

PR13 Implementation - Proposed Schedule 7 for First Scotrail

SCHEDULE 7: TRACK CHARGES AND OTHER PAYMENTS

PART 1: INTERPRETATION

1 Definitions

In Parts 1-8 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” and published by ORR on 30 October 2008;
“2013 Final Determinations”	means the document entitled [“Periodic Review 2013: Determination of Network Rail’s outputs and funding for 2014-19”] and published by ORR on • 2013;
“access charges review”	has the meaning ascribed to it by Schedule 4A to the Act;
“AC System”	means the alternating current system of electricity traction supply on the Network;
“Alliance Agreement”	means an agreement between Network Rail and one or more train operators establishing an alliance in which those parties work jointly to carry out or otherwise share the risk of activities on a part of the Network;
“Aggregate Fixed Charges”	means, in any Relevant Year t, the sum of the values of Ft under paragraph 1 of Part 2 and the corresponding provisions of each other relevant access agreement;
“Basic Value”	has the meaning ascribed to it in paragraph 1.1(a) of Part 3A;
“Capacity Charge”	means a variable charge, calculated in accordance with paragraph 6 of Part 2;

“DC System”	means the direct current system of electricity traction supply on the Network;
“Default Charge”	means the charge calculated in accordance with paragraph 3.3 of Part 2;
“Default Period”	means the period from the later of: <ul style="list-style-type: none"> (a) the date on which the New Specified Equipment is first used on the Network by the Train Operator; or (b) 1 April 2014, until the date on which ORR consents to or determines the supplement to the Track Usage Price List for that vehicle under paragraph 9.11 of Part 2;
“Default Rate”	means, in respect of any New Specified Equipment used on the Network, the corresponding passenger default rate for that type of vehicle set out in the Track Usage Price List;
“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 entitled [<i>insert title</i>], including its supporting documentation, published by Network Rail on or about 31 March 2014;
“Efficiency Benefit Share”	means the amount determined in accordance with paragraph 5.1 of Part 2;
“Electricity Type (AC/DC)”	means either the alternating current (AC), or the direct current (DC) system of electricity supplied through the electrification system;
“Electrification Asset Usage Charge”	means a charge for electrification asset usage, calculated in accordance with paragraph 8 of Part 2;
“excluded change”	means, in relation to paragraph 2.1.1(a)

	of Part 7, a change to the arrangements established between Network Rail and any other person in respect of the payment of any amount under sections 6 or 8 of the Railways Act 2005;
“Fixed Track Charge”	means a fixed annual charge, calculated in accordance with paragraph 1 of Part 2;
“Fixed Track Charge Indexation”	has the meaning ascribed to it in paragraph 2 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;
“Grant Agreement”	means the Agreement as to Network Grant made on or about 20 December 2013 between the Scottish Ministers and Network Rail;
“Grant Amount”	has the meaning ascribed to it in paragraph 1.2 of Part 3A;
“Gross Tonne Mile”	in relation to a train, means a mile travelled on the Network, multiplied by each tonne of the aggregate weight of the train in question;
“kWh”	means kilowatt hours;
“List of Capacity Charge Rates”	means the document entitled “List of Capacity Charge Rates” published by Network Rail on or about 20 December 2013;
“Network Rail Distribution System Loss Factor”	means the relevant factor that represents the electrical losses between the On-Train Meter and Network Rail’s meter through which it purchases traction electricity for the AC System or the DC System in Geographic Area g, as set out in appendix 3 of the Traction

	Electricity Rules;
“Network Rail Rebate”	has the meaning ascribed to it in paragraph 7.1 of Part 2;
“New Specified Equipment”	means a type of railway vehicle not included in the Track Usage Price List.
“On-Train Meter” and “On-Train Metering”	have the meanings ascribed to them in paragraph 1.2 of the Traction Electricity Rules;
“Payment Date”	has the meaning ascribed to it in paragraph 1.1(b) of Part 3A;
“Outperformance Sum”	shall be the amount, in the case of a REBS Outperformance, by which Network Rail’s performance on a REBS Route in Relevant Year t has exceeded the performance set in the Route Baseline, as determined by ORR’s annual efficiency and finance assessment of Network Rail;
“Period”	has the meaning ascribed to it in Schedule 8;
“Power Factor Correction”	means the relevant power factor correction as set out in appendix 2 of the Traction Electricity Rules;
“Rebatable Amount”	has the meaning ascribed to it in paragraph 7.2 of Part 2;
“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 [<i>insert reference</i>] of the 2013 Final Determinations, that Network Rail’s performance has exceeded the performance set in the Route Baseline;
“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 [insert reference] of the 2013 Final Determinations, that Network Rail’s performance has not achieved the performance set in the Route Baseline;

“relevant access agreement”

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

- (a) a franchise operator; or
- (b) a concession operator within the meaning of the Merseyrail Electrics Network Order 2003; or
- (c) a TfL concessionaire within the meaning of the Railways (North and West London Lines) Exemption Order 2007; or
- (d) any other person who benefits from a franchise exemption (within the meaning of section 24(13) of the Act) in relation to services for the carriage of passengers by railway; or
- (e) a relevant franchising authority (as defined in section 30(3B) of the Act) or a person providing services for the carriage of passengers by railway on behalf of a relevant franchising authority under section 30 of the Act;

“Relevant 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, as adjusted for inflation in accordance with the methodology and principles set out in [<i>insert reference</i>] of the 2013 Final Determinations, and that ORR will use in its annual efficiency and finance assessment of Network Rail for the purposes of the Route Level Efficiency Benefit Share Mechanism;
“Route-Level Efficiency Benefit Share”	has the meaning ascribed to it in paragraph 1.1 of Part 3;
“Route Level Efficiency Benefit Share Mechanism”	means the provisions for the calculation and payment of the Route Level Efficiency Benefit Share in respect of one or more REBS Routes as described in paragraph 1.3 of Part 3.
“route type k”	means route type k as identified by type of electrification (OLE or DC) in the Track Usage Price List;
“RPI”	means the General Index of Retail Prices All Items measured by CHAW and published each month, 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;

“Schedule of Fixed Charges”	means the document entitled “Fixed Track Charges Schedule” published by Network Rail on or about 20 December 2013;
“Scottish Grant Compensation Amount”	has the meaning ascribed to it in paragraph 3.2 of Part 3A;
“Scottish Grant Dilution”	has the meaning ascribed to it in paragraph 2.1 of Part 3A;
“Scottish Grant Dilution Date”	has the meaning ascribed to it in paragraph 2.2 of Part 3A;
“Service Coded Group”	means a Service or collection of Services specified as such in the List of Capacity Charge Rates, and any Ancillary Movements relating to such Services;
“tariff band”	means the tariff zone and time band in which the train in question is operated;
“Tolerance Factor”	means the relevant Tolerance Factor as set out in appendix 4 of the Traction Electricity Rules;
“Track Usage Price List”	means the document entitled “Track Usage Price List” published by Network Rail on or about 20 December 2013;
“Traction Electricity Charge”	means a variable charge for traction current calculated in accordance with paragraph 4 of Part 2;
“Traction Electricity Consumption Rates List”	means the document entitled “Traction Electricity Consumption Rates List” published by Network Rail on or about 20 December 2013 and specifying freight and passenger traction electricity consumption rates by train category i;

“train category”	means train type i using on the relevant Electricity Type (AC/DC);
“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 Sum”	shall be the amount, in the case of a REBS Underperformance, by which Network Rail’s performance on a REBS Route in Relevant Year t has not achieved the performance set out in the Route Baseline, as determined by ORR’s annual efficiency and finance assessment of Network Rail;
“Variable Charge”	means the Variable Usage Charges and, where the context admits, Traction Electricity Charges;
“Variable Usage Charge”	means a variable charge, calculated in accordance with paragraph 3 of Part 2;
“Vehicle Mile”	in relation to a railway vehicle, means a mile travelled by that vehicle on the Network;
“Volume Reconciliation”	has the meaning ascribed to it in the Traction Electricity Rules; and
“Weekday”	has the meaning ascribed to it in paragraph 1.1 of Schedule 5.

2 Interpretation

The provisions of Clause 1.2(e) of this contract shall not apply to any references to the Grant Agreement in this Schedule 7.

PART 2: TRACK CHARGES

1 Principal formula

During each Relevant Year (and, in respect of F_t , prorated for each day of any period of this contract comprising less than a full Relevant Year), Network Rail shall levy and the Train Operator shall pay Track Charges in accordance with the following formula:

$$T_t = F_t + V_t + D_t + E_t + K_t + EAV_t - BS_t - W_t$$

where:

T_t means Track Charges in Relevant Year t;

F_t means an amount in respect of the Fixed Track Charge in Relevant Year t, which shall be:

- (a) in respect of the Relevant Year commencing on 1 April 2014, the total of the amounts set out in the row relating to the Train Operator and the column relating to that year in the Schedule of Fixed Charges; and
- (b) in respect of any other Relevant Year t, the total of the amounts set out in the row relating to the Train Operator and the column relating to that year in the Schedule of Fixed Charges, multiplied by the Fixed Track Charge Indexation for that year calculated in accordance with paragraph 2;

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

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

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

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

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

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

W_t means an amount (which shall not be a negative value) in respect of the Network Rail Rebate in Relevant Year t, calculated in accordance with the provisions of paragraph 7.1.

2 Fixed Track Charge Indexation

The Fixed Track Charge Indexation in Relevant Year t shall be derived from the following formula:

$$FTCI_t = \left(1 + \frac{(RPI_{t-1} - RPI_{2013})}{RPI_{2013}} \right) \cdot (1 + TRUEUP_{t-1})$$

where:

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

RPI_{t-1} means the average value of the monthly figures of RPI for the 12 months up to and including the month of December immediately preceding the relevant 1 April; and

RPI_{2013} means the average value of the monthly figures of RPI for the 12 months up to and including December 2013; and

$$TRUEUP_{t-1} = \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} - \frac{(RPI_{t-2} - RPI_{t-3})}{RPI_{t-3}}$$

where:

RPI_{t-2} means the average value of the monthly figures of RPI for the 12 months up to and including the month of December which is 16 months before the relevant 1 April; and

RPI_{t-3} means the average value of the monthly figures of RPI for the 12 months up to and including the month of December which is 28 months before the relevant 1 April.

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:

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

where:

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

$$V_{rit} = V_{rit-1} \cdot \left[\left(1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right) \cdot (1 + TRUEUP_{t-1}) \right]$$

where:

RPI_{t-1} has the meaning set out in paragraph 2 above;

RPI_{t-2} has the meaning set out in paragraph 2 above; and

$TRUEUP_{t-1}$ has the meaning set out in paragraph 2 above,

but so that in relation to the Relevant Year commencing on 1 April 2014, V_{rit} shall have, in respect of vehicle i , the corresponding variable usage charge rate per Vehicle Mile for that vehicle i set out in the Track Usage Price List; and in relation to the next following Relevant Year V_{rit-1} shall have the same value;

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

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

3.2 Not used.

3.3 Default Charge

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

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

where:

D_{nt} means:

- (a) in respect of the Relevant Year commencing on 1 April 2014 the Default Rate for that New Specified Equipment; and
- (b) in respect of any other Relevant Year t the total of the Default Rate for that New Specified Equipment multiplied by the following formula:

$$\left[\left(1 + \frac{(RPI_{t-1} - RPI_{2013})}{RPI_{2013}} \right) \cdot (1 + TRUEUP_{t-1}) \right]$$

where:

RPI_{t-1} has the meaning set out in paragraph 2 above;

RPI_{2013} has the meaning set out in paragraph 2 above; and

$TRUEUP_{t-1}$ has the meaning set out in paragraph 2 above;

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

Σ means the summation across all relevant New Specified Equipment.

4 Traction Electricity Charge

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

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

where:

- E_{tmo} means an amount calculated in accordance with paragraph 4.1.2 below;
- E_{tme} means an amount calculated in accordance with paragraph 4.1.3 below;
- E_{tmuAC} means an amount calculated in accordance with paragraph 4.1.4(a) below; and
- E_{tmuDC} means an amount calculated in accordance with paragraph 4.1.4(b) below.

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

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

Calculation of modelled consumption

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

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

where:

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

E_{tmog} is derived from the following formula:

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

where:

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

C_i means the calibrated modelled consumption rate (in kWh per Train Mile in relation to passenger electric multiple units and kWh per Gross Tonne Mile in relation to locomotive-hauled units and all freight traffic) for train category i shown in the Traction Electricity Consumption Rates List, taking into account any Regenerative Braking Discount applied in accordance with the Traction Electricity Rules;

EF_{gjt} means an amount 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 4.2; and

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

Miles in relation to locomotive hauled units and all freight traffic), if any, of trains operated by or on behalf of the Train Operator in train category i, in Geographic Area g, in tariff band j and in Relevant Year t, pursuant to this contract.

Calculation of consumption using metered consumption data

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

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

where:

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

E_{tmeg} is derived from the following formula:

$$E_{tmeg} = \sum [((CME_{igt} \bullet PF_i \bullet EF_{gjt}) - (RGB_{igt} \bullet PF_i \bullet EF_{gjt})) \bullet (1 + \delta_i)]$$

where:

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

CME_{igt} means the consumption of electricity (in kWh) by trains operated by or on behalf of the Train Operator in train category i, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g and in Relevant Year t;

PF_i means the Power Factor Correction for train category i;

EF_{gjt} means an amount 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 4.2;

RGB_{igt} means the electricity (in kWh) generated by braking by railway vehicles operated by or on behalf of the Train Operator in train category i, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g and in Relevant Year t; and

δ_i means the Tolerance Factor for train category i.

4.1.4

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

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

where:

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

E_{tmugAC} is derived from the following formula:

$$E_{tmugAC} = \Sigma[(CME_{igtAC} \bullet PF_i \bullet EF_{gjt}) \bullet (1 + \delta_i)] \bullet \lambda_{ACg}$$

where:

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

CME_{igtAC} means the consumption of electricity (in kWh) from the AC System by trains operated by or on behalf of the Train Operator in train category i, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g and in Relevant Year t;

PF_i means the Power Factor Correction for train category i;

EF_{gjt} means an amount 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 4.2;

δ_i means the Tolerance Factor for train category i; 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:

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

where:

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

E_{tmugDC} is derived from the following formula:

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

where:

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

CME_{igtDC} means the consumption of electricity (in kWh) from the DC System by trains operated by or on behalf of the Train Operator in train category i, as measured by the On-Train Meters or as otherwise determined in accordance with the

- Traction Electricity Rules, in Geographic Area g and in Relevant Year t ;
- EF_{gjt} means an amount 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 4.2;
- δ_i means the Tolerance Factor for train category i ; and
- λ_{DCg} means the Network Rail Distribution System Loss Factor for the DC System in Geographic Area g .

Strategy for the procurement of traction electricity

- 4.2 At least three months prior to the start of each Relevant Year commencing on or after 1 April 2014, Network Rail shall consult with the Train Operator regarding a strategy for the procurement of traction electricity for the Train Operator in respect of that Relevant Year, and:
- (a) if Network Rail and the Train Operator agree on a strategy for the procurement of traction electricity, Network Rail will procure traction electricity for the Train Operator in accordance with that agreed strategy; or
 - (b) if Network Rail and the Train Operator do not agree on a strategy for the procurement of traction electricity and the Train Operator has, during its consultation with Network Rail under this paragraph 4.2, notified Network Rail of the Train Operator's preferred strategy for the procurement of traction electricity and it is possible for Network Rail, acting reasonably, to implement that strategy, Network Rail will procure traction electricity for the Train Operator in accordance with the traction electricity procurement strategy so notified to Network Rail by the Train Operator; or
 - (c) if Network Rail and the Train Operator do not agree on a strategy for the procurement of traction electricity and either (A) the Train Operator has not notified Network Rail of the Train Operator's preferred strategy for the procurement of traction electricity during its consultation with Network Rail in accordance with this paragraph 4.2, or (B) it is not possible for Network Rail, acting reasonably, to implement the Train Operator's preferred strategy for the procurement of traction electricity as notified to Network Rail during its consultation in accordance with this paragraph 4.2, Network Rail will:
 - (i) acting reasonably, determine the procurement strategy for traction electricity for the Train Operator, having regard to whatever information, if any, the Train Operator has supplied to Network Rail during its consultation under this paragraph 4.2; and

- (ii) procure traction electricity for the Train Operator in accordance with that traction electricity procurement strategy.

Actual cost of traction electricity

4.3 Network Rail shall provide to the Train Operator within 30 days of the end of each Period in each Relevant Year, the actual cost of traction electricity consumed by railway vehicles operated by or on behalf of the Train Operator in the relevant Period against the budgeted amounts. Network Rail shall also provide to the Train Operator a provisional six month Volume Reconciliation by Geographic Area g before 30 October of each Relevant Year and a provisional nine month Volume Reconciliation by Geographic Area g before 30 January of each Relevant Year.

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

- 4.4 (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 4.4(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 4.4(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 4.4(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 4.4(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 4.4(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 (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 Efficiency benefit share

5.1 The Efficiency Benefit Share:

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

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

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

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

where:

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

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

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

provided that, in each case:

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

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

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

6 Capacity Charge

For the purposes of paragraph 1, the term K_t means an amount in respect of the Capacity Charge in Relevant Year t which shall be derived from the following formula:

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

where:

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

Pg_{twd} 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:

$$Pg_{twd} = Pg_{twd-1} \cdot \left[\left(1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right) \cdot (1 + \mathbf{TRUEUP}_{t-1}) \right]$$

where:

RPI_{t-1} has the meaning set out in paragraph 2 above;

RPI_{t-2} has the meaning set out in paragraph 2 above; and

\mathbf{TRUEUP}_{t-1} has the meaning set out in paragraph 2 above,

but so that in relation to the Relevant Year t commencing on 1 April 2014, Pg_{twd} 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; and in relation to the next following Relevant Year, Pg_{twd-1} shall have the same value;

Pg_{twe} 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:

$$Pg_{twe} = Pg_{twe-1} \cdot \left[\left(1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right) \cdot (1 + \mathbf{TRUEUP}_{t-1}) \right]$$

where:

RPI_{t-1} has the meaning set out in paragraph 2 above;

RPI_{t-2} has the meaning set out in paragraph 2 above; and

\mathbf{TRUEUP}_{t-1} has the meaning set out in paragraph 2 above,

but so that in relation to the Relevant Year t commencing on 1 April 2014, Pg_{twe} 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; and in relation to the next following Relevant Year, $P_{g_{twe-1}}$ shall have the same value;

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

$T_{g_{twe}}$ means the actual Train Miles run on weekends by Services in Service Coded Group i in the Relevant Year t.

7 Network Rail Rebate

7.1 For the purpose of paragraph 1, the Network Rail Rebate in respect of any Relevant Year t (W_t) is an amount (which shall not be a negative value) by way of a return of Track Charges paid in Relevant Year t-1, derived from the following formula:

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

where:

RA_t means the Rebatable Amount declared by Network Rail in relation to Relevant Year t under paragraph 7.2;

F_t has the meaning ascribed to it in paragraph 1; and

AF_t means the Aggregate Fixed Charge in Relevant Year t.

7.2 The Rebatable Amount shall be the amount, if any:

- (a) which represents such proportion of Network Rail's total income for Relevant Year t as it reasonably considers that it does not require in order to discharge its obligations under its network licence and any contracts to which it is a party;
- (b) which Network Rail, in its discretion, considers it appropriate, having regard to the matters specified in paragraph 7.3, to rebate as an amount representing a return of Track Charges payable by persons who provide services for the carriage of passengers by railway under the relevant access agreements to which they are parties; and
- (c) which Network Rail notifies as such to ORR within 9 months after the end of each Relevant Year t.

7.3 In considering the amount of the Rebatable Amount in any Relevant Year, Network Rail shall have regard to:

- (a) its obligations under its network licence and any contracts to which it is a party;
- (b) the extent to which its efficiency and economy in discharging the obligations referred to in paragraph 7.3(a) exceeds any assumption which ORR made in the 2013 Final Determinations;
- (c) its current and foreseeable future financial position including whether it would be more appropriate to use any available financial resources to repay any indebtedness or fund research and development expenditure up to the value specified in the 2013 Final Determinations rather than to pay a rebate; and
- (d) the need for long term investment in the Network.

7.4 No amount of Track Charges shall be rebated under this paragraph 7 unless ORR, having regard to the matters:

- (a) to which Network Rail is to have regard under paragraph 7.3; and
- (b) in respect of which duties are imposed on it under section 4 of the Act,

has consented to such rebate.

7.5 Paragraph 5.4 shall apply to a payment of Network Rail Rebate in the same way as it applies in relation to a payment of an Efficiency Benefit Share, as if references in paragraph 5.4 to “Efficiency Benefit Share” and “EBS payment” were instead references to, respectively, “Network Rail Rebate” and “Network Rail Rebate payment”.

7.6 If, pursuant to paragraph 7.1, the Train Operator is entitled to payment of a Network Rail Rebate in respect of Relevant Year t, then such payment shall be made by Network Rail to the Train Operator as a lump sum payment within 28 days after the end of the Period in which ORR gives its consent under paragraph 7.4.

7.7 If Network Rail has, prior to 31 March 2014 and pursuant to the provisions of this agreement in force as at that date, notified ORR of a Rebatable Amount for the Relevant Year ending on that date, then such provisions shall continue to apply to the extent (and only to the extent) necessary to enable determination and payment (where applicable) of a Network Rail Rebate based on that Rebatable Amount.

8 Electrification Asset Usage Charge

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

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

where:

\sum means the summation across all route types;

EV_{tk} means an amount in respect of the Electrification Asset Usage Charge per electrified Vehicle Mile on route type k for Relevant Year t which is derived from the following formula:

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

where:

RPI_{t-1} has the meaning set out in paragraph 2 above;

RPI_{t-2} has the meaning set out in paragraph 2 above; and

$TRUEUP_{t-1}$ has the meaning set out in paragraph 2 above,

but so that in relation to the Relevant Year commencing on 1 April 2014, EV_{tk} shall have, in respect of each electrified Vehicle Mile on route type k, the value per electrified Vehicle Mile for the Electrification Asset Usage Charge set out in the Track Usage Price List; and in relation to the next following Relevant Year EV_{tk-1} shall have the same value; and

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

9 Bilateral supplements to the List of Capacity Charge Rates, Traction Electricity 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 inform Network Rail 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 Default Rate shall apply to it during the Default Period.
- 9.3 No supplement to the Traction Electricity Consumption Rates List, Track Usage Price List or List of Capacity Charge Rates, shall have effect unless it has been:
- (a) agreed between the parties and ORR has consented to it; or
 - (b) determined by a relevant ADRR Forum and ORR has consented to it; or
 - (c) determined by ORR, following consultation with the parties.
- 9.4 Either the Train Operator or Network Rail shall be entitled to propose that:
- (a) the Traction Electricity Consumption Rates List be supplemented to include a new service code, new service group or new train category;
 - (b) the Track Usage Price List shall be supplemented to include a vehicle category which is not included in the list; or
 - (c) the List of Capacity Charge Rates shall be supplemented to take account of changes in the pattern and number of 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 in reasonable detail of the proposal and the reasons for it. The parties shall thereafter negotiate 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 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, either party shall be entitled to refer the matter for resolution in accordance with the ADRR.
- 9.9 If the matter is referred for resolution under paragraph 9.8, the parties shall agree, in a Procedure Agreement, as defined in the ADRR, that the relevant ADRR Forum shall reach a decision which is fair and reasonable to them, having regard to:
- (a) the matters in respect of which duties are imposed on ORR by section 4 of the Act; and
 - (b) the criteria which ORR shall have most recently published (and identified as such) in relation to charging for permission to use track.

- 9.10 The parties shall procure that any determination by a relevant ADRR Forum shall be delivered to ORR within seven days after the date of the determination.
- 9.11 Following notification under paragraph 9.7 or 9.10 ORR may either consent to the supplement agreed by the parties or determined by the relevant ADRR Forum or may, having consulted the parties, determine a different supplement.
- 9.12 In the case of a supplement to the Traction Electricity Consumption Rates List or List of Capacity Charge Rates, the supplement shall have effect from such date as ORR shall determine by notice to the parties.
- 9.13 In the case of a supplement to the Track Usage Price List, the supplement shall have effect from the first day of the Default Period.
- 9.14 Following ORR's consent or determination under paragraph 9.11 Network Rail shall:
- (a) apply the supplement from the date in accordance with paragraph 9.12 or 9.13 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; and
 - (ii) publish on its website details of the supplement alongside the details of any other such supplements to which ORR has consented or determined pursuant to this or any other track access contract.

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

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

- (a) Save where the contract provides otherwise, the Train Operator shall pay or procure the payment to Network Rail of:
 - (i) the Variable Usage Charge;
 - (ii) the Traction Electricity Charge;
 - (iii) the Capacity Charge;
 - (iv) the Electrification Asset Usage 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) The Train Operator shall pay or procure the payment to Network Rail of that part of the Fixed Track Charge attributable to any Period as invoiced

by Network Rail on or after the expiry of each such Period within seven days of the invoice date or seven days after the end of the Period, whichever is later.

- (c) Any invoice issued by Network Rail under paragraph 18.5 of the Traction Electricity Rules (relating to modelled and actual rates of electricity consumption) shall be payable by the Train Operator within 21 days of the relevant invoice date.

10.2 *Train Consist Data*

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

10.3 *Invoices and right to object to invoices*

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

or (to the extent that (i) or (ii) or (iii) above do not apply) Default Train Consist Data. Each such invoice will be payable in accordance with the provisions of paragraph 10.1.
- (c) Either party shall be entitled, at any time prior to the later of 2359 hours on the fourteenth day following the expiration of the relevant Period and seven days following receipt by the Train Operator of the relevant invoice, to notify the other that it objects to any Train Consist Data (including, where applicable, the use of Default Train Consist Data) on which the whole or any part of the Variable Charges included in the

relevant invoice are based and any such notice shall specify in reasonable detail what that party believes to be the Train Consist Data for the relevant train movement(s) (“notice of objection”). In the absence of any notice of objection being served within such time the Train Consist Data used in the relevant invoice shall be final and binding on the parties.

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

10.4 Unrepresentative Train Consist Data

- (a) If at any time during this contract either party considers the Default Train Consist Data specified in Appendix 7C is not representative of the Train Operator’s Services and in particular, but without limitation, the type(s) of railway vehicles then in use and the regular number of carriages forming part of those railway vehicles in the operation of its Services, either party shall be entitled on written notice to the other to request that the Default Train Consist Data be amended. Any such request shall specify in reasonable detail the grounds for the request and the proposed amendments to the Default Train Consist Data.

- (b) The parties shall endeavour to reach agreement on any amendments to the Default Train Consist Data within 21 days of the date of the request referred to in paragraph 10.4(a) and if the parties are unable to agree such amendments within such time period, either party may refer the matter for resolution in accordance with the ADRR.
- (c) Upon the earlier of agreement between the parties or determination by a relevant ADRR Forum, the parties shall notify ORR of the proposed amendments to the Default Train Consist Data and, subject to ORR not objecting to the proposed amendments within 14 days (the “14 day period”) of receipt of the notification by ORR, such amendments shall take effect from the first day of the next Period following the earlier of ORR confirming its consent to the proposed amendments and the expiry of the 14 day period. If ORR objects to the proposed amendments within the 14 day period, the parties shall endeavour to reach agreement with ORR on the appropriate amendments, if any, to the Default Train Consist Data which shall then take effect on the first day of the Period next following that in which agreement is reached.

10.5 Disputed amounts repayment and interest rate

- (a) Where a party wishes to contest any invoice issued to it under this Schedule 7 (including any invoice in respect of Track Charges) it shall, within 14 days of receipt of the invoice, notify the other party in writing of the amount which is in dispute but shall pay the full amount of the invoice, including the disputed amount, in accordance with the terms of the invoice.
- (b) Where a party has given notice under paragraph 10.5(a) that it disputes part of any invoiced amount:
 - (i) payment of such sum shall be without prejudice to the determination of whether such sum is properly due or not; and
 - (ii) if it is subsequently determined that the disputed sum, or part of it, was not properly due the payee shall repay the disputed sum, or relevant part, to the payer together with interest (to accrue daily and be compounded monthly) at the Default Interest Rate from the date of payment until the actual date of repayment.
- (c) For the avoidance of doubt, nothing in this paragraph 10.5 shall apply to any sums which have fallen due in accordance with Part 3A of this Schedule 7.

PART 3: ROUTE-LEVEL EFFICIENCY BENEFIT SHARE MECHANISM

1. Route-Level Efficiency Benefit Share Mechanism

Calculation of the Route-Level Efficiency Benefit Share

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

(a) in the case of a REBS Outperformance:

$$O_t = \frac{V_t}{AV_t} \cdot \left[\frac{25 \cdot ORB_t}{100} \right]$$

and

(b) in the case of a REBS Underperformance:

$$U_t = \frac{V_t}{AV_t} \cdot \left[\frac{10 \cdot URB_t}{100} \right]$$

where:

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

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

AV_t means the aggregate Variable Usage Charge paid by all train operators providing services for the carriage of passengers in respect of the REBS Route in Relevant Year t (and calculated by summing the values of V_t 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 of the Variable Charge paid 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 of the Variable Charge under paragraph 2.2.1 of Schedule 7 of each relevant train operator's access agreement); and

ORB_t means the lower of:

- (i) the Outperformance Sum; and
- (ii) an amount equal to 10% of the Route Baseline in respect of the REBS Route in Relevant Year t;

U_t means the amount that is payable by the Train Operator to Network Rail in respect of the REBS Route in Relevant Year t ; and

URB_t means the lower of:

- (i) the Underperformance Sum; and
- (ii) an amount equal to 10% of the Route Baseline in respect of the REBS Route in Relevant Year t .

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

Train Operator right to opt out of the Route-Level Efficiency Benefit Share Mechanism

- 1.3 The Train Operator may serve a notice, in the form set out in Appendix 7B, on Network Rail (and shall provide a copy to ORR) informing Network Rail that the Route-Level Efficiency Benefit Share Mechanism shall not apply to the Train Operator in respect of one or more REBS Routes specified in the notice for the Relevant Year in the course of which the notice was served and all subsequent Relevant Years up to 31 March 2019 (an "**Opt-out Notice**"). Unless paragraph 1.4 applies, an Opt-out Notice may be served only before 1 June 2014.
- 1.4 If either of the following circumstances apply, the Train Operator may serve an Opt-out Notice at any time until 31 March 2019:
- (a) the Train Operator commences operating services for the carriage of passengers or freight by railway on one or more REBS Routes on which it did not previously operate such services, whether as a result of entering into a new franchise agreement or a new access agreement or otherwise, and such Opt-out Notice may be served only in respect of the REBS Routes on which the Train Operator commences operating those services; or
 - (b) Network Rail notifies the Train Operator that it has entered into an Alliance Agreement with another train operator in respect of a REBS Route or part thereof on which the Train Operator operates Services, and the Train Operator has obtained written confirmation from ORR that the Alliance Agreement is likely to have a material direct financial impact on Network Rail's performance on that REBS Route as assessed by ORR in its annual efficiency and financial assessment of

Network Rail, and such Opt-out Notice may only be served in respect of the REBS Route to which the Alliance Agreement applies, and in either circumstance, the Opt-out Notice must be served within two months after:

- (i) the date on which the Train Operator commences operating the services described in paragraph 1.4(a); or
- (ii) the date of receipt of written confirmation from ORR under paragraph 1.4(b),

as the case may be.

- 1.5 Network Rail shall serve notice on the Train Operator (copied to ORR) that it has entered into an Alliance Agreement with another train operator in respect of a REBS Route or part thereof on which the Train Operator operates Services within 14 days after entering into that Alliance Agreement.
- 1.6 Network Rail shall provide such information to the Train Operator as the Train operator may reasonably request in order to determine whether to serve an Opt-out Notice, and such information shall be provided within 14 days of the request.

Obligation to pay Route-Level Efficiency Benefit Share

- 1.7 If, pursuant to paragraph 1.1, a party is entitled to payment from the other of a Route-Level Efficiency Benefit Share in Relevant Year t, then, subject to paragraph 1.8, such payment shall be made to the party entitled to the payment by the other party as a lump sum payment within 28 days after the date of publication of ORR's annual efficiency and finance assessment of Network Rail for Relevant Year t.
- 1.8 If, in respect of any Relevant Year t, a Route-Level Efficiency Benefit Share is payable in accordance with paragraph 1.7 and this contract has either commenced or expired or otherwise been terminated during the course of that Relevant Year t, the party entitled to payment shall be entitled to a pro rata payment of the Route-Level Efficiency Benefit Share payable in respect of that REBS Route for Relevant Year t. Such pro rata payment (which shall be payable in accordance with paragraph 1.9) shall be calculated as follows:

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

where:

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

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

provided that, in each case:

- (i) if this contract expires or is otherwise terminated on or before the fourteenth day of a Period, such Period shall not be included in the calculation of 'CP';
 - (ii) if this contract expires or is otherwise terminated on or after the fifteenth day of a Period, such Period shall be included in the calculation of 'CP';
 - (iii) if this contract commences on or before the fourteenth day of a Period, such Period shall be included in the calculation of 'CP'; and
 - (iv) if this contract commences on or after the fifteenth day of a Period, such Period shall not be included in the calculation of 'CP'.
- 1.9 Without prejudice to the generality of Clause 16.3.1, any payment of a Route-Level Efficiency Benefit Share (a "**REBS payment**") shall be made on the basis that it is to be treated as exclusive of VAT, so that where and to the extent that the REBS payment is consideration for a supply for VAT purposes the party making that REBS payment shall in addition pay to the party receiving the REBS payment an amount equal to the amount of VAT due in respect of that REBS payment and either:
- (a) the party receiving the REBS Payment shall issue a VAT invoice to the party making such REBS payment in respect of the relevant amount; or
 - (b) if the parties so agree and have entered into an applicable self-billing agreement (within the meaning of regulation 13(3A) of the Value Added Tax Regulations 1995 (the "**VAT Regulations**")) that continues in force then the party making the REBS payment shall produce for itself a self-billed invoice (within the meaning of regulation 13(3) of the VAT Regulations) in respect of the relevant amount.

PART 3A: SCOTTISH GRANT DILUTION

1 Grant Amounts

1.1 Basic Values and Payment Dates

For the purposes of this Part 3A:

- (a) the Basic Values are the amounts by way of grant under section 8 of the Railways Act 2005 specified in the Grant Agreement as payable by the Scottish Ministers to Network Rail; and
- (b) the Payment Dates are the dates set out in the Grant Agreement for the payment of grant by the Scottish Ministers in each of the years 2014, 2015, 2016, 2017, 2018 and 2019, or such other dates for the payment of such grants as may be stipulated in the Grant Agreement.

1.2 *Indexation*

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

2 **Scottish Grant Dilution**

2.1 *Meaning of Scottish Grant Dilution*

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

- (a) the Scottish Ministers fail, for any reason, to pay the whole or any part of the Grant Amount on or before that Payment Date; or
- (b) the payment of the whole or any part of the Grant Amount in respect of that Payment Date is:
 - (i) subject to the performance by Network Rail or any other person of any obligation;
 - (ii) subject to the exercise by the Scottish Ministers or any other person of any discretion; or
 - (iii) contingent upon the happening of any event or circumstance, or any act or omission of any person.

2.2 *Meaning of Scottish Grant Dilution Date*

In respect of any Scottish Grant Dilution:

- (a) if the Scottish Grant Dilution is of the kind referred to in paragraph 2.1(a), the Scottish Grant Dilution Date shall be the Payment Date in

respect of which the Scottish Ministers fail to pay the whole or any part of the Grant Amount due on that date; and

- (b) if the Scottish Grant Dilution is of the kind referred to in paragraph 2.1(b), each Payment Date which falls during any period during which the payment of the whole or any part of a Grant Amount is:
 - (i) subject to any of the matters specified in paragraph 2.1(b)(i) or (ii); or
 - (ii) contingent upon any of the matters specified in paragraph 2.1(b)(iii),

shall be a Scottish Grant Dilution Date.

3. Scottish Grant Compensation Amount

3.1 *Payment obligation*

If a Scottish Grant Dilution occurs:

- (a) Network Rail shall notify the Train Operator and ORR that a Scottish Grant Dilution has occurred, and the circumstances in which it has occurred; and
- (b) the Train Operator shall:
 - (i) send a copy of the notification it has received from Network Rail under paragraph 3.1(a) to any Passenger Transport Executive within whose area it provides services for the carriages of passengers by railway;
 - (ii) if the Scottish Grant Dilution is of the kind described in paragraph 2.1(a), pay Network Rail a Scottish Grant Compensation Amount calculated in accordance with paragraph 3.2 three months after the Scottish Grant Dilution Date; and
 - (iii) if the Scottish Grant Dilution is of the kind described in paragraph 2.1(b), pay Network Rail a Scottish Grant Compensation Amount calculated in accordance with paragraph 3.2 three months after each Scottish Grant Dilution Date.

3.2 *Calculation*

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

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

where:

GC means the Scottish Grant Compensation Amount;

GA_p means the Grant Amount for the Payment Date which is the same date as the Scottish Grant Dilution Date;

P means:

- (a) if the Scottish Grant Dilution is of the kind described in paragraph 2.1(a), the amount of any whole or part payment of the Grant Amount which Network Rail certifies to the Train Operator, within 7 days after the Scottish Grant Dilution Date, that it has received from the Scottish Ministers; and
- (b) if the Scottish Grant Dilution is of the kind described in paragraph 2.1(b), zero;

F_t has the meaning ascribed to it in paragraph 1 of Part 2; and

AF_t means the Aggregate Fixed Charge in Relevant Year t.

PART 4: NOT USED

PART 5: [To be used for additional items where payments due, e.g. signal boxes, additional opening hours.]

PART 6: SUPPLEMENTAL PROVISIONS

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

- (a) the daily amount of the Fixed Track Charge and the number of days covered by the invoice;
- (b) the rate of Variable Usage Charge and the relevant number of Vehicle Miles applicable to vehicles for each service so charged;
- (c) the rate of Traction Electricity Charge and the number of Vehicle Miles applicable to vehicles for each service or Gross Tonne Miles applicable to units for each service so charged, for the purposes of calculating E_{imo} in accordance with paragraph 4.1.2 of Part 2;

- (d) the amount of the Electrification Asset Usage Charge and the number of days covered by the invoice;
- (e) not used;
- (f) not used;
- (g) the amount of any Efficiency Benefit Share in respect of Relevant Years ending on or before 31 March 2014;
- (h) the amount of any sum W_t payable as provided in paragraph 7 of Part 2;
- (i) the amount of any sum $S1_{tw}$ and/or $S2_{tw}$ payable as provided in paragraph 18 of the Traction Electricity Rules;
- (j) the amount of any sum K_t payable as provided in paragraph 6 of Part 2; and
- (k) in respect of any other sums which have fallen due in accordance with any provisions of this contract other than Part 3A, separately the amount payable in respect of each head of charge.

PART 7: FUTURE ACCESS CHARGES REVIEWS

1 General

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

- (a) an access charges review such that amendments to this contract to give effect to the conclusions of such an access charges review come into operation on and from 1 April 2019 or such later date as may be specified in that review; and
- (b) as provided in paragraph 2 (and only as provided in paragraph 2), an access charges review such that amendments to this contract to give effect to the conclusions of such an access charges review come into operation before 1 April 2019.

2 Access charges reviews capable of coming into operation before 1 April 2019

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

2.1.1

- (a) where it considers that there has been, or is likely to be, a material change, other than an excluded change, in the circumstances of Network Rail or in relevant financial markets or any part of such markets; or

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

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

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

where:

1 means Network Rail's total Scottish expenditure in the relevant Review Period;

2 means the proportion of net interest payable in respect of the Scottish Network in the relevant Review Period; and

3 means the proportion of corporation tax payable in respect of the Scottish Network in the relevant Review Period;

(ii) expressions used in the formula specified in paragraph 2.1.1(b)(i) but not otherwise defined shall have the meanings ascribed to them in paragraph 3;

(iii) "**assumed expenditure**" means the amount of Net Expenditure assumed by ORR to be incurred in respect of the Scottish Network in each Financial Year (or part) falling within the relevant Review Period and identified in respect of the Scottish Network in [*Insert reference*] of the 2013 Final Determinations; and

(iv) "**total Scottish expenditure**" means any cost Network Rail incurs operating, maintaining, renewing and enhancing the Scottish Network where, for the purposes of this definition, the cost is net of other operating income treated by ORR as an operating cost in [*Insert reference*] of the 2013 Final Determinations,

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

basis reflecting the proportion of that Financial Year falling within that Review Period; and

2.1.2 where ORR considers that there are compelling reasons to initiate an access charges review, having due regard to its duties under section 4 of the Act, including in particular the duty to act in a manner which it considers will not render it unduly difficult for persons who are holders of network licences to finance any activities or proposed activities of theirs in relation to which ORR has functions under or by virtue of Part I of the Act.

3. Definitions and interpretation:

In this Part 7:

- (a) “**corporation tax**” means corporation tax payable by Network Rail net of any group relief;
- (b) “**net interest payable**” is:
 - (i) interest, issuance costs and financing fees payable by Network Rail; less
 - (ii) interest receivable by Network Rail,in each case, on an accruals basis, and for these purposes, any calculation of interest :
 - (iii) shall treat all amounts payable and receivable under interest rate and foreign exchange derivative transactions as though such transactions fully qualified for hedge accounting whether or not they in fact do sobut:
 - (iv) shall not include:
 - (A) capital accretion on index-linked debt; or
 - (B) interest that is payable but rolled-up under intercompany loan arrangements;
- (c) “**Review Period**” means a period commencing at any time and ending 36 consecutive months later, provided that if a period of 36 consecutive months would, but for this proviso, extend beyond 31 March 2019, the relevant Review Period shall be deemed to end, and shall end on 31 March 2019;
- (d) “**income**” is as provided in Annex B to the Regulatory Accounting Guidelines dated March 2008 except that income

shall not include the final bullet of paragraph 9 of Annex B being “other income – income generated by [Network Rail] from sources other than those described above.”;

- (e) any calculation of income, expenditure and corporation tax made under or in connection with paragraph 2.1 shall be carried out on an accruals basis; and
- (f) references to ORR carrying out an access charges review shall be construed as including references to its initiating implementation of that review.

APPENDIX 7A – REBS ROUTES TABLE

Route	Route definition
Anglia	As defined in Network Rail's Delivery Plan supporting information
East Midlands	
Kent	
London North East	
London North West	
Scotland	
Sussex	
Wales	
Wessex	
Western	

APPENDIX 7B – ROUTE-LEVEL EFFICIENCY BENEFIT SHARE OPT-OUT NOTICE

[Name of train operator representative]

[Position]

Telephone: [xxx]

E-mail: [xxx]

[Date]

Head of Regulatory Policy

Network Rail

Kings Place

90 York Way

London

N1 9AG

Dear Head of Regulatory Policy,

Opt-out from the CP5 route-level efficiency benefit sharing (REBS) mechanism

Following the publication by Network Rail of the REBS baselines for CP5, Table 1 sets out the operating routes in relation to which [*enter train operator name here*] will not be participating in REBS for CP5 (2014-15 to 2018-19). [*Enter train operator name here*] hereby exercises its right to opt-out of REBS under its track access contract and accordingly no sums will be payable to or from Network Rail arising from REBS in CP5 for the routes identified in Table 1.

Table 1: REBS opt-out matrix

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

Wessex		
Western		

I understand that unless [*enter train operator name here*] has provided a notification to ORR to opt-out of REBS in CP5 within two months of [the start of the control period] [the start of new operations on the network] [the date of receipt of written confirmation from ORR that Network Rail has entered into a material alliance agreement], [*enter train operator name here*] will be eligible to make and receive payments under REBS for the remainder of CP5.

I have also sent a copy of this notice to the Director of Railway Markets and Economics at ORR.

Yours sincerely

[Name of train operator representative]

APPENDIX 7C – DEFAULT TRAIN CONSIST DATA

**APPENDIX 7D – CATEGORIES OF METERED TRAINS FOR THE
PURPOSES OF PARAGRAPH 4.1.1 OF PART 2**