Track Access Contract (Non-Franchised Passenger Services)

between

(1) Network Rail Infrastructure Limited

(2) The Festiniog Railway Company

Dated 08 December 2020

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This Contract is made on 08th December 2020

Between:

(1) **Network Rail Infrastructure Limited**, a company registered in England under number 2904587 having its registered office at Waterloo General Office, London, SE1 8SW (**"Network Rail"**); and

(2) **The Festiniog Railway Company**, a company incorporated by statute under number ZC000203 the chief office of which is at Harbour Station, Porthmadog, Gwynedd LL49 9NF (the **"Train Operator"**).

Background:

(A) Network Rail is the owner of the Network; and

(B) The Train Operator operates trains on the Train Operator Network.

(C) The Train Operator Network interfaces with the Network at the Connecting Points.

(D) The Asset Protection Agreement sets out rights and obligations on both Network Rail and the Train Operator in relation to the matters contained therein.

(E) Network Rail has been directed by ORR 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;

"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 the date on which Services may first be operated by the Train Operator under this contract, 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 the date on which Services may first be operated by the Train Operator under this contract, as from time to time amended or replaced under Part D of the Network Code;

"Applicable Timetable" has the meaning ascribed to it in Schedule 8;

"Asset Protection Agreement" means the asset protection agreement dated 6 June 2006 and any agreement varying and amending that asset protection agreement made between Network

Rail and the Train Operator in relation to the Festiniog Railway flat crossing (also known as the Cae Pawb crossing Porthmadog);

"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;

"Connecting Point" means each point at which the Train Operator Network connects to the Network and shown for the purposes of identification only between points A and B and points C and D on the Plan, each of which the parties agree forms part of the Train Operator Network (and "Connecting Points" shall have a corresponding meaning);

"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 9 December 2020 and subsequently on each anniversary of such date; "contract Year t" means the contract Year for the purposes of which any calculation falls to be made; "contract Year t-1" means the contract Year preceding contract Year t; and similar expressions shall be construed accordingly;

"Default Interest Rate" is two percent above the base lending rate of Barclays Bank PLC as varied from time to time;

"Emergency" means:

(a) an event or circumstance affecting a Connecting Point, the Route or the Train Operator Network which leads Network Rail to a reasonable apprehension of damage to property, risk to safety or security of or injury to persons or Environmental Damage; or

(b) an event or circumstance which materially prevents or materially disrupts (or is likely to be capable of materially preventing or materially disrupting) the operation of trains on the Network, the alleviation of which would entail the use or non-use of any Connecting Point or the Route or the exercise of Step- in Rights;

"Environmental Condition" has the meaning ascribed to it in Part E of the Network Code;

"Environmental Damage" has the meaning ascribed to it in Part E of the Network Code;

"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 Network Rail Event of Default;

"Expiry Date" means Principal Change Date 2029;

"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;

"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 9 December 2020;

“Maintenance Services” means the maintenance services Network Rail may carry out on the Route as set out in Part B of Schedule 11 of this contract (and as may be amended from time to time);

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

"Network Code" means the document by that name published by Network Rail;

"Network Rail Event of Default" has the meaning ascribed to it in paragraph 1.3 of Schedule 6;

“Network Rail Standards” means a standards document (or the equivalent of such document) issued by Network Rail for its own use as amended by Network Rail from time to time in relation to the Network as a whole or any part of it;

"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;

“Operating Arrangements” means the operating arrangements agreed in writing between Network Rail and the Train Operator as may be amended from time to time;

"Performance Order" has the meaning ascribed to it in clause 13.3.2;

“Plan” means the plan included in Appendix 1 of Schedule 11 of this contract;

"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); or

(c) in the case of Schedule 8, the matter specified in paragraph 18 of Schedule 8 (a "breach" for the purposes of this definition only),

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;

“Restriction of Use” means a restriction of use of all or any part of the Network;

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

“Rolling Stock” has the meaning ascribed to it in Part D of the Network Code;

"Route" means that part of the Network specified in Schedule 2;

"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 including passenger, freight and infrastructure operations;

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

"Stabling" means the parking or laying up of the Train Operator’s Rolling Stock such parking or laying up being necessary or reasonably 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;

“Third Party Train Operator” means any one or more train operator(s) other than the Train Operator;

“Third Party Train Operator Service” means any train service operated by a Third-Party Train Operator;

"Track Charges" means the charges payable by or on behalf of the Train Operator to Network Rail, as set out and/or calculated in Schedule 7;

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

“Train Operator Network” means the Train Operator’s railway network between Caernarvon and Porthmadog (but excluding the Route);

"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, the Railways and Other Guided Transport Systems (Safety) Regulations 2006 and Network Rail’s

network licence shall, unless otherwise defined in this contract, have the same meanings in this contract;

(m) any reference to the term "possession", either by itself or as part of any composite definition, shall be construed as a reference to a Restriction of Use as defined in Schedule 4;

(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;

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 and Heathrow Express Operating Company Limited to the extent that such persons are not party to the Network Code, Network Rail 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 date of signature of this contract and 9th December 2020.

3.2 ***Conditions precedent to clause 5***

Clause 5 shall take effect on 9 December 2020 provided that before that date 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

or is exempt from the requirement to be so authorised under section 7 of the Act;

(b) Network Rail 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;

(e) the provisions of this contract, other than clause 5, have taken effect in accordance with clause 3.1; and

(f) Operating Arrangements have been agreed in writing between Network Rail and the Train Operator.

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 Network Rail, 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) 01:59 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 Network Rail); and

(b) train operator and owner and operator of a network adjacent to and crossing the Network (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***

Network Rail 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 Routes for the provision of the Services;

(b) not used;

(c) to make Ancillary Movements;

(d) not used;

(e) not used; and

(f) not used,

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 ***Not used***

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 ***Engineering Access Statement, Timetable Planning Rules and Restrictions of Use***

Schedule 4 shall have effect.

5.6 ***The Services***

Schedule 5 shall have effect.

5.7 ***Performance***

Schedule 8 shall have effect.

5.8 ***Stabling***

Not used.

6. **Operation and maintenance of trains and Network**

6.1 ***General***

(a) Without prejudice to the other provisions of this contract the Train Operator shall maintain and operate the Rolling Stock 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) The Train Operator shall control the use of toilets aboard the Services such that effluent will not be discharged by the Specified Equipment onto Network Rail infrastructure.

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 Network Rail in relation to any aspect of the Train Operator's operations which affects or is likely to affect the performance of Network Rail's Safety Obligations; and

(b) Network Rail shall (so far as it may be reasonable in all the circumstances for Network Rail to do so) comply with any reasonable request by the Train Operator in relation to any aspect of Network Rail's operations which affects or is likely to affect the performance of the Train Operator's Safety Obligations on the Route.

6.4 ***Use of Railway Code Systems***

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 Network Rail 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 proper taking by Network Rail under Condition E2 of the Network Code of any steps to prevent, mitigate or remedy an Environmental 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 ***Network Rail indemnity***

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

(a) a failure by Network Rail 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 Network Rail; and

(c) any damage to the Rolling Stock or other vehicles or things brought onto the Network by the Train Operator in accordance with the permission to use granted by this contract arising directly from Network Rail'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 Network Rail*

Any claim by Network Rail 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 Network Rail would not have incurred as network owner and operator but for the relevant breach; and

(ii) give credit for any savings to Network Rail 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 Network Rail for indemnity for Relevant Losses:

(a) shall exclude any Relevant Losses to the extent that they result from delays to or cancellations of trains; 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 Schedule 4, Schedule 5, Schedule 6, Schedule 7, Schedule 8 or Schedule 11 ;

(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 Schedule 4, Schedule 5, Schedule 7 or Schedule 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 in accordance with the provisions of Schedule 7; or

(b) any other sum which has fallen due in accordance with the provision of Schedules 4, 5 or 8 or the Network Code, 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 Network Rail 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 *Network Rail - Affiliates*

Except as permitted by clause 14.2, Network Rail 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 Network Rail 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 Network Rail 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 and Schedule 7***

Nothing in this clause 14 restricts the right of Network Rail 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, or Schedule 7.

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 ***Not used***

15.3 ***Not used***

(a)

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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, in the Network Code.

16.1.2 *Delivery of invoices*

All invoices issued under Schedule 7, or statements of amounts payable under Schedule 4, Schedule 5, Schedule 6, Schedule 8, or Schedule 11 or under the Network Code, shall be delivered by hand at, or sent by prepaid first class post or by facsimile transmission (with confirmation copy by prepaid first class post) or by email (where the parties agree) 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 Schedule 4, Schedule 5, Schedule 6, Schedule 7, Schedule 8 and Schedule 11; 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*

Network Rail 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, recorded delivery, or by facsimile transmission (with confirmation copy by prepaid first class post) or by email (where the parties agree) to, the relevant address or email address or facsimile number 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;

(c) if sent by facsimile (subject to confirmation of uninterrupted transmission by a transmission report) before 17:00 hours on a Working Day, on the day of transmission and, in any other case, at 09:00 hours on the next following Working Day: and

(d) if sent by email (subject to confirmation of receipt of delivery) before 17:00 hours on a Working Day, on the day of transmission and, in any other case, at 09:00 hours on the next following Working Day.

18.4.4 *Copyees*

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), Schedule 4, paragraph 3 and 4 of Schedule 6 (Consequence of Termination), part B of Schedule 7, Schedule 9 (Limitation on liability) and Schedule 11), 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 *Not used*

18.7.4 *Not used*

19. **Transition**

19.1 ***Corresponding Rights***

In relation to any Corresponding Right:

(a) any Access Proposal or Rolled Over Access Proposal made under the Previous Access Agreement in relation to a Train Slot in respect of which there is a Corresponding Right shall:

(i) cease to have effect under the Previous Access Agreement as from the Transition Date; and

(ii) be deemed to have effect under this contract as from the Transition Date;

(b) any Train Slot which is the subject of an Access Proposal or Rolled Over Access Proposal referred to in clause 19.1(a) shall for all purposes be treated as if it had been established in and under this contract and not the Previous Access Agreement;

(c) any consultations undertaken, notices served, matters referred to dispute resolution, agreements reached or determinations made which:

(i) are made in accordance with Parts D, F, G or H of the Network Code under the Previous Access Agreement in relation to the Engineering Access Statement or the Timetable Planning Rules, Major Projects, Vehicle Change, Network Change or train regulation; and

(ii) relate to a right under the Previous Access Agreement which is the subject of a Corresponding Right,

shall:

(A) cease to have effect under the Previous Access Agreement as from the Transition Date; and

(B) be deemed to have effect under this contract as from the Transition Date; and

(d) not used

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19.2 ***Definitions***

In this clause 19:

"Corresponding Right" means any right of a party under this contract which:

(a) relates to the permission of the Train Operator to use the Routes; and

(b) corresponds to a right which:

(i) existed under the Previous Access Agreement; and

(ii) ceased to have effect under the Previous Access Agreement as from the Transition Date;

"Previous Access Agreement" means the track access agreement dated 10 July 2013 between Network Rail Infrastructure Limited and the Train Operator;

"Transition Date" means the date on which this contract comes into effect for all purposes.

20. **Schedule 11**

Schedule 11 shall have effect.

Schedule 1

(Contract Particulars)

1. Network Rail's address for service of notices is:

Network Rail Infrastructure Limited
Waterloo General Office
London
SE1 8SW

All written notices to be marked:

"URGENT: ATTENTION THE COMPANY SECRETARY AND SOLICITOR"

and copied to:

Address	The Route Managing Director Network Rail - Wales Route 17 Penarth Road, Cardiff CF10 5ZA

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

Address	Festiniog Railway Company Harbour Station Porthmadog Gwynedd LL49 9NF

All written notices to be marked:

"URGENT: ATTENTION OF THE GENERAL MANAGER"

and copied to:	Alex Spring - Infrastructure Manager
Address	Harbour Station Porthmadog Gwynedd LL49 9NF
Tel:	[redacted]

Schedule 2

(The Routes)

1. The Route is the 597 mm gauge section of track within Network Rail's boundary and between the Connecting Points, being under ten metres in length and title which is held by Network Rail, near Porthmadog on the Dovey Junction to Pwllheli line at approximately 119 miles 50 chains and known as the Festiniog Railway flat crossing or the Cae Pawb crossing at Porthmadog.

Schedule 3

(Collateral Agreements)

1. An agreement between (1) the Train Operator and (2) Network Rail relating to the connection of the Train Operator Network to the Network and operation and maintenance of the Route.

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.

Schedule 4

(Engineering Access Statement, Timetable Planning Rules and Restrictions of Use)

1. Where it is practical for Network Rail to do so, Network Rail shall consult the Train Operator in relation to maintenance, renewals, enhancements or other planned works on the Network (including the relevant parts of the Route) which may impede the use of or may require the stopping up of access to the Network at the Connecting Points or at any point on the Route.

2. The Train Operator and Network Rail agree that where Network Rail has complied with the provisions of paragraph 1 of this Schedule 4, Network Rail may take any Restriction of Use it may require to comply with its obligations in relation to the Network.

3. Where at the request of the Train Operator Network Rail takes a Restriction of Use of any part of the Network (whether for maintenance or any other purpose), the Train Operator shall pay Network Rail an amount equivalent to any payments Network Rail is required to make to any Third Party Train Operator under any access contract Network Rail has with that Third Party Train Operator.

4. Network Rail shall not be obliged to make any payments to the Train Operator for any reasonable Restriction of Use of the Route or the Network whether such Restriction of Use is required by Network Rail, the Train Operator or any third party and for whatever reason.

Part 1

(Not used)

Part 2

(Not used)

Part 3

(Not used)

Annex B to Part 3 of Schedule 4

(Not used)

Annex C to Part 3 of Schedule 4

(Not used)

Annex D to Part 3 of Schedule 4

(Not used)

Part 4

(Not Used)

Part 5

(Not Used)

Schedule 5

(The Services)

1. **Definitions**

1.1 In this Schedule unless the context otherwise requires:

"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 02:00 hours and ending immediately before the next succeeding 02:00 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;

"Passenger Train Slot" means a Train Slot intended by the Train Operator to be used for the provision of a Service;

"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;

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

For Passenger Train Slots please refer to Table 2.1 in Annex 1 to this Schedule 5.

Table 2.2: Additional Passenger Train Slots

For Additional Passenger Train Slots please refer to Table 2.2 in Annex 1 to this Schedule 5.

2.1 The Train Operator has Firm Rights to the number of Passenger Train Slots in the Working Timetable as listed against each Service specified in Table 2.1 in Annex 1 to this Schedule 5 under the heading "Passenger Train Slots".

2.2 The Train Operator has Contingent Rights to the number of Passenger Train Slots in the Working Timetable as listed against each Service specified in Table 2.2 in Annex 1 to this Schedule 5 under the heading "Passenger Train Slots".

2.3 Not Used

2.4 Not Used

2.5 Not Used

Ancillary Movements

2.6 The Train Operator has Firm Rights to make Ancillary Movements 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;

(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.

2.8 The Train Operator has Contingent Rights to make freight and infrastructure movements to the extent necessary or reasonably required.

Relief Passenger Train Slots

2.9 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:

(a) 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;

(b) not used

2.10 The Train Operator shall not have any rights to operate test trains over the Network unless prior agreement has been reached between Network Rail and the Train Operator.

3. Not used

4. Calling Patterns – Not Used

5. Not Used

6. Journey Times – Not Used

7. Provisions applicable to Journey Time Protection - Not Used

8. Other Rights

8.1 Not Used

8.2 Not Used

8.3 Passing Time Ranges

For Passing time ranges, please refer to Table 8.3 in Annex 1 to this Schedule 5.

8.5 For each Service specified in column 1 of Table 8.3, the Train Operator has Firm Rights, on the Days specified in column 2, to passing times at the location specified in column 3 within the range specified in column 4.

8.6 Not used.

8.7 Not used.

8.8 Not used.

Annex 1

See attached excel tables

Table 2.1

1					2				3
Service Description					Number of days' operation per slot type				
Month		Description			10 slots per day	6 slots per day	4 slots per day	Total number of days' operation each month	Notes
January		1.1			0	0	0	0	The rights are to cross the Network at the Cae Pawb crossing Porthmadog in order to provide Services between Porthmadog and Beddgelert.
February		1.2			0	0	0	0	
March		1.3			0	3	7	10	
April		1.4			0	19	3	22	
May		1.5			0	16	11	27	
June		1.6			0	17	10	27	
July		1.7			0	16	15	31	
August		1.8			0	31	0	31	
September		1.9			0	12	16	28	
October		1.1			0	3	23	26	
November		1.11			0	0	2	2	
December		1.12			0	6	6	12	

Table 2.2

1					2				3
					Additional Passenger Train Slots				
Service Description					Number of days' operation per slot type				
Month		**Description**			**10 slots per day**	**6 slots per day**	**4 slots per day**	**Total number of days' operation each month**	**Notes**
January		1.1			0	0	4	4	
February		1.2			0	0	12	12	
March		1.3			0	0	7	7	
April		1.4			0	0	8	8	
May		1.5			0	0	4	4	
June		1.6			0	0	3	3	
July		1.7			0	0	0	0	
August		1.8			0	0	0	0	
September		1.9			0	0	2	2	
October		1.1			0	2	3	5	
November		1.11			0	0	2	2	
December		1.12			0	0	0	0	

Table 8.3

1						2	3	4	5
Service Description									
TSC	Number of slots per day	Location	From	To	Via	Days	Location	Passing time ranges	Notes
N/A	4	Cae Pawb Crossing (Porthmadog)	Porthmadog	Beddgelert	Festiniog Railway	On dates of operation as listed in 2.1	Cae Pawb Crossing, Porthmadog	11:03 – 11:33 14:08 – 14:38	
N/A	4	Cae Pawb Crossing (Porthmadog)	Beddgelert	Porthmadog	Festiniog Railway	On dates of operation as listed in 2.1	Cae Pawb Crossing, Porthmadog	13:19 – 13:49 16:48 – 17:18	
N/A	6	Cae Pawb Crossing (Porthmadog)	Porthmadog	Beddgelert	Festiniog Railway	On dates of operation as listed in 2.2	Cae Pawb Crossing, Porthmadog	10:42 – 11:12 12:53 – 13:23 15:17 – 15:47	
N/A	6	Cae Pawb Crossing (Porthmadog)	Beddgelert	Porthmadog	Festiniog Railway	On dates of operation as listed in 2.3	Cae Pawb Crossing, Porthmadog	12:02 – 12:32 14:07 – 14:37 16:52 - 17:22	
N/A	10	Cae Pawb Crossing (Porthmadog)	Porthmadog	Beddgelert	Festiniog Railway	On dates of operation as listed in 2.4	Cae Pawb Crossing, Porthmadog	09:18 – 09:48 11:05 – 11:35 12:53 - 13:23 14:08 - 14:38 15:58 - 16:28	
N/A	10	Cae Pawb Crossing (Porthmadog)	Beddgelert	Porthmadog	Festiniog Railway	On dates of operation as listed in 2.5	Cae Pawb Crossing, Porthmadog	12:02 – 12:32 13:17 – 13:47 15:08 - 15:38 16:42 - 17:12 18:02 - 18:32	

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 or the Franchisee;

(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, Network Rail reasonably considers constitutes a threat to the safe operation of any part of the Network;

(c) any amount due by the Train Operator to Network Rail under this contract remains unpaid for more than seven days after their due date;

(d) 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 Network Rail;

(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 disruption to train operations of other train operators; and

(f) Not used.

1.2 ***Notification***

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

1.3 ***Network Rail Events of Default***

The following are Network Rail Events of Default:

(a) Network Rail 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 Network Rail;

(c)

(i) any breach by Network Rail 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 Network Rail 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***

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

2. **Suspension**

2.1 ***Right to suspend***

2.1.1 Network Rail 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 Network Rail 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 Network Rail, 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 amount due, seven days shall be a reasonable grace period).

2.3 ***Effect of Suspension Notice served by Network Rail***

Where Network Rail 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 Network Rail 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 sums due in accordance with this contract or any Collateral Agreement; 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 Network Rail:

(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 Network Rail 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) (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 Network Rail 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 Network Rail 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 affected 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 ***Network Rail's right to terminate***

Network Rail 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 Network Rail 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 Network Rail:

(a) where Network Rail fails to comply with its obligations under paragraph 2.5.3;

(b) where the Network Rail Event of Default specified in paragraph 1.3(a) has occurred and is continuing; or

(c) where the Network Rail 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 Charges or other amounts due, seven days is a reasonable grace period).

3.4 ***Effect of Termination Notice***

Where Network Rail 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.

3.5 ***Train Operator right to terminate on notice***

3.5.1 The Train Operator may terminate this contract for any reason on giving not less than 6 months' notice in writing to Network Rail.

3.5.2 A notice given under paragraph 3.5.1 above shall not affect the continuing obligations on the Train Operator to make payments due under this contract nor any of the other continuing obligations on the Train Operator.

3.6 Efficient and safe operation of the Network

3.6.1 Network Rail may restrict the use of or stop up access to the Route and may plain line the Festiniog Railway flat crossing so as to provide rail access only to Third Party Train Operators

and to prevent access to the Route (or any part of the Route) by the Train Operator or may carry out such other works to the Route or carry out works to stop up the Connecting Points as Network Rail deems necessary to safeguard the efficient and safe operation of any part of the rest of the Network either on a temporary or permanent basis ("Step-in Rights") in circumstances where:

3.6.1.1 Network Rail may serve a Termination Notice on the Train Operator in accordance with the provisions of paragraph 3.1 of Schedule 6 (and whether or not Network Rail has actually served a Termination Notice); or

3.6.1.2 the Train Operator requests Network Rail to do so; or

3.6.1.3 there is an Emergency or a risk to the health, safety or security of persons using or operating the Network or Network Rail reasonably apprehends an Emergency or a risk to the health, safety or security of such users or operators; or

3.6.1.4 for whatever reason this contract or any Collateral Agreement is terminated or expires; or

3.6.1.5 there is (in Network Rail's reasonable opinion) a risk of damage to or the safety or security of property forming part of the Network or of property on or adjacent to the Network; or

3.6.1.6 the Train Operator breaches any provision in any Collateral Agreement.

3.6.2 Network Rail Network Rail shall notify the Train Operator in writing before it exercises the Step-in Rights and neither the giving of any such notice nor the exercise of the Step-in Rights shall affect the continuing obligations on the Train Operator to make payments due under this contract or any Collateral Agreement.

3.6.3 Save where Network Rail exercises the Step-in Rights under paragraph 3.6.1.3 in circumstances not caused or contributed to by the Train Operator (when the parties shall agree which party shall pay and be responsible for the reasonable costs and expenses of the works carried out in connection with Network Rail exercising the Step-in Rights), the Train Operator shall pay and be responsible for the reasonable costs and expenses of all the works carried out in connection with Network Rail exercising the Step-in Rights.

3.6.4 Network Rail shall consult with the Train Operator and shall act reasonably (bearing in mind all the circumstances) in deciding whether to exercise the Step-in Rights on a temporary or permanent basis. Where Network Rail exercises the Step-in Rights on a temporary basis, Network Rail and the Train Operator shall work together and use efforts to agree how and when the Festiniog Railway flat crossing may be reinstated, or the other works carried out to the Route or Connecting Points modified or removed so as to permit access again to the Train Operator. Network Rail and the Train Operator shall use reasonable endeavours to agree which party shall be responsible for the costs of such works.

3.6.5 Where Network Rail exercises the Step-in Rights on a permanent basis (but not where Network Rail exercises the Step-in Rights under paragraph 3.6.1.4 above), this contract shall terminate 56 days after Network Rail notifying the Train Operator in writing of the practical completion of the works forming the subject of the Step-in Rights.

3.6.6 Network Rail shall not be required to compensate the Train Operator for any loss the Train Operator may suffer or costs or expenses the Train Operator may incur in connection with Network Rail exercising the Step-in Rights.

3.6.7 The Train Operator shall pay to Network Rail any sums that may be due (plus VAT where applicable) under any provision of this Schedule 6 within 28 days of the date of Network Rail's invoice to the Train Operator for that sum.

4. Consequence of termination

4.1 *Directions regarding location of Rolling Stock*

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 Network Rail concerning the location of the Rolling Stock

4.2 *Failure to comply with directions*

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

4.3 ***Evidence of costs***

Network Rail 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)

Part 1

Not used

Part 2

(Track Charges)

1. The fixed track charge for each contract Year shall be £6,705 multiplied by the Fixed Track Charge Indexation calculated in accordance with paragraph 2.

2. **Fixed Track Charge Indexation**

2.1 The Fixed Track Charge Indexation for each contract Year shall be derived from the following formula:

$$FTCI_t = \left(1 + \frac{(CPI_{t-1} - CPI_{2018})}{CPI_{2018}}\right) \bullet Initial\ Indexation\ Factor$$

where:

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

CPI_{t-1} means the CPI published or determined with respect to the month of November in the calendar year in which contract Year t-1 commenced; and

CPI_{2018} means the CPI published or determined with respect to the month of November 2018.

"CPI" means the Consumer Prices Index (all items) whose value is published each month by the Office for National Statistics in its statistical bulletin on consumer price inflation, or:

(a) if the Consumer Prices Index for any month in any year shall not have been published on or before the last day of the third month after such month, such index for such month or months as ORR may (after consultation with the parties and such other persons as it considers appropriate) determine to be appropriate in the circumstances; or

(b) if there is a material change in the basis of the Consumer Prices Index, such other index as ORR may (after consultation with the parties and such other persons as it considers appropriate) determine to be appropriate in the circumstances;

"Initial Indexation Factor" is derived from the following formula:

$$IIF = \left(1 + \frac{(CPI_{2018} - CPI_{2017})}{CPI_{2017}}\right)^2$$

where:

IIF means the Initial Indexation Factor;

CPI_{2017} means the CPI published or determined with respect to the month of November 2017; and

CPI_{2018} means the CPI published or determined with respect to the month of November 2018.

The value derived from this formula shall be rounded to three decimal places;

Part 3: Payment of Track Charges

3.1 The Train Operator shall pay Network Rail the Track Charges on or before the first day of each contract Year.

3.2 In addition to the Track Charges the Train Operator shall pay to Network Rail all reasonable costs, charges and expenses incurred, suffered, or levied by Network Rail in connection with Network Rail providing the services set out in Schedule 11 of this contract, whether in relation to testing, inspecting, maintaining, repairing or renewing the Route (or any part or parts thereof) or otherwise.

Schedule 8

(Performance Regime)

1. **Interpretation**

1.1 ***Definitions***

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

"Applicable Timetable" means, in respect of a day, that part of the Working Timetable in respect of that day which is required to be drawn up in accordance with Condition D2.1.1 of the Network Code as at 22:00 hours on the day prior to that day, and which is applicable to the Trains;

"Attributable to both the Train Operator and Network Rail" means, in respect of any Delay or Cancellation, a Delay or Cancellation in relation to which the parties have agreed or it is otherwise determined, having regard to the guidance on allocation of responsibility for incidents set out in the Delay Attribution Guide, that both the Train Operator and Network Rail are to be jointly responsible (in which case the Delay or Cancellation shall not fall within the definitions of "Attributable to the Train Operator" or "Attributable to Network Rail");

"Attributable to Network Rail" means, in respect of any Delay or Cancellation:

(a) any matter occurring on or off the Network, which is not Attributable to the Train Operator;

(b) that portion of any such Delay or Cancellation that would otherwise be Attributable to both the Train Operator and Network Rail, but which the parties agree or it is otherwise determined is Attributable to Network Rail; and

(c) any Delay, occurring on or off the Network, caused by a Third-Party Train Operator on the Network and which excludes any Delay, Cancellation or any other matter arising as a result of a Planned Incident, in all cases having regard to the guidance on allocation of responsibility for incidents set out in the Delay Attribution Guide;

"Attributable to the Train Operator" means any Delay or Cancellation arising as a result of:

(a) any acts or omissions of the Train Operator's staff or its agents, contractors or sub-contractors;

(b) any Train Operator Omission;

(c) any failure or defect in the Rolling Stock relating to any Service (including where Network Rail shall have refused to permit the Service to move over the Network because the contents of the railway wagons have escaped, or there is pollution arising from the operation of such railway wagons);

(d) any improperly loaded railway wagons which form the whole or part of any Service;

(e) any Service not being promptly accepted off the Network for reasons not caused by Network Rail in its capacity as operator of the Network, its agents, contractors or sub-contractors (acting as agent, contractor or sub-contractor for Network Rail in its capacity as operator of the Network) (other than the Train Operator);

(f) any failures or delays arising off the Network, other than those which are caused by Network Rail in its capacity as operator of the Network, its agents, contractors, or sub-contractors (acting as agent, **contractor or sub-contractor** for Network Rail in its capacity as operator of the Network) (other than the Train Operator); or

(g) that portion of any such Delay or Cancellation that would otherwise be Attributable to both the Train Operator and Network Rail, but which the parties agree or it is otherwise determined is Attributable to the Train Operator;

"Cancellation" means either a Full Cancellation or a Part Cancellation;

"Charging Period" means each period of 28 days which coincides with a Network Rail accounting period save that:

(a) the first period and last period may be of less than 28 days if:

(i) the date of signature of this contract does not coincide with the first day of one of Network Rail's accounting periods; or

(ii) the Expiry Date does not coincide with the last day of one of Network Rail's accounting periods; and

(b) the duration of the first and last such period in any financial year may be varied so as to coincide with the duration of Network Rail's accounting periods by notice from Network Rail to the Train Operator;

"Delay" means any delay suffered by one or more Third Party Train Operator Service calculated in accordance with the provisions of this Schedule and includes delay suffered as a result of a Cancellation;

"Destination" means, in relation to a Third Party Train Operator Service:

(a) the location on the Network at which that Third Party Train Operator Service is planned to terminate; or

(b) if the location at which that Third Party Train Operator Service is planned to terminate is not on the Network, the location on the Network which:

(i) will enable the train operating that Third Party Train Operator Service to leave the Network; and

(ii) is the most appropriate location for such train to use to terminate that Third Party Train Operator Service on the Network;

"Full Cancellation" means, in relation to one or more Third Party Train Operator Service, a cancellation of a train resulting in the train not operating at all;

"Origin" means, in relation to a Third Party Train Operator Service:

(a) the location on the Network at which that Third Party Train Operator Service is planned to commence; or

(b) if the location at which that Third Party Train Operator Service is planned to commence is not on the Network, the location on the Network which:

(i) will enable the train operating that Third Party Train Operator Service to be presented onto the Network; and

(ii) is the most appropriate location for such train to use to move onto the Network to reach the Destination of that Third Party Train Operator Service;

"Part Cancellation" means in relation to one or more Third Party Train Operator Service a cancellation of a train resulting in the train either not commencing at its Origin or not arriving at its Destination;

"Performance Monitoring System" means the recording system which Network Rail is required to operate under Part B of the Network Code;

"Planned Incident" means an incident in connection with a Restriction of Use to the extent that there is Recovery Time in respect of that Restriction of Use inserted in the Working Timetable;

"Recording Point" means a point at which Network Rail records Trains using the Performance Monitoring System;

"Recovery Time" means additional time incorporated in the Applicable Timetable to allow for a Train to regain time lost during an earlier part of its journey;

"Train Operator Omission" means any failure of or defect in or damage to the Network (excluding fair wear and tear) arising from:

(a) the improper operation of trains under this contract;

(b) a breach of the Train Operator's Safety Obligations or of the terms of this contract; or

(c) any act or omission of the Train Operator's staff or agents, contractors or sub-contractors in breach of this contract; and

"Train" means each train operating a Service which is:

(a) operated by or on behalf of the Train Operator pursuant to the permission to use the Routes granted under this contract; and

(b) used to provide services for the carriage of passengers by railway,

but excludes any and all trains making an Ancillary Movement.

2. **General**

2.1 Performance monitoring system recordings

For the purposes of this Schedule 8, Network Rail shall use recordings made using the Performance Monitoring System including the times at which Third Party Train Operator Services trigger a Recording Point.

2.2 Liability of Network Rail to Train Operator

Network Rail shall have no liability under any provision of this Schedule 8 to the Train Operator in respect of any Delay or Cancellation to any Train Operator Service (whether that delay shall be Attributable to Network Rail or Attributable to both the Train Operator and Network Rail).

2.3 Mitigation of Delay or Cancellation

The parties shall take reasonable steps to avoid and mitigate the effects of any incidents which cause Delay or Cancellation, and any failure to take such steps shall be regarded as a separate incident.

3. Dealing with Delay

3.1 *Attributing Delay*

Network Rail shall, using the information recorded under paragraph 2.1, calculate the number of minutes of Delay and identify whether that Delay is:

(a) Attributable to the Train Operator;

(b) Attributable to Network Rail; or

(c) Attributable to both the Train Operator and Network Rail.

3.2 *Delay Attributable to both the Train Operator and Network Rail*

If a Delay is Attributable to both the Train Operator and Network Rail, the associated minutes of Delay shall be allocated equally to the Train Operator and to Network Rail and the Train Operator shall pay Network Rail the sum calculated in accordance with Appendix 1 to this Schedule for each minute of Delay allocated to the Train Operator. Network Rail shall not be required to pay any sum to the Train Operator under any provision in this Schedule 8.

3.3 *Delay Attributable to the Train Operator*

If a Delay is Attributable to the Train Operator the Train Operator shall pay to Network Rail the sum calculated in accordance with Appendix 1 of this Schedule for each minute of Delay.

3.4 Delay Attributable to Network Rail

If a Delay is Attributable to Network Rail, Network Rail shall have no liability to the Train Operator for that Delay.

3.5 Identifying Delay incidents

The parties shall co-operate with each other by providing all such information to one another as is reasonably practicable regarding the identification of the incidents which cause Delay to any Third-Party Train Operator Service.

4. **Dealing with Cancellation**

4.1 *Attributing Cancellation*

Network Rail shall identify whether each Cancellation is:

(a) Attributable to the Train Operator;

(b) Attributable to Network Rail; or

(c) Attributable to both the Train Operator and Network Rail.

4.2 Cancellation minutes

For the purposes of calculating a payment due under this Schedule 8, a Full Cancellation shall be treated as 105 minutes of Delay and a Part Cancellation shall be treated as 50 minutes of Delay.

4.3 Cancellation Attributable to both the Train Operator and Network Rail

If a Cancellation is Attributable to both the Train Operator and Network Rail, the associated minutes of Delay shall be allocated equally to the Train Operator and to Network Rail and the Train Operator shall pay Network Rail the sum calculated in accordance with paragraph 4.2 and Appendix 1 to this Schedule for each minute of Delay allocated to the Train Operator.

4.4 Cancellation Attributable to the Train Operator

If a Cancellation is Attributable to the Train Operator the Train Operator shall pay to Network Rail the sum calculated in accordance with paragraph 4.2 and Appendix 1 of this Schedule for each minute of Delay.

4.5 Cancellation Attributable to Network Rail

If a Cancellation is attributable to Network Rail, Network Rail shall have no liability to the Train Operator for that Cancellation.

4.6 Identifying Cancellation incidents

The parties shall co-operate with each other by providing all such information to one another as is reasonably practicable regarding the identification of the incidents which cause any Cancellation of any Third-Party Train Operator Service.

5. Payment for Delay

Where the Train Operator is required to make payment to Network Rail for Delay or a Cancellation under the provisions of this Schedule 8, Network Rail shall issue an invoice to the Train Operator within 90 days of the end of the Charging Period in which the Delay or Cancellation arose requesting that payment. The Train Operator shall make payment to Network Rail of the sum contained in that invoice within 28 days of the date of that invoice.

6. **Review of payment for Delay and Cancellations to Third** Party Train Operator Services

6.1 Either Network Rail or the Train Operator may by written notice to the other served within a period of 120 days after the end of a contract Year request a review of the payments and invoices for Delay and Cancellations to Third Party Train Operators in that contract Year ("**Schedule 8 Notice**").

6.2 Where Network Rail serves a Schedule 8 Notice that notice shall include:

(a) a statement of the total amount invoiced to the Train Operator by Network Rail under paragraph 5 of this Schedule 8 ("**Train Operator Payments**");

(b) a statement of the total of all amounts actually paid by Network Rail to all Third Party Train Operators and of all amounts due to and allowed to all Third Party Train Operators by Network Rail in relation to all Delay and Cancellations Attributable to the Train Operator and those parts of any Delay and any Cancellations Attributable to both the Train Operator and Network Rail for which the Train Operator is liable in that contract Year ("**Network Rail Payments**");

(c) a calculation showing the difference between the Train Operator Payments and the Network Rail Payments or the Network Rail Payments and the Train Operator Payments (as the case may be) ("**Balancing Amount**").

6.3 Where the Train Operator serves a Schedule 8 Notice, within 28 days of the date of that Schedule 8 Notice, Network Rail shall provide to the Train Operator the statements and calculation referred to in paragraph 6.2 above.

6.4 Following the service of a Schedule 8 Notice by either party, where the Train Operator Payments exceed the Network Rail Payments, Network Rail shall pay the Balancing Amount to the Train Operator within 56 days of the Schedule 8 Notice.

Following the service of a Schedule 8 Notice by either party, where the Network Rail Payments exceed the Train Operator Payments, the Train Operator shall pay the Balancing Amount to Network Rail within 56 days of the Schedule 8 Notice.

Appendix 1

1.1 Any payment for Delay shall be at a rate of £3 per minute of Delay multiplied by the Fixed Track Charge Indexation for the relevant contract Year (as calculated in accordance with Part 2 of Schedule 7).

Appendix 2

Charter Destination Points

(Not used)

Appendix 3

SPP Threshold

(not used)

Schedule 9

(Limitation on Liability)

1. **Definitions**

In this Schedule

"Contract Year" means each yearly period commencing on 9 December 2020 and subsequently on each anniversary of such date;

"Liability Cap" means:

(a) in relation to the first Contract Year, the sum of £5 million; and

(b) in relation to any subsequent Contract Year, the sum calculated in accordance with the following formula:

$$C_n = C_1 \left[\frac{CPI_n}{CPI_1}\right]$$

where:

(i) C_1 is the sum of £5 million;

(ii) C_n is the Liability Cap in the nth subsequent Contract Year;

(iii) CPI_n is the Consumer Prices Index (as defined in Schedule 7) published or determined with respect to the first month of the subsequent Contract Year n; and

(iv) CPI_1 is the Consumer Prices Index (as defined in Schedule 7) 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 Network Rail's liability**

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

(a) Network Rail 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 Network Rail shall have no further liability for it.

4. **Limitation on Train Operator's liability**

In relation to any claims for indemnity made by Network Rail 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 Modifications)

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),

Network Rail 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 under Condition C8 of that 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.

Schedule 11

(Maintenance obligations)

Part 1

Network Rail will use reasonable efforts to:

1.1 carry out (or procure the carrying out of) the Maintenance Services on the Route in accordance with Network Rail Standards;

1.2 in addition to the Maintenance Services, inspect, test, maintain, repair and renew the Route (or any part thereof) (or to procure that the same shall be done) as may be required in accordance with Network Rail Standards; and

1.3 where it is practical for Network Rail to do so, consult the Train Operator as regards the provision of the Maintenance Services and all other maintenance, renewals or enhancements on the Network (including the Route) which may impede or may require the stopping up of access to the Network at the Connecting Points or at any point on the Route.

Part 2: Maintenance Services

2.1 S&T quarterly test undertaken by:

1 x Level 4 S&T (4 hour)

1 x Level 3 S&T (4 hour)

1 x Level 2 S&T (4 hour)

2.2 S&T annual test undertaken by:

1 x Level 4 S&T (2 hour)

1 x Level 3 S&T (2 hour)

1 x Level 2 S&T (2 hour)

2.3 P-way kango pack of the crossing twice yearly undertaken by:

1 x Supervisor (16 hours)

1 x Level 3 (16 hours)

2 x Level 2 (16 hours)

5 x Level 1 (16 hours)

2.4 Network Rail expects to carry out the following additional work on an “as required” basis and to raise charges in accordance with Schedule 7 of this contract:

- Replacement of the rails within the crossing as required, with replacement parts being supplied by the Train Operator.

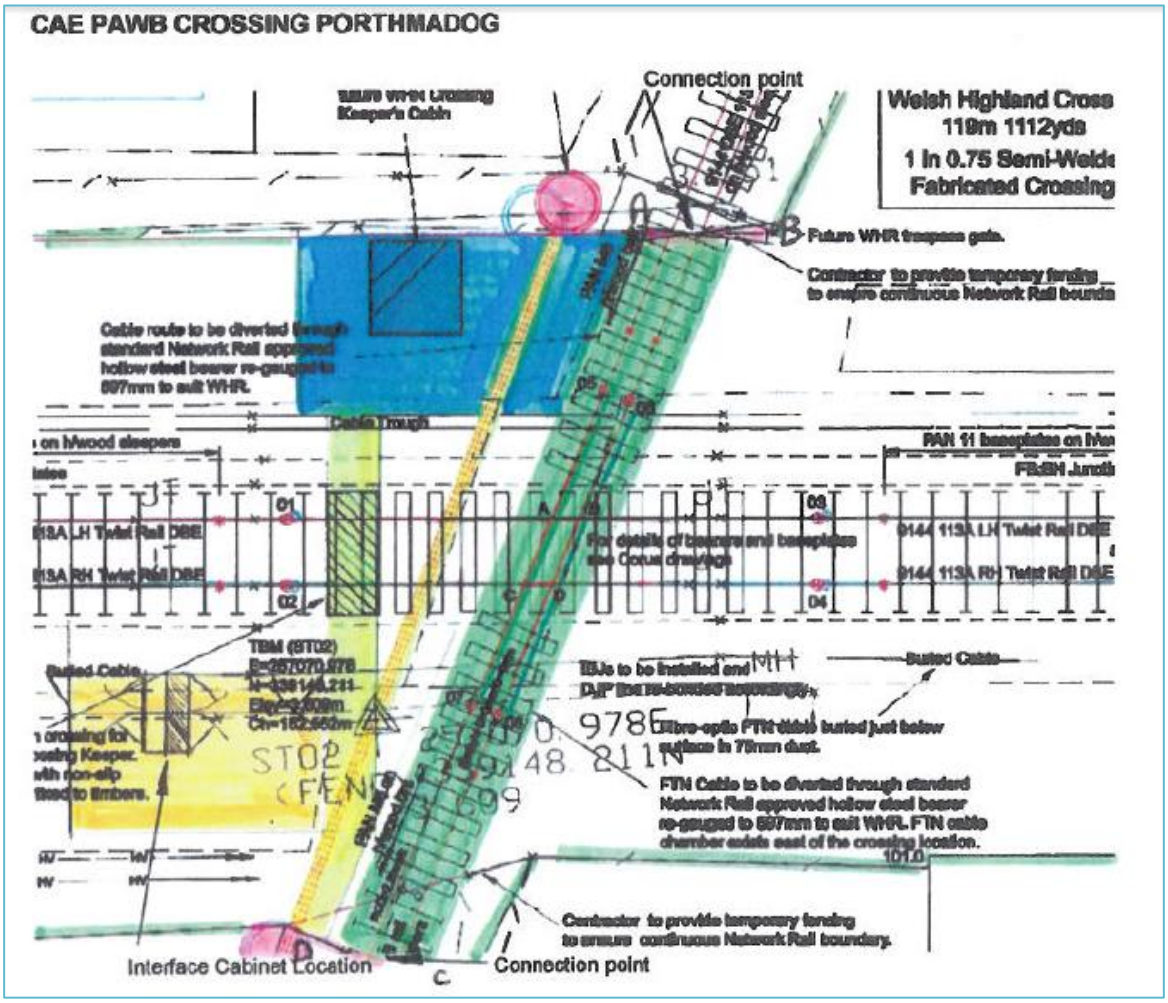
Appendix 1

Plan

[Cae Pawb Xing land

use at 09-12-2080.pd]

[Drawing: Issue 04 DRH 09.12.08]



Area coloured green to be maintained by Network Rail (NR).
Area coloured pink to be maintained by Welsh Highland Railway (WHR).
Area coloured blue owned by NR. Land, building and fences to be maintained by WHR.
Area coloured yellow to be maintained by NR, for use by WHR (footway crossing and cable ducts).
NR to be responsible for maintaining insulated block joints (IBJs) at 05, 06,07,08 on plan.
WHR to be responsible for maintaining track circuits on narrow gauge track panels leading to IBJs from outside NR boundary.
Area coloured orange owned and maintained by NR to which WHR have access.

Issue 04 DRH 09.12.08

In Witness whereof the duly authorised representatives of Network Rail and the Train Operator have executed this contract on the date first above written.

Signed by

Print name

Duly authorised for and on behalf of
Network Rail Infrastructure Limited

Signed by

`

Print name

Duly authorised for and on behalf of
Festiniog Railway Company