

# PR13 Implementation – Proposed Schedule 8 for Franchised Passenger Operators

## SCHEDULE 8: PERFORMANCE REGIME

### 1 Interpretation

#### 1.1 Definitions

In this Schedule 8 and its Appendices 1 and 2, unless the context otherwise requires:

**“Applicable Timetable”** means, in respect of a day, that part of the Working Timetable in respect of that day which is required to be drawn up in accordance with Condition D2.1.1 as at 2200 hours on the day prior to that day, and which is applicable to the Trains;

**“Bi-annual Timetable”** means in respect of any day or any Period the Passenger Timetable commencing on either the Principal Change Date or Subsidiary Change Date (as the case may be) in which falls the last day of the Period containing that day or the last day of that Period respectively;

**“Cancelled Stop”** means in relation to a Train scheduled in the Applicable Timetable to stop to set down passengers at a Monitoring Point, the Train failing to trigger that Monitoring Point (except where the failure of the train to trigger the Monitoring Point is due to a malfunction of the Monitoring Point);

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

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

**“Capped Value”** means in relation to any Service Group, the capped value (if any) specified in respect of that Service Group in Appendix 1 (as indexed in accordance with paragraph 9);

~~“Charter Destination Point”~~ means any such station so specified in Part 1 of Appendix 2;

~~“Charter Service Group”~~ means a Charter Service Group specified in Part 1 of Appendix 2 and comprising all of the Service Groups listed in Part 1 of Appendix 2 as forming that Charter Service Group;

“ETCS” means the European Train Control System;

“Joint Inquiry” means a formal inquiry which is required by any of the Railway Group Standards to be held or is permitted by any of the Railway Group Standards to be held and is in fact held;

“Minutes Delay” means, in relation to a Train and a Recording Point, the delay at that Recording Point, calculated in accordance with paragraph 3;

“Minutes Late” means, in relation to a day and a Monitoring Point, the lateness at that Monitoring Point, calculated in accordance with paragraph 2;

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

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

“Off-Peak” where applicable, has the meaning ascribed to “Off-Peak Services” in Schedule 5;

<b>“Passenger’s Charter”</b>	<del>means a commitment to passengers generally (whether or not legally binding) made by the Train Operator or any Passenger Transport Executive (in respect of any services operated by the Train Operator which are the subject of arrangements between the Train Operator and that Passenger Transport Executive) in relation to the punctuality and/or reliability of all or any of the Trains. The foregoing shall not be construed as to include any specific alternative or additional arrangements with any particular passenger (whether or not legally binding);</del>
<b>“Passenger Timetable”</b>	means the timetable referred to within the Performance Monitoring System as the passenger timetable and which reflects the Applicable Timetable;
<b><u>“Peak”</u></b>	<u>Where applicable, has the meaning ascribed to “Peak Services” in Schedule 5;</u>
<b>“Performance Data Accuracy Code”</b>	means the version of the Performance Data Accuracy Code referred to in Part B of the Network Code;
<b>“Performance Monitoring System”</b>	means the recording system which Network Rail is required to operate under Part B of the Network Code;
<b>“Performance Sum”</b>	means, in relation to a Service Group, a sum of money which Network Rail or the Train Operator is liable to pay to the other under this Schedule 8, as calculated in accordance with paragraph 9 or 10, as the case may be;
<b>“Period”</b>	means each consecutive period of 28 days during the term of this contract commencing at 0000 hours on 1 April in each year, provided that the length of the first and last such Period in any year may be varied by up to seven days on reasonable prior notice from Network Rail to the Train Operator;
<b>“Recording Point”</b>	means a point at which Network Rail records Trains using the Performance Monitoring System;
<b>“Recovery Time”</b>	means additional time incorporated in the Applicable Timetable to allow for a Train to regain time lost during an earlier part of its journey;
<b>“Relevant Year”</b>	has the meaning ascribed to it in Schedule 7;
<b>“Restriction of Use”</b>	has the meaning ascribed to it in Schedule 4;

<b><u>“Retail Prices Index”</u></b>	<del>has the meaning ascribed to it in Schedule 7;</del>
<b><u>“RPI”</u></b>	<u>has the meaning ascribed to it in Schedule 7;</u>
<b>“Season Ticket”</b>	means any ticket valid for unlimited travel on a Service for not less than a period of one calendar month;
<b>“Service Code”</b>	means the third, fourth and fifth digits of an eight character train service code applied in the Performance Monitoring System to Trains and used to identify them;
<b>“Service Group”</b>	means a collection of Services contained within the service groups specified in column A of Appendix 1;
<b>“Train”</b>	means each train operating a Service which is: <ul style="list-style-type: none"> <li>(a) operated by or on behalf of the Train Operator pursuant to the permission to use the Routes granted under this contract; and</li> <li>(b) used to provide services for the carriage of passengers by railway,</li> </ul> but excludes any and all trains making an Ancillary Movement; and
<b>“Train Operator Performance Point”</b>	means, in relation to a Service Group, the Train Operator performance point specified in column F of Appendix 1.



## 1.2 Interpretation

For the purposes of this Schedule 8:

- (a) a Train shall be treated as being in a Service Group for that part of its journey during which it satisfies the characteristics specified in columns A, L and N of Appendix 1 as forming a Service which is included in that Service Group;
- (b) events in respect of a Train shall be treated as occurring on the day on which the Train is scheduled in the Applicable Timetable to depart from the first point at which it is to pick up passengers; and
- (c) save as otherwise provided, each final calculation of minutes shall be accurate to three decimal places.

### 1.3 *Suspension Notices*

Wherever a Suspension Notice is in force, the effects of that Suspension Notice shall be the subject of Clause 3.6 and not of this Schedule 8. Accordingly, for the purposes of this Schedule 8:

- (a) neither Network Rail nor the Train Operator shall be allocated any responsibility for those effects; and
- (b) those effects shall not be regarded as causing any Minutes Late or Minutes Delay or Cancelled Stops.

## 2 **Calculation of Minutes Late**

The Minutes Late at a Monitoring Point on a day shall be derived from the following formula:

$$\text{Minutes Late} = \Sigma L$$

where:

L in respect of a Train is the lesser of:

- (i) the number of minutes (rounded down to the nearest whole minute) by which the time at which the Train stops at the Monitoring Point is later than the time at which that Train is scheduled in the Passenger Timetable to stop at that Monitoring Point; and
- (ii) the Cap,

provided that no regard shall be had for any Train which is not recorded as stopping at the Monitoring Point; and

$\Sigma$  is the sum across all those Trains in the relevant Service Group which are scheduled in the Passenger Timetable to stop at that Monitoring Point on that day which do so stop.

## 3 **Calculation of Minutes Delay**

The Minutes Delay in respect of a Train when it triggers a Recording Point shall be equal to:

- (a) in respect of the first Recording Point triggered by that Train on any day, the number of minutes (rounded down to the nearest whole minute) by which the time at which that Train triggers the Recording Point is later than the time at which that Train is scheduled in the Applicable Timetable to do so; and
- (b) in respect of any other Recording Point, the lesser of:
  - (i) the number of Minutes Delay in respect of that Recording Point calculated in accordance with paragraph 3(a) (as if that Recording Point were the first Recording Point triggered by that Train); and
  - (ii) the greater of  $((A_1 - A_2) + B)$  and zero

where:

- A<sub>1</sub> is the number of minutes between the time at which the Train triggers the Recording Point (rounded down to the nearest whole minute) and the time the Train last triggered a Recording Point (rounded down to the nearest whole minute);
- A<sub>2</sub> is the relevant time lapse scheduled in the Applicable Timetable between those same two Recording Points; and
- B is any Recovery Time between those Recording Points incorporated in the Applicable Timetable;

provided that:

- (1) any Minutes Delay which arise from a single incident or a series of related incidents and which are less than three minutes in aggregate shall be deemed to be zero; and
- (2) if for any Train the aggregate Minutes Delay in respect of all Recording Points caused by a single incident are in excess of the Cap specified in column K of Appendix 1 for that Service Group, then such excess shall be disregarded.

## 4 Recording of performance information

### 4.1 *Recording of lateness, Minutes Delay and Cancelled Stops*

Without prejudice to its obligations under Part B of the Network Code, Network Rail shall use the Performance Monitoring System to record for each day in respect of each Train scheduled in the Applicable Timetable:

- (a) the time at which the Train stops to set down passengers at each Monitoring Point;
- (b) each Cancelled Stop and the incident(s) causing such Cancelled Stop where the incident can be identified;
- (c) the time at which the Train triggers each Recording Point;
- (d) the Minutes Delay for that Train at each Recording Point; [and](#)
- (e) where the Minutes Delay which that Train has accrued since the last Recording Point are greater than or equal to three minutes:
  - (i) the incident(s) causing each minute of any delay included in Minutes Delay; and
  - (ii) those Minutes Delay for which Network Rail is unable to identify a cause; ~~and (f) for each Charter Destination Point in respect of Trains for which the Charter Destination Point is a destination for the purposes of a Passenger's Charter, the time of the Train's arrival.~~

The provisions of this Schedule 8, which concern the recording of train performance information or which refer to information regarding train performance, and the rights and remedies of the parties in respect of the

recording of that information, shall be subject to and interpreted in accordance with the provisions of the Performance Data Accuracy Code.

#### *4.2 Recording of allocated responsibility for Minutes Delay and Cancelled Stops*

Network Rail shall for each day and for each Train scheduled in the Applicable Timetable record separately in the Performance Monitoring System those Minutes Delay and Cancelled Stops caused by incidents:

- (a) for which Network Rail is allocated responsibility in accordance with paragraph 5.2;
- (b) for which the Train Operator is allocated responsibility in accordance with paragraph 5.3;
- (c) for which Network Rail and the Train Operator are allocated joint responsibility, in accordance with paragraph 5.4;
- (d) for which no cause can be identified; and
- (e) which are planned incidents in accordance with paragraph 5.7.

#### *4.3 Failed Recording Points*

Without prejudice to its obligations under Part B of the Network Code, Network Rail shall use all reasonable endeavours:

- (a) to restore as soon as reasonably practicable any failed Recording Point; and
- (b) pending such restoration, to compile such information from manual records and other sources, including the Train Operator, and otherwise to substitute such information as is appropriate to reflect as accurately as is reasonably practicable the actual performance of the relevant Trains for the purposes of this Schedule 8.

#### *4.4 Provision of information by Train Operator*

The Train Operator shall record and shall continue to record such information as Network Rail may reasonably require and which it is reasonable to expect the Train Operator to have or procure in connection with any Minutes Delay that may arise and shall provide such information to Network Rail promptly after such information first becomes available to the Train Operator.

Network Rail shall promptly notify the Train Operator upon Network Rail becoming aware of any failure or any likely failure to record accurately the information which it is required to record under paragraph 4.1. Any such notification shall be in sufficient detail to enable the Train Operator to institute the recording of such information in connection with the Trains for which the recording of information is subject to such failure or likely failure as the Train Operator may reasonably achieve. The Train Operator shall institute such recording as soon as it is reasonably able following receipt of the notification from Network Rail and will provide Network Rail with the resulting information

no later than 1700 hours two Working Days following the day on which it was recorded.

## **5 Allocation of responsibility for Minutes Delay and Cancelled Stops**

### *5.1 Assessment of incidents causing Minutes Delay and Cancelled Stops*

- (a) In assessing the cause of any Minutes Delay or Cancelled Stop, there shall be taken into account all incidents contributing thereto including:
  - (i) the extent to which each party has taken reasonable steps to avoid and/or mitigate the effects of the incidents; and
  - (ii) where a Restriction of Use overruns due to the start of such Restriction of Use being delayed by a late running Train, the incident(s) giving rise to that late running;
- (b) The parties shall take reasonable steps to avoid and mitigate the effects of any incidents upon the Trains and any failure to take such steps shall be regarded as a separate incident;
- (c) Network Rail shall identify:
  - (i) in respect of each incident recorded under paragraph 4.1(e)(i) as causing Minutes Delay, the extent to which that incident caused each of the Minutes Delay; and
  - (ii) in respect of each incident recorded under paragraph 4.1(b), the extent to which that incident caused the Cancelled Stop;
- (d) So far as Network Rail is reasonably able to do so, it shall identify whether responsibility for incidents causing Minutes Delay or Cancelled Stops is to be allocated to Network Rail or to the Train Operator or to them jointly in accordance with the following provisions of this paragraph 5.

### *5.2 Network Rail responsibility incidents*

Responsibility for Minutes Delay and Cancelled Stops on a day caused by incidents for which Network Rail is allocated responsibility pursuant to this paragraph 5.2 shall be allocated to Network Rail. Unless and to the extent otherwise agreed, Network Rail shall be allocated responsibility for an incident other than a planned incident (as defined in paragraph 5.7), if that incident is caused wholly or mainly:

- (a) by breach by Network Rail of any of its obligations under this contract; or
- (b) (whether or not Network Rail is at fault) by circumstances within the control of Network Rail in its capacity as operator of the Network; or
- (c) (whether or not Network Rail is at fault) by any act, omission or circumstance originating from or affecting the Network (including its operation), including, subject to paragraph 5.3(b)(i), any incident in connection with rolling stock on the Network for which any train operator



other than the Train Operator would be allocated responsibility if it were the Train Operator under this contract.

### 5.3 *Train Operator responsibility incidents*

Responsibility for Minutes Delay and Cancelled Stops on a day caused by incidents for which the Train Operator is allocated responsibility pursuant to this paragraph 5.3 shall be allocated to the Train Operator. Unless and to the extent otherwise agreed, the Train Operator shall be allocated responsibility for an incident other than a planned incident (as defined in paragraph 5.7) if that incident:

- (a) is caused wholly or mainly:
  - (i) by breach by the Train Operator of any of its obligations under this contract; or
  - (ii) (whether or not the Train Operator is at fault) by circumstances within the control of the Train Operator in its capacity as an operator of trains; or
  - (iii) (whether or not the Train Operator is at fault) by any act, omission or circumstance originating from or affecting rolling stock operated by or on behalf of the Train Operator (including its operation), including any such act, omission or circumstance originating in connection with or at any station (other than in connection with signalling under the control of Network Rail at that station or physical works undertaken by Network Rail at that station), any light maintenance depot or any network other than the Network; or
- (b) causes delay to:
  - (i) rolling stock operated by or on behalf of another train operator which is delayed in entering or leaving the Network due to any act, omission or circumstance originating in connection with a light maintenance depot or network other than the Network and, as a result of that delay, rolling stock operated by or on behalf of the Train Operator which is scheduled to leave or enter the Network at the connection with that light maintenance depot or other network is then delayed behind the first mentioned rolling stock; or
  - (ii) the commencement of a Train's journey, which is caused by the late running for any reason whatever of any rolling stock included in that Train when that rolling stock is operated by or on behalf of another train operator.

### 5.4 *Joint responsibility incidents*

- (a) Network Rail and the Train Operator shall be allocated joint responsibility for:

- (i) any incident which is not a planned incident (as defined in paragraph 5.7), caused by an act, omission or circumstance originating in connection with or at a station which:
    - (1) is an act, omission or circumstance which affects the Network, or its operation, and prevents a Train entering or passing through a station at the time it is scheduled to do so; and
    - (2) prevents the access of passengers through the station to or from the Train;and paragraphs 5.2 and 5.3 shall not apply to any such incident; or
  - (ii) any identified incident in respect of which Network Rail and the Train Operator are equally responsible and for which neither Network Rail nor the Train Operator is allocated responsibility under paragraph 5.2 or 5.3.
- (b) Unless and to the extent otherwise agreed, Minutes Delay or Cancelled Stops caused by incidents for which Network Rail and the Train Operator are allocated joint responsibility pursuant to paragraph 5.4(a) shall be allocated 50% to Network Rail and 50% to the Train Operator.

#### 5.5 *Unidentified incidents: Minutes Delay*

Responsibility for Minutes Delay on any day in respect of a Service Group caused by incidents which are unidentified, as recorded under paragraph 4.2(d), shall be allocated as follows:

- (a) if there are any Minutes Delay in respect of the Service Group recorded as being caused by incidents for which Network Rail or the Train Operator are allocated responsibility:
  - (i) 50% of the unidentified Minutes Delay under paragraph 4.2(d) shall be allocated to Network Rail, the Train Operator and joint responsibility incidents *pro rata* to the aggregate Minutes Delay for that Service Group respectively recorded as being their responsibility under this paragraph 5 for that day; and
  - (ii) the balance of the Minutes Delay under paragraph 4.2(d) shall be allocated to Network Rail; and
- (b) if no Minutes Delay on that day in respect of the Service Group are recorded as being caused by incidents for which Network Rail or the Train Operator are allocated responsibility, then Network Rail and the Train Operator shall each be allocated 50% of the unidentified Minutes Delay recorded under paragraph 4.2(d).

#### 5.6 *Unidentified incidents: Cancelled Stops*

Responsibility for Cancelled Stops on a day in respect of a Service Group caused by incidents which are unidentified shall be allocated 50% to Network Rail and 50% to the Train Operator.

### 5.7 *Planned incidents*

An incident shall be treated as a planned incident if and to the extent that:

- (a) such incident was a Restriction of Use notified in accordance with Schedule 4 by Network Rail to the Train Operator; or
- (b) there is Recovery Time in respect of that incident.

### 5.8 *Allocation of responsibility for Minutes Delay at Service Group level: aggregate Minutes Delay*

In respect of a Service Group, the aggregate Minutes Delay on a day shall be the aggregate of all Minutes Delay recorded under paragraphs 4.2(a) to 4.2(d) in respect of all Trains in that Service Group scheduled in the Applicable Timetable.

### 5.9 *Allocation of responsibility for Minutes Delay at Service Group level: Network Rail Minutes Delay*

In respect of a Service Group, the Minutes Delay on a day allocated to Network Rail shall be the aggregate of any Minutes Delay allocated to Network Rail under paragraph 5.2, paragraph 5.4 and paragraph 5.5.

### 5.10 *Allocation of responsibility for Minutes Delay at Service Group level: Train Operator Minutes Delay*

In respect of a Service Group, the Minutes Delay on a day allocated to the Train Operator shall be the aggregate of any Minutes Delay allocated to the Train Operator under paragraph 5.3, paragraph 5.4 and paragraph 5.5.

### 5.11 *Network Rail Cancelled Stops at Monitoring Point level*

In respect of a Monitoring Point, the Cancelled Stops on a day allocated to Network Rail shall be the aggregate of any Cancelled Stops allocated to Network Rail under paragraph 5.2, paragraph 5.4 and paragraph 5.6.

### 5.12 *Train Operator Cancelled Stops at Monitoring Point level*

In respect of a Monitoring Point, the Cancelled Stops on a day allocated to the Train Operator shall be the aggregate of any Cancelled Stops allocated to the Train Operator under paragraph 5.3, paragraph 5.4 or paragraph 5.6.

## **6 Statement of allocated responsibility**

### 6.1 *Initial statement*

For each day, Network Rail shall provide to the Train Operator as soon as reasonably practicable and in any event no later than the following Working Day:

- (a) the allocation of responsibility for incidents made by Network Rail under paragraph 5; and
- (b) a summary for each Service Group showing:
  - (i) the aggregate Minutes Delay and Cancelled Stops recorded under each category set out in paragraph 4.2; and
  - (ii) a list of the Minutes Delay and Cancelled Stops (in each case broken down by incident) recorded as the responsibility of Network Rail and as the responsibility of the Train Operator.

## 6.2 *Further statements*

If Network Rail's nominated representative has reasonable grounds to believe that any further incident was the responsibility of the Train Operator or of Network Rail but was not shown as such in the information made available in accordance with paragraph 6.1, then Network Rail may, within seven days after the last Minutes Delay or Cancelled Stop caused by that incident, issue a notice in accordance with paragraph 15 revising the information and/or allocations of responsibility made available under paragraph 6.1.

## 6.3 *Adjustment statements*

If Condition B3.3 (adjustment to prior results) applies in respect of all or part of a Period, then Network Rail shall promptly issue to the Train Operator a statement showing the necessary adjustments (if any) to statements already issued and Performance Sums already paid in respect of the Period, and any such adjusting statement shall be treated as if it were a statement under paragraph 11.1 and, subject to paragraph 12.2, an adjusting payment shall be payable within 28 days of Network Rail's statement.

## 6.4 *Disputes about statements of allocated responsibility*

- (a) Except to the extent that it has, within two Working Days of receipt, notified Network Rail in accordance with paragraph 15 that it disputes the contents of a statement under paragraphs 6.1 or 6.2, the Train Operator shall be deemed to have agreed the contents of that statement. Any notification of a dispute shall specify the reasons for that dispute.
- (b) The parties shall attempt to resolve disputes notified in accordance with paragraph 6.4(a) as follows:
  - (i) within the next two clear Working Days after notification of any dispute, nominated representatives of the parties shall attempt to resolve that dispute; and
  - (ii) if agreement has not been reached after two clear Working Days, representatives authorised by a more senior level of management of the parties shall use all reasonable endeavours to negotiate a resolution of the dispute.

- (c) Negotiations under paragraph 6.4(b)(ii) shall continue, if necessary, until a date no earlier than five clear Working Days after the end of the Period in which the event giving rise to the dispute referred to in paragraph 6.4(a) occurred.

## 7 Allocation of Minutes Late to Network Rail

In respect of each Monitoring Point, the Minutes Late on a day at that Monitoring Point allocated to Network Rail (MLNR) shall be calculated according to the following formulae:

if MD is greater than zero

$$MLNR = \frac{(MDNR \cdot ML)}{MD} + DMLNR$$

or if MD is equal to zero

$$MLNR = (0.5 \cdot ML) + DMLNR$$

where:

ML is the aggregate Minutes Late at that Monitoring Point on that day for all Trains in that Service Group, calculated in accordance with paragraph 2;

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

MDNR is that part of such MD allocated to Network Rail in accordance with paragraph 5.9; and

DMLNR is the deemed minutes late at that Monitoring Point on that day allocated to Network Rail, derived from the following formula:

$$DMLNR = RC \cdot CM$$

where:

RC is the number of Cancelled Stops recorded at that Monitoring Point on that day for which Network Rail is allocated responsibility in accordance with paragraph 5.11; and

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

## 8 Allocation of Minutes Late to the Train Operator

In respect of each Monitoring Point, the Minutes Late at that Monitoring Point on a day allocated to the Train Operator (MLT) shall be calculated according to the following formulae:

if MD is greater than zero

$$MLT = \frac{(MDT \cdot ML)}{MD} + DMLT$$

or if MD is equal to zero

$$MLT = (0.5 \cdot ML) + DMLT$$

where:

ML is the aggregate Minutes Late at that Monitoring Point on that day for all Trains in that Service Group, calculated in accordance with paragraph 2;

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

MDT is that part of such MD allocated to the Train Operator in accordance with paragraph 5.10; and

DMLT is the deemed minutes late at that Monitoring Point on that day allocated to the Train Operator, derived from the following formula:

$$DMLT = TC \cdot CM$$

where:

TC is the number of Cancelled Stops recorded at that Monitoring Point on that day for which the Train Operator is allocated responsibility in accordance with paragraph 5.12; and

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

## 9 Network Rail Performance Sums

9.1 In respect of a Service Group, the Network Rail Performance Sum (NRPS) for each Period shall be calculated according to the following formula:

$$NRPS = (NRPP - NRWAML) \cdot BF \cdot NRPR$$

where:

NRPP is the Network Rail Performance Point for that Service Group specified in column B of Appendix 1 for the year in which that Period falls;

NRWAML is the aggregate for all Monitoring Points in the Service Group of the weighted average minutes late allocated to Network Rail in accordance with the following formula:

$$NRWAML = \sum \frac{(MLNR \cdot MPW)}{SP}$$

where:

$\Sigma$  is the sum across all Monitoring Points in the Service Group;

MLNR is the Minutes Late allocated to Network Rail in respect of each Monitoring Point in that Period, in accordance with paragraph 87;

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

SP is the aggregate number of stops to set down passengers at that Monitoring Point scheduled for the Period in the Applicable Timetable for which a stop or Cancelled Stop is recorded in accordance with paragraphs 4.1(a) and (b) except that if SP=0 for any Monitoring Point, then for that Monitoring Point it shall be deemed that  $\frac{(MLNR \cdot MPW)}{SP}$  shall equal zero;

BF is the relevant busyness factor estimated for the Period according to the following formula:

$$BF = \frac{\Sigma(MPW \cdot SD)}{AS}$$

where:

$\Sigma$  is the sum across all Monitoring Points in the Service Group;

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

SD is the aggregate number of stops to set down passengers at that Monitoring Point scheduled in the Applicable Timetable for that Period for that Service Group; and

AS is the average number of stops per day at the Monitoring Point scheduled in the Bi-annual Timetable in respect of that Period except that if AS=0 for any Monitoring Point it shall be deemed that  $\frac{(MPW \cdot SD)}{AS}$  shall equal zero; and

NRPR is the relevant Network Rail payment rate for that Service Group specified in column E of Appendix 1 ~~(being the sum of the amount for the marginal revenue effect specified in column C of Appendix 1 and the amount for the societal rate specified in column D of Appendix 1)~~ as indexed in accordance with paragraph 13,

provided that:

- (i) if a Capped Value is specified in respect of that Service Group in Appendix 1 and the value of NRPS in respect of any Period is determined in accordance with the formula set out in this paragraph to be greater than the Capped Value in respect of such Period, then the

value of NRPS shall be deemed to be equal to the Capped Value in respect of such Period;

(ii) the Capped Value shall be multiplied by the CV indexation figure for the Relevant Year;

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

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

~~$$CV_t = 1 + \left( \frac{RPI_{t-1} - RPI_{2008}}{RPI_{2008}} \right)$$~~

where:

CV<sub>t</sub> means the CV indexation in Relevant Year t;

RPI<sub>t-1</sub> means the RPI for the 12 months up to and including the month of December immediately preceding the relevant 1 April;~~Retail Prices Index published or determined with respect to November in Relevant Year t-1;~~ and

RPI~~2013~~<sup>2008</sup> means the average value of the monthly figures of RPI for the 12 months up to and including December 2013;~~Retail Prices Index published or \_\_\_\_\_ determined with respect to November 2008.~~

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

Where:

RPI<sub>t-2</sub> 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<sub>t-3</sub> 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.

- 9.2 Where NRPS is less than zero, Network Rail shall pay the amount of the NRPS to the Train Operator. Where NRPS is greater than zero, the Train Operator shall pay that amount to Network Rail.

## 10 Train Operator Performance Sums

- 10.1 In respect of a Service Group, the Train Operator Performance Sum (TPS) for each Period shall be calculated according to the following formula:

$$TPS = (TPP - TWAML) \cdot BF \cdot TPR$$

where:

TPP is the Train Operator Performance Point for the Service Group specified in column F of Appendix 1;

TWAML is the aggregate for all Monitoring Points in the Service Group of the weighted average minutes late allocated to the Train Operator in accordance with the following formula:

$$TWAML = \sum \frac{(MLT \cdot MPW)}{SP}$$

where:

$\sum$  is the sum across all Monitoring Points in the Service Group;

MLT is the Minutes Late allocated to the Train Operator in respect of each Monitoring Point in that Period, in accordance with paragraph 8;

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

SP is the aggregate number of stops to set down passengers at that Monitoring Point scheduled for the Period in the Applicable Timetable for which a stop or Cancelled Stop is recorded in accordance with paragraphs 4.1(a) and (b) except that if SP=0 for any Monitoring Point, then for that Monitoring Point it shall be deemed that  $\frac{(MLT \cdot MPW)}{SP}$  shall equal zero;

BF is the relevant business factor estimated for the Period according to the following formula:

$$BF = \sum \frac{(MPW \cdot SD)}{AS}$$

where:

$\Sigma$  is the sum across all Monitoring Points in the Service Group;

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

SD is the aggregate number of stops to set down passengers at the Monitoring Point scheduled in the Applicable Timetable for that Period for that Service Group; and

AS is the average number of stops per day at the Monitoring Point scheduled in the Bi-annual Timetable in respect of that Period except that if AS=0 for any Monitoring Point it shall be deemed that

$\frac{(\text{MPW} \cdot \text{SD})}{\text{AS}}$  shall equal zero; and

TPR is the relevant Train Operator payment rate for that Service Group specified in column I of Appendix 1 ~~(being the sum of the amount of the Train Operator rate specified in column G of Appendix 1 and the amount of the Passenger Charter rate specified in column H of Appendix 1)~~ as indexed in accordance with the provisions in paragraph 13.

10.2 Where TPS is less than zero, the Train Operator shall pay the amount of the TPS to Network Rail. Where TPS is greater than zero, Network Rail shall pay that amount to the Train Operator.

## 11 Notification of Performance Sums

### 11.1 Notification

Within 14 days after the end of each Period, Network Rail shall provide the Train Operator with a statement for each Service Group for that Period showing:

- (a) any Performance Sums for which Network Rail or the Train Operator is liable, together with such supporting information (other than information in respect of incidents recorded as the responsibility of Network Rail) as the Train Operator may reasonably require; and
- (b) any matter referred to in paragraph 6.1 which the Train Operator has disputed in accordance with paragraph 6.4(a) and which is still in dispute.

### 11.2 Disputes

Within 14 days after receipt by the Train Operator of a statement required under paragraph 11.1, the Train Operator shall notify Network Rail of any aspects of such statement which it disputes, giving reasons for each such dispute. The Train Operator shall not dispute any matter which it has agreed or deemed to have agreed under paragraph 6. Such disputes and any matter referred to in paragraph 11.1(b) shall be resolved in accordance with the procedure in paragraph 16. Save to the extent that disputes are so notified,

the Train Operator shall be deemed to have agreed the contents of each statement.

## 12 Payment procedures

### 12.1 Payments and set-off

- (a) In respect of any and all Performance Sums for which Network Rail and the Train Operator are liable in any Period, the aggregate liabilities of Network Rail and the Train Operator shall be set off against each other. The balance shall be payable by Network Rail or the Train Operator, as the case may be, within 35 days after the end of the Period to which the payment relates.
- (b) Subject to paragraph 12.2, and save as otherwise provided, all other sums payable under this Schedule 8 shall be paid within 35 days after the end of the Period to which such payment relates.

### 12.2 Payments in the event of dispute

Where any sum which is payable under this paragraph 12 is in dispute:

- (a) the undisputed amount shall be paid or set off (as the case may be) in accordance with paragraph 12.1;
- (b) the disputed balance (or such part of it as has been agreed or determined to be payable) shall be paid or set off (as the case may be) within 35 days after the end of the Period in which the dispute is resolved or determined; and
- (c) from the date at which such balance would but for the dispute have been due to be paid or set off, the disputed balance shall carry interest (incurred daily and compounded monthly) at the Default Interest Rate, unless the dispute relates to an incident the responsibility for which is the subject of a Joint Inquiry, in which case interest shall be payable at the prevailing base rate of Barclays Bank plc.

## 13 Payment rates

- 13.1 Each payment rate in columns E and I of Appendix 1 shall be adjusted in respect of Periods in Relevant Year t in accordance with the following formula:

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

$$\frac{R_t = R_{t+1} (1 + \frac{RPI_{t+1}}{100})}{100}$$

Where:

$R_t$  is the relevant rate in the Relevant Year t;

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

$RPI_{t-1}$  has the same meaning as set out in Paragraph 9.1 above of this Schedule 8;

$RPI_{t-2}$  has the same meaning as set out in Paragraph 9.1 above of this Schedule 8; and

$TRUEUP_{t-1}$  has the same meaning as set out in Paragraph 9.1 above of this Schedule 8

where:

~~$R_t$  is the relevant rate in the Relevant Year t;~~

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

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

but so that in relation to the Relevant Year commencing on 1 April 2009,  $R_t$  shall have the relevant value specified in the relevant column (either E or I) of Appendix 1 and in the next following Relevant Year  $R_{t-1}$  shall have the same value.

#### ~~14~~ **Compensation under the Passenger's Charter** 14 Not used

##### ~~14.1~~ *Scope of indemnification*

~~(a) For each Charter Service Group Network Rail shall indemnify the Train Operator for revenue actually lost by the Train Operator as a direct result of the Train Operator:~~

~~(i) in respect of a void day, giving an extension of any Season Ticket or a refund in lieu of an extension; or~~

~~(ii) otherwise than for a void day, giving discounts on the purchase of any Season Ticket,~~

~~where the Train Operator is required (or elects by declaring a void day) to offer such extension, discount (or the refund in lieu of an extension)~~

~~under the Passenger's Charter in force on 28 May 2000 and as described in Part 2 of Appendix 2.~~

~~(b) In this paragraph 14, a void day is as set out in Appendix 2.~~

#### ~~14.2 Calculation of payments in respect of extensions~~

~~(a) Subject to paragraphs 14.2(c) and 14.2(d), the liability of Network Rail, under paragraph 14.1(a), for the costs of offering an extension for poor reliability (or refund in lieu of the extension for poor reliability) in relation to a Season Ticket (RRSC) shall be determined in accordance with the following formula:~~

$$\frac{RRSC = TRLC \cdot \frac{GRDT}{CDT}}$$

~~where~~

~~TRLC means the revenue actually lost by the Train Operator as a direct result of the Train Operator giving an extension of that Season Ticket as a result of poor reliability (or refund in lieu of extension);~~

~~GRDT means the number of Cancelled Stops allocated to Network Rail under paragraph 5.11 on that void day for the Charter Service Group, in respect of which such an extension (or refund in lieu of extension) is given; and~~

~~CDT means the aggregate number of Cancelled Stops on that void day for the Charter Service Group in respect of which such extension (or refund in lieu of extension) is given, recorded under paragraphs 4.2(a) to 4.2(d) inclusive.~~

~~(b) Subject to paragraphs 14.2(c) and 14.2(d), the liability of Network Rail under paragraph 14.1(a) for the costs of offering an extension for poor punctuality (or refund in lieu of the extension for poor punctuality) in relation to a Season Ticket (RRS) shall be determined in accordance with the following formula:~~

$$\frac{RRS = TRL \cdot \frac{MRDT}{MDT}}$$

~~where~~

~~TRL means the revenue actually lost by the Train Operator as a direct result of the Train Operator giving an extension of that Season Ticket as a result of poor punctuality (or refund in lieu of extension);~~

~~MRDT means the aggregate Minutes Delay allocated to Network Rail under paragraph 5.9 on that void day for the Charter Service~~

~~Group, in respect of which such an extension (or refund in lieu of extension) is given; and~~

~~MDT means the aggregate Minutes Delay on that void day for the Charter Service Group in respect of which such extension (or refund in lieu of extension) is given, recorded under paragraphs 4.2(a) to 4.2(d) inclusive.~~

- ~~(c) Subject to paragraph 14.2(d), the liability of Network Rail under subparagraph 14.1(a) for the costs of offering an extension for both poor reliability and poor punctuality (or refund in lieu of extension for poor reliability and poor punctuality) shall be 50% of the aggregate of:~~
- ~~(i) such costs calculated in accordance with paragraph 14.2(a) (as if such extension or refund was for poor reliability only); and~~
  - ~~(ii) such costs calculated in accordance with paragraph 14.2(b) (as if such extension or refund was for poor punctuality only).~~
- ~~(d) In respect of a void day satisfying:~~
- ~~(i) the punctuality criterion in Appendix 2, liability in respect of extensions (or refunds in lieu of such extensions) of Season Tickets shall only be allocated to Network Rail under paragraph 14.1(a)(i) if the Train Operator, under the Passenger's Charter, has also declared void days in accordance with the criteria set out in Part 2 of Appendix 2 (and granted extensions or refunds in lieu of extensions to passengers) in respect of all days in the relevant Period which have had a greater or equal detrimental impact on punctuality performance measures (under the Passenger's Charter in force on 28 May 2000) compared to the void day concerned; or~~
  - ~~(ii) the reliability criterion in Appendix 2, liability in respect of extensions (or refunds in lieu of such extensions) of Season Tickets shall only be allocated to Network Rail under paragraph 14.1(a)(i) if the Train Operator, under the Passenger's Charter, has also declared void days in accordance with the criteria set out in Part 2 of Appendix 2 (and granted extensions or refunds in lieu of extensions to passengers) in respect of all days in the relevant Period which have had a greater or equal detrimental impact on reliability performance measures (under the Passenger's Charter in force on 28 May 2000) compared to the void day concerned; or~~
  - ~~(iii) both the reliability and the punctuality criterion in Appendix 2, liability in respect of extensions (or refunds in lieu of such extensions) of Season Tickets shall only be allocated to Network Rail under paragraph 14.1(a)(i) if either paragraph 14.2(d)(i) or paragraph 14.2(d)(ii) is satisfied.~~

#### ~~14.3 Calculation of punctuality payments~~

~~For each Period, for each Charter Service Group, the extent of Network Rail's liability under this paragraph 14 with regard to discounts given in respect of punctuality shall be determined in accordance with the following formula:~~

$$\frac{R_p = PCP \cdot \frac{C}{C + D}}$$

~~where:~~

~~$R_p$  is Network Rail's liability for poor punctuality in respect of the indemnity under paragraph 14.1;~~

~~PCP is the revenue actually lost by the Train Operator on the sale of any Season Tickets in that Period as the direct result of the discounts given in respect of punctuality of Trains in accordance with paragraph 14.1;~~

~~C is the aggregate of the Minutes Delay allocated to Network Rail under paragraph 5.9 in respect of that Charter Service Group for every day in the thirteen Periods immediately preceding that Period; and~~

~~D is the aggregate of the Minutes Delay allocated to the Train Operator under paragraph 5.10 in respect of that Charter Service Group for every day in the thirteen Periods immediately preceding that Period.~~

#### ~~14.4 Calculation of reliability payments~~

~~For each Period, for each Charter Service Group, the extent of Network Rail's liability under this paragraph 14 with regard to discounts given in respect of reliability of Trains shall be determined in accordance with the following formula:~~

$$\frac{R_r = PCR \cdot \frac{Y}{Y + Z}}$$

~~where:~~

~~$R_r$  is Network Rail's liability for poor reliability in respect of the indemnity under paragraph 14.1;~~

~~PCR is the revenue actually lost by the Train Operator on the sale of any Season Tickets in that Period as the direct result of the discounts given in respect of reliability of Trains in accordance with paragraph 14.1;~~

~~Y is the aggregate number of total cancellations of Trains for which Network Rail is allocated responsibility in accordance with paragraph 5 for that Charter Service Group for every day in the thirteen Periods immediately preceding that Period; and~~

~~Z is the aggregate number of total cancellations of Trains for which the Train Operator is allocated responsibility in accordance with paragraph 5 for that Charter Service Group for every day in the thirteen Periods immediately preceding that Period;~~

~~and for the purposes of this paragraph 14.4, “total cancellation” means a cancellation of a Train resulting in a reduction of 50% or more of the number of miles run by that Train which it was scheduled, in the Applicable Timetable, to run.~~

#### ~~14.5—Extensions and charter excluded events~~

~~For the purpose of paragraphs 14.3 and 14.4 there shall be disregarded the Minutes Delay and total cancellations for any day in respect of which any extension of any Season Ticket (or any refund in lieu of such an extension) shall have been given pursuant to the Passenger’s Charter and in respect of any event which is excluded from the performance statistics under the Passenger’s Charter.~~

#### ~~14.6—Statements~~

~~Within 14 days of the end of each Period, the Train Operator shall in respect of each Charter Service Group forward to Network Rail a statement setting out its calculation of the liability of Network Rail under this paragraph 14. That statement shall be in sufficient detail to enable Network Rail to make an informed assessment thereof. Network Rail shall co-operate with the Train Operator in the production of such statements by providing to the Train Operator within a reasonable time of any request the values of GDT, GDRT, MDRT, MDT, C, D, Y and Z under this paragraph 14. In addition, the Train Operator shall include in any such statement details of any incident occurring during that Period which it considers is the responsibility of Network Rail in accordance with paragraph 5 and is of such type that the Train Operator will be liable in accordance with the Passenger’s Charter to pay compensation. Save to the extent that any such details are included in such statement, the Train Operator shall be deemed to have agreed that no such incidents occurred.~~

#### ~~14.7—Disputes~~

- ~~(a) Within 14 days after receipt of each such statement from the Train Operator, Network Rail shall notify the Train Operator of any aspects of the statements which it disputes, giving the reason for any dispute. Any such disputes shall be resolved in accordance with the procedure set out in paragraph 16. Save to the extent that disputes are so notified, Network Rail shall be deemed to have agreed the contents of such statement and the undisputed amount of any such statement shall become due and payable by the later of:
  - ~~(i) 35 days after the end of the Period to which it relates; and~~
  - ~~(ii) 21 days from the date of service of such statement.~~~~
- ~~(b) Where, in any Period and in respect of any Charter Service Group either the parties are unable or the parties agree that it is impracticable to allocate responsibility for any liability to Network Rail under this~~



~~paragraph 14, then responsibility shall be allocated to Network Rail according to actual performance as established using all relevant data available to the parties in respect of that Period or on such other basis as the parties may agree. The parties shall consult each other with regard to the application of this paragraph 14.7(b).~~

#### ~~14.8—Network Rail audit~~

- ~~(a) The Train Operator shall, for a period of not less than six years, keep all material information relating to extensions, refunds in lieu of extensions, and discounts under the Passenger's Charter.~~
- ~~(b) Network Rail may upon giving not less than two Working Days prior notice to the Train Operator:
  - ~~(i) audit and inspect and take copies of such books, documents, data and other information (whether stored electronically or otherwise); and~~
  - ~~(ii) question such employees of the Train Operator or of any of its contractors, sub-contractors and consultants,~~as Network Rail may reasonably require to verify the amount of any revenue actually lost by the Train Operator in respect of which the Train Operator has claimed the benefit of the indemnity in paragraph 14.1. Network Rail may use the information for verification of those amounts but for no other purpose.~~

#### ~~14.9—Adjustment statements~~

~~If in respect of any Period it is established in accordance with paragraph 14.7 that the amount of revenue actually lost by the Train Operator is less than that in respect of which the Train Operator has claimed the benefit of the indemnity in paragraph 14.1 then the Train Operator shall promptly issue to Network Rail a statement showing the necessary adjustments to statements already issued and sums already paid by Network Rail in respect of the Period and any such adjusting statement shall be treated as if it were a statement under paragraph 14.6 and an adjusting payment shall be payable by the Train Operator to Network Rail in accordance with paragraph 14.7.~~

#### ~~14.10—Access charge supplement for the Passenger's Charter arrangements~~

- ~~(a) The Train Operator shall pay or procure the payment to Network Rail of an access charge supplement (ACSPC) in respect of each Period equal to 1/13 of the amount specified in Table A in respect of the Relevant Year in which the first day of the relevant Period falls:~~

**Table A**

Year	£
2009-2010	[ ]
2010-2011	[ ]
2011-2012	[ ]
2012-2013	[ ]
2013-2014	[ ]

~~Each such payment shall be made within 35 days after the end of the relevant Period.~~

- ~~(b) The ACSPC calculated pursuant to paragraph 14.10(a) shall be adjusted in respect of payments made relating to Periods in the Relevant Year t in accordance with the following formula:~~

$$\frac{ACSPC_{pt}}{ACSPC_t} = \frac{RPI_{t-1}}{RPI_{2008}}$$

~~where:~~

~~ACSPC<sub>pt</sub> is the actual amount payable in the Relevant Year t;~~

~~ACSPC<sub>t</sub> is the relevant amount set out in Table A above;~~

~~RPI<sub>t-1</sub> means the Retail Prices Index published or determined with respect to November in the Relevant Year t-1; and~~

~~RPI<sub>2008</sub> means the Retail Prices Index published or determined with respect to November 2008;~~

~~but so that in relation to the Relevant Year commencing on 1 April 2009, ACSPC<sub>t</sub> shall have the relevant value specified in the relevant column of Table A above.~~

## 15 Notices

15.1 All notices under this Schedule 8 shall be given in writing and shall be sent by prepaid first class post, email or fax or delivered by hand to the party in question at the address for service last notified by that party.

15.2 Any such notice shall be deemed to have been duly received:

- (a) if sent by prepaid first class post, three days after posting unless otherwise proven;
- (b) if sent by hand, when delivered;
- (c) if sent by facsimile, (subject to confirmation of uninterrupted transmission by a transmission report) before 1700 hours on a business day, on the day of transmission and, in any other case, at 0900 hours on the next following business day ("business day" for these purposes)

being a day which is not a Saturday, Sunday or a public holiday in the place where the transmission is to be received); and

- (d) if sent by email, (unless a notice of non-delivery is received) upon receipt.

## **16 Disputes**

16.1 If any dispute is notified under paragraph 11.2 ~~or 14.6~~ it shall be resolved according to the following procedure:

- (a) within seven days of service of the relevant notice (or, if the dispute relates to an incident the responsibility for which is or is to be the subject of a Joint Inquiry, within seven days of publication of the conclusion of that Joint Inquiry), the parties shall meet to discuss the disputed aspects with a view to resolving all disputes in good faith;
- (b) if, for any reason, within seven days of the meeting referred to in paragraph 16.1(a), the parties are still unable to agree any disputed aspects, each party shall promptly and in any event within seven days prepare a written summary of the disputed aspects and the reasons for each such dispute and submit such summaries to the senior officer of each party;
- (c) within 28 days of the first meeting of the parties, the senior officers of the parties shall meet with a view to resolving all disputes;
- (d) if no resolution results before the expiry of 14 days following that meeting, then either party may refer the matter for resolution in accordance with the ADRR;

## **17 Amendments to Appendix 1**

17.1 *Circumstances in which parties agree to amend Appendix 1*

Either party may by notice to the other propose that Appendix 1 be amended in accordance with this paragraph 17.

17.2 *Procedure for amendments to Appendix 1*

- (a) The party who wishes to amend Appendix 1 shall notify the other party of any such proposed change and the date from which it proposes that such change will have effect:
  - (i) where such change relates to a forthcoming timetable change, on or before the first day of the month six months before the relevant Principal Change Date or Subsidiary Change Date on which that timetable change is due to occur; and
  - (ii) in any other case, prior to the date from which it proposes such change shall have effect.
- (b) Any notice under paragraph 17.2(a) shall:

- (i) specify as far as possible that party's proposed amendments to Appendix 1; and
  - (ii) be accompanied by information and evidence in reasonable detail supporting the change proposed and setting out the reasons for it.
- (c) The party receiving a notice issued under paragraph 17.2(a) shall respond to that notice in writing, in reasonable detail and with reasons for its response, within 56 days of service of such notice.
- (d) Promptly (and in any event within 34 days) following the service of any response under paragraph 17.2(c), the parties shall endeavour to agree whether Appendix 1 should be amended in accordance with this paragraph 17 and, if so, the amendments.
- (e) If the parties fail to reach agreement within 90 days ~~after of~~ service of ~~the relevant~~ notice under paragraph 17.2(a), or if prior to that date both parties agree that agreement is unlikely to be reached ~~prior to that date, the parties shall~~ within that period:
- (i) either party may notify ORR. ~~If; and~~
  - (ii) if ORR elects to determine the matter, the parties shall furnish ORR with such information and evidence as ORR shall require in order to determine the matter ~~and shall abide by any, such~~ determination ~~issued by to be binding on ORR parties.~~
- (f) If ORR does not ~~so~~ elect to determine the matter within 56 days of receipt by ORR of notification in accordance with ~~this~~ paragraph 17.2(e); (i), either party may refer the matter ~~shall be referred~~ for resolution in accordance with the ADRR. ~~In respect of any such dispute which is referred for resolution under the ADRR and~~ the parties shall agree in a Procedure Agreement, ~~as defined~~ (such term to have the same meaning as in the ADRR, ~~)~~ that:
- (A) the relevant ADRR Forum shall have regard to any relevant criteria and/or policy statement ~~recently~~ issued by ORR including in relation to the introduction of any capped value in respect of any Service Group in Appendix 1; and
  - (B) that the relevant ADRR Forum will set out its reasoning in any determination.
- (fg) ~~Any~~ An amendment to Appendix 1 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 or determined in accordance with this paragraph 17 (other than a determination by ORR pursuant to paragraph 17.2(e) (iii)), the parties shall ensure that ORR is furnished with such amendment and such information and evidence as ~~it shall require to determine~~ ORR requires to decide whether or not to approve the amendment.
- (gh) ~~In giving its approval under paragraph 17.2(g), ORR may:~~

(i) after giving the parties and such other persons as it considers appropriate the opportunity to make representations; and

(ii) taking such representations into account.

specify changes which it requires to be made to an amendment to Appendix 1.

(ih) Any agreed amendment to Appendix 1 in connection with the proposal referred to in paragraph 17.1 which is approved by ORR under section 22 of the Act shall apply with effect from either: Any amendment to Appendix 1 shall apply with effect from:

(i) the relevant Principal Change Date or Subsidiary Change Date (where paragraph 17.2(a)(i) applies); or

(ii) the date agreed by the parties in accordance with paragraph 17.2(a)(ii) (unless otherwise determined by the relevant ADRR Forum in accordance with paragraph 17.2(f)). subject to paragraph 17.2(fg), the date proposed by the party requesting the change in accordance with paragraph 17.2(a)(ii) (unless otherwise agreed by the parties or determined by ORR or the expertrelevant ADRR Forum in relation to the change).

(i) Where ORR determines the matter subject to paragraph 17.2(e)(ii), it may issue a notice to the parties setting out the amendments to be made to Appendix 1 and the date, which may be retrospective, from which they shall take effect.

### 17.3 *Adjustments to the Performance Monitoring System*

Network Rail shall make appropriate amendments to the Performance Monitoring System to reflect the amendments to Appendix 1 by the date when in accordance with paragraph 17.2(e) such amendments are to take effect, or as soon as reasonably practicable thereafter. Where any such amendment to Appendix 1 or any consequential amendment to the Performance Monitoring System is not made until after that date, Network Rail shall, promptly following such amendments being made, issue to the Train Operator a statement showing the necessary adjustments to the statements already issued and the payments already made in respect of Performance Sums up to and including the Period commencing on the date when in accordance with paragraph 17.2(e) such amendments to Appendix 1 are to take effect. Any such adjusting statement shall be treated as if it were a statement under paragraph 11.1 and, subject to paragraph 12.2, an adjusting payment shall be payable within 35 days of that adjusting statement.

### 17.4 *Costs of implementing amendment*

Network Rail shall (subject to any determination of ~~an expert~~ the relevant ADRR Forum as to costs, where a matter is referred to that ~~expert~~ forum under paragraph 17.2(ej)) be entitled to ninety percent (90%) of costs incurred

by or on behalf of Network Rail in assessing and implementing any amendments to Appendix 1 and the Performance Monitoring System, provided that those costs shall be the minimum reasonably necessary for Network Rail to assess and implement that amendment.

#### *17.5 Relationship with Appendix 3 and remainder of Schedule 8*

References in this paragraph to amendments to Appendix 1 shall include any amendments to Appendix 3 or any other relevant parts of Schedule 8 which are agreed or determined to be reasonably required in connection with those amendments to Appendix 1.

### **17A ETCS Amendments**

#### *17A.1 Circumstances in which ETCS Amendments can be made*

- (a) Either party may by notice to the other propose that amendments are made to this Schedule 8 (and to any other provisions of this contract as a result of those amendments) as a consequence of the introduction of ETCS on any of the Routes that the Train Operator has permission to use ("ETCS Amendments").
- (b) ORR may make ETCS Amendments, subject to complying with paragraph 17A.3.

#### *17A.2 ETCS Amendments agreed by the parties*

- (a) A party that wishes to make ETCS Amendments shall serve a notice on the other party that:
  - (i) specifies as far as possible the proposed ETCS Amendments and the date from which they are to have effect; and
  - (ii) is accompanied by information and evidence in reasonable detail supporting the proposed ETCS Amendments and setting out the reasons for making them.
- (b) The party receiving a notice under paragraph 17A.2(a) shall respond in writing, in reasonable detail and with reasons for its response, within 30 Working Days of service of such notice.
- (c) Promptly, ~~(and in any event within 20 Working Days)~~ following service of a response pursuant to paragraph 17A.2(b), the parties shall use reasonable endeavours to agree ~~whether the wording of the proposed ETCS Amendments and the date on which they are to have effect. shall be made, and, if so, their precise form.~~
- (d) If:
  - (i) the parties agree to make ETCS Amendments pursuant to paragraph 17A.2(c); or

(ii) the parties fail to reach agreement within 50 Working Days of service of a notice under paragraph 17A.2(a), or prior to that date the parties agree that it is unlikely that agreement will be reached within that period,

they shall notify ORR.

### 17A.3 ORR right to approve, determine or make ETCS Amendments

(a) If ORR:

(i) receives a notification under paragraph 17A.2(d); or

(ii) proposes to make ETCS Amendments itself,

then in deciding whether to approve, determine or make (as the case may be) the ETCS Amendments it shall:

(A) give the parties and such other persons, if any, as it considers appropriate, the opportunity to make representations in relation to the proposed ETCS Amendments; and

(B) take into account any representations received before making its decision, such decision to specify the date on which the ETCS Amendments shall have effect.

(b) ORR may require either party to provide such information as it may reasonably require to make a decision pursuant to paragraph 17A.3(a), and such information shall be provided in accordance with any timescales and to the standard required by ORR.

"ETCS" means the European Train Control System.

## **18. Compensation for sustained poor performance**

### *18.1 Definitions*

In this paragraph 18, unless the context otherwise requires:

**"Average Periodic Liability"** means one thirteenth of the sum of all values of NRPS (as that term is defined in paragraph 9) to be calculated by deducting the sum of all values of NRPS for which the Train Operator is liable from the sum of all values of NRPS for which Network Rail is liable in each case in respect of the relevant Calculation Term, ~~so that in respect of the period prior to 10 December 2006 such calculation shall be made with reference to the values of NRPS in the relevant period under all of the Previous Access Agreements (as defined in Clause 19.2) after such adjustment as is reasonably required to make them correspond to the values which would have applied if all the Services concerned had been operated throughout the relevant period under a single track access agreement with a Schedule 8 on the same terms as the Schedule 8 included in this contract;~~

**“Calculation Term”** means the 13 Periods immediately preceding each Periodic Liability Date;

**“Periodic Liability Date”** means the first day of the first, fourth, seventh and eleventh Periods in each Relevant Year ignoring for these purposes any Period that commences before the Transition Date as referred to in Clause 19; and

**“SPP Threshold”** means the value specified in respect of the end of the relevant Calculation Term in Appendix 3 (as indexed in accordance with paragraph 19).

## 18.2 *Indemnity*

Network Rail shall indemnify the Train Operator against all Relevant Losses in accordance with this paragraph 18 if, and to the extent that, the Average Periodic Liability shows Network Rail has exceeded (that is, equalled or been worse than) the relevant SPP Threshold.

## 18.3 *Determination of Relevant Losses*

Subject to paragraph 18.4, the liability of Network Rail under paragraph 18.2 for sustained poor performance (SPPL) shall be determined in accordance with the following formula:

$$\text{SPPL} = \text{RL} - (\text{PS} + \text{NRp} + \text{NRr})$$

where:

RL means the Train Operator’s Relevant Losses arising as a direct result of Minutes Delay and Cancelled Stops during the Calculation Term in each case insofar as these do not arise as a result of an incident for which the Train Operator is allocated responsibility pursuant to paragraph 5.3; [and](#)

PS means the sum of all values of NRPS (as that term is defined in paragraph 9) to be calculated by deducting the sum of all values of NRPS for which the Train Operator is liable from the sum of all values of NRPS for which Network Rail is liable in each case in respect of the relevant Calculation Term;

~~NRp means Network Rail’s liability, if any, for poor punctuality calculated in accordance with paragraph 14.2 in respect of the relevant Calculation Term; and NRr means Network Rail’s liability, if any, for poor reliability calculated in accordance with paragraph 14.3 in respect of the relevant Calculation Term.~~

## 18.4 *Restrictions on claims by Train Operator*



The Train Operator shall not be entitled to make a claim for Relevant Losses pursuant to this paragraph 18:

- (a) if and to the extent that it has previously recovered those Relevant Losses whether under this paragraph 18 or otherwise; or
- (b) in relation to any Calculation Term or part of it that precedes the Transition Date as referred to in Clause 19.

## 19 SPP Indexation

### 19.1 SPP Indexation

Each value specified in Appendix 3 shall be multiplied by the SPP indexation figure for the Relevant Year.

### 19.2 Application of SPP Indexation

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

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

~~$$SPPI_t = 1 + \left( \frac{RPI_{t-1} - RPI_{2008}}{RPI_{2008}} \right)$$~~

where:

SPPI<sub>t</sub> means the SPP indexation in Relevant Year t;

RPI<sub>t-1</sub> ~~has the meaning as set out in Paragraph 9.1 above of this Schedule 8; means the Retail Prices Index published or determined with respect to November in Relevant Year t-1; and~~

RPI<sub>2013</sub> ~~has the meaning as set out in Paragraph 9.1 above of this Schedule 8; and means the Retail Prices Index published or determined with respect to November 2008.~~

TRUEUP<sub>t-1</sub> ~~H~~has the meaning as set out in Paragraph 9.1 above of this Schedule 8.

Appendix 1

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	
Service Group	Network Rail				TOC				Cancellation Minutes	Cap	Service Code		Direction	Monitoring Point	Weighting
	Performance Point	Payment Rate			Performance Point	Payment Rate									
		MRE(Not Used)	Societal(Not Used)	Total		Train Operator Rate(Not Used)	Passenger Charter Rate(Not Used)	Total							

## Appendix 2

~~Part 1 Charter Service Groups~~

~~Part 2 Passenger Charter Arrangements~~

[Not Used.](#)

### APPENDIX 3 - SPP THRESHOLD

	<b>Period:</b>	<b>3</b>	<b>6</b>	<b>10</b>	<b>13</b>
<b>2009/10</b>					
<b>2010/11</b>					
<b>2011/12</b>					
<b>2012/13</b>					
<b>2013/14</b>					

	<u>Period:</u>	<u>3</u>	<u>6</u>	<u>10</u>	<u>13</u>
<u>2014/15</u>					
<u>2015/16</u>					
<u>2016/17</u>					
<u>2017/18</u>					
<u>2018/19</u>					