

## Schedule 7

(Track Charges and Other Payments)

### Part 1

(Interpretation)

#### 1. Definitions

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

~~"2008 Final Determinations" means the document entitled "Periodic Review 2008: Determination of Network Rail's outputs and funding for 2009-14" published by ORR on 30 October 2008;~~

~~"2013 Final Determination" means the document entitled "Periodic Review 2013: Final determination of Network Rail's outputs and funding for 2014-19" published by ORR on 31 October 2013;~~

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

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

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

~~"Capacity Charge Wash-up Weekday Rate" has the meaning as ascribed to it in paragraph 6.4;~~

~~"Capacity Charge Wash-up Weekend Rate" has the meaning as ascribed to it in paragraph 6.4;~~

"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;

"Current Control Period" means the period of five years commencing at 0000 hours on 1 April 2019 and due to end at 2359 hours on 31 March 2024;

"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 ~~2014~~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";

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

~~"Delivery Plan" means the document, including its supporting documentation, published by Network Rail on or about 31 March 2014 setting out its delivery plan for the period 1 April 2014 – 31 March 2019;~~

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

~~"Existing Service Codes" means each of the following Service Coded Groups: [●];~~

~~"Infrastructure Cost Charge" or "ICC" means, in respect of those services identified as [interurban] as set out in the Open Access ICC Rates List, 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 Initial Indexation Factor;

~~$RPI_{2012} - CPI_{2017}$  means the  $RPI - CPI$  published or determined with respect to the month of November 2012 2017; and~~

~~$RPI_{2013} - CPI_{2018}$  means the  $RPI - CPI$  published or determined with respect to the month of November 2013 2018;~~

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

~~"List of Capacity Charge Rates" means the document entitled "List of Capacity Charge Rates" published by Network Rail on or about 20 December 2013 which, for the purposes of this contract, shall be deemed to incorporate any supplements to that document consented to or determined pursuant to paragraph 9.10 of Part 2 of Schedule 7 to this contract;~~

~~"Material Alliance Agreement" means a legally binding agreement between:~~

~~(a) — Network Rail and the Train Operator; or~~

~~(b) — Network Rail, the Train Operator and one or more other train operators; or~~

~~(c) — Network Rail and one or more other train operators;~~

~~establishing an alliance under which the parties to such legally binding agreement agree to share risk or reward or both on a REBS Route or part thereof on which the Train Operator operates Services and which is likely to have a material direct financial impact on one or more elements of Network Rail's costs or income included within the Route Baseline;~~

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

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

~~**"Outperformance Sum"** means the lower of:~~

- ~~(a) — the Outperformance Cap as indexed in accordance with paragraph 1.11 of Part 3; and~~
- ~~(b) — 25% of the amount in pounds sterling which ORR, in its annual efficiency and finance assessment of Network Rail, determines in respect of the REBS Outperformance;~~

~~**"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;~~

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

~~**"REBS Outperformance"** means the situation where ORR's annual efficiency and finance assessment of Network Rail in respect of the REBS Route in Relevant Year t has identified, in accordance with the methodology and principles set out in Chapter 19 of the 2013 Final Determination, that Network Rail's performance has exceeded the performance set in the Route Baseline as indexed in accordance with paragraph 1.10 of Part 3;~~

~~**"REBS Route"** means a route specified in the table in Appendix 7A for the purposes of the Route Level Efficiency Benefit Share Mechanism;~~

~~**"REBS Underperformance"** means the situation where ORR's annual efficiency and finance assessment of Network Rail in respect of the REBS Route in Relevant Year t has identified, in accordance with the methodology and principles set out in Chapter 19 of the 2013 Final Determination, that Network Rail's performance has not achieved the performance set in the Route Baseline as indexed in accordance with paragraph 1.10 of Part 3;~~

~~**"Proposed Review Notice"** means the most recently proposed Review Notice given by ORR during the course of the Current Control Period, 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 Baseline"** means the baseline value in respect of a REBS Route in Relevant Year t that is published by Network Rail in its Delivery Plan;~~

**"Route-Level Efficiency Benefit Share"** has the meaning ascribed to it in paragraph 1.4 of Part 3;

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

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

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

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

"Service Coded Group" means any Service or collection of Services or Ancillary Movements operating under a service code specified in the List of Capacity Charge 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~~3~~] which, for the purposes of this contract, shall be deemed to incorporate any supplements to that document consented to or determined pursuant to paragraph 9.10 of Part 2 of Schedule 7 to this contract;

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

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

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

~~"Underperformance Sum" means the lower of:~~

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

~~(b) — 10% of the amount in pounds sterling which ORR, in its annual efficiency and finance assessment of Network Rail, determines in respect of the REBS Underperformance;~~

"Variable Charges" means the Capacity Charge, the 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; 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:

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

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 ~~derived from the formula in~~ 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 ~~6.36~~; 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; and

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

## 2. Not used 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:

$\Sigma$  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, and indexed in accordance with the following formula:

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

where:

$CPI_{t-1}$  means the CPI published or determined with respect to the month of November in Relevant Year  $t-1$ ; 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  $t$  commencing on 1 April 2019,  $R$  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 in relation to the next following Relevant Year,  $R_{t-1}$  shall have the same value;

$TM_{ti}$  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  $t$  which is derived from the following formula:

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

where:

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

$RPI_{t-2}$  means the  $RPI_{CPI}$  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  $t$  which is derived from the following formula:

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

where:

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

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

but so that in relation to the Relevant Year commencing on 1 April ~~2014~~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

$\Sigma$  means the summation across all relevant New Specified Equipment.

4. **Not used.**

5. **Efficiency benefit shareNot used.**

~~5.1 The Efficiency Benefit Share:~~

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

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

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

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

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

~~where:~~

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

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

~~(a) where this contract commences during the course of that Relevant Year  $t$ , following commencement of this contract; or~~

~~(b) where this contract expires or is otherwise terminated during the course of that Relevant Year  $t$ , prior to the expiry or other termination of this contract,~~

~~provided that, in each case:~~

~~(i) if this contract expires or is otherwise terminated on or before the fourteenth day of a Period, such Period shall not be included in the calculation of 'CP';~~

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

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

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

## 6. Capacity Charge and Capacity Charge Wash-up

~~6.4 In respect of the Relevant Year ending 31 March 2019 For the purposes of paragraph 4, the terms  $K_t$  and  $KW_t$  respectively means an amount in respect of the Capacity Charge and the Capacity Charge Wash-Up in Relevant Year t which shall be derived from the formula that was contained in paragraph 6 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. the following formula:~~

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

~~where:~~

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

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

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

~~where:~~

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

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

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



~~Pg<sub>twei</sub> means the weekend rate per Service Coded Group i in respect of Relevant Year t shown in the List of Capacity Charge Rates and indexed in accordance with the following formula:~~

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

~~where:~~

~~RPI<sub>t-1</sub> has the meaning set out in paragraph 3.1 above; and~~

~~RPI<sub>t-2</sub> has the meaning set out in paragraph 3.1 above,~~

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

~~Tg<sub>twdi</sub> means the actual Train Miles run on Weekdays by Services or Ancillary Movements in Service Coded Group i in the Relevant Year t; and~~

~~Tg<sub>twei</sub> means the actual Train Miles run on weekends by Services or Ancillary Movements in Service Coded Group i in the Relevant Year t.~~

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

~~6.3 KW<sub>t</sub> is derived from the following formula:~~

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

~~where  $\sum$  means the summation across all the Existing Service Codes e.~~

~~6.4 For each Existing Service Code e, KW<sub>te</sub> is derived from the following formula:~~

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

~~where:~~

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

~~B<sub>te</sub> means a baseline value in pounds for Existing Service Code e for the Train Operator (BV<sub>t</sub>) in Relevant Year t which shall be derived from the following formula:~~

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

where:

~~RPI<sub>t-1</sub> has the meaning set out in paragraph 3.1 above; and~~

~~RPI<sub>t-2</sub> has the meaning set out in paragraph 3.1 above.~~

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

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

~~If KW<sub>tie</sub> is a negative sum, then for the purposes of paragraph 6.3 above, it shall be zero.~~

7. **Not used.**

8. **Not used.**

9. **Bilateral supplements to the Open Access ICC Rates List List of Capacity Charge Rates and Track Usage Price List**

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

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

9.3 No supplement to the Track Usage Price List or Open Access ICC Rates List List of Capacity Charge Rates shall have effect unless it has been:

(a) agreed between the parties and ORR has consented to it; or

(b) determined by ORR.

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

(a) the Track Usage Price List be supplemented as necessary to include a new vehicle type and corresponding rate; or

(b) the Open Access ICC Rates List List of Capacity Charge Rates be supplemented as necessary to take account of changes in the pattern and number of Services or to include rates in respect of new Services.

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

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

- 9.7 Where the parties agree to a supplement following a proposal under paragraph 9.4, they shall request ORR's consent to it and provide such information as ORR reasonably requires in order to decide whether to give its consent.
- 9.8 If the parties fail to reach agreement within 45 days of the date of the notice given under paragraph 9.5, at any point thereafter either party shall be entitled to refer the matter to ORR for determination.
- 9.9 Following a reference to ORR under paragraph 9.8, the parties shall, within such timescales as ORR may reasonably specify, furnish ORR with such information and evidence as ORR shall reasonably require to determine the matter. If a party fails to furnish such information and evidence within the specified timescale, ORR shall be entitled to determine the matter without that information and evidence and the party in default shall have no grounds for complaint in that respect.
- 9.10 ORR may:
- (a) consent to any supplement that is agreed by the parties and submitted to it under paragraph 9.7, or following consultation with the parties, determine that a different supplement should apply; or
  - (b) following a referral to ORR under paragraph 9.8, determine the supplement that should apply.
- 9.11 In the case of a supplement to the [Open Access ICC Rates List](#)~~List of Capacity Charge Rates~~, the supplement shall have effect from such date as ORR shall determine by notice to the parties, provided that such date shall not be a date falling prior to 1 April 2014.
- 9.12 In the case of a supplement to the Track Usage Price List, the supplement shall have retrospective effect from the first day of the [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.
- 9.14 Any supplement to the Traction Electricity Modelled Consumption Rates List, Track Usage Price List or [Open Access ICC Rates List](#)~~List of Capacity Charge Rates~~ 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~~ the Infrastructure Cost Charge;
  - (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***

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:

<u>Train ID</u>	<u>Start date &amp; time</u>	<u>Train Slot origin</u>	<u>Train slot destination</u>	<u>Train Consist (actual): Specified Equipment used</u>

~~(e)~~(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.

~~(d)~~(e) Within 7-14 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)~~(f) Not used.

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

#### 10.4 **Unrepresentative Train Consist Data**

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

day period. If ORR objects to the proposed amendments within the 14 day period, the parties shall endeavour to reach agreement with ORR on the appropriate amendments, if any, to the Default Train Consist Data which shall then take effect on the first day of the Period next following that in which agreement is reached.

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

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

### **Part 3**

(Route level Efficiency Benefit Share Mechanism)

#### ~~1. Route Level Efficiency Benefit Share Mechanism~~

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

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

~~The Route-Level Efficiency Benefit Share for Relevant Year t (" $O_t$ " or " $U_t$ " as the case may be) is the amount (if any) that is payable by Network Rail to the Train Operator or by the Train Operator to Network Rail, as the case may be, in respect of a REBS Route, derived from the following formula:~~

~~in the case of a REBS Outperformance:~~

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

~~and~~

~~in the case of a REBS Underperformance:~~

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

~~where:~~

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

~~D<sub>t</sub> means the Default Charge payable by the Train Operator in respect of the REBS Route for Relevant Year t;~~

~~V<sub>t</sub> means the Variable Usage Charge payable by the Train Operator in respect of the REBS Route for Relevant Year t;~~

~~AV<sub>t</sub> means the aggregate Variable Usage Charge and Default Charge payable by all train operators providing services for the carriage of passengers in respect of the REBS Route in Relevant Year t (and calculated by summing the values of V<sub>t</sub> and D<sub>t</sub> under paragraph 1 of Part 2 and the corresponding provisions of each relevant train operator's access agreement) and the aggregate amounts payable under items 1 to 4 and 9 of the variable charge payable by all train operators providing services for the carriage of freight in respect of the REBS Route in Relevant Year t (and calculated by summing items 1 to 4 and 9 of the variable charge under paragraph 2.2.1 of Schedule 7 of each relevant train operator's access agreement); and~~

~~U<sub>t</sub> means the amount that is payable by the Train Operator to Network Rail in respect of REBS Underperformance on the REBS Route in Relevant Year t.~~

~~The Route Level Efficiency Benefit Share (if any) calculated under paragraph 1.1 shall be payable for each REBS Route for Relevant Year t, unless the Train Operator has exercised a right to opt out in respect of a particular REBS Route in accordance with paragraph 1.3 or 1.4. Where the Train Operator has exercised such a right, no Route Level Efficiency Benefit Share shall be payable by or to the Train Operator, in respect of that REBS Route:~~

~~for the Relevant Year in the course of which the notice referred to in paragraph 1.3 was served and all subsequent Relevant Years up to 31 March 2019; and~~

~~where Network Rail entered into a Material Alliance Agreement during the course of Relevant Year t and the Train Operator issued an Opt-out Notice pursuant to paragraph 1.4(b) in Relevant Year t+1, in respect of any Period in Relevant Year t commencing on or after the date of the Material Alliance Agreement.~~

#### ~~*Train Operator right to opt out of the Route Level Efficiency Benefit Share Mechanism*~~

~~The Train Operator may serve a notice, in the form set out in Appendix 7B, on Network Rail (and shall provide a copy to ORR) informing Network Rail that the Route Level Efficiency Benefit Share Mechanism shall not apply to the Train Operator in respect of one or more REBS Routes specified in the notice for the Relevant Year in the course of which the notice was served and all subsequent Relevant Years up to 31 March 2019 (an "Opt-out Notice"). Unless paragraph 1.4 applies, an Opt-out Notice may be served only before 1 July 2014.~~

~~If any of the following circumstances apply, the Train Operator may serve an Opt-out Notice at any time until 31 March 2019:~~

~~the Train Operator commences operating on one or more REBS Routes on which it did not previously operate services, services for the carriage of passengers or freight by railway, as a result of entering into a new access agreement or otherwise. In these circumstances such Opt-out Notice may be served only in respect of the REBS Routes on which the Train Operator commences operating those services; or~~

~~Network Rail notifies ORR and the Train Operator that it has entered into an agreement which is, in its opinion, a Material Alliance Agreement and ORR confirms in writing that it agrees. In these circumstances the Opt-out Notice may only be served in respect of the REBS Route to which the Material Alliance Agreement applies.~~

~~In the circumstances described in paragraphs 1.4(a) and (b), the Opt-out Notice must be served within 2 months after:~~

~~the date on which the Train Operator commences operating the services described in paragraph 1.4(a); or~~

~~the date of receipt of written confirmation from ORR under paragraph 1.4(b),~~

~~as the case may be.~~

~~Network Rail shall serve notice on ORR and the Train Operator that it has entered into an agreement which it considers to be a Material Alliance Agreement within 14 days after entering into it.~~

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

#### ~~*Obligation to pay Route-Level Efficiency Benefit Share*~~

~~If, pursuant to paragraph 1.1, a party is entitled to payment from the other of a Route-Level Efficiency Benefit Share in Relevant Year t, then, subject to paragraphs 1.2 and 1.8, such payment shall be made to the party entitled to the payment by the other party as a lump sum payment within 56 days after the date of publication of ORR's annual efficiency and finance assessment of Network Rail for Relevant Year t.~~

~~If, in respect of any Relevant Year t, a Route-Level Efficiency Benefit Share is payable in accordance with paragraph 1.7 and this contract has either commenced or expired or otherwise been terminated during the course of that Relevant Year t, the party entitled to payment shall be entitled to a pro rata payment of the Route-Level Efficiency Benefit Share payable in respect of that REBS Route for Relevant Year t. Such pro rata payment (which shall be payable in accordance with paragraph 1.9) shall be calculated as follows:~~

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

~~where:~~

~~REBS means either  $O_t$  or  $U_t$  as the case may be; and~~

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

~~where this contract commences during the course of that Relevant Year t, following commencement of this contract; or~~

~~where this contract expires or is otherwise terminated during the course of that Relevant Year t, prior to the expiry or other termination of this contract,~~

~~provided that, in each case:~~

~~(iii) — if this contract expires or is otherwise terminated on or before the fourteenth day of a Period, such Period shall not be included in the calculation of 'CP';~~

~~(iv) — if this contract expires or is otherwise terminated on or after the fifteenth day of a Period, such Period shall be included in the calculation of 'CP';~~

~~(v) — if this contract commences on or before the fourteenth day of a Period, such Period shall be included in the calculation of 'CP'; and~~

~~(vi) — if this contract commences on or after the fifteenth day of a Period, such Period shall not be included in the calculation of 'CP'.~~



~~1.1 Without prejudice to the generality of Clause 16.3.1, any payment of a Route Level Efficiency Benefit Share (a "REBS payment") shall be made on the basis that it is to be treated as exclusive of VAT, so that where and to the extent that the REBS payment is consideration for a supply for VAT purposes the party making that REBS payment shall in addition pay to the party receiving the REBS payment an amount equal to the amount of VAT due in respect of that REBS payment and either:~~

- ~~(a) the party receiving the REBS Payment shall issue a VAT invoice to the party making such REBS payment in respect of the relevant amount; or~~
- ~~(b) if the parties so agree and have entered into an applicable self-billing agreement (within the meaning of regulation 13(3A) of the VAT Regulations) that continues in force then the party making the REBS payment shall produce for itself a self-billed invoice (within the meaning of regulation 13(3) of the VAT Regulations) in respect of the relevant amount.~~

#### *Route Baseline Indexation*

~~1.2 The indexed Route Baseline in respect of Relevant Year t shall be derived from the following formula:~~

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

~~where:~~

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

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

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

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

~~1.3 The indexed Outperformance Cap and Underperformance Cap in respect of Relevant Year t shall be derived from the following formula:~~

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

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

- ~~(b) in the case of the Underperformance Cap:~~

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

~~where:~~

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

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

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

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

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

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

**Part 3A**

(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 applicable to vehicles for each service so charged;
- (c) not used;
- (d) not used;
- (e) not used;
- (f) not used;
- (g) ~~the amount of any Efficiency Benefit Share in respect of Relevant Years ending on or before 31 March 2014~~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 ~~2019~~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 [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, 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**

~~REBS Routes Table~~(Not used)

## Appendix 7B

### Route Level Efficiency Benefit Share Mechanism Opt Out Notice(Not used)

~~[Name of train operator representative]~~

~~[Position]~~

~~Telephone: [●]~~

~~E-mail: [●]~~

~~[Date]~~

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

~~Network Rail~~

~~Kings Place~~

~~York Way~~

~~London~~

~~N1 9AG~~

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

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

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

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

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

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

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

~~Yours faithfully~~

~~[Name of train operator representative]~~

## Appendix 7C

### Default Train Consist Data

Train Service Code	Description of Journey	Default Train Consist Data

