

## PR13 Implementation - Proposed Schedule 7 for Freight Operators

### SCHEDULE 7: TRACK CHARGES AND OTHER PAYMENTS

#### 1. Definitions

In this Schedule 7 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 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 attributed to it in paragraph 1(1) of Schedule 4A to the Act;

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

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

**“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;

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

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

**“Coal Spillage Charge”** means the amount payable in respect of item 6 in the formula specified in paragraph 2.2.1;

**“Coal Spillage Charge Rate”** means, in respect of each Coal Vehicle used in a Service, the coal spillage charge rate per KGTM for that Coal Vehicle, as set out in the Track Usage Price List and adjusted in accordance with paragraph 2.7.2;

**“Coal Spillage Investment”** has the meaning attributed to it in paragraph 2.12.3(b);

**“Coal Spillage Reduction Investment Charge”** means the amount payable in respect of item 7 in the formula specified in paragraph 2.2.1;

**“Coal Spillage Reduction Investment Charge Rate”** means, in respect of each Coal Vehicle used in a Service, the coal spillage charge rate per KGTM set out in the Track Usage Price List;

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

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

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

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

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

**“CSR Deductions”** means any amounts applied by Network Rail from the amounts received by Network Rail from all freight train operators in respect of the Coal Spillage Investment Charge for the purpose described in paragraph 2.12.2;

**“CSR Rebate”** has the meaning attributed to it in paragraph 2.12.6;

**“CSR Variation Notice”** means a notice given by ORR to the parties which sets out whether the Total CSR Fund Balance (if any) shall be carried forward or whether a CSR Rebate shall be made;

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

**“Default Period”** means the period from the later of:

- (a) the date on which the New Registered Equipment is first used on the Network by the Train Operator; or
- (b) 1 April 2014,

until the date on which ORR consents to or determines the supplement to the Track Usage Price List under paragraph 2.2.8(b) or paragraph 2.2.11;

**“Default Rate”** means, in respect of any New Registered Equipment used on the Network by the Train Operator, the corresponding freight default rate for that type of vehicle (locomotive, empty wagon or loaded wagon) set out in the Track Usage Price List;

**“Delivery Plan”** means the document entitled [*insert title*], 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 2.10;

**“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 the electrification asset usage charge calculated in accordance with paragraph 2.4.12, and adjusted in accordance with paragraph 2.7.2;

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

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

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

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

**“Freight Capacity Rate”** means, in respect of each Service, the freight capacity rate corresponding to the day (or days) of the week on which that Service is operated, as set out in the List of Capacity Charge Rates and adjusted in accordance with paragraph 2.7.2;

**“Freight Only Line Charge Rate”** means, in respect of each ESI Vehicle, IO Vehicle and/or SNF Vehicle used in a Service, the rate per KGTM for that ESI Vehicle, IO Vehicle and/or SNF Vehicle (as applicable) which shall be:

- (a) in respect of the Relevant Year commencing on 1 April 2014 the amount set out in the Track Usage Price List relating to the freight only line charge rate for an ESI Vehicle, IO Vehicle or SNF Vehicle for that year; and

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

**“Freight Services”** means the services for the carriage of goods by railway on the Network;

**“Freight Specific Charge Rate”** means, in respect of each ESI Vehicle, IO Vehicle and/or SNF Vehicle used in a Service the rate per KGTM for that ESI Vehicle, IO Vehicle and/or SNF Vehicle (as applicable) which shall be:

- (a) in respect of the Relevant Year commencing on 1 April 2014 the amount set out in the Track Usage Price List relating to the freight specific charge rate for an ESI Vehicle, IO Vehicle or SNF Vehicle for that year; and
- (b) in respect of any other Relevant Year t, the total of the amount set out in the Track Usage Price List relating to the freight specific charge rate for an ESI Vehicle, IO Vehicle or SNF Vehicle for that year multiplied by the Phased in Charges Indexation Adjustment for that year calculated in accordance with paragraph 2.7.3;

**“FY CSR Fund”** has the meaning attributed to it in paragraph 2.12.3;

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

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

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

- (a) any loss of income on the part of Network Rail; and

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

**"Indexed Figures"** means the Default Rate, the Electrification Asset Usage Charge, the Freight Capacity Rate, the Incident Cap Access Charge Supplement Rate, the Train Operator Payment Rate, the Network Rail–Payment Rate, the Service Variation Sum, the Train Operator Cap, the Disruption Sum, the Normal Planned Disruption Sum, the Enhanced Planned Disruption Sum, the Network Rail Cap, the Cancellation Sum, the Late Notice Cancellation Sum, the Prolonged Disruption Amount and the Coal Spillage Charge Rate;

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

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

**"kWh"** means kilowatt hours;

**"List of Capacity Charge Rates"** means the document entitled "List of Capacity Charge Rates" published by Network Rail on or about 20 December 2013;

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

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

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

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

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

**"New Registered Equipment"** means a type of railway vehicle or vehicle commodity combination not incorporated in the 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;

**“ORR’s Qualifying Modification Criteria”** means the criteria issued by ORR as described in paragraph 2.9.1;

**“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;

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

**“Power Factor Correction”** means the relevant power factor correction as set out in appendix 2 of the Traction Electricity Rules;

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

**“Qualifying Modification”** means a modification to the Operating Constraints in excess of their level as at 1 April 2001, which:

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

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

- (a) take account of:
  - (i) the use made or to be made of the Qualifying Modification, where such modification increased the capacity of the Network; or
  - (ii) in any other case, the benefit which is likely to be derived from the Qualifying Modification by the Train Operator compared to the benefit derived from such modification by the Contributing Train Operator; and
- (b) reflect any relevant guidance in relation to the funding of modifications to the Operating Constraints published in ORR’s Qualifying Modification Criteria;

**“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 [*insert reference*] 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 1 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 Year t"** means the Financial Year for the purposes of which any calculation falls to be made;

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

**"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 [insert reference] 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 4.1;

**"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 4;

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

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

**“tariff band”** 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;

**“Total CSR Fund”** means, at any given time, the aggregate of all amounts received by Network Rail from all freight train operators in respect of the Coal Spillage Investment Charge, less any CSR Deductions;

**“Total CSR Fund Balance”** has the meaning attributed to it in paragraph 2.12.3(c);

**“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 the charge calculated in accordance with paragraph 2.4;

**“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;

**“Traction Electricity Rate”** means, for each Service, such amount as Network Rail shall specify for the purpose of each Financial Year as reflecting, so far as reasonably practicable, the actual cost to Network Rail of providing traction electricity to the Train Operator, calculated using the consumption rates set out in the Traction Electricity Consumption Rates List and subject to:

- (a) the agreement of the Train Operator to those amounts, such agreement not to be unreasonably withheld or delayed; and
- (b) the consent of ORR;

**“train category”** means train type i using the relevant Electricity Type (AC/DC);

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

**“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 charge that varies according to KGTM and is calculated in accordance with the formula set out in paragraph 2.2.1, summed across all Services;

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

- (a) in respect of the Relevant Year commencing on 1 April 2014 the amount set out in the Track Usage Price List relating to the variable usage charge rate for the corresponding vehicle type and commodity for that year; and
- (b) in respect of any other Relevant Year t, the total of the amount set out in the Track Usage Price List relating to the variable usage charge rate for the corresponding vehicle type and commodity for that year multiplied by the Phased in Charges Indexation Adjustment for that year calculated in accordance with paragraph 2.7.3; and

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

## **2. Track Charges and Invoices**

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

- 2.1.1 In respect of each Charging Period, the Train Operator shall pay or procure payment of the Variable Charge, the Freight Capacity Charge, the Traction Electricity Charge, the Electrification Asset Usage Charge, the Incremental Costs, the Incident Cap Access Charge Supplement, the Qualifying Modification Benefit Charge and any amount of  $S1_{tw}$  or  $S2_{tw}$  payable in accordance with the Traction Electricity Rules. The charges will be rounded to the nearest penny. Where a calculation ends up exactly half way between whole numbers it will be adjusted upward.
- 2.1.2 No Track Charges shall be payable by the Train Operator in respect of a Train Slot when the train has not reached its Planned Destination for a reason which is Attributable to Network Rail.
- 2.1.3 Network Rail shall issue to the Train Operator an invoice as soon as practicable, or as otherwise agreed, following the expiry of each Charging Period in respect of the Variable Charge, the Freight Capacity Charge, the Traction Electricity Charge, the Electrification Asset Usage Charge, the Incident Cap Access Charge Supplement and any Incremental Costs or Qualifying Modification Benefit Charge which is or are payable in respect of that Charging Period.

2.1.4 If, at the time that Network Rail issues any invoice pursuant to paragraph 2.1.3, any Efficiency Benefit Share is payable by Network Rail to the Train Operator, or any Route-Level Efficiency Benefit Share or any amount under the Traction Electricity Rules is payable by either party to the other, that invoice shall also reflect that Efficiency Benefit Share payable by Network Rail and the Route-Level Efficiency Benefit Share or any amount under the Traction Electricity Rules payable by either party to the other.

## 2.2 *Variable Charges*

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

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

where:

- 1 means, in respect of each locomotive, the VUC Rate for the relevant locomotive type multiplied by the KGTM for that locomotive type relating to the relevant Service;
- 2 means, in respect of each empty wagon, the VUC Rate for the relevant empty wagon type multiplied by the KGTM for that empty wagon type relating to the relevant Service;
- 3 means, in respect of each loaded wagon, the VUC Rate for the relevant loaded wagon type multiplied by the KGTM for that loaded wagon type relating to the relevant Service;
- 4 means, in respect of each unit of coaching stock, the VUC Rate for the relevant coaching stock type multiplied by the KGTM for that coaching stock type relating to the relevant Service;
- 5 means, in respect of each ESI Vehicle, IO Vehicle and each SNF Vehicle, the Freight Only Line Charge Rate for that ESI Vehicle, IO Vehicle or SNF Vehicle (as the case may be) multiplied by the KGTM for that ESI Vehicle, IO Vehicle or SNF Vehicle (as the case may be) relating to the relevant Service;
- 6 means, in respect of each Coal Vehicle, the Coal Spillage Charge Rate multiplied by the KGTM for that Coal Vehicle relating to the relevant Service;
- 7 means, in respect of each Coal Vehicle, the Coal Spillage Reduction Investment Charge Rate multiplied

by the KGTM for that Coal Vehicle relating to the relevant Service;

- 8 means, in respect of each ESI Vehicle, IO Vehicle and each SNF Vehicle, the Freight Specific Charge Rate for that ESI Vehicle, IO Vehicle or SNF Vehicle (as the case may be) multiplied by the KGTM for that ESI Vehicle, IO Vehicle or SNF Vehicle (as the case may be) relating to the relevant Service; and
- 9 means, in respect of New Registered Equipment during the Default Period, the Default Rate multiplied by the KGTM for that New Registered Equipment relating to the relevant Service.

*Supplementing the Track Usage Price List to include rates for New Registered Equipment*

2.2.2 A supplement to the Track Usage Price List to include a rate for New Registered Equipment shall have effect only if the supplement has been:

- (a) agreed between the parties and ORR has consented to it;
- (b) determined by a relevant ADRR Forum and ORR has consented to it; or
- (c) determined by ORR,

pursuant to paragraph 2.2.8(b) or paragraph 2.2.11 below.

2.2.3 The Train Operator shall inform Network Rail of the date or likely date from which it intends to use the New Registered Equipment on the Network.

2.2.4 The Default Rate shall have effect in respect of the New Registered Equipment during the Default Period.

2.2.5 Where the Train Operator begins to use or informs Network Rail that it intends to use New Registered Equipment on the Network:

- (a) the Train Operator may give notice to Network Rail requesting that it propose a rate to apply as the VUC Rate for the New Registered Equipment ("**Supplement Rate**"). The Train Operator shall provide such information as Network Rail reasonably requires to do this; or
- (b) Network Rail may give notice to the Train Operator proposing:

- (i) a Supplement Rate for the New Registered Equipment in which case Network Rail must provide all information on which it based the calculation of the Supplement Rate; or
- (ii) that the Train Operator provides it with information to enable it to calculate the Supplement Rate in which case the Train Operator shall use reasonable endeavours to provide this information promptly.

2.2.6 If the Train Operator gives notice to Network Rail under paragraph 2.2.5(a) or provides Network Rail with information under paragraph 2.2.5(b)(ii) Network Rail shall calculate and notify the Train Operator promptly of the Supplement Rate.

2.2.7 Following receipt of a notice given under paragraph 2.2.5(a) or (b) (the "**Notice**"):

- (a) the parties shall seek to agree a Supplement Rate and where they do agree shall request ORR's consent to it providing ORR with information and evidence in support of the agreed Supplement Rate; and
- (b) where the parties are unable to agree a Supplement Rate within 90 days of receipt of the Notice, either party may refer the matter for resolution in accordance with the ADRR.

2.2.8 Following a request to ORR under paragraph 2.2.7(a):

- (a) the parties shall, within such timescales as ORR may specify, furnish ORR with such further information as ORR may request in order to consider whether to issue its consent; and
- (b) ORR may consent to the Supplement Rate agreed by the parties or may, having consulted the parties, determine that a different Supplement Rate shall apply.

2.2.9 If the matter is referred for resolution under paragraph 2.2.7(b) the parties shall agree in a Procedure Agreement, as defined in the ADRR, that the remit of the relevant ADRR Forum shall be to determine the Supplement Rate and 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.

2.2.10 The parties shall procure that all details of any determination by a relevant ADRR Forum shall be notified to ORR within seven days after the date of the determination.

2.2.11 Following notification under paragraph 2.2.10 ORR may either consent to the determination or may, having consulted the parties, determine that a different Supplement Rate shall apply.

2.2.12 Following ORR's consent or determination under paragraph 2.2.8(b) or 2.2.11 Network Rail shall:

- (a) apply the Supplement Rate which ORR either consented to or determined as the VUC Rate in respect of the New Registered Equipment from the date which was the first day of the Default Period; and
- (b) within 28 days of the date of ORR's consent or determination under paragraph 2.2.8(b) or 2.2.11:
  - (i) issue an adjusting invoice or credit note to the Train Operator; and
  - (ii) publish on its website details of the VUC Rate for the New Registered Equipment, alongside the details of any other such Supplement Rates to which ORR has consented or determined pursuant to this or any other track access contract.

### 2.3 *Freight Capacity Charge*

The Freight Capacity Charge shall be calculated in accordance with the following formula or such other method that the parties may agree with the object of calculating a Freight Capacity Charge that is not materially different from that calculated in accordance with the following formula:

$$\text{Freight Capacity Charge} = \sum (\text{FCR}_{\text{mf}} \times \text{CM}_{\text{mf}}) + (\text{FCR}_{\text{w}} \times \text{CM}_{\text{w}})$$

where:

$\text{FCR}_{\text{mf}}$  means the Freight Capacity Rate in respect of Services operated during the period from Monday to Friday (both inclusive) as set out in the List of Capacity Charge Rates;

$\text{CM}_{\text{mf}}$  means Contract Miles in respect of Services operated during the period from Monday to Friday (both inclusive);

$FCR_w$  means the Freight Capacity Rate in respect of Services operated on Saturday and/or Sunday, as set out in the List of Capacity Charge Rates;

$CM_w$  means Contract Miles in respect of Services operated on Saturday and/or Sunday; and

$\Sigma$  means the summation across all Services.

## 2.4 Traction Electricity Charge

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

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

where:

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

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

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

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

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

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

*Calculation of modelled consumption*

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

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

where:

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

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

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

where:

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

$C_i$  means the 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;

$EF_{gjt}$  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 2.4.11; 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*

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

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

where:

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

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

$\delta_i]$

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

where:

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

$CME_{igt}$  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 2.4.11;

$RGB_{igt}$  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

$\delta_i$  means the Tolerance Factor for train category  $i$ .

#### 2.4.1.4

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

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

where:

$\Sigma$  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:



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

$CME_{igtAC}$  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 2.4.11;

$\delta_i$  means the Tolerance Factor for train category i; and

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

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

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

where:

$\Sigma$  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:

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

$CME_{igtDC}$  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 2.4.11;

$\delta_i$  means the Tolerance Factor for train category i; and

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

2.4.2 Not used.

2.4.3 Not used.

2.4.4 Not used.

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

2.4.5 If the Train Operator wishes to propose the introduction of On-Train Metering to measure traction electricity consumption for a vehicle or vehicles of a vehicle type that the Train Operator operates for the purposes of being invoiced by Network Rail for traction electricity, it shall notify Network Rail of any required changes to the contract in connection with that proposal.

2.4.6 Any notice under paragraph 2.4.5 shall be accompanied by information and evidence in reasonable detail supporting the changes proposed and setting out the reasons for those changes, and Network Rail shall respond in writing within 56 days of service of any such notice.

2.4.7 Promptly following any response served by Network Rail under paragraph 2.4.6, the parties shall endeavour to agree whether the contract should be amended in connection with that proposal and, if so, the amendments.

2.4.8 If the parties agree an amendment to the contract in connection with the proposal referred to in paragraph 2.4.5, that amendment shall take effect only when it has been approved by ORR under section 22 of the Act. Accordingly, as soon as reasonably practicable after any such amendment is agreed, the parties shall ensure that ORR is furnished with such amendment and such information and evidence as it shall require to determine whether or not to approve the amendment.

2.4.9 Any agreed amendment to the contract in connection with the proposal referred to in paragraph 2.4.5, which is approved by ORR under section 22 of the Act, shall apply with effect from the date agreed by the parties.

2.4.10 If the parties fail to reach agreement within 90 days after service of a notice under paragraph 2.4.5, or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, either party may notify ORR and request that ORR determines the matter. The parties shall, within such timescales as ORR may specify, furnish ORR with such information and evidence as ORR shall require to determine the matter. If a party fails to furnish such information and evidence within the specified timescale, ORR shall be entitled to determine the matter without that information and evidence and the party in default shall have no grounds for complaint in that respect.

2.4.10A Where ORR determines the matter pursuant to paragraph 2.4.10, it may issue a notice to the parties setting out the amendments to be made to the contract and the date, which may be retrospective, from which they shall take effect.

#### 2.4.11 **Strategy for the Procurement of Traction Electricity**

At least three months prior to the start of each Financial Year, 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 Financial 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 2.4.11, 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 2.4.11, 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 2.4.11, 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 2.4.11; and
- (ii) procure traction electricity for the Train Operator in accordance with that traction electricity procurement strategy.

#### 2.4.11A Actual cost of traction electricity

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

#### 2.4.12 Electrification Asset Usage Charge

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

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

where:

**Error! Bookmark not defined.**  $\sum$  means the summation across all Services using electric traction;

$EV_{tk}$  means an amount in respect of the Electrification Asset Usage Charge per electrified KGTM on route type k for a Charging Period in Relevant Year t, where, in relation to the Relevant Year commencing on 1 April 2014,  $EV_{tk}$  shall have, in respect of each electrified KGTM on each route type k, the value per electrified KGTM on route type k for the Electrification Asset Usage Charge set out in the Track Usage Price List; and

$UV_{tk}$  means the actual number of electrified KGTM on route type k in the relevant Charging Period in Relevant Year t operated by or on behalf of the Train Operator.

2.5 Not used.

## 2.6 Incident Cap Access Charge Supplement

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

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

where:

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

ICACSR means the Incident Cap Access Charge Supplement Rate.

## 2.7 Price Variation

2.7.1 The Indexed Figures shall remain in force until the day preceding 1 April 2015.

2.7.2 On 1 April in each Financial Year, commencing 1 April 2015, the Indexed Figures from the previous Financial Year shall each be adjusted by multiplying them by the Adjustment Factor (rounded to three decimal places) which shall have been calculated in accordance with the following formula:

$$\text{Adjustment Factor} = \left( 1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right) \cdot (1 + \text{TRUEUP}_{t-1})$$

where:

$RPI_{t-1}$  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

$RPI_{t-2}$  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.

$$\text{TRUEUP}_{t-1} = \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} - \frac{(RPI_{t-2} - RPI_{t-3})}{RPI_{t-3}}$$

where:

$RPI_{t-3}$  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.

2.7.3 The Phased in Charges Indexation Adjustment in Relevant Year t shall be derived from the following formula:

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

where:

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

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

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

$RPI_{t-2}$  has the same meaning as set out in paragraph 2.7.2 above.

## 2.8 Incremental Costs

2.8.1 Where:

- (a) the Train Operator makes an Access Proposal, Rolled Over Access Proposal or Train Operator Variation Request;
- (b) the operation of the Service requested would exceed the Operating Constraints applying as at 1 April 2001;
- (c) the Train Operator notifies Network Rail at the time of requesting the Service that it wishes Network Rail to modify the Operating Constraints applying as at 1 April 2001 in a manner so as to permit the operation of the Service requested under this contract;

- (d) Network Rail is reasonably able to effect such modifications in a timescale that meets the Train Operator's requirements; and
- (e) the Incremental Costs of any such modifications are not estimated by Network Rail to exceed £300,000 in any Financial Year,

then paragraph 2.8.2 shall apply.

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

- (a) it shall effect the modification to the Operating Constraints requested by the Train Operator under paragraph 2.8.1(c); or
- (b) it shall not effect the modification to the Operating Constraints requested by the Train Operator under paragraph 2.8.1(c) for one of the following reasons:
  - (i) it is not reasonably able to effect such modification in a timescale that meets the Train Operator's requirements; or
  - (ii) the Incremental Costs of such modification are estimated by Network Rail to exceed £300,000 in any Financial Year.

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

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

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

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

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

2.8.7 Where:

- (a) the Train Operator makes an Access Proposal, Rolled Over Access Proposal or Train Operator Variation Request; and
- (b) the operation of the Service requested:
  - (i) would exceed the Operating Constraints applying as at 1 April 2001; and
  - (ii) is permitted under the Operating Constraints applying as at the date of the request by reason of a Qualifying Modification,

then paragraph 2.8.8 shall apply.

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

2.8.9 Where:

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

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

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

2.8.11 If the Train Operator disputes:

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



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

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

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

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

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

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

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

- (a) such determination shall be binding on Network Rail and the Train Operator; and

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

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

## 2.9 *Office of Rail Regulation's Qualifying Modification Criteria*

2.9.1 ORR may at any time issue criteria:

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

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

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

## 2.10 *Efficiency Benefit Share*

2.10.1 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.

2.10.2 If, pursuant to paragraph 2.10.1, the Train Operator is entitled to payment of an Efficiency Benefit Share in respect of Relevant

Year t, then, subject to paragraph 2.10.3, 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 Charging Period in which it is determined by the ORR that such payment should be made.

2.10.3 If, in respect of any Relevant Year t, an Efficiency Benefit Share is payable in accordance with paragraph 2.10.2 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 2.10.2) shall be calculated as follows:

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

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 Charging 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 Charging Period, such Charging 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 Charging Period, such Charging Period shall be included in the calculation of 'CP';
- (iii) if this contract commences on or before the fourteenth day of a Charging Period, such

Charging Period shall be included in the calculation of 'CP'; and

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

2.10.4 Without prejudice to the generality of Clause 16.4.1, 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.

2.11 Not used.

2.12 *Coal Spillage Reduction Investment Charge for Financial Year ending 31 March 2014*

2.12.1 Not used.

2.12.2 The purpose of the Coal Spillage Reduction Investment Charge was to enable Network Rail to fund capital investments to reduce coal spillage on the Network, and Network Rail shall only be entitled to apply amounts received in respect of the Coal Spillage Reduction Investment Charge for such purpose.

2.12.3 Within 28 days of the end of the Financial Year ending immediately before 00:00 hours on 1 April 2014, Network Rail shall provide the Train Operator and ORR with details of:

- (a) the total amount received by Network Rail from all freight train operators during that Financial Year in respect of the Coal Spillage Reduction Investment Charge (the "FY CSR Fund");

- (b) the aggregate amount of funding distributed by Network Rail during that Financial Year to reduce coal spillage on the Network (each a “Coal Spillage Investment”); and
- (c) the balance (if any) of the FY CSR Fund after:
  - (i) adding the Total CSR Fund Balance for the previous Financial Year if such Total CSR Fund Balance for the previous Financial Year has been carried forward; and
  - (ii) deducting the capital cost of any Coal Spillage Investments made during that Financial Year, (the “**Total CSR Fund Balance**”).

2.12.4 Within 56 days of the last day of the Financial Year ending immediately before 00:00 hours on 1 April 2014, Network Rail shall, following consultation with the Train Operator and all other freight train operators whose access agreement in respect of track includes a provision similar to this paragraph 2.12, notify the Train Operator and ORR in writing whether it wishes to carry forward the Total CSR Fund Balance for application to Coal Spillage Investments in the then current Financial Year.

2.12.5 Network Rail's notice pursuant to paragraph 2.12.4 shall be accompanied by such information and supporting evidence (including any freight train operators' representations and details of any Coal Spillage Investments proposed for the then current Financial Year) as ORR may require to determine whether or not the Total CSR Fund Balance should be carried forward for application in the then current Financial Year.

2.12.6 If ORR determines that the Total CSR Fund Balance should not be carried forward and ORR issues a CSR Variation Notice to that effect, the Train Operator shall be entitled to a rebate of amounts paid by the Train Operator in respect of the Coal Spillage Reduction Investment Charge (a “CSR Rebate”). The amount of the CSR Rebate payable to the Train Operator shall be an amount which, when expressed as a percentage of the Total CSR Fund Balance, is equal to the proportion borne by the Train Operator's total contribution to the Total CSR Fund.

2.12.7 If ORR determines that the Total CSR Fund Balance should be carried forward and ORR issues a CSR Variation Notice to that effect, Network Rail shall retain the Total CSR Fund Balance for application for Coal Spillage Investments in the then current Financial Year.

2.12.8 Promptly following service of a CSR Variation Notice under this paragraph 2.12, and in order to give effect to any CSR Rebate specified in that CSR Variation Notice, Network Rail shall issue to the Train Operator a statement showing the necessary adjustments to:

- (a) any invoices and credit notes already issued; and
- (b) any payments already made,

in each case in respect of the Coal Spillage Reduction Investment Charge- paid during the Financial Year ending immediately before 00:00 hours on 1 April 2014.

2.12.9 Any statement issued by Network Rail pursuant to paragraph 2.12.8 shall be accompanied by an adjusting invoice (which shall be payable by the Train Operator within 28 days) or credit note.

### 3. Freight Charging Review

3.1 ORR may carry out one or more access charges reviews of all or part of this contract such that amendments to this contract to give effect to the conclusions of such an access charges review come into operation on and from 1 April 2019 or such later date as may be specified in that review.

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

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

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

4.1 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:

$$O_t = \frac{V_{ct}}{AV_{ct}} \cdot \left[ \frac{25 \cdot ORB_t}{100} \right]$$

and

- (b) in the case of a REBS Underperformance:

$$U_t = \frac{V_{ct}}{AV_{ct}} \cdot \left[ \frac{10 \cdot URB_t}{100} \right]$$

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  $t$ ;

$V_{ct}$  means the amounts payable under items 1 to 4 of the Variable Charge paid by the Train Operator in respect of the REBS Route for Relevant Year  $t$ ;

$AV_{ct}$  means 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 the amounts payable under items 1 to 4 of the Variable Charge under paragraph 2.2.1 and the corresponding provisions of each relevant train operator's access agreement) and 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 amount  $V_t$  under paragraph 3 of Part 2 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 or 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  $t$ .

4.2 The Route-Level Efficiency Benefit Share (if any) calculated under paragraph 4.1 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 4.3 or 4.4. 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 4.3 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*

4.3 The Train Operator may serve a notice, in the form set out in Appendix 2, 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 4.4 applies, an Opt-out Notice may be served only before 1 June 2014.

4.4 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 4.4(a); or



- (ii) the date of receipt of written confirmation from ORR under paragraph 4.4(b),

as the case may be.

- 4.5 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.
- 4.6 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 the Route-Level Efficiency Benefit Share*

- 4.7 If, pursuant to paragraph 4.1, a party is entitled to payment from the other of a Route-Level Efficiency Benefit Share in Relevant Year t, then, subject to paragraph 4.8, 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.
- 4.8 If, in respect of any Relevant Year t, a Route-Level Efficiency Benefit Share is payable in accordance with paragraph 4.7 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 4.9) 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 Charging 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 Charging Period, such Charging 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 Charging Period, such Charging Period shall be included in the calculation of 'CP';
- (iii) if this contract commences on or before the fourteenth day of a Charging Period, such Charging Period shall be included in the calculation of 'CP'; and
- (iv) if this contract commences on or after the fifteenth day of a Charging Period, such Charging Period shall not be included in the calculation of 'CP'.

4.9 Without prejudice to the generality of Clause 16.4.1, 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.

## APPENDIX 1 – 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 2 – 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 3 – CATEGORIES OF METERED TRAINS FOR THE  
PURPOSES OF PARAGRAPH 2.4.1.1**