Train Operator shall only be liable to pay Network Rail the applicable charge under paragraph 5.1 of Part 2 of Schedule 7 and in the event of a Planned Service Cancellation for which the Train Operator is allocated joint responsibility with Network Rail under paragraph 6.5, then in respect of that Planned Service the Train Operator shall be liable to pay Network Rail 50% of the applicable charge under Schedule 7.

4.3

4.3.1 For the purposes of this paragraph 4.3, the TO Performance Minutes arising in respect of a Planned Service (and its associated Ancillary Movements) shall be capped as follows:

(a) where the Train Operator has elected to have no exposure above the Planned Service Incident Cap in accordance with paragraph 9, any such minutes in excess of the Planned Service Incident Cap shall be disregarded; or

(b) where the Train Operator has elected to have 30% exposure above the Planned Service Incident Cap in accordance with paragraph 9, 70% of any such minutes in excess of the Planned Service Incident Cap shall be disregarded.

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

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

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

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

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

where:

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

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

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

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

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

4.4 If:

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

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

4.5 Within 5 Working Days after the end of each Week, Network Rail shall provide the Train Operator with an Interim Statement listing all Service Incidents during that Week for which the Train Operator is allocated responsibility under paragraph 6.4 or joint responsibility with Network Rail under paragraph 6.5 and showing, for each such Service Incident, the TO Performance Minutes. Any unresolved dispute under paragraph 2.7 in relation to any such Service Incident shall be indicated as such on the Interim Statement. Within 2 Working Days of receipt of the Interim Statement the Train Operator shall sign and return a copy thereof to Network Rail and indicate on the copy any aspects of the Interim Statement which it disputes, giving reasons for any dispute. Save to the extent that any disputes are so notified or if the Train Operator fails to sign and return to Network Rail a copy of the Interim Statement, the Train Operator shall be deemed to have agreed the contents of the Interim Statement.

5. Calculation of minutes delay

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

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

where:

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

A2 is the Planned time between such Triggers; and

B is any Recovery Time between such Triggers.

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

6. Allocation of responsibility

6.1 For the purposes of this Schedule 8 responsibility for each minute of delay included in Minutes Delay, each Third Party Train Cancellation, each Diversion, each Failure to Stop and each Planned Service Cancellation shall be allocated according to the responsibility for the incident which caused such Minutes Delay, Third Party Train Cancellation, Diversion, Failure to Stop or Planned Service Cancellation as established in accordance with the following provisions of this paragraph 6.

6.2 In assessing the causes of any Minutes Delay, Third Party Train Cancellation, Diversion, Failure to Stop or Planned Service Cancellation there shall be taken into account all incidents contributing thereto including:

- (a) the extent to which each party has taken reasonable steps to avoid and/or mitigate the effects of the incidents contributing thereto;
- (b) where a train is affected by the cancellation of or delay to an Ancillary Movement, the incident(s) giving rise to that cancellation or delay; and
- (c) where a Restriction of Use overruns, due to the start of such Restriction of Use being delayed by a late running train (including a Planned Service or an Ancillary Movement associated therewith), the incident(s) giving rise to that late running.

6.3 Subject to paragraph 6.5, Network Rail shall be allocated responsibility for an incident other than a Planned Incident if that incident is:

- (a) caused by breach by Network Rail of any of its obligations under this contract or any of its obligations in its safety authorisation which are relevant to the operation of the Services;
- (b) caused by failures of or delays to Services arising on the Network which are not allocated to the Train Operator under this contract; or
- (c) caused by acts or omissions of Network Rail's staff or Network Rail's contractors in breach of this contract.

6.4 Subject to paragraph 6.5, the Train Operator shall be allocated responsibility for an incident other than a Planned Incident if that incident is:

- (a) caused by breach by the Train Operator of any of its obligations under this contract or any of its obligations in its safety certificate which are relevant to the operation of the Services;

- (b) caused by circumstances within the control of the Train Operator (whether or not the Train Operator is at fault) in its capacity as an operator of trains under this contract; or
- (c) caused (whether or not the Train Operator is at fault) by any defect in or other failure by the Specified Equipment to comply with the Service Characteristics of a Service whether or not such Specified Equipment is owned by the Train Operator; or
- (d) caused by acts, or omissions of the Train Operator's staff, customers, contractors (including any associates or associate sub-contractors of the Train Operator) in connection with this contract, or passengers using the Services; or
- (e) caused by circumstances arising:
 - (i) off the Network and which are not caused by Network Rail in breach of its obligations under this contract; or
 - (ii) in connection with the operation of any station, light maintenance depot or other facility to which the Train Operator has been granted access for the purpose of the operation of the relevant Service; or
 - (iii) under a connection agreement to which Network Rail is a party in relation to a light maintenance depot or other facility referred to under (ii) above.

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

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

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

7. **Payment terms and supplementary provisions**

7.1.1 The aggregate of any and all sums for which each party is liable under this Schedule in relation to Planned Services which were Planned to depart from their point of origin during a Period shall be set off against each other and the balance, if any, shall be invoiced by Network Rail to the Train Operator or, as the case may be, shall be the subject of a credit note issued by Network Rail to the Train Operator within 14 days after the end of the Period and shall be payable within 28 days after the end of the Period.

7.1.2 In respect of any Financial Year, the aggregate liability of Network Rail to make balance payments to the Train Operator under paragraph 7.1.1 shall not exceed the Network Rail Annual Cap.

7.1.3 In respect of any Financial Year, the aggregate liability of the Train Operator to make balance payments to Network Rail under paragraph 7.1.1 shall not exceed the Train Operator Annual Cap.

7.1.4 Where any amount which is the subject of this Schedule is in dispute:

- (a) the undisputed amount shall be accounted for in accordance with paragraph 7.1.1 (and shall be subject to set off accordingly);

- (b) the disputed balance ("disputed balance") shall be accounted for in the calculations made under paragraph 7.1.1 for the Period in which the dispute is resolved or otherwise determined (and shall be subject to set off accordingly); and
- (c) the disputed balance shall carry interest (accruing daily and compounded monthly) at the Default Interest Rate from the date on which the disputed balance would but for such dispute have been due to be so accounted for until the date of such account.

7.2 In respect of the Financial Year commencing on 1 April 2019, on 1 April 2019 each of the Network Rail Payment Rate, Train Operator Payment Rate, Network Rail Annual Cap and Train Operator Annual Cap, Network Rail Cancellation Sum, Joint Cancellation Sum and the Charter Service Variation Sum shall be adjusted by multiplying them by the Initial Indexation Factor. In respect of the Financial Year commencing 1 April 2020, and in respect of each subsequent Financial Year, on 1 April in each Financial Year, each of the Network Rail Payment Rate, Train Operator Payment Rate, Network Rail Annual Cap and Train Operator Annual Cap, Network Rail Cancellation Sum, Joint Cancellation Sum and the Charter Service Variation Sum respectively which in each case applied in the immediately preceding Financial Year shall be further adjusted by multiplying them by the Adjustment Factor (rounded to three decimal places) which shall have been calculated in accordance with the following formula:

$$Adjustment\ Factor = 1 + \left(\frac{CPI_{t-1} - CPI_{t-2}}{CPI_{t-2}} \right)$$

where:

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

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

8. **Reviews of Network Rail Annual Cap and Train Operator Annual Cap**

8.1 *Not used*

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

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

- (a) prior to 1 April 2020; and
- (b) thereafter only if the total number of Train Miles operated by the Train Operator during Financial Year t or the Baseline Annual Train Mileage is 1,000,000 or greater.

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

- (a) the total number of Train Miles operated by the Train Operator during Financial Year t (the "**Annual Train Mileage**");

- (b) Network Rail's determination as to whether or not the Annual Train Mileage for Financial Year t exceeds or is less than the Baseline Annual Train Mileage (as determined in accordance with paragraph 8.2.3 below (the "**Baseline Annual Train Mileage**")) by, in each case, an amount equal to or greater than 2.5% of the Baseline Annual Train Mileage (the "**Annual Train Mileage Variation**"); and
- (c) if Network Rail determines that there has been an Annual Train Mileage Variation, Network Rail's proposal for an adjusted Network Rail Annual Cap and/or Train Operator Annual Cap, in each case having regard to any relevant criteria and/or policy statement most recently issued by ORR.

8.2.3

- (a) The Baseline Annual Train Mileage that shall apply from 1 April in each Financial Year shall be the total number of Train Miles operated by the Train Operator during the Financial Year commencing on 1 April 2018 and ending on 31 March 2019, unless it is adjusted in accordance with paragraph 8.2.3(b).
- (b) If, in accordance with paragraph 8.2.2(b), Network Rail determines that there has been an Annual Train Mileage Variation, then the Baseline Annual Train Mileage for the Financial Year immediately following Financial Year t ("**Financial Year $t+1$** ") and each subsequent Financial Year until any further adjustment is made to the Baseline Annual Train Mileage pursuant to this paragraph 8.2.3(b) shall be the Annual Train Mileage for the Financial Year t in which the Annual Train Mileage Variation has occurred.

8.2.4 Promptly (and in any event, within 28 days) following receipt by the Train Operator of the information and notice from Network Rail required to be provided pursuant to paragraph 8.2.2, the parties shall endeavour to agree whether the Network Rail Annual Cap and/or the Train Operator Annual Cap should be adjusted in accordance with this paragraph 8.2 and, if so, the adjustment (in each case having regard to any relevant criteria and/or policy statement most recently issued by ORR), provided that any adjustment to the Network Rail Annual Cap and/or the Train Operator Annual Cap pursuant to this paragraph 8.2 shall be subject to the prior approval of ORR.

8.2.5 If, within 56 days of receipt by the Train Operator of the information and notice from Network Rail required to be provided pursuant to paragraph 8.2.2, the Train Operator and Network Rail reach agreement as to any adjustment to the Network Rail Annual Cap and/or the Train Operator Annual Cap, the parties shall notify ORR and shall provide ORR with such information and evidence as ORR shall require to determine whether or not to approve the proposed adjustment. The parties agree to abide by any determination issued by ORR.

8.2.6 If, within 56 days of receipt by the Train Operator of the information and notice from Network Rail required to be provided pursuant to paragraph 8.2.2, either:

- (a) the parties fail to reach agreement; or
- (b) prior to the expiry of that 56 day period both parties agree that agreement is unlikely to be reached prior to the expiry of that period,

the parties shall notify ORR and shall provide ORR with such information and evidence as ORR shall require to determine the matter. The parties agree to abide by any determination issued by ORR.

8.2.7 Any adjustment to the Network Rail Annual Cap and/or the Train Operator Annual Cap shall take effect only when it has been approved by ORR and, unless otherwise specified by ORR, any such adjustment shall take effect from 1 April in Financial Year t .

8.2.8 Promptly following any adjustment to the Network Rail Annual Cap and/or the Train Operator Annual Cap pursuant to this paragraph 8.2, and in order to give effect to that adjustment,

Network Rail shall issue to the Train Operator a statement showing the necessary adjustments to:

- (a) any invoices and credit notes already issued; and
- (b) any payments already made in respect of Performance Sums,

in each case relating to the Periods in Financial Year t+1.

8.2.9 Any statement issued by Network Rail pursuant to paragraph 8.2.8 shall be accompanied by an adjusting invoice or credit note in accordance with paragraph 7.1.1.

9. **Selection by the Train Operator of the Planned Service Incident Cap and Exposure Level**

9.1 ***Selection by the Train Operator of the Planned Service Incident Cap and Exposure Level***

9.1.1 Subject to paragraph 9.1.3, on or before the date on which this paragraph 9.1 takes effect, the Train Operator shall notify Network Rail in writing of the level of Planned Service Incident Cap and the level of exposure above the Planned Service Incident Cap ("**Exposure Level**") it wishes to apply being either no exposure above the Planned Service Incident Cap, as described in paragraph 4.3.1(a) ("**Zero Exposure**"), or 30% exposure above the Planned Service Incident Cap, as described in paragraph 4.3.1(b) ("**30% Exposure**") (such notification being the "**Initial Planned Service Incident Cap Notice**"). The Planned Service 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 Planned Service Incident Cap selected by the Train Operator in the Initial Planned Service Incident Cap Notice until it is replaced by a different level of Planned Service Incident Cap and Exposure Level selected by the Train Operator in a Planned Service Incident Cap Notice issued pursuant to paragraph 9.1.2.

9.1.2 Subject to paragraph 9.1.3, the Train Operator may change the level of Planned Service Incident Cap and Exposure Level previously selected by it (either in the Initial Planned Service Incident Cap Notice or any subsequent Planned Service Incident Cap Notice issued pursuant to this paragraph 9.1.2) with effect from 1 April in any Financial Year by notifying Network Rail in writing of the level of Planned Service Incident Cap and Exposure Level it wishes to apply for that Financial Year (the "**Planned Service Incident Cap Notice**"). Any such Planned Service Incident Cap Notice must be served by the Train Operator on Network Rail by no later than 6 weeks prior to 1 April in the Financial Year from which the Train Operator wishes the new level of Planned Service Incident Cap and Exposure Level to apply, and the Planned Service Incident Cap Access Charge Supplement Rate applicable for that and each subsequent Financial Year shall be the rate set out in 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 Planned Service Incident Cap selected by the Train Operator in the Planned Service Incident Cap Notice until it is replaced by a different level of Planned Service Incident Cap selected by the Train Operator pursuant to this paragraph 9.1.2.

9.1.3 For the avoidance of doubt, if the Train Operator selected a Planned Service Incident Cap prior to Financial Year 2019/20, and did not issue a subsequent Planned Service Incident Cap Notice in respect of Financial Year 2019/20 selecting 30% Exposure, the Train Operator shall be deemed, for the purposes of paragraphs 9.1.1 and 9.1.2, to have selected Zero Exposure for Financial Year 2019/20.

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

For the purposes of paragraph 9.1, the Train Operator shall select one of the following Planned Service Incident Caps and, in respect of the relevant Planned Service Incident Cap, the Exposure Level as set out in either Column B or C:

A	B	C
Planned Service Incident Cap	Planned Service Incident Cap Access Charge Supplement Rate (£ per Train Mile operated in a Period) expressed in pounds sterling and rounded to two decimal places – Zero Exposure above the Planned Service Incident Cap	Planned Service Incident Cap Access Charge Supplement Rate (£ per Train Mile operated in a Period) expressed in pounds sterling and rounded to two decimal places – 30% Exposure above the Planned Service Incident Cap
93 minutes	0.41	0.29
147 minutes	0.33	0.24
500 minutes	0.13	0.09
1,000 minutes	0.04	0.03
5,000 minutes	0.00	0.00
No Planned Service Incident Cap	None	None

10. **ETCS Amendments**

10.1

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

10.2

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

- (i) the parties agree to make ETCS Amendments pursuant to paragraph 10.2(c);
or
- (ii) the parties fail to reach agreement within 50 Working Days of service of a notice under paragraph 10.2(a), or prior to that date the parties agree that it is unlikely that agreement will be reached within that period,

they shall notify ORR.

10.3

(a) If ORR:

- (i) receives a notification under paragraph 10.2(d); or
- (ii) proposes to make ETCS Amendments itself,

then in deciding whether to approve, determine or make (as the case may be) the ETCS Amendments it shall:

- (A) give the parties and such other persons, if any, as it considers appropriate, the opportunity to make representations in relation to the proposed ETCS Amendments; and
- (B) take into account any representations received before making its decision, such decision to specify the date on which the ETCS Amendments shall have effect.

(b) ORR may require either party to provide such information as it may reasonably require to make a decision pursuant to paragraph 10.3(a), and such information shall be provided in accordance with any timescales and to the standard required by ORR.

Appendix 8A

Service Variation Sum: £662

Joint Cancellation Sum: £1,007

Network Rail Cancellation Sum: £2,013

Network Rail Payment Rate: £21.25 per NR Performance Minute

Network Rail Annual Cap: £691,524

Network Rail Benchmark (NRB): the NRB in relation to a Period shall be 1.80 Minutes Delay per 100 Train Operator Miles

Train Operator Payment Rate: £ [] per TO Performance Minute

Train Operator Annual Cap: £691,524

Train Operator Benchmark (TOB): the TOB in relation to each Period shall be 0.39 Minutes Delay per 100 Train Operator Miles

Third Party User Cancellation Minutes: 35 minutes

Baseline Annual Train Mileage: shall be the total number of Train Miles operated by the Train Operator during the Financial Year commencing on 1 April 2018 and ending on 31 March 2019, which Network Rail shall notify to the Train Operator.

APPENDIX 7 TO ANNEX 2

Amendments to paragraphs 7.3, 7.4 and 11 of Schedule 8 (for the North Yorkshire Moors TAA)

1. Delete paragraph 7.3 and paragraph 7.4 of Schedule 8 to the North Yorkshire Moors TAA and replace them with the following:

“7.3 “Cancellation Rates” for the purpose of this paragraph 7 means the rates payable by Network Rail in the event of a Cancellation of a Service Planned to depart its Origin in that Charging Period. The Cancellation Rates shall be as set out in Table 7.3, as adjusted in accordance with paragraph 7.4.

Table 7.3: Advanced Cancellation Rates

Notice	Cancellation 3-7 days notice	Cancellation 8-14 days notice	Cancellation 15-28 days notice
Cancellation Rate	£408.99	£292.14	£175.29

7.4 CPI Uplift in relation to Advanced Cancellation

Any payment for Advanced Cancellation shall be at the Cancellation Rate set out in Table 7.3 Advanced Cancellation Rates subject to the following variation:

For each Relevant Year, the value of the payment for Advanced Cancellation shall be calculated in accordance with the following formula:

where:

$$ACR_t = ACR_{t-1} \times \left(1 + \frac{(CPI_{t-1} - CPI_{t-2})}{CPI_{t-2}} \right)$$

ACR_t is the applicable Cancellation Rate for the relevant year t ;

ACR_{t-1} is the applicable Cancellation Rate for the relevant year $t-1$;

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

CPI_{t-2} means the CPI published or determined with respect to the month of November in Relevant Year t-2,

but so that in relation to the Relevant Year commencing on 1 April 2019, ACR_t shall have the relevant value specified in Table 7.3 multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year, ACR_{t-1} shall have the same value.”

2. Delete paragraph 11 (RPI Uplift in relation to Network Rail Cancellation Sum (Appendix 1)) of Schedule 8 to the North Yorkshire Moors TAA, and replace it with the following:

“11 CPI Uplift in relation to Network Rail Cancellation Sum (Appendix 1)

Any payment for Cancellation in relation to the Relevant Year commencing 1 April 2019 shall be the Cancellation Sum in Appendix 1 multiplied by the Initial Indexation Factor.

For each subsequent Relevant Year, the payment for the Cancellation Sum shall be calculated in accordance with the following formula:

$$CS_t = CS_{t-1} \times \left(1 + \frac{(CPI_{t-1} - CPI_{t-2})}{CPI_{t-2}} \right)$$

where:

CS_t is the applicable Cancellation Sum for the relevant year t;

CS_{t-1} is the applicable Cancellation Sum for the relevant year t-1; and

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

CPI_{t-2} means the CPI published or determined with respect to the month of November in Relevant Year t-2.”

ANNEX 3
BESPOKE AMENDMENTS

PART 1 (MODIFICATIONS TO STANDARD AMENDMENTS)

Explanatory Note:

This Annex 3 sets out the modifications which need to be made to the standard amendments set out in Annex 2 to this Review Notice, in each case required in order to give effect to ORR's conclusions on the Review in the Track Access Agreements listed below.

In relation to each Track Access Agreement which is listed in Part 1 of this Annex 3, ORR proposes that the amendments set out in Annex 2 to this Review Notice will be made to that Track Access Agreement, modified to the extent specified in the paragraph or paragraphs of Part 1 of this Annex 3 relating to that Track Access Agreement.

Each Track Access Agreement referred to in this Annex 3, in each case as amended in accordance with Annex 2, shall be further amended on the terms set out in this Part 1 of Annex 3.

1 Definitions of SPD Cost Threshold No.1 and SPD Cost Threshold No.2

1.1 In the following Track Access Agreements:

- (i) the **Grand Central TAA**;
- (ii) the **Hull Trains TAA**; and
- (iii) the **Supertram TAA**,

delete the definitions of “SPD Cost Threshold No.1” and “SPD Cost Threshold No.2” in paragraph 1.1 (Definitions) of Part 3 to Schedule 4, and replace them with the following:

- (a) “**SPD Cost Threshold No.1**” means £342,223”; and
- (b) “**SPD Cost Threshold No.2**” means £684,447”.

2 Paragraph 4.2 (Cost Compensation Formula) of Part 3 to Schedule 4

2.1 In the following Track Access Agreements:

- (i) the **Grand Central TAA**;
- (ii) the **Hull Trains TAA**; and
- (iii) the **Supertram TAA**,

delete the definition of EBMPR in sub-paragraph 4.2(b) (Cost Compensation Formula) of Part 3 of Schedule 4, and replace it with the following:

“EBMPR is the payment rate per EBM, which is £10.73.”

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

(Annex C (Payment Rate per train mile) to Part 3 of Schedule 4 for each of the following:

- **the Grand Central TAA;**
- **the Hull Trains TAA; and**
- **the Supertram TAA)**

Annex C (Payment Rate per train mile) to Part 3 of Schedule 4 in the Grand Central TAA

Annex C (Payment Rate per train mile) to Part 3 of Schedule 4 in the Hull Trains TAA

Annex C (Payment Rate per train mile) to Part 3 of Schedule 4 in the Supertram TAA

APPENDIX 2 TO PART 2 OF ANNEX 3

(Annex D (Defined Service Group Revenue) to Part 3 of Schedule 4 for each of the following:

- **the Grand Central TAA;**
- **the Hull Trains TAA; and**
- **the Supertram TAA)**

**Annex D (Defined Service Group Revenue) to Part 3 of Schedule 4
in the Grand Central TAA**

**Annex D (Defined Service Group Revenue) to Part 3 of Schedule 4
in the Hull Trains TAA**

**Annex D (Defined Service Group Revenue) to Part 3 of Schedule 4
in the Supertram TAA**

APPENDIX 3 OF PART 2 OF ANNEX 3

(Appendix 1 of Schedule 8 for each of the following:

- **the Grand Central TAA;**
- **the Hull Trains TAA;**
- **the North Yorkshire Moors TAA;**
- **the Supertram TAA; and**
- **the East Coast TAA)**

Appendix 1 of Schedule 8 to the Grand Central TAA

Appendix 1 of Schedule 8 to the Hull Trains TAA

Appendix 1 of Schedule 8 to the North Yorkshire Moors TAA

Appendix 1 of Schedule 8 to the Supertram TAA

Appendix 1 of Schedule 8 to the East Coast TAA

APPENDIX 4 OF PART 2 OF ANNEX 3

Appendix 8A of Schedule 8 to the WCRC Jacobite TAA: Train Operator Payment Rate

