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25 October 2013

Dear colleague

Update on the consultation on contractual provisions to implement options for the capacity charge in CP5

1. *The purpose of this letter is to confirm that we are still consulting on the contractual wording for the capacity charge as per our 30 September letter, and we do not think subsequent exchanges of letters changes this. Of the options for freight operators in the consultation, consultees may wish to restrict their responses to the RDG option, as that is the only one we are pursuing. To take account of possible confusion caused by the subsequent letters, we are extending the deadline of this consultation to 4 November 2013.*
2. On 30 September 2013 we published a consultation letter on the contractual drafting for a number of options that had been put forward in relation to the capacity charge as part of the 2013 periodic review (PR13)¹.
3. On 8 October 2013 we published a consultation letter setting out the ORR's proposed conclusions for the capacity charge for freight operators in CP5², with reference to the RDG's proposal set out in its letter dated 13 September 2013³.
4. We understand that it may be unclear to consultees how our letter of 8 October 2013 sits with our previous capacity charge implementation consultation of 30 September 2013.
5. In our 30 September consultation, we set out draft contractual wording for all the alternative capacity charge proposals we were considering (for passenger, as well

¹ This letter may be accessed at: <http://www.rail-reg.gov.uk/pr13/PDF/implementing-pr13-capacity-charge.pdf>.

² This letter may be accessed at: <http://www.rail-reg.gov.uk/pr13/PDF/freight-capacity-charge-2013.pdf>.

³ This letter may be accessed at: http://www.raildeliverygroup.org/files/2013/10/RDG%20Freight%20Group%20Proposal%20FOC%20CP5%20Capacity%20Charge_13%20Sept%202013.pdf

as freight); one of those was wording to implement the RDG freight proposal of 13 September 2013 (which proposed that the wash-up would be disaggregated into three groups of commodities: coal and biomass; intermodal; and other traffic).

6. We produced our 8 October 2013 letter after meeting RDG representatives on 2 October 2013, when we identified that those representatives in fact had two alternative methods of implementing the RDG proposal – one with no negative wash-up, and the other with both a positive and negative wash-up (so that there would be a rebate to freight operators for traffic below baseline). We set out that our preferred approach was to keep to the RDG proposal with no negative wash-up.
7. We confirm that the contractual wording we proposed in our 30 September consultation for the RDG proposal remains valid. Nothing in our 8 October letter necessitates any changes to the proposed implementation wording for the RDG ‘no negative wash-up’ proposal.
8. Although our 8 October letter does set out some proposals in relation to setting the baseline and charge rates (at paragraph 30), those rates will be eventually be set out in the relevant Determination of Capacity Charge Baselines and the List of Capacity Charge Rates respectively – the contractual wording does not alter.
9. Freight consultees may restrict their comments to the proposed implementation wording for the RDG ‘no negative wash-up’ proposal if they wish, rather than comment on the other proposed freight implementation alternatives contained in the 30 September document, given our stated preference for this RDG proposal in our 8 October letter. For ease of reference, we attach the specific wording we included with our 30 September consultation for implementing the RDG proposal – again, we stress that this wording has not changed as a result of our 8 October letter.
10. The deadline for responding to the 30 September implementation consultation is 28 October; we are prepared to extend this to **4 November 2013** to take account of any confusion there may have been on this particular point.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Emily Bulman', with a stylized flourish at the end.

Emily Bulman

PR13 Implementation – Freight Schedule 7 – RDG Proposal - Capacity Charge Amendments

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 Train” means any train in respect of which fifty percent or more of the number of vehicles that make up that train contain electricity supply industry coal, other coal or biomass;

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“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

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(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 Capacity Charge Wash-Up” means the charge calculated in accordance with paragraph 2.3.2;

“Freight Capacity Charge Wash-up Rate” means the rate for Services for the carriage of goods in the column headed “Wash-up

rate” corresponding to the day of the week on which the 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 Freight Capacity Charge Wash-up 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;

“Intermodal Train” means [any train in respect of which fifty percent or more of the number of vehicles that make up that train are intermodal](#);

“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;

“Other Train” means [any train used for the carriage of goods other than a Coal Train or an Intermodal Train;](#)

“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;

“Train Type” means an [Intermodal Train, Other Train or a Coal Train](#);

“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.

[2.1.5 Where, in accordance with paragraph 2.3.2, Network Rail calculates that the Freight Capacity Charge Wash-up is a positive amount then, as soon as practicable, it shall issue to the Train Operator an invoice for that amount and the Train Operator shall pay or procure payment of it.](#)

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 and Freight Capacity Charge Wash-up

2.3.1 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:

FCR_{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;

CM_{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

\sum means the summation across all Services.

2.3.2 Within 90 days after the end of Relevant Year t, Network Rail shall calculate any Freight Capacity Charge Wash-up for the Train Operator (KW_t) in accordance with paragraph 2.3.3 which, if a positive sum, shall be payable by the Train Operator. If KW_t is a negative sum or equal to zero then no sum shall be payable by the Train Operator or by Network Rail.

2.3.3 KW_t is derived from the following formula:

$$\text{KW}_t = \sum_i (\text{M}_{ti} - \text{B}_{ti} - \text{A}_{ti}) \bullet (\text{T}_{ti} / \text{A}_{ti})$$

Where:

M_{ti} means Network Rail's reasonable estimate of the aggregate revenue it would have been entitled to receive during Relevant Year t from the Freight Capacity Charge for Train Type i from all track access agreements with Network Rail for the carriage of goods by railway if, in the calculation of the Freight Capacity Charge for Train Type i under paragraph 2.3.1, the Freight

Capacity Rate was interpreted to mean the Freight Capacity Charge Wash-up Rate and had been applied as such for all Services relating to that Train Type that had operated on the Network during Relevant Year t;

B_{ij} means a baseline value in pounds for Train Type i for Relevant Year t for all Train Operators with a track access agreement with Network Rail for the carriage of good by railway, as set out in ORR's Determination of Capacity Charge Baselines published on or about [];

A_{ij} means the aggregate income which Network Rail, acting reasonably, estimates is owed to it under all track access agreements for the carriage of goods by railway in respect of the Freight Capacity Charge for all Services relating to Train Type i that have been operated on the Network during Relevant Year t; and

T_{ij} means the total income which Network Rail, acting reasonably, estimates it is owed by the Train Operator who is party to this contract in respect of the Freight Capacity Charge for all Services relating to Train Type i that it has operated on the Network during Relevant Year t;

Σ_i means the summation across all Coal Trains, Intermodal Trains and Other Trains

*****The rest of Schedule 7 is not included in this document as we are only proposing changes relating to the capacity charge.*****