

TRACK ACCESS CONTRACT (PASSENGER SERVICES)

Dated

24 AUGUST 2015

Between

HEATHROW AIRPORT LIMITED

and

HEATHROW EXPRESS OPERATING COMPANY LIMITED

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THIS CONTRACT is made the 27th day of August 2015

BETWEEN:

- (1) Heathrow Airport Limited, a company registered in England under number 01991017 having its registered office at The Compass Centre, Nelson Road, Hounslow, Middlesex, TW6 2GW ("HAL"); and
- (2) Heathrow Express Operating Company, a company registered in England under number 03145133 having its registered office at The Compass Centre, Nelson Road, Hounslow, Middlesex, TW6 2GW (the "Train Operator").

WHEREAS:

- (A) HAL is the owner of the Network; and
- (B) HAL has agreed to grant to the Train Operator permission to use certain track comprised in the Network on the terms and conditions of this contract.

IT IS AGREED AS FOLLOWS:

1 INTERPRETATION

1.1 Definitions

In this contract unless the context otherwise requires:

"Access Agreement" has the meaning ascribed to it in Part A of the Network Code;

"Access Dispute Resolution Rules" and **"ADRR"** have the meaning ascribed to them in Part A of the Network Code;

"Access Proposal" has the meaning ascribed to it in Part D of the Network Code;

"Accounting Year" means each period of 12 months ending on 31 December

"Act" means the Railways Act 1993;

"Affected Party" has the meaning ascribed to it in Clause 17.1;

"Affiliate" means, in relation to any company:

- (a) a company which is either a holding company or a subsidiary of such company; or
- (b) a company which is a subsidiary of a holding company of which such company is also a subsidiary,

and for these purposes "holding company" and "subsidiary" have the meanings ascribed to them in section 1159 of the Companies Act 2006;

"Ancillary Movements" has the meaning ascribed to it in Part D of the Network Code;

“Applicable Engineering Access Statement” means the Engineering Access Statement in force in respect of the Routes on 1 September 2015, as from time to time amended or replaced under Part D of the Network Code;

“Applicable Timetable Planning Rules” means the Timetable Planning Rules in force in respect of the Routes on 1 September 2015, as from time to time amended or replaced under Part D of the Network Code;

“associate” has the meaning ascribed to it in section 17 of the Act;

“Claims Allocation and Handling Agreement” means the agreement of that name approved by ORR;

“Collateral Agreements” means the agreements and arrangements listed in Schedule 3;

“Confidential Information” means information relating to the affairs of one party to this contract or any of its Affiliates which has been provided by any such person to the other party under or for the purposes of this contract, or any matter or thing contemplated by this contract or to which this contract relates, the disclosure of which is likely materially to compromise or otherwise prejudice the commercial interests of any such person;

“Contract” means this document including all schedules and appendices to it and the Network Code;

“Contract Year” means each yearly period commencing on 1 September 2015 and subsequently on each anniversary of such date;

“Default Interest Rate” is two percent above the base lending rate of the Royal Bank of Scotland plc as varied from time to time;

“European licence” has the meaning ascribed to it in section 6(2) of the Act;

“Event of Default” means a Train Operator Event of Default or a HAL Event of Default;

“Expiry Date” means 31 December 2023;

“Force Majeure Event” has the meaning ascribed to it in Clause 17.1;

“Force Majeure Notice” has the meaning ascribed to it in Clause 17.1;

“Force Majeure Report” has the meaning ascribed to it in Clause 17.1;

“Heathrow Network Statement” means the Heathrow Network Statement published by HAL in June 2015, as updated from time to time.

“Innocent Party” means, in relation to a breach of an obligation under this contract, the party who is not in breach of that obligation;

“Insolvency Event”, in relation to either of the parties, has occurred where:

- (a) any step which has a reasonable prospect of success is taken by any person with a view to its administration under Part II of the Insolvency Act 1986;

- (b) it stops or suspends or threatens to stop or suspend payment of all or a material part of its debts, or is unable to pay its debts, or is deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986, except that in the interpretation of this paragraph:
 - (i) section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for “£750” there were substituted “£100,000” or such higher figure as the parties may agree in writing from time to time; and
 - (ii) it shall not be deemed to be unable to pay its debts for the purposes of this paragraph if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is satisfied before the expiry of 21 days from such demand;
- (c) its directors make any proposal under section 1 of the Insolvency Act 1986, or it makes any agreement for the deferral, rescheduling or other readjustment (or makes a general assignment or an arrangement or composition with or for the benefit of the relevant creditors) of all or a material part of its debts, or a moratorium is agreed or declared in respect of or affecting all or a material part of its debts;
- (d) any step is taken to enforce security over or a distress, execution or other similar process is levied or sued out against the whole or a substantial part of its assets or undertaking, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
- (e) any step is taken by any person with a view to its winding up or any person presents a winding-up petition which is not dismissed within 14 days, or it ceases or threatens to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the other party before that step is taken (which approval shall not be unreasonably withheld or delayed); or
- (f) any event occurs which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above,

unless:

- (i) in any case, a railway administration order (or application for such order) has been made or such order (or application) is made within 14 days after the occurrence of such step, event, proposal or action (as the case may be) in relation to the party in question under section 60, 61 or 62 of the Act and for so long as any such order (or application) remains in force or pending; or
- (ii) in the case of paragraphs (a), (d) and (e), the relevant petition, proceeding or other step is being actively contested in good faith by that party with timely recourse to all appropriate measures and procedures;

“Liability Cap” has the meaning ascribed to it in paragraph 1 of Schedule 9;

“Longstop Date” means 1 September 2015;

“Network” has the meaning ascribed to it in Paragraph 1.2 of the Heathrow Network Statement;

“Network Code” means the document now known as the HAL Network Code;

“HAL Event of Default” has the meaning ascribed to it in paragraph 1.3 of Schedule 6;

“Office of Rail and Road” has the meaning ascribed to it under section 15 of the Railways and Transport Safety Act 2003, and references to “ORR” shall be construed as references to the Office of Rail and Road;

“Performance Order” has the meaning ascribed to it in Clause 13.3.2;

“Railway Code Systems” means necessary systems within the meaning of the Systems Code;

“railway facility” has the meaning ascribed to it in section 83 of the Act;

“relevant ADRR Forum” means the Forum, having the meaning ascribed to it in the ADRR, to which a Relevant Dispute is allocated for resolution in accordance with the ADRR;

“Relevant Dispute” means any difference between the parties arising out of or in connection with this contract;

“Relevant Force Majeure Event” has the meaning ascribed to it in Clause 17.1;

“Relevant Losses” means, in relation to:

- (a) a breach of this contract; or
- (b) in the case of Clause 10, any of the matters specified in Clause 10.1(a), (b) or (c) or Clause 10.2(a), (b) or (c) (each a “breach” for the purpose of this definition);

all costs, losses (including loss of profit and loss of revenue), expenses, payments, damages, liabilities, interest and the amounts by which rights or entitlements to amounts have been reduced, in each case incurred or occasioned as a result of or by such breach;

“Relevant Obligation” has the meaning ascribed to it in Clause 17;

“Rolled Over Access Proposal” has the meaning ascribed to it in Part D of the Network Code;

“Routes” means that part of the Network specified in Schedule 2;

“RPI” means the General Index of Retail Prices All Items measured by CHAW and published each month;

“safety authorisation” has the meaning ascribed to it by regulation 2 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

“safety certificate” has the meaning ascribed to it by regulation 2 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

“Safety Obligations” means all applicable obligations concerning health and safety (including any duty of care arising at common law, and any obligation arising under statute, statutory instrument or mandatory code of practice) in Great Britain;

“Services” means the railway passenger services specified in Schedule 5;

“SNRP” has the meaning ascribed to it in the Railways (Licensing of Railway Undertakings) Regulations 2005;

“Specified Equipment” means the railway vehicles which the Train Operator is entitled to use in the provision of Services as specified in paragraph 5.1 of Schedule 5;

“Stabling” means the parking or laying up of the Specified Equipment or such other railway vehicles as the Train Operator is permitted by this contract to use on the Network, such parking or laying up being necessary or reasonably required for giving full effect to the movements of Specified Equipment required for the provision of the Services;

“Suspension Notice” means a notice in writing served by the relevant party on the other party under paragraph 2 of Schedule 6;

“Systems Code” means the code of practice relating to the management and development of railway code systems as amended from time to time in accordance with its terms;

“Termination Notice” means a notice in writing served by the relevant party on the other party under paragraph 3 of Schedule 6;

“Track Charges” means the charges payable by or on behalf of the Train Operator to Network Rail, as set out in paragraph 1 of Schedule 7;

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

“Train Operator Event of Default” has the meaning ascribed to it in paragraph 1.1 of Schedule 6;

“Train Slot” has the meaning ascribed to it in Part D of the Network Code;

“Value Added Tax” means value added tax as provided for in the Value Added Tax Act 1994, and any tax similar or equivalent to value added tax or any turnover tax replacing or introduced in addition to them, and “VAT” shall be construed accordingly;

“Working Day” has the meaning ascribed to it in Part A of the Network Code; and

“Working Timetable” has the meaning ascribed to it in Part A of the Network Code.

1.2 Interpretation

In this contract, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) any one gender includes the other;
- (c) all headings are for convenience of reference only and shall not be used in the construction of this contract;
- (d) reference to an item of primary or secondary legislation is to that item as amended or replaced from time to time;
- (e) reference to a contract, instrument or other document is to that contract, instrument or other document as amended, novated, supplemented or replaced from time to time;
- (f) reference to a party is to a party to this contract, its successors and permitted assigns;
- (g) reference to a recital, Clause or Schedule is to a recital, clause or schedule of or to this contract; reference in a schedule to a Part of or an Appendix to a schedule is to a part of or an appendix to the schedule in which the reference appears; reference in a Part of a Schedule to a paragraph is to a paragraph of that part; reference to a Part of an appendix is to a part of the appendix in which the reference appears; and reference in a schedule to a Table is a reference to the table included in or annexed to that schedule;
- (h) where a word or expression is defined, cognate words and expressions shall be construed accordingly;
- (i) references to the word “person” or “persons” or to words importing persons include individuals, firms, corporations, government agencies, committees, departments, authorities and other bodies incorporated or unincorporated, whether having separate legal personality or not;
- (j) “otherwise” and words following “other” shall not be limited by any foregoing words where a wider construction is possible;
- (k) the words “including” and “in particular” shall be construed as being by way of illustration or emphasis and shall not limit or prejudice the generality of any foregoing words;
- (l) words and expressions defined in the Railways Act 1993 and the Railways and Other Guided Transport Systems (Safety) Regulations 2006 unless otherwise defined in this contract, have the same meanings in this contract;
- (m) NOT USED;
- (n) words and expressions defined in the Network Code shall have the same meanings in this contract;

- (o) if there is any conflict of interpretation between this contract and the Network Code, the Network Code shall prevail;
- (p) NOT USED; and
- (q) NOT USED.

1.3 Indemnities

Indemnities provided for in this contract are continuing indemnities in respect of the Relevant Losses to which they apply, and hold the indemnified party harmless on an after tax basis.

2 NETWORK CODE

2.1 Incorporation

The Network Code is incorporated in and forms part of this contract.

2.2 Modifications to the Network Code

If the Network Code is modified at any time, Schedule 10 shall have effect.

2.3 Compliance by other operators

Except where ORR has directed otherwise in the exercise of its powers under the Act or the Network Code, and except in relation to London Underground Limited to the extent that such persons are not party to the Network Code, HAL shall ensure that all operators of trains having permission to use any track comprised in the Network agree to comply with the Network Code.

3 CONDITIONS PRECEDENT AND DURATION

3.1 Effective date

The provisions of this contract, other than Clause 5, take effect from the later of the signature of this contract and 27 August 2015.

3.2 Conditions precedent to Clause 5

Clause 5 shall take effect when the following conditions precedent have been satisfied in full:

- (a) to the extent required by the Act and/or the Railways (Licensing of Railway Undertakings) Regulations 2005, the Train Operator is authorised to be the operator of trains for the provision of the Services by:
 - (i) a licence granted under section 8 of the Act; and/or
 - (ii) a European licence and corresponding SNRP;
- (b) HAL is authorised by a licence granted under section 8 of the Act to be the operator of that part of the Network comprising the Routes or is exempt from the requirement to be so authorised under section 7 of the Act;

- (c) each of the Collateral Agreements is executed and delivered by all the parties to each such agreement and is unconditional in all respects (save only for the fulfilment of any condition relating to this contract becoming unconditional);
- (d) each of the parties has, as necessary, a valid safety certificate or safety authorisation as required by the Railways and Other Guided Transport Systems (Safety) Regulations 2006 and has established and is maintaining a safety management system which meets the requirements of those Regulations; and
- (e) the provisions of this contract, other than Clause 5, have taken effect in accordance with Clause 3.1.

3.3 Obligations to satisfy conditions precedent to Clause 5

Each party shall use all reasonable endeavours to secure that the following conditions precedent are satisfied as soon as practicable, and in any event not later than the Longstop Date:

- (a) in the case of HAL, the conditions precedent contained in Clause 3.2(b) and, insofar as within its control, Clauses 3.2(c) and 3.2(d); and
- (b) in the case of the Train Operator, the conditions precedent contained in Clause 3.2(a) and, insofar as within its control, Clauses 3.2(c) and 3.2(d).

3.4 Consequences of non-fulfilment of conditions precedent to Clause 5

If the conditions precedent set out in Clause 3.2 have not been satisfied in full on or before the Longstop Date:

- (a) this contract shall lapse save for the obligations of confidence contained in Clause 14 which shall continue in force; and
- (b) neither party shall have any liability to the other except in respect of any breach of its obligations under this contract.

3.5 Expiry

This contract shall continue in force until the earliest of:

- (a) lapse under Clause 3.4;
- (b) termination under Schedule 6; and
- (c) 1159 hours on the Expiry Date.

3.6 Suspension and termination

Schedule 6 shall have effect.

4 STANDARD OF PERFORMANCE

4.1 General standard

Without prejudice to all other obligations of the parties under this contract, each party shall, in its dealings with the other for the purpose of, and in the

course of performance of its obligations under, this contract, act with due efficiency and economy and in a timely manner with that degree of skill, diligence, prudence and foresight which should be exercised by a skilled and experienced:

- (a) network owner and operator (in the case of HAL); and
- (b) train operator (in the case of the Train Operator).

4.2 Good faith

The parties to this contract shall, in exercising their respective rights and complying with their respective obligations under this contract (including when conducting any discussions or negotiations arising out of the application of any provisions of this contract or exercising any discretion under them), at all times act in good faith.

5 PERMISSION TO USE

5.1 Permission to use the Routes

HAL grants the Train Operator permission to use the Routes.

5.2 Meaning

References in this contract to permission to use the Routes shall, except where the context otherwise requires, be construed to mean permission:

- (a) to use the track comprised in the Network for the provision of the Services using the Specified Equipment along the Routes;
- (b) to use the track comprised in the Network in order to implement any plan established under Part H of the Network Code;
- (c) to make Ancillary Movements;
- (d) to Stable, which shall be treated, for the purposes of Part D of the Network Code, as the use of a Train Slot;
- (e) for the Train Operator and its associates to enter upon that part of the Network comprising the Routes, with or without vehicles; and
- (f) for the Train Operator and its associates to bring things onto that part of the Network comprising the Routes and keep them there,

and such permission is subject, in each case and in all respects to:

- (i) the Network Code;
- (ii) the Applicable Engineering Access Statement; and
- (iii) the Applicable Timetable Planning Rules.

5.3 Permission under Clauses 5.2(e) and 5.2(f)

In relation to the permissions specified in Clauses 5.2(e) and 5.2(f):

- (a) the Train Operator shall, and shall procure that its associates shall, wherever reasonably practicable, first obtain the consent of HAL, which consent shall not be unreasonably withheld or delayed;
- (b) the Train Operator shall remove any vehicle or other thing so brought onto any part of the Network when reasonably directed to do so by HAL; and
- (c) whilst exercising any rights conferred by Clauses 5.2(e) and 5.2(f), the Train Operator shall, and shall procure that its associates shall, comply with such reasonable restrictions or instructions as HAL shall specify.

5.4 Changes to Applicable Engineering Access Statement and Applicable Timetable Planning Rules

Changes to the Applicable Engineering Access Statement and the Applicable Timetable Planning Rules are subject to regulatory protection (including appeals) in accordance with Part D of the Network Code.

5.5 NOT USED

5.6 The Services and the Specified Equipment

Schedule 5 shall have effect.

5.7 Performance

Schedule 8 shall have effect.

5.8 Stabling

Without prejudice to HAL's obligations, if any, under Schedule 5 to provide Stabling, HAL shall use all reasonable endeavours to provide such Stabling facilities (where available) as are necessary or expedient for or in connection with the provision of the Services in accordance with the Working Timetable.

6 OPERATION AND MAINTENANCE OF TRAINS AND NETWORK

6.1 General

Without prejudice to the other provisions of this contract:

- (a) the Train Operator shall maintain and operate the Specified Equipment used on the Network in accordance with Clause 4.1 with a view to permitting the provision of the Services on the Routes in accordance with the Working Timetable and the making of Ancillary Movements; and
- (b) HAL shall maintain and operate the Network in accordance with Clause 4.1 with a view to permitting the provision of the Services on the Routes using the Specified Equipment in accordance with the Working Timetable and the making of Ancillary Movements.

6.2 Trespass, vandalism and animals

Without prejudice to the other provisions of this contract, each of the parties shall use all reasonable endeavours (including participating in such

consultation and joint action as is reasonable in all the circumstances) to reduce:

- (a) trespass;
- (b) vandalism; and
- (c) intrusions on to the Network by animals,

in each case as may affect either the provision of the Services or the Routes.

6.3 Safety

In relation to Safety Obligations:

- (a) the Train Operator shall comply with any reasonable request by HAL in relation to any aspect of the Train Operator's operations which affects or is likely to affect the performance of HAL's Safety Obligations; and
- (b) HAL shall comply with any reasonable request by the Train Operator in relation to any aspect of HAL's operations which affects or is likely to affect the performance of the Train Operator's Safety Obligations.

6.4 Use of Railway Code Systems

6.4.1 General

The parties shall:

- (a) use the Railway Code Systems in their dealings with each other in connection with matters provided for in this contract; and
- (b) comply with the Systems Code.

6.4.2 Provision of Track Consist Data

Without prejudice to Clause 6.4.1, the Train Operator shall:

- (a) provide to HAL such Train Consist Data as shall be necessary to enable Network Rail to calculate the amount of Track Charges; and
- (b) procure that such data is true and accurate in all respects.

7 TRACK CHARGES AND OTHER PAYMENTS

Schedule 7 shall have effect.

8 LIABILITY

8.1 Performance Orders in relation to breach

In relation to any breach of this contract:

- (a) the Innocent Party shall be entitled to apply under Clause 13 for a Performance Order against the party in breach; and
- (b) if a Performance Order is made, the party against whom it has been made shall comply with it.

8.2 Compensation in relation to breach

In relation to any breach of this contract, the party in breach shall indemnify the Innocent Party against all Relevant Losses.

9 NOT USED

10 LIABILITY - OTHER MATTERS

10.1 Train Operator indemnity

The Train Operator shall indemnify HAL against all Relevant Losses resulting from:

- (a) a failure by the Train Operator to comply with its Safety Obligations;
- (b) any environmental damage arising directly from the acts or omissions of the Train Operator or the taking by HAL of any steps to prevent, mitigate or remedy a condition which exists as a direct result of the acts or omissions of the Train Operator; and
- (c) any damage to the Network arising directly from the Train Operator's negligence.

10.2 HAL indemnity

HAL shall indemnify the Train Operator against all Relevant Losses resulting from:

- (a) a failure by HAL to comply with its Safety Obligations;
- (b) any environmental damage to the Network arising directly from any acts or omissions of the British Railways Board prior to 1 April 1994 and any environmental damage arising directly from the acts or omissions of HAL; and
- (c) any damage to the Specified Equipment or other vehicles or things brought onto the Network in accordance with the permission to use granted by this contract arising directly from HAL's negligence.

11 RESTRICTIONS ON CLAIMS

11.1 Notification and mitigation

A party wishing to claim under any indemnity provided for in this contract:

- (a) shall notify the other party of the relevant circumstances giving rise to that claim as soon as reasonably practicable after first becoming aware of those circumstances (and in any event within 365 days of first becoming so aware); and
- (b) subject to Clause 11.1(c), shall take all reasonable steps to prevent, mitigate and restrict the circumstances giving rise to that claim and any Relevant Losses connected with that claim; but
- (c) shall not be required to exercise any specific remedy available to it under this contract.

11.2 Restrictions on claims by HAL

Any claim by HAL against the Train Operator for indemnity for Relevant Losses:

- (a) shall exclude payments to any person under or in accordance with the provisions of any Access Agreement other than any such payments which are for obligations to compensate for damage to property, and so that any claim for indemnity under this contract for such payments for damage to property, in relation to any incident, shall be limited to:
 - (i) the maximum amount for which the Train Operator would be liable for such damage in accordance with the Claims Allocation and Handling Agreement; less
 - (ii) any other compensation which the Train Operator has an obligation to pay for such damage;
- (b) shall exclude loss of revenue in respect of permission to use any part of the Network under or in accordance with any Access Agreement with any person; and
- (c) shall:
 - (i) include Relevant Losses only to the extent that these constitute amounts which HAL would not have incurred as network owner and operator but for the relevant breach; and
 - (ii) give credit for any savings to HAL which result or are likely to result from the incurring of such amounts.

11.3 Restrictions on claims by Train Operator

Any claim by the Train Operator against HAL for indemnity for Relevant Losses:

- (a) shall exclude any Relevant Losses to the extent that they result from delays to or cancellations of trains (other than delays or cancellations in circumstances where the SPP Threshold has been exceeded as provided for in paragraph 18 of Schedule 8); and
- (b) shall:
 - (i) include Relevant Losses only to the extent that these constitute amounts which the Train Operator would not have incurred as train operator but for the relevant breach; and
 - (ii) give credit for any savings to the Train Operator which result or are likely to result from the incurring of such amounts.

11.4 Restriction on claims by both parties

Any claim for indemnity for Relevant Losses shall exclude Relevant Losses which:

- (a) do not arise naturally from the breach; and

- (b) were not, or may not reasonably be supposed to have been, within the contemplation of the parties:
 - (i) at the time of the making of this contract; or
 - (ii) where the breach relates to a modification or amendment to this contract, at the time of the making of such modification or amendment,as the probable result of the breach.

11.5 Limitation on liability

Schedule 9 shall have effect so as to limit the liability of the parties to one another under the indemnities in Clauses 8.2 and 10, but:

- (a) does not limit any liability arising under Schedules 5, 7 or 8;
- (b) in relation to a failure to perform an obligation under the Network Code, only to the extent (including as to time and conditions) that the Network Code so provides; and
- (c) subject to Clause 18.3.3.

11.6 Claims Allocation and Handling Agreement

11.6.1 General

Clauses 16 and 17 of the Claims Allocation and Handling Agreement provide that claims between parties to it are limited to specified amounts unless the parties expressly contract otherwise.

11.6.2 Restriction of application

Except as otherwise expressly provided in this contract, Clauses 16 and 17 of the Claims Allocation and Handling Agreement shall not apply as between the parties to this contract if and to the extent that the giving of any right or remedy as provided for under this contract would be prevented or restricted by Clauses 16 and 17 of the Claims Allocation and Handling Agreement.

11.6.3 Liability for small claims

Nothing in this contract shall affect the application as between the parties of the provisions of the Claims Allocation and Handling Agreement which relate to liability for small claims equal to or below the Threshold (as defined in that agreement).

12 GOVERNING LAW

This contract and any non-contractual obligations connected with it shall be governed by and construed in accordance with the laws of England and Wales.

13 DISPUTE RESOLUTION

13.1 ADRR

A Relevant Dispute shall be referred for resolution in accordance with the Access Dispute Resolution Rules in force at the time of the reference (the "ADRR"), as modified by this Clause 13, unless:

- (a) any Part of the Network Code provides for an alternative dispute resolution procedure for the Relevant Dispute, in which case such alternative procedure shall apply;
- (b) any Part of Schedules 5, 7 or 8 provides for an alternative dispute resolution procedure for the Relevant Dispute, in which case such alternative procedure shall apply; or
- (c) Clause 13.2 applies.

13.2 Unpaid sums

If either party fails to pay:

- (a) any invoice issued to it under this contract in respect of Track Charges; or
- (b) any other sum which has fallen due in accordance with any provision of this contract, then:
 - (i) the amount invoiced or sum due, as referred to in Clause 13.2(a) or (b), shall immediately constitute a debt due and owing from the party who has failed to pay the invoice or sum due to the other party (and to any assignee of a party's right to payment in respect of any invoice or other sum due);
 - (ii) such debt shall be recoverable by any means available under the laws of England and Wales; and
 - (iii) the dispute resolution procedures in Clauses 13.1 and 13.3 to 13.5 shall not apply to proceedings commenced under this Clause 13.2.

13.3 Performance Orders

13.3.1 Power to order provisional relief

For the purposes of section 39 of the Arbitration Act 1996, should any Relevant Dispute be allocated in accordance with the ADRR to arbitration under Chapter F of the ADRR, the arbitrator shall have power to order on a provisional basis any relief which he would have power to grant in a final award including Performance Orders.

13.3.2 Performance Orders

A Performance Order:

- (a) is an order made under Clause 13.3.3(b), relating to a Relevant Dispute, whether by way of interim or final relief; and

- (b) may be applied for by HAL or the Train Operator in the circumstances set out in Clause 8.1, subject to the qualifications in Clause 17.8,

and an application for a Performance Order shall be without prejudice to any other remedy available to the claimant under this contract (whether final or interim and whether by way of appeal under the Network Code or otherwise).

13.3.3 Duties of arbitrator in relation to Performance Orders

Without prejudice to any additional remedies that may be ordered by the arbitrator under Clause 13.4, where a dispute is allocated in accordance with the ADRR to arbitration and a party has applied for a Performance Order, the parties shall agree in a Procedure Agreement, as defined in the ADRR, that:

- (a) the arbitrator shall decide as soon as possible whether the application is well founded or not; and
- (b) if the arbitrator decides that the application is well founded, he shall be required to make an interim or final declaration to that effect and, in that event, the arbitrator may also make any interim or final order directing any party to do or to refrain from doing anything arising from such declaration which he considers just and reasonable in all the circumstances.

13.4 Remedies

The powers exercisable by the arbitrator as regards remedies shall include:

- (a) the powers specified in sections 48(3) to (5) of the Arbitration Act 1996;
- (b) the powers specified in the ADRR;
- (c) the power to make Performance Orders; and
- (d) the power to order within the same reference to arbitration any relief specified in Clause 13.4 (a), (b) and (c) consequent upon, or for the breach of, any interim or final Performance Order previously made.

13.5 Exclusion of applications on preliminary points of law

Any recourse to any Court for the determination of a preliminary point of law arising in the course of the arbitration proceedings is excluded.

14 CONFIDENTIALITY

14.1 Confidential Information

14.1.1 General obligation

Except as permitted by Clause 14.2, all Confidential Information shall be held confidential during and after the continuance of this contract and shall not be divulged in any way to any third party without the prior written approval of the other party.

14.1.2 HAL - Affiliates

Except as permitted by Clause 14.2, HAL shall procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information.

14.1.3 Train Operator - Affiliates

Except as permitted by Clause 14.2, the Train Operator shall procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information.

14.2 Entitlement to divulge

Either party, and its Affiliates, and its and their respective officers, employees and agents, shall be entitled in good faith to divulge any Confidential Information without the approval of the other party in the following circumstances:

- (a) to ORR;
- (b) to the Secretary of State;
- (c) to any Affiliate of either party;
- (d) to any officer or employee of the party in question or any person engaged in the provision of goods or services to or for him if disclosure is necessary or reasonably required to enable the party in question to perform its obligations under this contract, upon obtaining an undertaking of strict confidentiality from such officer, employee or person;
- (e) to any professional advisers or consultants of such party engaged by or on behalf of such party and acting in that capacity, upon obtaining an undertaking of strict confidentiality from such advisers or consultants;
- (f) to any insurer or insurance broker from whom such party is seeking insurance or in connection with the making of any claim under any policy of insurance upon obtaining an undertaking of strict confidentiality from the insurer or insurance broker;
- (g) to any lender, security trustee, bank or other institution from whom such party is seeking or obtaining finance or credit support for such finance, or any advisers to any such entity, or any rating agency from whom such party is seeking a rating in connection with such finance or credit support, upon obtaining an undertaking of strict confidentiality from the entity, advisers or rating agency in question;
- (h) to the extent required by the Act, the Railways (Licensing of Railway Undertakings) Regulations 2005, any other applicable law, the rules of any recognised stock exchange or regulatory body or any written request of any taxation authority;
- (i) to the extent that it has become available to the public other than as a result of a breach of confidence; and

- (j) under the order of any court or tribunal of competent jurisdiction (including the Allocation Chair or any relevant ADRR Forum, each as defined in the ADRR).

14.3 Return of Confidential Information

Each of HAL and the Train Operator shall promptly return to the other party any Confidential Information requested by the other party if such request:

- (a) is made on or within two months after the Expiry Date or, if this contract lapses or is terminated earlier, is made within two months after the date on which this contract lapses or is terminated;
- (b) is reasonable; and
- (c) contains a sufficient description of the relevant Confidential Information to enable such information to be readily identified and located.

14.4 Retention or destruction of Confidential Information

If HAL or the Train Operator, as the case may be, has not received a request to return any Confidential Information to the other party under and within the time limits specified in Clause 14.3, it may destroy or retain such Confidential Information.

14.5 Ownership of Confidential Information

All Confidential Information shall be and shall remain the property of the party which supplied it to the other party.

14.6 Network Code

Nothing in this Clause 14 restricts the right of HAL to disclose information to which this Clause 14 applies to the extent that it is permitted or required to do so under the Network Code.

15 ASSIGNMENT AND NOVATION

15.1 Assignment

Neither party may assign, transfer, novate (including a novation under Clause 15.2) or create any encumbrance or other security interest over the whole or any part of its rights and obligations under this contract except to the extent approved by ORR following consultation with the other party, and subject to the conditions (if any) of ORR's approval.

15.2 Novation

HAL (and any assignee of all or part of HAL's rights under this contract) shall:

- (a) agree to the novation of the rights and obligations of the Train Operator under this contract in favour of another person (including the Secretary of State or a person nominated by him) in any circumstances where the Secretary of State requests HAL to participate in such a novation in the course of exercising its powers under section 30 of the Act; and

- (b) execute such contracts and do such things as the Secretary of State may reasonably request to give effect to the novation.

15.3 Novation terms

Any novation under Clause 15.2 shall be on terms that:

- (a) the Train Operator shall not be released from:
 - (i) any accrued but unperformed obligation;
 - (ii) the consequences of any breach of this contract which is the subject of any proceedings (arbitral or otherwise) for the resolution of a dispute between the parties; or
 - (iii) any liability in respect of anything done under this contract before, or as at the date of, any such novation (except to the extent that such other person agrees to assume and be responsible for it); and
- (b) such other person shall not be required by HAL, as a term of or a condition to the novation, to agree to assume and be responsible for any unperformed obligation, liability or consequence of a breach of the kind referred to in Clause 15.3(a), but this shall not prevent any such agreement being a term or condition of the novation if required by the Secretary of State.

16 PAYMENTS, INTEREST AND VAT

16.1 Payment

16.1.1 No deduction

All sums due or payable by either party under this contract shall be paid free and clear of any deduction, withholding or set off except only as may be required by law or as expressly provided in any Schedule to this contract or in the Network Code.

16.1.2 Delivery of invoices

All statements of amounts payable under Schedules 4, 5 or 8, under the Network Code shall be delivered by hand at, or sent by prepaid first class post to, the address for service for the recipient specified in Schedule 1 and shall be deemed to have been received by the addressee in accordance with Clause 18.4.3.

16.1.3 Content of invoices and other statements of amounts payable

Each invoice and statement of amounts payable shall contain such detail as to the constituent elements of the amounts stated to be payable as shall be necessary or expedient so as to enable the person to whom it is given to understand and check it.

16.1.4 Method of payment

All payments shall be made by direct debit mandate or standing order mandate, CHAPS transfer, BACS transfer or other electronic or telegraphic transfer to a London clearing bank or such other financial institution as may be approved by the party entitled to the payment, such approval not to be unreasonably withheld or delayed.

16.2 Interest

Without prejudice to any other rights or remedies which one party may have in respect of the failure of the other party to pay any amount on the due date, amounts payable under this contract and not paid by the due date shall carry interest (to accrue daily and to be compounded monthly) at the Default Interest Rate from the due date until the date of actual payment (as well after judgment as before), except to the extent that late payment arises from any failure by the invoicing party to comply with Clause 16.1.2 or Clause 16.1.3.

16.3 VAT

16.3.1 Payment of VAT

Where any taxable supply for VAT purposes is made under or in connection with this contract by one party to the other the payer shall, in addition to any payment required for that supply, pay such VAT as is chargeable in respect of it.

16.3.2 Reimbursement of VAT

Where under this contract one party is to reimburse or indemnify the other in respect of any payment made or cost incurred by the other, the first party shall also reimburse any VAT paid by the other which forms part of its payment made or cost incurred to the extent such VAT is not available for credit for the other party (or for any person with whom the indemnified party is treated as a member of a group for VAT purposes) under sections 25 and 26 of the Value Added Tax Act 1994.

16.3.3 VAT credit note to be issued on repayment

Where under this contract any rebate or repayment of any amount is payable by one party to the other, and the first party is entitled as a matter of law or of HM Revenue and Customs practice to issue a valid VAT credit note, such rebate or repayment shall be paid together with an amount representing the VAT paid on that part of the consideration in respect of which the rebate or repayment is made, and the first party shall issue an appropriate VAT credit note to the other party.

17 FORCE MAJEURE EVENTS

17.1 Meaning of Force Majeure Event

In this Clause 17:

“Affected Party” means, in relation to a Force Majeure Event, the party claiming relief under this Clause 17 by virtue of that Force Majeure Event, and “Non-affected Party” shall be construed accordingly;

“Force Majeure Event” means any of the following events (and any circumstance arising as a direct consequence of any of the following events):

- (a) an act of the public enemy or terrorists or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;
- (b) acts of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;
- (c) natural disasters or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);
- (d) nuclear, chemical or biological contamination;
- (e) pressure waves caused by devices travelling at supersonic speeds;
- (f) discovery of fossils, antiquities or unexploded bombs; and
- (g) strike or other industrial action which is a single circumstance and which also is a strike or industrial action in sectors of the economy other than the railway industry;

“Force Majeure Notice” means a notice to be given by the Affected Party to the other party stating that a Force Majeure Event has occurred;

“Force Majeure Report” means a report to be given by the Affected Party to the other party following the giving of a Force Majeure Notice;

“Relevant Force Majeure Event” means a Force Majeure Event in relation to which an Affected Party is claiming relief under this Clause 17; and

“Relevant Obligation” means an obligation under this contract in respect of which a Force Majeure Event has occurred and the Affected Party has claimed relief under this Clause 17.

17.2 Nature and extent of relief for Force Majeure

Force Majeure relief under this Clause 17:

- (a) extinguishes the obligation of the Affected Party to indemnify the other party under Clause 8.2 in respect of Relevant Losses sustained as a result of the failure of the Affected Party to perform a Relevant Obligation; but
- (b) is not available in respect of:
 - (i) any obligation to pay money under Schedules 5, 7 or 8; or
 - (ii) any other obligation to do or refrain from doing any other thing provided for in this contract; and

- (c) is only available in relation to a failure to perform an obligation under the Network Code to the extent (including as to time and conditions) that the Network Code so provides.

17.3 Entitlement to Force Majeure relief

An Affected Party is entitled to Force Majeure relief if and to the extent that:

- (a) performance of the Relevant Obligation has been prevented or materially impeded by reason of a Force Majeure Event;
- (b) it has taken all reasonable steps, taking account of all relevant circumstances (including as to whether the event in question could reasonably have been anticipated):
 - (i) to avoid the occurrence of the Force Majeure Event; and
 - (ii) to minimise, and where practicable avoid, the effects of the Force Majeure Event on its ability to perform the Relevant Obligation; and
- (c) except in the case of Clause 17.1(f), none of the Affected Party, its officers, employees or agents caused the Force Majeure Event.

17.4 Procedure for claiming relief

Without prejudice to Clause 17.3, an Affected Party is only entitled to claim Force Majeure relief under this Clause 17 if it complies with the obligations to give Force Majeure Notices, Force Majeure Reports and provide other information under Clause 17.5 and to perform its obligations under Clause 17.6.

17.5 Force Majeure Notices and Reports

17.5.1 Force Majeure Notice

In relation to any Relevant Force Majeure Event:

- (a) as soon as reasonably practicable after the Affected Party becomes aware, or ought reasonably to have become aware, that such Force Majeure Event qualifies for relief under this Clause 17 (and, in any event, within 72 hours of becoming aware of such circumstances), the Affected Party shall give a Force Majeure Notice; and
- (b) the Force Majeure Notice shall include detailed particulars (to the extent available) of the Relevant Force Majeure Event and its consequences, its effects on the Affected Party, the Relevant Obligations, the likely duration of such consequences and effects and the remedial measures proposed by the Affected Party to avoid or remove the Relevant Force Majeure Event or to mitigate its consequences and effects.

17.5.2 Force Majeure Report

Following the giving of a Force Majeure Notice:

- (a) the Affected Party shall give a Force Majeure Report as soon as practicable, and in any event within seven days of service of the Force Majeure Notice; and
- (b) the Force Majeure Report shall constitute a full report on the Relevant Force Majeure Event, amplifying the information provided in the Force Majeure Notice and containing such information as may reasonably be required by the Non-affected Party, including the effect which the Relevant Force Majeure Event is estimated to have on the Affected Party's performance of the Relevant Obligations.

17.5.3 Other information

The Affected Party shall promptly give the Non-affected Party all other information concerning the Relevant Force Majeure Event and the steps which could reasonably be taken, and which the Affected Party proposes to take, to avoid or remove the Relevant Force Majeure Event or to mitigate its consequences and effects as may reasonably be requested by the Non-affected Party from time to time.

17.6 Mitigation

The Affected Party shall, promptly upon becoming aware of the occurrence of a Force Majeure Event in respect of which it intends to claim relief, use all reasonable endeavours to:

- (a) minimise the effects of such Force Majeure Event on the performance of the Relevant Obligations; and
- (b) minimise the duration of such Force Majeure Event,

and shall keep the Non-affected Party fully informed of the actions which it has taken or proposes to take under this Clause 17.6.

17.7 Duration of relief for force majeure

The right of an Affected Party to relief under Clause 17.2 shall cease on the earlier of:

- (a) the date on which its performance of the Relevant Obligations is no longer prevented or materially impeded by the Relevant Force Majeure Event; and
- (b) the date on which such performance would no longer have been prevented or materially impeded if the Affected Party had complied with its obligations under Clause 17.6.

17.8 Availability of Performance Order

If and to the extent that a breach of this contract has been caused by a Relevant Force Majeure Event, the Non-affected Party shall not be entitled to a Performance Order except to secure performance by the Affected Party of its obligations under this Clause 17.

18 MISCELLANEOUS

18.1 Non waiver

18.1.1 No waiver

No waiver by either party of any failure by the other to perform any obligation under this contract shall operate or be construed as a waiver of any other or further default, whether of a like or different character.

18.1.2 Failure or delay in exercising a right or remedy

The failure to exercise or delay in exercising a right or remedy under this contract shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies, and no single or partial exercise of any right or remedy under this contract shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

18.2 Variations

18.2.1 Amendments to be in writing and to be approved

No amendment of any provision of this contract shall be effective unless:

- (a) such amendment is in writing and signed by, or on behalf of, the parties; and
- (b) if it is an amendment which requires ORR's approval under section 22 of the Act, the amendment has been approved by ORR.

18.2.2 Exceptions

Clause 18.2.1(b) does not apply to amendments of the following kinds:

- (a) an amendment made by virtue of a general approval issued by ORR under section 22 of the Act; and
- (b) a modification made by virtue of Clause 18.4.2.

18.2.3 No Office of Rail and Road approval needed

Modifications of the following kinds do not require ORR's approval under section 22 of the Act and so are not subject to Clause 18.2.1(b):

- (a) modifications effected by virtue of any of the Schedules to this contract; and
- (b) modifications effected by virtue of the Network Code, unless the relevant provision expressly states that it requires the approval of ORR.

18.2.4 Conformed copy of contract

HAL shall produce and send to the Train Operator and to ORR a conformed copy of this contract within 28 days of the making of any amendment or modification to it (including any modification made by virtue of Schedule 10).

18.3 Entire contract and exclusive remedies

18.3.1 Entire contract

Subject to Clause 18.3.3:

- (a) this contract contains the entire agreement between the parties in relation to the subject matter of this contract;
- (b) each party acknowledges that it has not been induced to enter into this contract in reliance upon, nor has it been given, any warranty, representation, statement, agreement or undertaking of any nature whatsoever other than as expressly set out in this contract and, to the extent that this is not the case, the relevant party unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to any such matter; and
- (c) neither party shall have any right to rescind or terminate this contract either for breach of contract or for misrepresentation or otherwise, except as expressly provided for in this contract.

18.3.2 Exclusive remedies

Subject to Clause 18.3.3 and except as expressly provided in this contract:

- (a) neither party shall have any liability (including liability arising as a result of any negligence, breach of contract or breach of statutory obligation) to the other in connection with the subject matter of this contract; and
- (b) the remedies provided for in this contract shall be the sole remedies available to the parties in respect of any matters for which such remedies are available.

18.3.3 Fraud, death and personal injury

Without prejudice to the generality of this Clause 18.3, nothing in this contract shall exclude, restrict or limit, or purport to exclude, restrict or limit:

- (a) any liability which either party would otherwise have to the other party, or any right which either party may have to rescind this contract, in respect of any statement made fraudulently by the other party before the execution of this contract;
- (b) any right which either party may have in respect of fraudulent concealment by the other party;
- (c) any right which either party may have in respect of a statement of the kind referred to in section 146 of the Act, whether or not proceedings have been instituted in that respect; or

- (d) any liability which either party may have towards the other party for death or personal injury resulting from its negligence or the negligence of any of its officers, employees or agents.

18.4 Notices

18.4.1 Giving of notices

Any notice to be given under this contract:

- (a) shall be in writing; and
- (b) shall be duly given if signed by or on behalf of a person duly authorised to do so by the party giving the notice and delivered by hand at, or by sending it by prepaid first class post or recorded delivery to, the relevant address set out in Schedule 1.

For the purposes of this Clause 18.4 and Clause 16.1.2, delivery by hand shall include delivery by a reputable firm of couriers.

18.4.2 Right to modify registered company and communication details

A party shall be entitled to modify in any respect:

- (a) the registered name and address details which relate to it and are set out on page one of this contract (provided that this modification shall not amount to or purport to be an assignment, transfer or novation of this contract); and
- (b) the communication particulars which relate to it and which are set out in Schedule 1,

by giving notice of such modification:

- (i) to the other party as soon as reasonably practicable; and
- (ii) to ORR within 14 days of such modification.

18.4.3 Deemed receipt

A notice shall be deemed to have been given and received:

- (a) if sent by hand or recorded delivery, at the time of delivery;
- (b) if sent by prepaid first class post from and to any place within the United Kingdom, three Working Days after posting unless otherwise proven; and
- (c) NOT USED.

18.4.4 Copies

If Schedule 1 specifies any person to whom copies of notices shall also be sent:

- (a) the party giving a notice in the manner required by this Clause 18.4 shall send a copy of the notice to such person at the address for sending copies as specified in Schedule 1, or to such other person or address as

may, from time to time, have been notified by the party to be notified to the notifying party under this Clause 18.4; and

(b) such copy notice shall be sent immediately after the original notice.

18.5 Counterparts

This contract may be executed in two counterparts which, taken together, shall constitute one and the same document. Either party may enter into this contract by signing either of such counterparts.

18.6 Survival

Those provisions of this contract which by their nature or implication are required to survive expiry or termination of this contract (including the provisions of Clauses 8 (Liability), 10 (Liability - Other Matters), 11 (Restrictions on Claims); 12 (Governing Law), 13.2 (Unpaid Sums), 14 (Confidentiality), 16 (Payments, Interest and VAT), 17 (Force Majeure Events), paragraph 4 of Schedule 6 (Consequence of Termination) and Schedule 9 (Limitation on liability)), shall so survive and continue in full force and effect, together with any other provisions of this contract necessary to give effect to such provisions.

18.7 Contracts (Rights of Third Parties) Act 1999

18.7.1 Application to third parties

Save as provided in this Clause 18.7 or as expressly provided elsewhere in this contract, no person who is not a party to this contract shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract.

18.7.2 Application to the Office of Rail and Road

ORR shall have the right under the Contracts (Rights of Third Parties) Act 1999 to enforce directly such rights as have been granted to it under this contract.

18.7.3 Application to the Secretary of State

The Secretary of State shall have the right under the Contracts (Rights of Third Parties) Act 1999 directly to enforce Clauses 15.2 and 15.3.

18.7.4 NOT USED.

19 NOT USED

SCHEDULE 1: CONTACT PARTICULARS

1. HAL's address for service of notices is:

The Compass Centre

Nelson Road

Hounslow

Middlesex

TW6 2GW

Tel: 0844 335 1801

Email: www.heathrow.com

All written notices to be marked:

"URGENT: ATTENTION THE COMPANY SECRETARY AND SOLICITOR"

2. The Train Operator's address for the service of notices is:

The Compass Centre

Nelson Road

Hounslow

Middlesex

TW6 2GW

Tel: +44 (0)20 8750 6600

Email: www.heathrowexpress.com

All written notices to be marked:

"URGENT: ATTENTION THE COMPANY SECRETARY AND SOLICITOR"

SCHEDULE 2: THE ROUTES

1. In order to provide the Services, the Train Operator has permission to use the routes specified in Column 1 of Table 2.1 and Table 2.2 of Schedule 5.
2. In order to provide Services when any part of the route is unavailable, the Train Operator has permission to use any reasonable route for diversionary purposes, subject to obtaining any necessary route clearance for the Specified Equipment over the route in question.
3. In order to make Ancillary Movements, the Train Operator has permission to use any reasonable route, subject to obtaining any necessary route clearance for the Specified Equipment over the route in question.
4. In order to Stable railway vehicles, the Train Operator has permission to use any reasonable location, subject to obtaining any necessary route clearance for the Specified Equipment for the location in question.
5. Use of all routes is subject to the Network Code.

SCHEDULE 3: COLLATERAL AGREEMENTS

1. An access agreement between (1) the Train Operator and (2) HAL granting the Train Operator permission to use the following stations:
 - a) Heathrow Airport Terminals 2 and 3;
 - b) Heathrow Airport Terminal 4; and
 - c) Heathrow Airport Terminal 5.
2. An agreement under which the Train Operator agrees to become a party to the Claims Allocation and Handling Agreement and, for the purpose of Schedule 6, the Claims Allocation and Handling Agreement.
3. An accession agreement to the document entitled Emergency Access Code as approved or directed by ORR and, for the purpose of Schedule 6, the Emergency Access Code.

SCHEDULE 4: NOT USED

SCHEDULE 5: THE SERVICES AND THE SPECIFIED EQUIPMENT

1 Definitions

1.1 In this Schedule unless the context otherwise requires:

“Calling Pattern”	means a list of stations related to one or more Passenger Train Slots, at which stops are to be Scheduled in the Working Timetable;
“Contingent Right”	means a right under this Schedule 5 which is not a Firm Right and which is subject to the fulfilment of all competing Exercised Firm Rights and any additional contingency specified in this Schedule 5;
“Day”	means any period of 24 hours beginning at 0200 hours and ending immediately before the next succeeding 0200 hours, and any reference in this Schedule to any named day of the week shall be to such period commencing on that named day;
“Exercised”	has the meaning ascribed to it in Part D of the Network Code;
“Firm Right”	has the meaning ascribed to it in Part D of the Network Code;
“Journey Time”	means the time in the Working Timetable to be taken by a Service in travelling between the specified departure point and specified destination for that Service;
“Journey Time Review Notice”	has the meaning ascribed to it in paragraph 7.5;
“Maximum Journey Time”	means, in respect of a Passenger Train Slot, the corresponding Maximum Journey Time, if any, set out in column 4 of Table 6.1;
“Maximum Key Journey Time”	means, in respect of a Passenger Train Slot, the corresponding Maximum Key Journey Time, if any, set out in column 4 of Table 6.1;
“Modification Notice”	has the meaning ascribed to it in paragraph 7.10;
“HAL Network Change”	has the meaning ascribed to it in Part G of the Network Code;
“Passenger Train Slot”	means a Train Slot intended by the Train Operator to be used for the provision of a Service;
“Public Holiday”	means any day other than Saturday or Sunday on which the banks in the City of London are not open for business;

“Reduced Regular Calling Pattern”	has the meaning ascribed to it in paragraph 4.1;
“Regular Calling Pattern”	has the meaning ascribed to it in paragraph 4.1;
“Scheduled”	means, in relation to the quantum, timing or any other characteristic of a train movement, that quantum, timing or other characteristic as included in the applicable Working Timetable;
“Service Group”	means any one or more (as the context may require) of the service groups described in this Schedule;
“Timetable Period”	means the period of time between (and including) one Timetable Change Date and (but excluding) the immediately succeeding Timetable Change Date;
“Timing Load”	means, in relation to a Service, the timing reference code as defined from time to time in the Working Timetable;
“Train Service Code” or “TSC”	means the eight character code applied in the Performance Monitoring System and used to identify Services;
“Weekday”	means any day (including, except for the purposes of paragraphs 6 and 7, a Public Holiday) which is not a Saturday or Sunday; and

- 1.2 Unless otherwise stated, where in this Schedule a period is expressed to be between two specific times that period shall be inclusive of both such times.
- 1.3 The Train Operator's rights under this Schedule as to numbers of Passenger Train Slots per Day are calculated by reference to departures from the Scheduled start point on the Day in question, notwithstanding that a Passenger Train Slot may not be Scheduled to arrive at its end point until the immediately succeeding Day.

2 Passenger Train Slots

Table 2.1: Passenger Train Slots

1						2					
London Paddington to London Heathrow Airport						Passenger Train Slots					
From	To	Via	Description	TSC	Timing Load	Peak times ¹		Off-Peak times ²	Weekday ³	Saturday	Sunday
						Morning Peak	Evening Peak				
Paddington	Heathrow Terminal 5	Direct	HEX	25905000	332	8	8	8	150	150	150
Paddington	Heathrow Terminals 2 and 3	Direct	HEC	25503003	360	2	2	2	76	76	76
Heathrow Terminals 2 and 3	Heathrow T4	Direct	Shuttle	25905005	332 or 360	8	8	8	150	150	150
Heathrow Terminals 2 and 3	Heathrow T5	Direct	HECshuttle	25503003	360	2	2	2	76	76	76

Notes to Table:

1 Peak times – arriving at and departing from a relevant station between 0700 and 1000 or between 1530 and 1900.

2 Off-Peak times - arriving at and departing from a relevant station outside Peak times

3 Passenger Train Slots listed under the sub-headings "Peak times" and "Off-Peak times" are the constituent parts of, and are not in addition to, those listed under the sub-heading "Weekday".

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Passenger Train Slots

- 2.1 The Train Operator has Firm Rights to the number of Passenger Train Slots in the Working Timetable in respect of a Service Group as listed against each Service specified in Table 2.1 on the Days and within the Peak and Off-Peak times so listed using any Specified Equipment included in paragraph 5.1.(a) that is capable of achieving the Timing Load shown. If the Train Operator makes an Access Proposal, or relies on a Rolled Over Access Proposal, to operate any of the Services specified in Table 2.1 using Specified Equipment that is not capable of achieving the Timing Load shown, then the rights will be treated as Contingent Rights for the purposes of Part D of the Network Code.
- 2.2 In order to provide for the Scheduling of part only of Passenger Train Slots specified in Table 2.1 the Train Operator has:
 - (a) Firm Rights for such a Passenger Train Slot to commence from and/or terminate at Heathrow Terminals 2 and 3 Station, Heathrow Terminal 4 Station, Heathrow Terminal 5 Station; and
 - (b) Contingent Rights for such a Passenger Train Slot to commence from and/or terminate at: N/A.
- 2.3 In order to provide through Services the Train Operator has:
 - (a) Firm Rights to combine Passenger Train Slots at Heathrow Terminals 2 and 3 Station; and
 - (b) Contingent Rights to combine Passenger Train Slots at: N/A.

Table 2.2: Additional Passenger Train Slots

NOT USED

Additional Passenger Train Slots

- 2.4 The Train Operator has Contingent Rights to additional Passenger Train Slots in the Working Timetable in respect of a Service Group up to the number listed against each Service specified in Table 2.2 and on the Days so listed.
- 2.5 A Contingent Right for an additional Passenger Train Slot under paragraph 2.4 includes:
- (a) a Contingent right to call at any station listed in Table 4.1;
 - (b) a Contingent Right to have Scheduled part only of the Passenger Train Slot in question; and
 - (c) a Contingent Right to combine Passenger Train Slots to provide a through Service.

Ancillary Movements

- 2.6 The Train Operator has Firm Rights to make Ancillary Movements of Specified Equipment to the extent necessary or reasonably required to give full effect to the other Firm Rights of the Train Operator, including:
- (a) movements for the purpose of maintenance of rolling stock to and from maintenance depots;
 - (b) movements for driver training purposes; and
 - (c) empty stock movements.
- 2.7 For the purpose of paragraph 2.6, Ancillary Movements shall not include movements of rolling stock for the purpose of testing or driver training to the extent that:
- (a) the rolling stock concerned has not achieved vehicle and route acceptance necessary for its use in the carriage of passengers on the route in question; or
 - (b) where the route in question is not used by the Train Operator for carriage of passengers, the rolling stock concerned has not achieved vehicle and route acceptance necessary to operate on the route without passengers on board.

Relief Passenger Train Slots

- 2.8 The Train Operator has Contingent Rights to relief Passenger Train Slots for special or seasonal events, whenever the Train Operator believes (acting in a reasonable and proper manner) that a relief Passenger Train Slot is necessary to accommodate anticipated customer demand. These Contingent Rights are subject to the relief Passenger Train Slot being additional to a Service for which the Train Operator has access rights in table 2.1 or 2.2.
- 2.9 NOT USED
- 2.10 NOT USED
- 2.11 The exercise of a Stabling right shall not count against the number of Passenger Train Slots listed in Table 2.1.

3 Intervals

Table 3.1: Service Intervals

1					2	3				4			
Heathrow Shuttle													
Service description					Station where interval applies	Interval (minutes)				Maximum variation (+/- minutes)			
From	To	Via	Description	TSC		Peak ¹	Off-Peak ²	Satur-day ³	Sun-day ⁴	Peak ¹	Off-Peak ²	Satur-day ³	Sun-day ⁴
Heathrow T23	Heathrow T5		HEX shuttle	25905000		15	15	15	15	14	14	14	14
Heathrow T23	Heathrow T4		HEX shuttle	25905005		15	15	15	15	14	14	14	14
Heathrow T23	Heathrow T5		HEC shuttle	25503003		30	30	30	30	29	29	29	29

Notes to Table:

1 "Peak" means in Table 3.1 0700 to 1000 and 1530 to 1900.

2 "Off-Peak" means in Table 3.1 times outside of Peak hours

Table 3.1(a): Morning Peak Service Intervals

N/A

Table 3.1b: Evening Peak Service Intervals

N/A

Service Intervals

- 3.1 In respect of each Service specified in column 1 of Tables 3.1(a) and 3.1(b), and subject to paragraphs 3.3 and 3.4, the Train Operator has Firm Rights to the minimum number of Passenger Train Slots during the times shown in column 2 of Table 3.1(a) and Table 3.1(b), arriving at the station shown in column 2 of Table 3.1(a) and departing from the station shown in column 2 of Table 3.1(b), being the component parts of, and not additional to, the quanta shown in column 2 of Table 2.1.
- 3.2 In respect of each Service specified in column 1 of Table 3.1 and subject to paragraphs 3.3 and 3.4, the Train Operator has Firm Rights to:
- (a) the interval between Passenger Train Slots shown in column 3 of Table 3.1 from the station shown in column 2 of that Table, being a station of origin or an intermediate station;
 - (b) the minimum interval between Passenger Train Slots shown in column 3 of Table 3.1(a) arriving at the station shown in that column, being a destination station or an intermediate station; and
 - (c) the minimum interval between Passenger Train Slots shown in column 3 of Table 3.1(b) departing from the station shown in that column, being a station of origin or an intermediate station.
- 3.3 The Firm Rights specified in paragraphs 3.1 and 3.2 may only be Exercised if the Access Proposal or Rolled Over Access Proposal for each such Service complies with the Regular Calling Pattern or Reduced Regular Calling Pattern and the Specified Equipment is capable of achieving the Timing Load specified for each such Service.
- 3.4 HAL shall be entitled to vary:
- (a) any one or more departures from the station named in column 2 of Table 3.1 and named in column 3 of Table 3.1(b) by up to the number of minutes specified in column 4 of Table 3.1 and column 3 of Table 3.1(b); and
 - (b) any one or more arrivals at the station named in column 3 of Table 3.1(a) by up to the number of minutes specified in column 3 of Table 3.1(a),
- with the effect that the interval between any two or more of such Passenger Train Slots may be less than or more than that specified in column 3 of Table 3.1 provided that the cumulative effect of such flexing over a period of 60 minutes shall not reduce the Train Operator's entitlement to its full quantum of Passenger Train Slots.

4 Calling Patterns

Table 4.1: Calling Patterns

1					2	3
HM01						
Service description						
Between	And	Via	Description	TSC	Regular Calling Pattern	Additional stations
London Paddington	Heathrow T5			25905000	ClassHeathrow T23	

Calling Patterns

- 4.1 In respect of each Service specified in column 1 of Table 4.1, the Train Operator has Firm Rights to the corresponding Calling Pattern listed in column 2 of that Table (the "Regular Calling Pattern") or any subset of the Calling Pattern (the "Reduced Regular Calling Pattern").

Additional calls

- 4.2 The Train Operator has Contingent Rights to have Scheduled, in respect of any Passenger Train Slot, calls at one or more of the stations set out opposite the Service in column 3 of Table 4.1 being stations which do not form part of the Regular Calling Pattern.

5 Specified Equipment

Specified Equipment

5.1 In order to provide the Services specified in this Schedule 5, subject to obtaining any necessary route clearance for the route in question, the Train Operator has:

(a) Firm Rights to operate the following railway vehicles:

Class 332 EMUs and Class 360/2 EMUs

and

(b) Contingent Rights to operate any railway vehicles registered with Network Rail's rolling stock library, subject to HAL's specific requirements relating to rolling stock compatibility guidelines as set out in the Heathrow Network Statement.

For the purposes of this contract the railway vehicles specified in paragraph 5.1(a) and 5.1(b) are known as the "Specified Equipment".

Train length

5.2 The Train Operator has a Firm Right to the maximum train length in metres which the Network can from time to time accommodate, subject to a right of HAL to vary the train length in cases where the Network cannot accommodate all Access Proposals and Rolled Over Access Proposals to operate to the maximum length.

5.3 Nothing in paragraph 5.2 precludes the operation of trains in excess of platform lengths where appropriate measures have been taken to control, so far as is reasonably practicable, any risks introduced by the use of such longer trains.

Journey Time protection

- 6.1 The Train Operator has Firm Rights to Maximum Journey Times or Maximum Key Journey Times under this paragraph 6 only in relation to Passenger Train Slots which are the subject of and comply with Firm Rights under paragraph 2.1 and paragraph 4.1.
- 6.2 In respect of each Service listed in column 1 of Table 6.1, the Train Operator has Firm Rights to a Journey Time, being a Maximum Journey Time or Maximum Key Journey Time as specified by MJT or MKJT respectively in column 2, on the days listed in column 3, not exceeding the Journey Time listed in column 4.
- 6.3 Journey Times specified as Maximum Journey Times shall be increased or decreased (as the case may be) by an amount equal to any:
 - (a) increase or decrease in the relevant sectional running times applicable as at the date of this contract;
 - (b) increase or decrease in the relevant station dwell times applicable as at as at the date of this contract; and
 - (c) increase or decrease in the relevant performance allowances, engineering recovery allowances or any other allowances,as such sectional running times, station dwell times or allowances are established and may change in accordance with the Applicable Engineering Access Statement and/or the Applicable Timetable Planning Rules.
- 6.4 Journey Times specified as Maximum Key Journey Times are not subject to changes to the Applicable Engineering Access Statement or the Applicable Timetable Planning Rules, otherwise than in accordance with the provisions of paragraph 7.

7 Provisions applicable to Journey Time protection

Restriction on changes to the Engineering Access Statement and Timetable Planning Rules

- 7.1 In relation to the Applicable Engineering Access Statement and the Applicable Timetable Planning Rules:
- (a) subject to paragraphs 7.1(b) and 7.1(c), HAL shall not propose or agree to any amendments to the Applicable Engineering Access Statement or the Applicable Timetable Planning Rules which would prevent it from Scheduling a Journey Time in the Working Timetable which is equal to or less than the relevant Maximum Key Journey Time specified for every Passenger Train Slot specified in Table 6.1;
 - (b) paragraph 7.1(a) shall not apply in relation to any such amendment which is proposed by the Train Operator or effected pursuant to the order of an appeal body under Part D of the Network Code or any other competent tribunal; and
 - (c) NOT USED.

HAL Network Change

- 7.2 If:
- (a) in any Timetable Period, 90 per cent or more of train movements which:
 - (i) are Scheduled in that Timetable Period; and
 - (ii) are Services to which in each case a Maximum Key Journey Time applies,exceed the applicable Scheduled Journey Time; and
 - (b) the failure of such train movements to achieve those Scheduled Journey Times is attributable to the condition or operation of the Network,
- then a HAL Network Change within the meaning of paragraph (c) of the definition of HAL Network Change shall be treated as having occurred and the provisions of Part G of the Network Code shall apply:
- (i) as if such HAL Network Change had been proposed by HAL; and
 - (ii) as if the revisions to Maximum Key Journey Times agreed under paragraph 7.3, or determined under paragraph 7.4, subject to any modification under paragraph 7.10, constitute the scope of the relevant HAL Network Change,
- and compensation shall be payable to the Train Operator accordingly.

Agreement of revised Maximum Key Journey Time

- 7.3 If under paragraph 7.2 a HAL Network Change is treated as having occurred, the parties will try to agree a revised Maximum Key Journey Time for each such Maximum Key Journey Time affected by such HAL Network Change.

Referral to ADRR

- 7.4 If the parties fail to agree such revised Maximum Key Journey Time(s) within 3 months of the request of either party for revision of the relevant Maximum Key Journey Time(s), either party may refer the matter for resolution in accordance with the ADRR. The parties shall agree in a Procedure Agreement, as defined in the ADRR, that in performing its function the relevant ADRR Forum must have regard to the following criteria:
- (a) Maximum Key Journey Times should be as short as is compatible with the development of a safe, reliable and robust timetable; and
 - (b) any relevant criteria which may have been published by ORR.

Provisions applicable to Maximum Key Journey Times and Maximum Journey Times

- 7.5 A Journey Time Review Notice is a notice given to the parties by ORR:
- (a) requiring them to enter into negotiations in good faith to vary such Journey Times set out in Table 6.1 as are specified in the notice;
 - (b) after consultation with the parties, the Secretary of State and such other persons as it considers appropriate; and
 - (c) containing its reasons for giving it.
- 7.6 As soon as reasonably practicable after the service of a Journey Time Review Notice, the parties shall begin and in good faith diligently pursue the negotiations in question.
- 7.7 If the parties reach agreement on the variations in question, they shall send a copy of them to ORR for its consent, together with a note of the reasons for them and an explanation of how they are consistent with its statutory duties.
- 7.8 If the parties fail to reach agreement on the variations in question within 45 days of the giving of a Journey Time Review Notice, either party may refer the matter for resolution in accordance with the ADRR. In such a case, the parties shall agree in a Procedure Agreement, as defined in the ADRR, that the relevant ADRR Forum shall reach a determination that is fair and reasonable on the basis of the following criteria:
- (i) Journey Times should be as short as is compatible with the development of a safe, reliable and robust timetable;
 - (ii) any relevant criteria which may have been published by ORR; and
 - (iii) the reasons for the service of the Journey Time Review Notice given by ORR in that notice.

Requirement for Office of Rail and Road's consent

- 7.9 Subject to paragraph 7.10, a variation:
- (a) agreed under paragraph 7.3;

(b) agreed or determined as an outcome of a referral for resolution in accordance with the ADRR under any of the provisions of this paragraph 7; or

(c) agreed under paragraph 7.7;

shall have effect:

(i) only if ORR has given its consent to it; and

(ii) from such date as is specified in that consent.

Office of Rail and Road's Modification Notice

7.10 A Modification Notice is a notice given to the parties by ORR:

(a) specifying the changes which ORR requires be made to the proposed variations which have been:

(i) agreed under paragraph 7.3;

(ii) agreed or determined as an outcome of a referral for resolution in accordance with the ADRR under any of the provisions of this paragraph 7; or

(iii) specified in an agreement of the kind referred to in paragraph 7.7;

(b) after consultation with the parties, the Secretary of State and such other persons as it considers appropriate; and

(c) containing its reasons for giving it.

7.11 If a Modification Notice is given, this contract will have effect with the variations referred to in paragraph 7.10(a) as modified in accordance with the terms of the notice.

Office of Rail and Road's notice for substitution of date/period

7.12 ORR shall be entitled, by notice to the parties and the Secretary of State, to substitute for any date or period specified in paragraph 7.8, a date which is not more than 180 days later, or a period which is not more than 180 days longer, than that so specified.

Requirements for notice under paragraph 7.12

7.13 No notice under paragraph 7.12 may be given unless:

(a) ORR has consulted the parties and the Secretary of State;

(b) ORR has taken into account any representations or objections which have been made to it within such period as it has specified for the purpose; and

(c) where the notice is given after the date or the expiry of the period to which it relates, it is given no later than 30 days after such date or expiry.

Table 8.4: Stabling facilities

1	2	3
Stabling facility	Time available	Specified Equipment
Heathrow Terminals 2 and 3 Station	When required due to engineering work on HAL or Network Rail infrastructure. Times and locations to be agreed between all parties.	332 EMUs and 360/2 EMUs
Heathrow Terminal 4 Station	When required due to engineering work on HAL or Network Rail infrastructure. Times and locations to be agreed between all parties.	332 EMUs and 360/2 EMUs
Heathrow Terminal 5 Station	When required due to engineering work on HAL or Network Rail infrastructure. Times and locations to be agreed between all parties.	332 EMUs and 360/2 EMUs

Stabling facilities

8.6 The Train Operator has Firm Rights to use the Stabling facility specified in column 1 of Table 8.4 between the hours specified in column 2 for the purposes of Stabling the Specified Equipment specified in column 3.

SCHEDULE 6: EVENTS OF DEFAULT, SUSPENSION AND TERMINATION

1 Events of Default

1.1 Train Operator Events of Default

The following are Train Operator Events of Default:

- (a) the Train Operator ceases to be authorised to be the operator of trains for the provision of the Services in accordance with Clause 3.2(a);
- (b) an Insolvency Event occurs in relation to the Train Operator;
- (c) (i) any breach by the Train Operator of this contract, its Safety Obligations or any of the Collateral Agreements; or
(ii) any event or circumstance which is reasonably likely to result in any such breach,
which, by itself or taken together with any other such breach, event or circumstance, HAL reasonably considers constitutes a threat to the safe operation of any part of the Network;
- (d) any Track Charges or other amount due by the Train Operator to HAL under this contract remain unpaid for more than seven days after their due date;
- (e) any breach of this contract or any material breach of any of the Collateral Agreements by the Train Operator which, by itself or taken together with any other such breach, results, or is likely to result, in material financial loss to HAL;
- (f) any breach of this contract or any material breach of any of the Collateral Agreements by the Train Operator which, by itself or taken together with any other such breach, results, or is likely to result, in material disruption to train operations of other train operators; and
- (g) NOT USED.

1.2 Notification

The Train Operator shall notify HAL promptly on becoming aware of the occurrence of a Train Operator Event of Default.

1.3 HAL Events of Default

The following are HAL Events of Default:

- (a) HAL ceases to be authorised to be the operator of that part of the Network comprising the Routes by a licence granted under section 8 of the Act unless exempt from the requirement to be so authorised under section 7 of the Act;
- (b) an Insolvency Event occurs in relation to HAL;
- (c) (i) any breach by HAL of this contract, its Safety Obligations or any of the Collateral Agreements; or
(ii) any event or circumstance which is reasonably likely to result in any such breach,

which, by itself or taken together with any other such breach, event or circumstance the Train Operator reasonably considers constitutes a threat to the safe operation of the Services or any Ancillary Movements; and

- (d) any breach of this contract or any material breach of any of the Collateral Agreements by HAL which, by itself or taken together with any other such breach, results, or is likely to result, in material financial loss to the Train Operator.

1.4 Notification

HAL shall notify the Train Operator promptly on becoming aware of the occurrence of a HAL Event of Default.

2 Suspension

2.1 Right to suspend

2.1.1 HAL may serve a Suspension Notice where a Train Operator Event of Default has occurred and is continuing.

2.1.2 The Train Operator may serve a Suspension Notice where a HAL Event of Default has occurred and is continuing.

2.2 Contents of Suspension Notice

A Suspension Notice shall specify:

- (a) the nature of the relevant Event of Default;
- (b) the date and time at which suspension is to take effect;
- (c) in the case of a Suspension Notice served on the Train Operator, reasonable restrictions imposed while the Suspension Notice is in force on the permission to use the Routes or any parts of them or any other part of the Network;
- (d) in the case of a Suspension Notice served on HAL, details of any necessary suspension of the Services; and
- (e) whether the party serving the Suspension Notice reasonably considers that the Event of Default is capable of remedy, and where the Event of Default is capable of remedy:
 - (i) the steps reasonably required to remedy the Event of Default; and
 - (ii) a reasonable grace period for the defaulting party to remedy it (where the Event of Default which has occurred is a failure to pay Track Charges or other amounts due, seven days shall be a reasonable grace period).

2.3 Effect of Suspension Notice served by HAL

Where HAL has served a Suspension Notice on the Train Operator:

- (a) the Train Operator shall comply with any reasonable restrictions imposed on it by the Suspension Notice;

- (b) the Suspension Notice shall remain in full force and effect in accordance with its terms until it has been revoked either in whole or in part by notice from HAL to the Train Operator under paragraph 2.5.4;
- (c) service of the Suspension Notice shall not affect the Train Operator's continuing obligation to pay the Track Charges; and
- (d) service of the Suspension Notice shall not affect the Train Operator's Firm Rights (as defined in Schedule 5) for the purposes of Part D of the Network Code.

2.4 *Effect of a Suspension Notice served by the Train Operator*

Where the Train Operator has served a Suspension Notice on HAL:

- (a) it shall have the effect of suspending the Train Operator's permission to use the Routes to provide the Services to the extent specified in the Suspension Notice;
- (b) NOT USED;
- (c) the Suspension Notice shall remain in full force and effect in accordance with its terms until it has been revoked either in whole or in part by notice from the Train Operator to HAL under paragraph 2.5.4; and
- (d) the service of the Suspension Notice shall not affect the Train Operator's Firm Rights (as defined in Schedule 5) for the purposes of Part D of the Network Code.

2.5 *Suspension to be proportionate to breach*

2.5.1 A Suspension Notice served under paragraph 2.3 in respect of any of the Train Operator Events of Default specified in paragraphs (a) and (c) to (f) (inclusive) of paragraph 1.1 shall, so far as reasonably practicable, apply only to the:

- (a) railway vehicles;
- (b) Services;
- (c) Routes; and
- (d) categories of train movements or railway vehicles,

(or (as the case may be) parts or part of them) to which the relevant Train Operator Event of Default relates.

2.5.2 A Suspension Notice served under paragraph 2.4 in respect of any of the HAL Events of Default specified in paragraphs 1.3(a), (c) and (d) shall, so far as reasonably practicable, apply only to the:

- (a) railway vehicles;
- (b) Services;
- (c) Routes; and
- (d) categories of train movements or railway vehicles,

(or (as the case may be) parts or part of them) to which the relevant HAL Event of Default relates.

- 2.5.3 The party served with a Suspension Notice which specifies an Event of Default which is capable of remedy shall:
- (a) with all reasonable diligence, take such steps as are specified in the Suspension Notice to remedy the Event of Default; and
 - (b) keep the party serving the Suspension Notice fully informed of the progress which is being made in remedying the Event of Default.
- 2.5.4 Where a party served with a Suspension Notice has complied with its obligations under paragraph 2.5.3 (whether in whole or in part) and it is reasonable for the suspension effected by the Suspension Notice to be revoked (whether in whole or in part), the party which served the Suspension Notice shall revoke the suspension to that extent. Such revocation shall be effected as soon as practicable after the remedy in question by notice to the other party specifying the extent of the revocation and the date on which it is to have effect.

3 Termination

3.1 HAL's right to terminate

HAL may serve a Termination Notice on the Train Operator:

- (a) where the Train Operator fails to comply with any material restriction in a Suspension Notice;
- (b) where the Train Operator fails to comply with its obligations under paragraph 2.5.3;
- (c) where the Train Operator Event of Default specified in paragraph 1.1(a) has occurred and is continuing; or
- (d) where the Train Operator Event of Default specified in a Suspension Notice served by HAL is not capable of being remedied and three months have elapsed from the service of that Suspension Notice.

3.2 Train Operator's right to terminate

The Train Operator may serve a Termination Notice on HAL:

- (a) where HAL fails to comply with its obligations under paragraph 2.5.3;
- (b) where the HAL Event of Default specified in paragraph 1.3(a) has occurred and is continuing; or
- (c) where the HAL Event of Default specified in a Suspension Notice served by the Train Operator is not capable of being remedied and three months have elapsed from the service of that Suspension Notice.

3.3 Contents of Termination Notice

A Termination Notice shall specify:

- (a) the nature of the relevant Event of Default;
- (b) a date and time, which shall be reasonable in the circumstances, at which termination is to take effect; and

- (c) whether the party serving the Termination Notice reasonably considers that the Event of Default is capable of remedy, and where the relevant Event of Default is capable of remedy:
 - (i) the steps which the party serving the Termination Notice believes are reasonably required to remedy the Event of Default; and
 - (ii) a reasonable grace period within which such steps may be taken (where the Event of Default is a failure of the Train Operator to pay Track Access Charges or amounts due, seven days is a reasonable grace period).

3.4 *Effect of Termination Notice*

Where HAL or the Train Operator has served a Termination Notice on the other:

- (a) the service of the Termination Notice shall not affect the parties' continuing obligations under this contract up to the date of termination, which date shall be determined in accordance with paragraph 3.4(c);
- (b) the party which has served the Termination Notice shall withdraw it by notice to the other party, upon being reasonably satisfied that the relevant Event of Default has been remedied; and
- (c) this contract shall terminate on the later of:
 - (i) the date and time specified in the Termination Notice for the contract to terminate (or such later date and time as the party which served the Termination Notice notifies to the other before the date and time so specified); and
 - (ii) the date on which a copy of the Termination Notice is given to ORR.

4 **Consequence of termination**

4.1 *Directions regarding location of Specified Equipment*

Immediately before, upon or following termination or expiry of this contract, the Train Operator shall comply or procure compliance with all reasonable directions given by HAL concerning the location of the Specified Equipment.

4.2 *Failure to comply with directions*

If the Train Operator fails to comply with any directions given under paragraph 4.1, HAL shall be entitled to remove from the Network or Stable any Specified Equipment left on the Network or to instruct a third party to do so and any reasonable costs incurred by HAL in taking such steps shall be paid promptly by the Train Operator.

4.3 *Evidence of costs*

HAL shall provide such evidence of such costs as are referred to in paragraph 4.2 as the Train Operator shall reasonably request.

SCHEDULE 7: TRACK CHARGES AND OTHER PAYMENTS

1. *Track Charges*

The Track Charge shall, in respect of each Accounting Year, be the sum of the following in respect of that Accounting Year:

- 1.1 the Fixed Track Access Charge (as set out in paragraph 4);
- 1.2 the Common Cost Charge (as set out in paragraph 4); and
- 1.3 any applicable performance payment (as set out in Schedule 8).

The parties recognise that the Track Charge represents due and full consideration for the entire term of this Agreement. The Train Operator shall pay the Track Charges set out in an invoice issued in accordance with paragraph 2 of this Schedule 7 without deduction (other than a deduction agreed by HAL as being due under Schedule 8) or set off.

2. *Invoices*

- (a) Invoices shall be submitted by HAL monthly in arrears.
- (b) All invoices, other than VAT invoices which shall be sent by email (with confirmation copy by prepaid first class post), shall be sent to the address notified by the Train Operator from time to time with a copy to the bank or other financial institution providing the payment facility referred to in paragraph 3 and all invoices shall be paid within 28 days of their receipt.

3. *Direct Debit*

All amounts payable under this Clause 3 shall, except as may otherwise be agreed by the parties from time to time, be paid by direct debit mandate or standing order mandate to such bank account in the United Kingdom as may be nominated by HAL from time to time.

4. *Charges*

The Fixed Track Access Charge and the Common Cost Charge will be charged on a per Train Movement basis, as set out in Table 1 below.

Table 1

Charge	£ GBP
Fixed Track Access Charge (per Train Movement)	597.30
Common Cost Charge (per Train Movement)	138.40
Total (per Train Movement)	735.70

The per Train Movement charges set out in Table 1 shall apply until 31 December 2016 at which time they will be reviewed and adjusted and thereafter charges will be reviewed and adjusted on annual basis

For the purposes of this paragraph 4:

"Train Movement" means the movement of a train operated by the Train Operator either into or out of any Station. The movement of a train into a Station and the movement of the same train out of that Station are each separate Train Movements. The through movement of a train into and out of Heathrow Terminals 2 and 3 Station is not treated as a Train Movement for these purposes, however, if that train is en-route to either Heathrow Terminal 5 Station or Heathrow Terminal 4 Station.

"Stations" means:

- (a) Heathrow Terminals 2 and 3 Station;
- (b) Heathrow Terminal 4 Station; and
- (c) Heathrow Terminal 5 Station;

with "Station" meaning any one of the Stations.

5. Disputed amounts repayment and interest rate

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

SCHEDULE 8: PERFORMANCE REGIME

1. *Purpose*

- 1.1 HAL and the Train Operator agree and acknowledge that their joint objective is to ensure that:-
 - 1.1.1 95% of Trains arrive at their destination station at or within 3 minutes of their scheduled arrival time (as set out in paragraph 2.2 of Schedule 2); and
 - 1.1.2 at least 99.5% of Trains run; and
 - 1.1.3 the quality of the Service improves consistently over time.
- 1.2 This Schedule 8 sets out the basis on which the HAL's liability to the Train Operator and/or the Train Operator's liability to the HAL in respect of the performance of the Service shall be calculated.

2 *Applicability*

- 2.1 This Schedule 8 applies to the operation of the Service between Paddington Station and CTA. For the purposes of this Schedule 8, "destination" means Paddington Station or CTA (as appropriate).
- 2.2 Delays and/or cancellations of the Trains as a result of an event occurring on the Branch shall be taken into account for the purposes of calculating liability under this Schedule 8 and shall be deemed to be caused by Train Operator Event of Default unless the same are caused by HAL Event of Default.

3 *Measures of Performance*

- 3.1 The performance of the Service shall be measured in terms of its punctuality, expressed as the percentage of trips meeting a specified punctuality target.
- 3.2 Whether or not a trip meets the punctuality target shall be determined on the basis of the following parameters:-
 - 3.2.1 the punctuality of its arrival at the destination station;
 - 3.2.2 whether or not the trip was cancelled, terminated short of its destination, or assisted to its destination; and
 - 3.2.3 the punctuality of its departure from the originating station.

- 3.3 For each period of twenty-eight days, the punctuality of the Service shall be expressed as a percentage, calculated as follows:-

$$\frac{\text{Total trips meeting the punctuality target}}{\text{Total scheduled trips}} \times 100$$

4 *Punctuality of Arrival*

- 4.1 The punctuality of arrival of a trip will be determined by:-
- 4.1.1 comparing actual and scheduled arrival times at CTA, in the down direction, and at Paddington Station, in the up direction; and
 - 4.1.2 discounting any delay caused by Train Operator Default.
- 4.2 If, after allowing for discountable delays, the actual arrival time of a trip is at or within 3 minutes of its scheduled arrival time, the trip shall count as 1 trip meeting the punctuality target and a trip arriving more than 3 minutes after its scheduled arrival time shall count as a trip missing the punctuality target.
- 4.3 Subject to paragraph 4.4, for the purposes of this Schedule 8 only, the scheduled arrival time at CTA in the down direction shall be deemed to be 16 minutes after the departure time shown in the Working Timetable from Paddington Station and the scheduled arrival time at Paddington Station in the up direction shall be deemed to be 17 minutes after the departure time shown in the Working Timetable from CTA.
- 4.4 If Major Engineering Works are, in the reasonable opinion of the HAL, required, the Facility Owner shall consult (to the maximum extent practicable) with the Train Operator and Users to determine the effects (if any) of such works on the scheduled arrival times referred to in paragraph 4.3. After such consultation, the agreed revised schedule arrival times will be used for the purpose of determining the punctuality of each Train's arrival. In the absence of such agreement, HAL (acting reasonably) shall have the right to alter the scheduled arrival times to take account of the effects of any Major Engineering Works. Consultation concerning Major Engineering Works and their effects on the Service shall normally be held at the annual meetings(s) held between the Train Operator and the Facility Owner to discuss the Rules of the Route for the following twelve months.

5 *Cancellations, Terminations Short of Destination and Assisted Trips*

- 5.1 Subject to paragraph 5.2, each trip cancelled other than as a result of Force Majeure or Train Operator Event of Default shall count as 2 trips failing to meet the punctuality target.
- 5.2 Each trip cancelled as a result of Train Operator Event of Default shall count as 2 trips meeting the punctuality target.
- 5.3 If a cancelled trip in one direction causes a trip in the opposite direction to be cancelled, each cancelled trip shall count as described above.
- 5.4 Trips were are terminated short, or require assistance, through the emergency breakdown and rescue service to reach, their destination, shall be treated as cancelled.

6 *Punctuality of Departure*

- 6.1 If, for any reason, the departure of any trip is delayed by more than 10 minutes, the trip will be treated as cancelled in accordance with the provisions of paragraph 5.5, even if it does, in fact, take place.
- 6.2 A trip which, as a result of Train Operator Default, fails to start at or within 30 seconds of its schedule departure time shall count as 1 trip meeting the punctuality target even if it does, ultimately, take place.
- 6.3 When the operation of the Service is disrupted for whatever reason, the Train Operator shall use its reasonable endeavours to minimise turnaround time (the time required between the arrival of a Train at Paddington Station, or at the station at Heathrow Airport at which the trip is to end, and its being ready to depart) and shall use its reasonable endeavours to achieve a turnaround time of no more than 10 minutes.
- 6.4 When (for whatever reason) the Specified Equipment does not operate in accordance with the Timetable and/or the Specified Service Pattern, each of the Train Operator and the Facility Owner shall use their best endeavours to ensure that any lost time is made up and that the Specified Equipment operates in accordance with the Timetable and the Specified Service Pattern as soon as reasonably practicable.

7 *Assumptions*

- 7.1 The Trains achieve the performance standards set out in Schedule 3.

7.2 The trip times in paragraph 4.3 assume permitted speeds over the Branch as follows:-

Boundary – 13.95 mp (22.32 km)	80mph (128 kmph)
13.95 mp – 14.47 mp (22.32 km – 23.15 km)	50 mph (80 kmph)
14.47 mp – (23.15 km) – CTA	30 mph (48 kmph)

(mp = 'milepost' mileage from Paddington Station)

7.3 Any temporary restrictions of speed on the Branch accords with the Rules of the Route.

7.4 The Service will be operated by 6 Trains and at least 6 sets of train crew.

7.5 The provisions of this Schedule 5 will be subject to review if there is any change in the assumptions contained in this paragraph 5.7.

8 *Force Majeure*

8.1 For the purposes of this Schedule 8, any trip affected by an event of Force Majeure, whether cancelled or delayed, shall be treated as meeting the punctuality target.

8.2 Where a Train is delayed or its trip otherwise affected by its being used under Clauses 17.3 or 17.5.1, the penalty provisions of this Schedule 8 shall apply only if the circumstance giving rise to the exercise by the HAL of its rights under Clauses 17.3 and 17.5.1 do not constitute events of Force Majeure.

9 *Performance Payments*

9.1 The performance of the Service achieved in each period of twenty-eight days shall give rise to a liability to penalty/bonus payments which shall be calculated in accordance with Table 1 below.

Table 1

Performance Achieved	Payment Liability £000 per year	
98% and above	476	Payment by Train Operator To Facility Owner
97%	286	
96%	95	
95%	0	No Liability
94%	0	
93%	0	
92%	0	
91%	95	Payment by Facility Owner To Train Operator
90%	190	
89%	286	
88%	381	
87%	476	
86%	572	
85%	667	
84% and below	762	

- 9.2 The amounts contained in Table 1 above shall be indexed annually in accordance with RPI and Network Rail practices. The annual payment liability shall be apportioned into 13 periods each of twenty-eight days.
- 9.3 The performance of the Service shall be monitored in accordance with Clause 11 and Schedule 6 and, for each period of twenty-eight days, shall be agreed between the Train Operator and the Facility Owner within 7 days of the end of such period. Any payments arising under the provisions of this Schedule 8 shall be made in accordance with Schedule 7.

10 *4-Weekley Review of Performance*

- 10.1 Within 7 days of the end of each period of twenty-eight days, representatives of the Facility Owner and of the Train Operator shall meet to review the operation of the Service.
- 10.2 The review will attempt to identify problems and incidents affecting the Service and corrective action taken or planned and will aim to ensure that quality of performance improves consistently.
- 10.3 Additionally, the performance of the Service and the payment due, as defined in this Schedule 5, shall be agreed for the preceding twenty-eight day period.

11 *Improvement Plans*

- 11.1 The Train Operator and Facility Owner shall together develop, agree, maintain and implement general improvement plans directed at improving the performance of the Service.
- 11.2 In the event of persistent Facility Owner Default or persistent Train Operator Default, which (in either case) adversely affects the performance of the Service, the party at fault shall produce and agree with the other party a special improvement plan directed at correcting the causes of the persistent default. Both parties shall co-operate in the implementation of any special improvement plan.

SCHEDULE 9: LIMITATION ON LIABILITY

1 Definitions

In this Schedule

“Liability Cap” means:

- (a) in relation to the first Contract Year, the sum of £155million; and
- (b) in relation to any subsequent Contract Year, the sum calculated in accordance with the following formula:

$$C_n = C_1 * \left(\frac{RPI_n}{RPI_1} \right)$$

where:

- (i) C_1 is the sum of £155 million;
- (ii) C_n is the Liability Cap in the nth subsequent Contract Year;
- (iii) RPI_n is the Retail Prices Index published or determined with respect to the first month of the subsequent Contract Year n; and
- (iv) RPI_1 is the Retail Prices Index published or determined with respect to the month in which this contract became effective under Clause 3.1.

2 Application

The limitations on liability contained in this Schedule apply in the circumstances set out in Clause 11.5.

3 Limitation on HAL’s liability

In relation to any claim for indemnity made by the Train Operator to which this Schedule 9 applies:

- (a) HAL shall not be liable to make payments in relation to such claims which are admitted in writing or finally determined in any Contract Year to the extent that its liability for such claims exceeds the Liability Cap for such Contract Year; and
- (b) to the extent that its liability for such claims exceeds the Liability Cap for such Contract Year, any claim for payment of a sum which exceeds such Liability Cap shall be extinguished and HAL shall have no further liability for it.

4 Limitation on Train Operator’s liability

In relation to any claims for indemnity made by HAL to which this Schedule 9 applies:

- (a) the Train Operator shall not be liable to make payments in relation to such claims which are admitted in writing or finally determined in any Contract Year to the extent that its liability for such claims exceeds the Liability Cap for such Contract Year; and

- (b) to the extent its liability for such claims exceeds the Liability Cap for such Contract Year, any claim for payment of a sum which exceeds such Liability Cap shall be extinguished and the Train Operator shall have no further liability for it.

5 Disapplication of limitation

To the extent that any Relevant Losses:

- (a) result from a conscious and intentional breach by a party; or
- (b) are in respect of obligations to compensate any person for liability for death or personal injury, whether resulting from the negligence of a party or the negligence of any of its officers, employees or agents or from a failure by a party to comply with its Safety Obligations,

such Relevant Losses:

- (i) shall not be subject to the limitation of liability in Schedule 9; and
- (ii) shall not be taken into account when calculating the amount of Relevant Losses in respect of claims admitted or finally determined in a Contract Year for the purposes of the limitations of liability in this Schedule 9.

6 Exclusion of legal and other costs

The limits on the parties' liabilities provided for in paragraphs 3 and 4 shall not apply to costs incurred in recovering any amount under a relevant claim, including legal, arbitral and other professional fees and expenses.

7 Exclusion of certain Relevant Losses

A party shall have no claim for Relevant Losses to the extent that such Relevant Losses result from its own negligence or breach of this contract.

8 Continuing breaches

Nothing in this Schedule 9 shall prevent a party making a new claim for indemnity in respect of a continuing breach of contract which:

- (a) is a continuing breach of contract which continues for more than 12 months;
- (b) is a continuing breach of contract which continues beyond a period within which it might reasonably be expected to have been remedied; or
- (c) is a breach of a Performance Order in relation to a breach of contract,

but any such new claim shall not include any sum which was the subject matter of a previous claim and was extinguished by virtue of paragraph 3(b) or 4(b).

9 Final determination of claims

For the purpose of this Schedule 9, a determination of a claim for Relevant Losses by a Court or other tribunal shall be treated as final when there is no further right of appeal or review from such determination or in respect of which

any right of appeal or review has been lost, whether by expiry of time or otherwise.

SCHEDULE 10: NETWORK CODE

1 Automatic effect

1.1 General

This contract shall have effect:

- (a) with the modifications; and
- (b) from the date,

specified by ORR in a modification notice as supplemented (where appropriate) by a notice of consent to requisite adaptations or a notice of determined requisite adaptations.

1.2 Retrospective effect

No relevant notice may have retrospective effect.

2 Modification notice

2.1 Meaning

A modification notice is a notice given by ORR to the parties for the purposes of this contract which modifies specified provisions of this contract (other than this Schedule 10) by making such modifications as are consequential upon, or necessary to give full effect to any change to the Network Code.

2.2 Contents of modification notice

A modification notice shall state:

- (a) the modifications which are to be made to this contract;
- (b) the date from which specified modifications are to have effect; and, if any such modifications are to have effect from different dates, the dates applicable to each modification; and
- (c) which of the specified modifications are to be subject to adaptation and the backstop date for the requisite adaptations in question.

3 Adaptation procedure

3.1 Application

This paragraph 3 applies in the case of specified modifications which are specified as being subject to adaptation.

3.2 Negotiation of adaptations

In respect of the modifications in each modification notice:

- (a) within 14 days of the date of service of the relevant modification notice, the parties shall meet and in good faith negotiate and attempt to agree the requisite adaptations;
- (b) each party shall ensure that:
 - (i) such negotiations are conducted in good faith in a timely, efficient and economical manner, with appropriate recourse to professional advice; and
 - (ii) ORR's criteria are applied in the negotiations; and
- (c) the negotiations shall not continue after the backstop date.

3.3 *Agreed adaptations - notice to the Office of Rail and Road*

If the parties have agreed the requisite adaptations on or before the backstop date, not later than seven days after the backstop date the agreed requisite adaptations shall be sent by the parties to ORR for its consent, together with a statement, signed by or on behalf of both parties:

- (a) stating the reasons for the agreed requisite adaptations;
- (b) stating the extent to which and ways in which ORR's criteria have been applied in arriving at the agreed requisite adaptations and, in any case where they have not been applied, the reasons; and
- (c) giving such other information as ORR may have requested.

3.4 *Agreed adaptations – Office of Rail and Road's consent*

If ORR is satisfied with the agreed requisite adaptations, and it gives a notice of consent to requisite adaptations, they shall have effect as provided for in paragraph 3.8.

3.5 *Agreed requisite adaptations – Office of Rail and Road's refusal of consent*

If ORR gives notice to the parties that it is not satisfied with any or all of the agreed requisite adaptations, it may:

- (a) require the parties again to follow the procedure for negotiating requisite adaptations (with such modifications as to time limits as it specifies), in which case they shall do so; or
- (b) determine the requisite adaptations itself.

3.6 *Requisite adaptations - failure to agree or submit*

If the parties have failed to submit agreed requisite adaptations to ORR for its consent within seven days after the backstop date, it may determine the requisite adaptations itself.

3.7 *Notice of determined requisite adaptations*

A notice of determined requisite adaptations is a notice:

- (a) given by ORR to the parties for the purposes of this paragraph 3 following the failure of the parties to send to ORR within seven days of the backstop date requisite adaptations to which it gives its consent; and
- (b) which states the requisite adaptations which ORR has determined should be made using its powers to do so under paragraph 3.5 or 3.6.

3.8 *Effect of requisite adaptations*

Requisite adaptations established either:

- (a) by agreement of the parties and in respect of which ORR has given a notice of consent to requisite adaptations under paragraph 3.4; or
- (b) by the determination of ORR under paragraph 3.5 or 3.6 and stated in a notice of determined requisite adaptations,

shall have effect from such date as ORR states in the relevant notice of consent to requisite adaptations or (as the case may be) the relevant notice of determined requisite adaptations.

4 **Procedural matters**

4.1 *More than one notice*

More than one modification notice may be given.

4.2 *Differences etc as to requisite adaptations*

Any difference or question as to whether anything is a requisite adaptation shall be determined by ORR:

- (a) on the application of either party; and
- (b) in accordance with such procedure (including as to consultation) as ORR may by notice to the parties determine.

4.3 *Co-operation and information*

If ORR gives notice to either or both of the parties that it requires from either or both of them information in relation to any requisite adaptation or proposed requisite adaptation:

- (a) the party of whom the request is made shall provide the requested information promptly and to the standard required by ORR; and
- (b) if that party fails timeously to do so, ORR shall be entitled to proceed with its consideration of the matter in question and to reach a decision in relation to it without the information in question and the party in default shall have no grounds for complaint in that respect.

4.4 *Office of Rail and Road's criteria*

In relation to the negotiation of any requisite adaptation, ORR shall be entitled to:

- (a) give to the parties any criteria which it requires to be applied in the negotiations; and
- (b) modify the criteria after consultation.

4.5 *Procedural modifications*

In relation to the procedure in paragraph 3 for the agreement or establishment of requisite adaptations (including the times within which any step or thing requires to be done or achieved):

- (a) such procedure may be modified by ORR by a notice of procedural modification given by it to the parties; but
- (b) ORR may give a notice of procedural modification only if it is satisfied that it is necessary or expedient to do so in order to promote or achieve the objectives specified in section 4 of the Act or if such a notice is requested by both parties.

4.6 *Dates*

In this Schedule 10:

- (a) where provision is made for a date to be specified or stated by ORR it may, instead of specifying or stating a date, specify or state a method by which a date is to be determined, and references to dates shall be construed accordingly; and
- (b) any notice given by ORR which states a date may state different dates for different purposes.

4.7 *Requirement for prior consultation*

No relevant notice shall have effect unless:

- (a) ORR has first consulted the parties and the Secretary of State in relation to the proposed relevant notice in question;
- (b) in the consultations referred to in paragraph 4.7(a), ORR has made available to the parties and the Secretary of State such drafts of the proposed relevant notice as it considers are necessary so as properly to inform them of its contents;
- (c) ORR has given each party and the Secretary of State the opportunity to make representations in relation to the proposed relevant notice and has taken into account all such representations (other than those which are frivolous or trivial) in making its decision on the relevant notice to be given;
- (d) ORR has notified the parties and the Secretary of State as to its conclusions in relation to the relevant notice in question (including by providing to each such person a copy of the text of the proposed relevant notice) and its reasons for those conclusions; and

- (e) in effecting the notifications required by paragraph 4.7(d), ORR has treated as confidential any representation (including any submission of written material) which (and to the extent that) the person making the representation, by notice in writing to ORR or by endorsement on the representation of words indicating the confidential nature of such representation, has specified as confidential information.

4.8 Consolidated contract

Not later than 28 days after the giving of the last of:

- (a) a modification notice; and
- (b) a notice of determined requisite adaptations or a notice of consent to requisite adaptations (as the case may be),

HAL shall prepare and send to the Train Operator, ORR and the Secretary of State a copy of this contract as so modified.

4.9 Saving

Nothing in this Schedule 10 affects:

- (a) the right of either party to approach and obtain from ORR guidance in relation to the requisite adaptations; or
- (b) the right of ORR at any time to effect modifications to either the Network Code pursuant to the provisions contained therein.

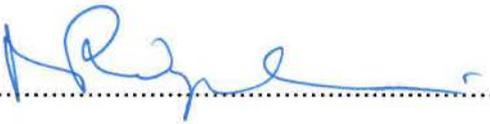
5 Definitions

In this Schedule 10:

- “backstop date”** means the date (being not earlier than 28 days from the date of the modification notice) specified as such in a modification notice (or such later date as may be established under paragraph 3.5(a) or 4.6);
- “modification notice”** has the meaning ascribed to it in paragraph 2.1;
- “notice of consent to requisite adaptations”** means a notice given by ORR under paragraph 3.4;
- “notice of determined requisite adaptations”** has the meaning ascribed to it in paragraph 3.7;
- “notice of procedural modification”** means a notice given by ORR to the parties under paragraph 4.5 modifying any aspect of the procedure in this Schedule 10 for the agreement or establishment of requisite adaptations;

- “ORR’s criteria”** means the criteria established by ORR for the purposes of the negotiation of requisite adaptations and given to the parties, or modified, under paragraph 4.4;
- “relevant notice”** means a modification notice, notice of determined requisite adaptations, notice of procedural modification or notice of modification of ORR’s criteria;
- “requisite adaptations”** in relation to specified modifications, means the amendments (including the addition of information) to the provisions in question which are necessary or expedient so as to give full effect to them in the particular circumstances of the case, and “adaptation” shall be construed accordingly; and
- “specified”** means specified in a modification notice.

IN WITNESS whereof the duly authorised representatives of HAL and the Train Operator have executed this contract on the date first above written.

Signed by 

Print name MICHAEL UZIELLI

Duly authorised for and on behalf of
HEATHROW AIRPORT LIMITED

Signed by 

Print name BRIAN WOODHEAD

Duly authorised for and on behalf of
HEATHROW EXPRESS OPERATING COMPANY LIMITED