

# FORTY SECOND

# SUPPLEMENTAL AGREEMENT

between

**NETWORK RAIL INFRASTRUCTURE LIMITED**

as Network Rail

and

**FIRST CAPITAL CONNECT LIMITED**

as Train Operator

relating to

the Track Access Agreement (Passenger Services) dated  
9<sup>th</sup> February 2006

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**THIS FORTY SECOND SUPPLEMENTAL AGREEMENT** is dated

[2012] and made

**BETWEEN:**

- (1) **NETWORK RAIL INFRASTRUCTURE LIMITED**, a company registered in England under number 2904587 having its registered office at Kings Place, 90 York Way, London N1 9AG (“Network Rail”); and
- (2) **FIRST CAPITAL CONNECT LIMITED**, a company registered in England under number 05281077 having its registered office at 50 Eastbourne Terrace, Paddington, London W2 6LG (the “Train Operator”).

**WHEREAS:**

- (A) The parties entered into a Track Access Agreement (Passenger Services) dated 9th February 2006 in a form approved pursuant to Section 18(7) of the Act, as amended by various supplemental agreements each in a form approved pursuant to Section 22 of the Act (which track access contract as subsequently amended is hereafter referred to as the “Contract”).
- (B) The parties propose to enter into this Supplemental Agreement in order to amend Schedule 7 and clauses 1, 2 and 18 of the Contract to provide for the use of metered data in the calculation of the Traction Electricity Charge.

**IT IS HEREBY AGREED** as follows:

**1. INTERPRETATION**

In this Supplemental Agreement:

- (A) words and expressions defined in and rules of interpretation set out in the Contract shall have the same meaning and effect when used in this Supplemental Agreement except where the context requires otherwise; and
- (B) “Effective Date” means the date on which the Office of Rail Regulation issues its approval pursuant to Section 22 of the Act of the terms of this Supplemental Agreement.

**2. EFFECTIVE DATE AND TERM**

The amendments to the Contract as set out in this Supplemental Agreement shall have effect from the Effective Date and shall cease to have effect on the Expiry Date or earlier termination of the Contract.

**3. RETROSPECTIVE EFFECT**

- 3.1 Notwithstanding the Effective Date, the amendments made to the Contract by paragraphs 4 to 7 of this Supplemental Agreement shall be applied retrospectively from 18 September 2011.

#### **4. AMENDMENTS TO CLAUSE 1 OF THE CONTRACT**

4.1 In clause 1 of the Contract, below the definition of “Disputes Chairman”, the following definition shall be added:

“**“EC4T Metering Rules”** shall have the meaning ascribed to it in paragraph 1 of Part 1 of Schedule 7;”.

4.2 Clause 1.2 shall be amended as follows:

- (A) the word “and” shall be deleted from the end of clause 1.2(o);
- (B) the full stop shall be deleted from the end of clause 1.2(p) and replaced with the following:

“;and”

- (C) a new clause 1.2(q) shall be inserted, as follows:

“ (q) if there is any conflict of interpretation between this contract and the EC4T Metering Rules, the EC4T Metering Rules shall prevail.”

#### **5. AMENDMENTS TO CLAUSE 2 OF THE CONTRACT**

5.1 The heading “NETWORK CODE” to clause 2 shall be deleted and replaced with the heading “NETWORK CODE AND EC4T METERING RULES”.

5.2 A new sub-clause 2.4 shall be added as follows:

“2.4 EC4T Metering Rules

The EC4T Metering Rules are incorporate in, and form part of this contract.”

#### **6. AMENDMENTS TO CLAUSE 18 OF THE CONTRACT**

6.1 A new sub-clause 18.7.4 shall be added as follows:

“18.7.4 *Application of the EC4T Metering Rules to other train operators*

- (a) Any train operator shall have the right under the Contracts (Rights of Third Parties) Act 1999 directly to enforce paragraphs 7.3, 9.7, 9.15, 9.19, 9.20, 9.21 and 12.1 of the EC4T Metering Rules.
- (b) Any Metered Train Operator, Prospective Metered Train Operator or Modelled Train Operator (as defined in the EC4T Metering Rules) shall have the right under the Contracts (Rights of Third

Parties) Act 1999 directly to enforce such rights as have been granted to it under the EC4T Metering Rules.”

**7. AMENDMENTS TO SCHEDULE 7 OF THE CONTRACT**

7.1 Schedule 7 (Track Charges) shall be deleted and replaced with the schedule set out in appendix 1.

**8. GENERAL**

The Contract, as amended by this Supplemental Agreement, shall remain in full force and effect in accordance with its terms, and during the period in which the amendments made by this Supplemental Agreement are to have effect, all references in the Contract to “the contract”, “herein”, “hereof”, “hereunder” and other similar expressions shall, unless the context requires otherwise, be read and construed as a reference to the Contract as amended by this Supplemental Agreement.

**9. THIRD PARTY RIGHTS**

No person who is not a party to this Supplemental Agreement shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Supplemental Agreement.

**10. LAW**

This Supplemental Agreement shall be governed by, construed and given effect to in all respects in accordance with English Law.

**11. COUNTERPARTS**

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

IN WITNESS whereof the duly authorised representatives of Network Rail and the Train Operator have executed this Supplemental Agreement on the date first above written.

SIGNED by..... *M. J. Frobisher* .....

Print name..... *M. J. FROBISHER* .....

Duly authorised for and on behalf of

**NETWORK RAIL INFRASTRUCTURE LIMITED**

SIGNED by..... *C. J. Cornthwaite* .....

Print name..... *MR C. J. CORNTHWAITE* .....

Duly authorised for and on behalf of

**FIRST CAPITAL CONNECT LIMITED**

**APPENDIX 1**

**SCHEDULE 7: TRACK CHARGES**

**PART 1: INTERPRETATION**

**1 Definitions**

In Parts 1-8 inclusive, unless the context otherwise requires:

<b>“2008 Final Determinations”</b>	means the document entitled “Periodic Review 2008: Determination of Network Rail’s outputs and funding for 2009-14” and published by ORR on 30 October 2008;
<b>“access charges review”</b>	has the meaning ascribed to it by Schedule 4A to the Act;
<b>“AC System”</b>	means the alternating current system of electricity traction supply on the Network;
<b>“Additional Permitted Charges”</b>	means the charges specified in paragraph 2 of Part 5;
<b>“Adjusted Interest Cover Ratio”</b>	means the value of AICR derived from the formula set out in paragraph 2.1.1(c) of Part 7;
<b>“Aggregate Fixed Charges”</b>	means, in any Relevant Year $t$ , the sum of the values of $F_t$ under paragraph 1 of Part 2 and the corresponding provisions of each other relevant access agreement;
<b>“Basic Value”</b>	has the meaning ascribed to it in paragraph 1.1(a) of Part 3A;
<b>“Capacity Charge”</b>	means a variable charge, calculated in accordance with paragraph 6 of Part 2;
<b>“DC System”</b>	means the direct current system of electricity traction supply on the Network;
<b>“Deed of Grant”</b>	means the Deed of Grant made on 18 December 2008 between the Secretary of State and Network Rail;

<b>“Default Train Consist Data”</b>	means the data listed in Appendix 7C as amended from time to time in accordance with paragraph 10.4 of Part 2;
<b>“EC4T Metering Rules”</b>	means the document known as the EC4T Metering Rules;
<b>“Efficiency Benefit Share”</b>	means the amount determined in accordance with paragraph 3.2 of Part 2;
<b>“Electrification Asset Usage Charge”</b>	means an annual charge for electrification asset usage, calculated in accordance with paragraph 8 of Part 2;
<b>“English &amp; Welsh Grant Compensation Amount”</b>	has the meaning ascribed to it in paragraph 3.2 of Part 3A;
<b>“English &amp; Welsh Grant Dilution”</b>	has the meaning ascribed to it in paragraph 2.1 of Part 3A;
<b>“English &amp; Welsh Grant Dilution Date”</b>	has the meaning ascribed to it in paragraph 2.2 of Part 3A;
<b>“excluded change”</b>	means, in relation to paragraph 2.1.1(a) of Part 7, a change to the arrangements established between Network Rail and any other person in respect of the payment of any amount under sections 6 or 8 of the Railways Act 2005;
<b>“Fixed Track Charge”</b>	means a fixed annual charge, calculated in accordance with paragraphs 1 and 2 of Part 2;
<b>“Fixed Track Charge Indexation”</b>	has the meaning ascribed to it in paragraph 2 of Part 2;
<b>“Geographic Area g”</b>	means, for the purposes of performing the calculations set out in paragraphs 4 and 5 of Part 2, the relevant geographic section of the Network as set out in Appendix 7B;
<b>“Grant Amount”</b>	has the meaning ascribed to it in paragraph 1.2 of Part 3A;
<b>“Gross Tonne Mile”</b>	in relation to a train, means a mile travelled on the Network, by each tonne of the aggregate weight of the train in question;



<b>“kWh”</b>	means kilowatt hours;
<b>“List of Capacity Charge Rates”</b>	means the document entitled “List of Capacity Charge Rates” published by Network Rail on or about 18 December 2008;
<b>“Network Rail Distribution System Loss Factor”</b>	means, for the purposes of performing the calculations set out in paragraphs 4 and 5 of Part 2, the relevant factor that represents the electrical losses between the On-Train Meter and Network Rail’s meter through which it purchases traction electricity for the AC System or the DC System in Geographic Area g, as set out in appendix 3 of the EC4T Metering Rules;
<b>“Network Rail Rebate”</b>	has the meaning ascribed to it in paragraph 7.1 of Part 2;
<b>“On-Train Meter” and “On-Train Metering”</b>	have the meanings ascribed to them in paragraph 1.2 of the EC4T Metering Rules;
<b>“Payment Date”</b>	has the meaning ascribed to it in paragraph 1.1(b) of Part 3A;
<b>“Period”</b>	has the meaning ascribed to it in Schedule 8;
<b>“Power Factor Correction”</b>	means, for the purposes of performing the calculations set out in paragraphs 4 and 5 of Part 2, the relevant power factor correction as set out in appendix 2 of the EC4T Metering Rules;
<b>“Rebatable Amount”</b>	has the meaning ascribed to it in paragraph 7.2 of Part 2;
<b>“relevant access agreement”</b>	<p>means an access agreement under which any of the following persons obtains permission from Network Rail to use the Network:</p> <ul style="list-style-type: none"> <li>(a) a franchise operator; or</li> <li>(b) a concession operator within the meaning of the Merseyrail Electrics Network Order 2003; or</li> <li>(c) a TfL concessionaire within the meaning of the Railways (North and West London Lines)</li> </ul>

Exemption Order 2007; or

- (d) any other person who benefits from a franchise exemption (within the meaning of section 24(13) of the Act) in relation to services for the carriage of passengers by railway; or
- (e) a relevant franchising authority (as defined in section 30(3B) of the Act) or a person providing services for the carriage of passengers by railway on behalf of a relevant franchising authority under section 30 of the Act;

**“Relevant Year”**

means a year commencing at 0000 hours on 1 April and ending at 2359 hours on the following 31 March; “Relevant Year t” means the Relevant Year for the purposes of which any calculation falls to be made; “Relevant Year t-1” means the Relevant Year preceding Relevant Year t; and similar expressions shall be construed accordingly;

**“Retail Prices Index”**

means the general index of retail prices published by National Statistics each month in respect of all items or:

- (a) if the 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 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;

**“route type k”**

means route type k as identified by type of electrification (OLE or DC) in the Track Usage Price List;

<b>“Schedule of Fixed Charges”</b>	means the document entitled “Fixed Track Charges Schedule” published by Network Rail on or about 18 December 2008;
<b>“Service Coded Group”</b>	has the meaning ascribed to it in paragraph 6 of Part 2;
<b>“tariff band”</b>	means the tariff zone and time band in which the train in question is operated;
<b>“Tolerance Factor”</b>	means, for the purposes of performing the calculations set out in paragraphs 4 and 5 of Part 2, the relevant Tolerance Factor as set out in appendix 4 of the EC4T Metering Rules;
<b>“Track Usage Price List”</b>	means the document entitled “Track Usage Price List” published by Network Rail on or about 18 December 2008;
<b>“Traction Electricity Charge”</b>	means a variable charge for traction current calculated in accordance with paragraph 4 of Part 2;
<b>“Traction Electricity Consumption Rates List”</b>	means the document entitled “Traction Electricity Consumption Rates List” published by Network Rail on or about 18 December 2008 and specifying freight and passenger traction electricity consumption rates by train category i;
<b>“train category”</b>	means train type i used on the relevant route;
<b>“Train Consist Data”</b>	means the information relating to the number(s) and type(s) of railway vehicle comprised in a train movement;
<b>“Train Mile”</b>	in relation to a train, means a mile travelled by that train on the Network;
<b>“Variable Charge”</b>	means the Variable Track Usage Charges and, where the context admits, Traction Electricity Charges;
<b>“Variable Track Usage Charge”</b>	means a variable charge, calculated in accordance with paragraph 3 of Part 2;
<b>“Vehicle Mile”</b>	in relation to a railway vehicle, means a mile

travelled by that vehicle on the Network; and

**“Weekday”**

has the meaning ascribed to it in paragraph 1.1 of Schedule 5.

## **2 Interpretation**

The provisions of Clause 1.2(e) of this contract shall not apply to any references to the Deed of Grant in this Schedule 7.

## PART 2: TRACK CHARGES

### 1 Principal formula

During each Relevant Year (and, in respect of  $F_t$ , prorated for each day of any period of this contract comprising less than a full Relevant Year), Network Rail shall levy and the Train Operator shall pay Track Charges in accordance with the following formula:

$$T_t = F_t + V_t + E_t + K_t + EAV_t - BS_t - W_t$$

where:

- $T_t$  means Track Charges in Relevant Year t;
- $F_t$  means an amount in respect of the Fixed Track Charge in Relevant Year t, which shall be:
- (a) in respect of the Relevant Year commencing on 1 April 2009, the total of the amounts set out in the row relating to the Train Operator and the column relating to that year in the Schedule of Fixed Charges; and
  - (b) in respect of any other Relevant Year t, the total of the amounts set out in the row relating to the Train Operator and the column relating to that year in the Schedule of Fixed Charges, multiplied by the Fixed Track Charge Indexation for that year calculated in accordance with paragraph 2;
- $V_t$  means an amount in respect of the Variable Track Usage Charge in Relevant Year t which is derived from the formula in paragraph 3.1;
- $E_t$  means an amount in respect of the Traction Electricity Charge in Relevant Year t which is derived from the formula in paragraph 4.1;
- $K_t$  means an amount in respect of the Capacity Charge in Relevant Year t which is derived from the formula in paragraph 6;
- $EAV_{tk}$  means an amount in respect of the Electrification Asset Usage Charge, calculated in accordance with the formula in paragraph 8;
- $BS_t$  means an amount (which shall not be a negative value) in respect of the Efficiency Benefit Share in Relevant Year t which is determined in accordance with paragraph 3.2; and

$W_t$  means an amount (which shall not be a negative value) in respect of the Network Rail Rebate in Relevant Year t, calculated in accordance with the provisions of paragraph 7.1.

## 2 Fixed Track Charge Indexation

The Fixed Track Charge Indexation in Relevant Year t shall be derived from the following formula:

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

where:

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

$RPI_{t-1}$  means the Retail Prices Index published or determined with respect to November in Relevant Year t-1; and

$RPI_{2008}$  means the Retail Prices Index published or determined with respect to November 2008.

## 3 Variable track usage charge and efficiency benefit share

### 3.1 Variable track usage charge

For the purposes of paragraph 1, the term  $V_t$  means an amount in respect of the Variable Track Usage Charge in Relevant Year t which is derived from the following formula:

$$V_t = \sum V_{it} \cdot UV_{it}$$

where:

$V_{it}$  means an amount in respect of the Variable Track Usage Charge per Vehicle Mile for a category of vehicle i for Relevant Year t which is derived from the following formula:

$$V_{it} = V_{it-1} \left[ 1 + \frac{RPI_{t-1} - 0}{100} \right]$$

where:

RPI<sub>t-1</sub> means the percentage change (whether of a positive or negative value) between the Retail Prices Index published or determined with respect to November in Relevant Year t-1 and the index published or determined with respect to November in Relevant Year t-2,

but so that in relation to the Relevant Year commencing on 1 April 2009, V<sub>it</sub> shall have, in respect of each Vehicle Mile, the value set out in the Track Usage Price List, or in the case of the class 139, 0.455 pence per Vehicle Mile, and in relation to the next following Relevant Year V<sub>it-1</sub> shall have the same value;

UV<sub>it</sub> means the actual volume of usage (in Vehicle Miles) in Relevant Year t of vehicle type i (referred to in the Track Usage Price List) operated by or on behalf of the Train Operator; and

Σ means the summation across all relevant categories of vehicle types (i), including the Class 139.

## 3.2 *Efficiency Benefit Share*

3.2.1 The Efficiency Benefit Share is an amount (which shall not be a negative value) representing a return of Track Charges which shall be identified in the ORR's annual assessment of Network Rail as the "Efficiency Benefit Share", if any, to be rebated to the Train Operator, such amount to be determined in accordance with the methodology and principles set out in paragraphs 27.34 to 27.53 (inclusive) of the 2008 Final Determinations.

3.2.2 If, pursuant to paragraph 3.2.1, the Train Operator is entitled to payment of an Efficiency Benefit Share in respect of Relevant Year t, then, subject to paragraph 3.2.3, such payment shall be made by Network Rail to the Train Operator as a lump sum payment within 28 days after the end of the Period in which it is determined by the ORR that such payment should be made.

3.2.3 If, in respect of any Relevant Year t, an Efficiency Benefit Share is payable in accordance with paragraph 3.2.2 and this contract has either commenced or expired or otherwise been terminated during the course of that Relevant Year t, the Train Operator shall be entitled to a pro rata payment of the Efficiency Benefit Share payable in respect of that Relevant Year t. Such pro rata payment (which shall be payable in accordance with paragraph 3.2.2) shall be calculated as follows:

$$\text{Pro rata BS}_t = \left( \frac{\text{EBS}}{13} \right) \times \text{CP}$$

where:

**EBS** means the total amount of the Efficiency Benefit Share that would have been payable to the Train Operator in respect of the whole of the Relevant Year t in question had this contract been in force for the entire Relevant Year t; and

**CP** means the number of Periods during that Relevant Year t either:

- (a) where this contract commences during the course of that Relevant Year t, following commencement of this contract; or
- (b) where this contract expires or is otherwise terminated during the course of that Relevant Year t, prior to the expiry or other termination of this contract,

provided that, in each case:

- (i) if this contract commences, expires or is otherwise terminated on or before the fourteenth day of a Period, such Period shall not be included in the calculation of 'CP'; and
- (ii) if this contract commences, expires or is otherwise terminated on or after the fifteenth day of a Period, such Period shall be included in the calculation of 'CP'.

3.2.4 Any such payment of an Efficiency Benefit Share ("**EBS payment**") shall be made on the basis that it is to be treated as a rebate of Track Charges for the purposes of VAT unless the parties agree that the law relating to VAT at the date of the payment requires some other treatment as agreed between the parties or unless, prior to making such payment, Network Rail has notified the Train Operator that, based on advice that Network Rail has received from HM Revenue and Customs, this paragraph 3.2.4 applies. Where this paragraph 3.2.4 applies, the relevant EBS payment is to be treated as being outside the scope of VAT, then paragraphs (a) to (e) inclusive below shall apply, and the EBS payment may be made accordingly:

- (a) the provisions of this contract relating to VAT on rebates or repayments shall be disapplied in relation only to EBS payments and subject to paragraph (e) below;
- (b) no VAT will be charged on the EBS payment;
- (c) in respect of the Track Charges paid or payable by the Train Operator to Network Rail (disregarding the EBS payment) in



respect of the period to which the EBS payment relates, Network Rail will account for VAT (where required by law to do so) and will not seek to reclaim any such VAT, except in either case as provided under paragraph (e) below;

- (d) the Train Operator will treat the EBS payment as being outside the scope of VAT; and
- (e) if the treatment of an EBS payment as being outside the scope of VAT is challenged such that the Train Operator is required to account for VAT to HM Revenue and Customs on the EBS payment, then (subject to the Train Operator promptly notifying Network Rail of that fact) the preceding paragraphs (a) to (d) inclusive will (at the election of the Train Operator) cease to apply to the EBS payment and Network Rail will account to the Train Operator for the amount of VAT on the EBS payment and issue the Train Operator with a VAT credit note in respect of that amount.

3.2.5 Network Rail will indemnify the Train Operator in respect of any liability it may incur to HM Revenue and Customs (other than the obligation to account to HM Revenue and Customs for the amount of the VAT credit set out in paragraph 3.2.4(e)) as a result of having treated the EBS payment as being outside the scope of VAT in accordance with paragraph 3.2.4.

#### **4 Traction Electricity Charge**

4.1 For the purposes of paragraph 1, the term  $E_t$  means an amount in respect of the Traction Electricity Charge in Relevant Year  $t$ , which is derived from the following formula:

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

where:

$E_{tmo}$  means an amount calculated in accordance with paragraph 4.1.2 below;

$E_{tme}$  means an amount calculated in accordance with paragraph 4.1.3 below;

$E_{tmuAC}$  means an amount calculated in accordance with paragraph 4.1.4(a) below; and

$E_{tmuDC}$  means an amount calculated in accordance with paragraph 4.1.4(b) below.

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

4.1.1 From 01 April 2011,  $E_{tmo}$  shall be calculated in respect of all trains other than those identified in the table at Appendix 7D, and  $E_{tme}$ ,  $E_{tmuAC}$  and  $E_{tmuDC}$  shall be calculated in respect of the trains identified in the table at Appendix 7D.

*Calculation using modelled consumption rate*

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

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

where:

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

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

$$E_{tmog} = \sum C_i \cdot EF_{gjt} \cdot UE_{igt}$$

where:

$\Sigma$  means the summation across all relevant train categories  $i$  (determined in accordance with paragraph 4.1.1 above) and tariff bands  $j$ , as appropriate;

$C_i$  means the calibrated modelled consumption rate (in kWh per Train Mile in relation to passenger electric multiple units and kWh per Gross Tonne Mile in relation to locomotive-hauled units and all freight traffic) for train category  $i$  shown in the Traction Electricity Consumption Rates List;

$EF_{gjt}$  means an amount for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area  $g$ , in tariff band  $j$  and in Relevant Year  $t$  as agreed or determined pursuant to paragraph 4.2; and

$UE_{igt}$  means the actual volume of usage (in electrified Vehicle Miles in relation to passenger electric multiple units or Gross Tonne Miles in relation to locomotive hauled units and all freight traffic), if any, of trains operated by or on behalf of the

Train Operator in train category i, in Geographic Area g, in tariff band j and in Relevant Year t, pursuant to this contract.

*Calculation using metered consumption data*

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

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

where:

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

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

$$E_{tmeg} = \sum [((CME_{igt} \cdot PF_i \cdot EF_{gjt}) - (RGB_{igt} \cdot PF_i \cdot EF_{gjt})) \cdot (1 + \delta_i)]$$

where:

$\Sigma$  means the summation across all relevant train categories i (determined in accordance with paragraph 4.1.1 above) and tariff bands j, as appropriate;

$CME_{igt}$  means the consumption of electricity (in kWh) by trains operated by or on behalf of the Train Operator in train category i, as measured by the On-Train Meters or as otherwise determined in accordance with the EC4T Metering Rules, in Geographic Area g and in Relevant Year t;

$PF_i$  means the Power Factor Correction for train category i;

$EF_{gjt}$  means an amount for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g, in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 4.2;

$RGB_{igt}$  means the electricity (in kWh) generated by braking by railway vehicles operated by or on behalf of the Train Operator in train category i, as measured by the On-Train Meters or as otherwise determined in accordance with the EC4T Metering Rules, in Geographic Area g and in Relevant Year t; and

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

#### 4.1.4

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

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

where:

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

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

$$E_{tmugAC} = \sum [((CME_{igtAC} \cdot PF_i \cdot EF_{gjt}) - (RGB_{igtAC} \cdot PF_i \cdot EF_{gjt})) \cdot (1 + \delta_i)] \cdot \lambda_{ACg}$$

where:

$\Sigma$  means the summation across all relevant train categories  $i$  (determined in accordance with paragraph 4.1.1 above) and tariff bands  $j$ , as appropriate;

$CME_{igtAC}$  means the consumption of electricity (in kWh) from the AC System by trains operated by or on behalf of the Train Operator in train category  $i$ , as measured by the On-Train Meters or as otherwise determined in accordance with the EC4T Metering Rules, in Geographic Area  $g$  and in Relevant Year  $t$ ;

$PF_i$  means the Power Factor Correction for train category  $i$ ;

$EF_{gjt}$  means an amount for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area  $g$ , in tariff band  $j$  and in Relevant Year  $t$  as agreed or determined pursuant to paragraph 4.2;

$RGB_{igtAC}$  means the electricity (in kWh) generated by braking by railway vehicles operated by or on behalf of the Train Operator on the AC System in train category  $i$ , as measured by the On-Train Meters or as otherwise determined in accordance with the EC4T Metering Rules, in Geographic Area  $g$  and in Relevant Year  $t$ ;

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

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

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

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

where:

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

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

$$E_{tmugDC} = \sum [((CME_{igtDC} \cdot EF_{gt}) - (RGB_{igtDC} \cdot EF_{gt})) \cdot (1 + \delta_i)] \cdot \lambda_{DCg}$$

where:

$\Sigma$  means the summation across all relevant train categories i (determined in accordance with paragraph 4.1.1 above) and tariff bands j, as appropriate;

$CME_{igtDC}$  means the consumption of electricity (in kWh) from the DC System by trains operated by or on behalf of the Train Operator in train category i, as measured by the On-Train Meters or as otherwise determined in accordance with the EC4T Metering Rules, in Geographic Area g and in Relevant Year t;

$EF_{gt}$  means an amount for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g, in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 4.2;

$RGB_{igtDC}$  means the electricity (in kWh) generated by braking by railway vehicles operated by or on behalf of the Train Operator on the DC System in train category i, as measured by the On-Train Meters or as otherwise determined in accordance with the EC4T Metering Rules, in Geographic Area g and in Relevant Year t;

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

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

*Re-opener*

4.1.5 For the purposes of paragraphs 4.1.6 to 4.1.10, the term “**On-Train Metering Provisions**” shall mean:

(a) the provisions set out in paragraphs 4.1.1 (which for these purposes shall not include the reference to 01 April 2011), 4.1.3 and 4.1.4;

and

(b) those parts of the provisions set out in paragraph 5 which relate to charges calculated in accordance with paragraphs 4.1.3 and / or 4.1.4.

4.1.6 If at any time after 01 April 2011 either party considers that, in order to improve the accuracy of charges for electricity consumption charged to the Train Operator, any of the On-Train Metering Provisions should be amended or any additional provisions should be added to this contract, then such party may by notice to the other propose amendments to the On-Train Metering Provisions, the inclusion of any additional provisions and/or any consequential amendments to any other provisions of this contract (the “**Proposed Amendments**”) in accordance with paragraphs 4.1.7 to 4.1.10 below.

4.1.7 A notice served under paragraph 4.1.6 shall:

(a) specify the Proposed Amendments and the date from which it is proposed that the Proposed Amendments will have effect; and

(b) specify the reasons for the Proposed Amendments and shall, where appropriate, include details of relevant data or documents which support the Proposed Amendments.

4.1.8 Following receipt of a notice referred to in paragraph 4.1.6, the parties shall endeavour to agree the Proposed Amendments.

4.1.9 If the parties fail to reach agreement on the Proposed Amendments within 28 days after service of the relevant notice, or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, the parties shall notify ORR. If ORR elects to determine the matter, the parties shall furnish ORR with such information and evidence as ORR

shall require to determine the matter and shall abide by any determination issued by ORR to accept, reject or modify the Proposed Amendments. If ORR does not so elect, the matter shall be referred for expert determination in accordance with Chapter I of the Access Dispute Resolution Rules. In such a case, the parties shall require:

- (a) that the expert's determination is delivered no later than 56 days after the date of referral of the matter to the expert;
- (b) the expert to establish such rules and procedures for the conduct of the determination as he sees fit having regard to that timescale;
- (c) the expert to give reasons for his determination; and
- (d) the expert to reach a determination that is fair and reasonable on the basis of the following criteria:
  - (i) the charges for electricity consumption charged to the Train Operator should be as accurate as reasonably possible; and
  - (ii) any relevant criteria and/or policy statement most recently published by ORR.

4.1.10 Any amendment to the contract in connection with the proposal referred to in paragraph 4.1.6 shall take effect only when ORR has given its consent to it in writing. Accordingly, as soon as reasonably practicable after any such amendment is agreed in accordance with paragraph 4.1.8 or determined in accordance with paragraph 4.1.9 (other than a determination by ORR pursuant to paragraph 4.1.9), the parties shall ensure that ORR is furnished with such amendment and such information and evidence as it shall require to determine whether or not to consent to the amendment.

*Right for ORR to issue On-Train Metering Provisions Review Notice*

4.1.11 An On-Train Metering Provisions Review Notice is a notice given to the parties by ORR:

- (a) requiring them to enter into negotiations in good faith to amend such On-Train Metering Provisions and make such consequential amendments and/or add such additional provisions to this contract relating to On-Train Metering as are specified in the notice;
- (b) after consultation with the parties, the Secretary of State and such other persons as it considers appropriate; and
- (c) containing its reasons for giving it.

4.1.12 As soon as reasonably practicable after the service of an On-Train Metering Provisions Review Notice, the parties shall begin and in good faith diligently pursue the negotiations in question.

4.1.13 If the parties reach agreement on the amendments in question, they shall send a copy of them to ORR for its consent, together with a note of the reasons for them and an explanation of how they are consistent with the purpose of and reasons for the On-Train Metering Provisions Review Notice as set out by ORR in the On-Train Metering Provisions Review Notice.

4.1.14 If the parties fail to reach agreement on the amendments in question within 56 days of the giving of an On-Train Metering Provisions Review Notice, either party may refer the matter to expert determination in accordance with Chapter I of the Access Dispute Resolution Rules. In such a case, the parties shall require:

- (a) that the expert's determination is delivered no later than 30 days after the date of referral of the matter to the expert;
- (b) the expert to establish such rules and procedures for the conduct of the determination as he sees fit having regard to that timescale;
- (c) the expert to give reasons for his determination; and
- (d) the expert to reach a determination that is fair and reasonable on the basis of the following criteria:
  - (i) the charges for electricity consumption charged to the Train Operator should be as accurate as reasonably possible; and
  - (ii) any relevant criteria and/or policy statement most recently published by ORR; and
  - (iii) the reasons for the service of the On-Train Metering Provisions Review Notice given by ORR in that notice.

4.1.15 If neither party wishes to refer the matter to expert determination in accordance with paragraph 4.1.14, the parties shall notify ORR. If ORR elects to determine the matter, the parties shall furnish ORR with such information and evidence as ORR shall require to determine the matter and shall abide by any determination issued by ORR in relation to any amendments to the On-Train Metering Provisions and/or any other provisions of this Contract pursuant to the On-Train Metering Provisions Review Notice. If ORR does not elect to determine the matter and it notifies the parties of this, the parties shall within 14 days of such notice refer the matter to expert determination in accordance with paragraph 4.1.14.

*Requirement for Office of Rail Regulation's consent*

4.1.16 Subject to paragraph 4.1.17, an amendment:

- (a) agreed under paragraph 4.1.13;
- (b) determined by an expert under paragraph 4.1.14;



shall have effect:

- (i) only if ORR has given its consent to it; and
- (ii) from such date as is specified in that consent (which may be retrospective).

Accordingly, as soon as reasonably practicable after any such amendment is agreed in accordance with paragraph 4.1.13 or determined in accordance with paragraph 4.1.14, the parties shall ensure that ORR is furnished with such amendment and such information and evidence as it shall require to determine whether or not to consent to the amendment.

#### *Office of Rail Regulation's Modification Notice*

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

- (a) specifying the changes which ORR requires be made to the proposed variations which have been:
  - (i) agreed under paragraph 4.1.8 or 4.1.13; or
  - (ii) determined by an expert following a reference under paragraph 4.1.9 or 4.1.14;
- (b) after consultation with the parties, the Secretary of State and such other persons as it considers appropriate; and
- (c) containing its reasons for giving it.

4.1.18 If a Modification Notice is given, this contract will have effect with the variations referred to in paragraph 4.1.17(a) as modified in accordance with the terms of the notice.

#### *Modifications to the EC4T Metering Rules*

4.1.19 If the EC4T Metering Rules are modified at any time, the provisions of Schedule 10 shall apply except that:

- (a) in paragraph 2.1 of Schedule 10, "Network Code" shall be read as "EC4T Metering Rules"; and
- (b) in paragraph 4.9(b) of Schedule 10, the words "Network Code under Condition C8 of that code" shall be read as "EC4T Metering Rules pursuant to the provisions contained therein."

#### *Strategy for the procurement of traction electricity*

4.2 At least three months prior to the start of each Relevant Year commencing on or after 1 April 2009, Network Rail shall consult with the Train Operator regarding a strategy for the procurement of traction electricity for the Train Operator in respect of that Relevant Year, and:

- (a) if Network Rail and the Train Operator agree on a strategy for the procurement of traction electricity, Network Rail will procure traction electricity for the Train Operator in accordance with that agreed strategy; or
- (b) if Network Rail and the Train Operator do not agree on a strategy for the procurement of traction electricity and the Train Operator has, during its consultation with Network Rail under this paragraph 4.2, notified Network Rail of the Train Operator's preferred strategy for the procurement of traction electricity and it is possible for Network Rail, acting reasonably, to implement that strategy, Network Rail will procure traction electricity for the Train Operator in accordance with the traction electricity procurement strategy so notified to Network Rail by the Train Operator; or
- (c) if Network Rail and the Train Operator do not agree on a strategy for the procurement of traction electricity and either (y) the Train Operator has not notified Network Rail of the Train Operator's preferred strategy for the procurement of traction electricity during its consultation with Network Rail in accordance with this paragraph 4.2, or (z) it is not possible for Network Rail, acting reasonably, to implement the Train Operator's preferred strategy for the procurement of traction electricity as notified to Network Rail during its consultation in accordance with this paragraph 4.2, Network Rail will:
  - (i) acting reasonably, determine the procurement strategy for traction electricity for the Train Operator, having regard to whatever information, if any, the Train Operator has supplied to Network Rail during its consultation under this paragraph 4.2; and
  - (ii) procure traction electricity for the Train Operator in accordance with that traction electricity procurement strategy.

4.3 Network Rail shall provide to the Train Operator within 30 days of the end of each calendar month in each Relevant Year, the actual cost of traction electricity consumed by railway vehicles operated by or on behalf of the Train Operator in the relevant calendar month against the budgeted amounts. Network Rail shall also provide to the Train Operator a provisional six month volume reconciliation by region before 30 October of each Relevant Year and a provisional nine month volume reconciliation by region before 30 January of each Relevant Year.

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

- 4.4 (a) If the Train Operator wishes to propose the introduction of On-Train Metering to measure traction electricity consumption in a vehicle or

vehicles of a vehicle type that the Train Operator operates for the purposes of being invoiced by Network Rail for traction electricity, it shall notify Network Rail of any required changes to the contract in connection with that proposal.

- (b) Any notice under sub-paragraph 4.4(a) shall be accompanied by information and evidence in reasonable detail supporting the changes proposed and setting out the reasons for those changes, and Network Rail shall respond in writing within 56 days of service of any such notice.
- (c) Promptly following any response served by Network Rail under sub-paragraph 4.4(b), the parties shall endeavour to agree whether the contract should be amended in connection with that proposal and, if so, the amendments.
- (d) If the parties fail to reach agreement within 90 days after service of the relevant notice, or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, the parties shall notify ORR. If ORR elects to determine the matter, the parties shall furnish ORR with such information and evidence as ORR shall require to determine the matter and shall abide by any determination issued by ORR. If ORR does not so elect, the matter shall be referred for resolution in accordance with the ADRR. In respect of any such dispute which is referred for resolution under the ADRR the parties shall agree in a Procedure Agreement, as defined in the ADRR, that the relevant ADRR Forum shall have regard to any relevant criteria and/or policy statement most recently issued by ORR.
- (e) Any amendment to the contract in connection with the proposal referred to in sub-paragraph 4.4(a) shall take effect only when it has been approved by ORR. Accordingly, as soon as reasonably practicable after any such amendment is agreed or determined in accordance with this paragraph 4.4 (other than a determination by ORR pursuant to sub-paragraph 4.4(d)), the parties shall ensure that ORR is furnished with such amendment and such information and evidence as it shall require to determine whether or not to approve the amendment.
- (f) Any amendment to the contract in connection with the proposal referred to in sub-paragraph 4.4(a) shall apply with effect from, subject to sub-paragraph 4.4(e), the date proposed by the Train Operator (unless otherwise agreed by the parties or determined by the ORR or the expert in relation to the proposal).

## **5. Volume and Cost Reconciliation**

5.1 Within 90 days after the end of each Relevant Year t, commencing with Relevant Year 01 April 2011 – 31 March 2012, Network Rail shall calculate two supplementary amounts S1<sub>t</sub> and S2<sub>t</sub> which shall be payable by or to the Train Operator in accordance with this paragraph 5.

5.2 S1<sub>t</sub> is derived from the following formula:

$$S1_t = \sum E_{tmog} \cdot \frac{(A_{gt} - L_{mogt} - L_{meqt} - L_{mugt})}{L_{mogt} + Z \cdot (L_{meqt} + L_{mugt})} + \sum (E_{tmeq} + E_{tmugAC} + E_{tmugDC}) \cdot Z \cdot \frac{(A_{gt} - L_{mogt} - L_{meqt} - L_{mugt})}{L_{mogt} + Z \cdot (L_{meqt} + L_{mugt})}$$

where:

$\Sigma$  means the summation across all Geographic Areas g for Relevant Year t for all train operators, as appropriate;

E<sub>tmog</sub> means the amount calculated in accordance with paragraph 4.1.2 of Part 2 of this Schedule;

A<sub>gt</sub> means the total actual electricity consumption (in kWh), if any, in Geographic Area g in Relevant Year t by or on behalf of all train operators, assessed by Network Rail (as accurately as possible) as being the appropriate proportion of the electricity consumption billed to Network Rail by its electricity suppliers in that area for traction electricity consumed in accordance with the terms for the purchase of traction electricity entered into by Network Rail;

L<sub>mogt</sub> means the total modelled traction electricity consumption charged to all train operators in Geographic Area g and in Relevant Year t which is derived from the following formula:

$$L_{mogt} = \sum C_i \cdot UE_{igt}$$

where:

$\Sigma$  means the summation across all train categories i and tariff bands j for Relevant Year t for all train operators, as appropriate;

C<sub>i</sub> means the calibrated modelled consumption rate (in kWh per Train Mile in relation to passenger electric multiple units and kWh per Gross Tonne Mile in relation to locomotive-hauled units and all freight traffic) for train category i shown in the Traction Electricity Consumption Rates List; and

$UE_{igt}$  means the actual volume of usage (in electrified Vehicle Miles in relation to passenger electric multiple units or Gross Tonne Miles in relation to locomotive hauled units and all freight traffic), if any, of trains operated in Relevant Year t by or on behalf of all train operators in train category i, in Geographic Area g, where relevant, in tariff band j and in Relevant Year t in respect of which charges for traction electricity consumption are payable based on modelled consumption rates pursuant to paragraph 4.1 or 4.1.2 (in the case of passenger operators) or paragraph 2.4.2 (in the case of freight operators) of each relevant train operator's track access contract;

$L_{megt}$  means the total metered traction electricity consumption charged to all train operators in Geographic Area g and Relevant Year t which is derived from the following formula:

$$L_{megt} = \sum [((CME_{igt} \cdot PF_i) - (RGB_{igt} \cdot PF_i)) \cdot (1 + \delta_i)]$$

where:

$\Sigma$  means the summation across all relevant train categories i for Relevant Year t for all train operators, as appropriate;

$CME_{igt}$  means the consumption of electricity (in kWh) by trains operated by or on behalf of all train operators in train category i, as measured by the On-Train Meters or as otherwise determined in accordance with the EC4T Metering Rules, in Geographic Area g and in Relevant Year t;

$PF_i$  means the Power Factor Correction for train category i;

$RGB_{igt}$  means the electricity (in kWh) generated by braking by railway vehicles operated by or on behalf of all train operators in train category i, as measured by the On-Train Meters or as otherwise determined in accordance with the EC4T Metering Rules, in Geographic Area g and in Relevant Year t; and

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

$L_{mugt}$  means the total amounts in respect of the Network Rail Distribution System Loss Factor, adjusted, where appropriate, for Power Factor Correction and Tolerance Factor, charged to all train operators in Geographic Area g and Relevant Year t which is derived from the following formula:

$$L_{mugt} = L_{mugtAC} + L_{mugtDC}$$

where:

$L_{mugtAC}$  is derived from the following formula:

$$L_{mugtAC} = \sum [((CME_{igtAC} \cdot PF_i) - (RGB_{igtAC} \cdot PF_i)) \cdot (1 + \delta_i)] \cdot \lambda_{ACg}$$

where:

$\Sigma$  means the summation across all train categories i for Relevant Year t for all train operators, as appropriate;

$CME_{igtAC}$  means the consumption of electricity (in kWh) from the AC System by trains operated by or on behalf of all train operators in train category i, as measured by the On-Train Meters or as otherwise determined in accordance with the EC4T Metering Rules, in Geographic Area g and in Relevant Year t;

$PF_i$  has the meaning given in paragraph 4.1.4(a) of Part 2 of this Schedule;

$RGB_{igtAC}$  means the electricity (in kWh) generated by braking by railway vehicles operated by or on behalf of all train operators on the AC System in train category i, as measured by the On-Train Meters or as otherwise determined in accordance with the EC4T Metering Rules, in Geographic Area g and in Relevant Year t;

$\lambda_{ACg}$  has the meaning given in paragraph 4.1.4(a) of Part 2 of this Schedule; and

$\delta_i$  has the meaning given in paragraph 4.1.4(a) of Part 2 of this Schedule;

$L_{mugtDC}$  is derived from the following formula:

$$L_{mugtDC} = \sum [(CME_{igtDC} - RGB_{igtDC}) \cdot (1 + \delta_i)] \cdot \lambda_{DCg}$$

where:

$\Sigma$  means the summation across all train categories i for Relevant Year t for all train operators, as appropriate;

$CME_{igtDC}$  means the consumption of electricity (in kWh) from the DC System by trains operated by or on behalf of all train operators in train category i, as measured by the On-Train Meters or as otherwise determined in accordance with the EC4T Metering Rules, in Geographic Area g and in Relevant Year t;

$RGB_{igtDC}$  means the electricity (in kWh) generated by braking by railway vehicles operated by or on behalf of all train operators on the DC System in train category i, as measured by the On-Train Meters or as otherwise determined in accordance with the EC4T Metering Rules, in Geographic Area g and in Relevant Year t;

$\lambda_{DCg}$  has the meaning given in paragraph 4.1.4(b) of Part 2 of this Schedule; and

$\delta_i$  has the meaning given in paragraph 4.1.4(b) of Part 2 of this Schedule;

Z has the value of 1 where  $(L_{megt} + L_{mugt})$  is greater than 90% of  $A_{gt}$  and 0 where  $(L_{megt} + L_{mugt})$  is equal to or less than 90% of  $A_{gt}$ ;

$E_{tme}$  means the amount calculated in accordance with paragraph 4.1.3 of Part 2 of this Schedule;

$E_{tmuAC}$  means the amount calculated in accordance with paragraph 4.1.4(a) of Part 2 of this Schedule; and

$E_{tmuDC}$  means the amount calculated in accordance with paragraph 4.1.4(b) of Part 2 of this Schedule.

5.3  $S2_t$  is derived from the following formula:

$$S2_t = (E_{tmo} + S1_t + E_{tme} + E_{tmuAC} + E_{tmuDC}) * (CS_t - CW_t) / CW_t$$

where:

- $S1_t$  means the supplementary amount in respect of the Train Operator for Relevant Year t calculated in accordance with paragraph 5.2 of Part 2 of this Schedule;
- $E_{tmo}$  has the meaning given in paragraph 4.1.2 of Part 2 of this Schedule;
- $E_{tme}$  has the meaning given in paragraph 4.1.3 of Part 2 of this Schedule;
- $E_{tmuAC}$  has the meaning given in paragraph 4.1.4(a) of Part 2 of this Schedule;
- $E_{tmuDC}$  has the meaning given in paragraph 4.1.4(b) of Part 2 of this Schedule;
- $CS_t$  means the total actual cost to Network Rail for traction electricity for each train operator whose access contract incorporates a provision in relation to  $S2_t$  in substantially similar terms to this paragraph 5.3 in Relevant Year t; and
- $CW_t$  means the total cost for traction electricity for each train operator whose access contract incorporates a provision in relation to  $S2_t$  in substantially similar terms to this paragraph 5 in the Relevant Year t as notified to the Train Operator by Network Rail which is derived from the following formula:

$$CW_t = \sum (E_t + S1_t)$$

where:

- $\sum$  means the summation across all train operators whose access contracts incorporate a provision in relation to  $S2_t$  in substantially similar terms to this paragraph 5 in Relevant Year t;
- $E_t$  means the summation of  $E_t$  (as defined in each relevant train operator's track access contract) for each train operator calculated in accordance with paragraph 5.2 of Part 2 of Schedule 7 (or the equivalent provision in each relevant train operator's access contract) across all Geographic Areas g for Relevant Year t; and
- $S1_t$  means (where applicable) the supplementary amount  $S1_t$  in respect of each train operator for Relevant Year t calculated in accordance with paragraph 5.2 of Part 2 of



Schedule 7 (or the equivalent provision in each relevant train operator's track access contract).

- 5.4 Network Rail shall, within 90 days after the end of Relevant Year t, provide to the Train Operator:
- (a) a statement of the amounts  $S1_t$  and  $S2_t$  (whether of a positive or negative amount);
  - (b) such background workings as may reasonably be required for a proper understanding of the calculation; and
  - (c) a certificate of the auditors of Network Rail confirming the accuracy of the calculation.
- 5.5 Within 30 days after the date upon which Network Rail shall have provided to the Train Operator the information referred to in paragraph 5.4, the amounts  $S1_t$  and  $S2_t$  shall be invoiced for payment as provided under this contract. If the aggregate of the amounts  $S1_t$  and  $S2_t$  is positive, the invoice shall be issued by Network Rail and payable by the Train Operator. If the aggregate of the amounts  $S1_t$  and  $S2_t$  is negative, Network Rail will issue a credit note to the Train Operator.

## 6 Capacity Charge

For the purposes of paragraph 1, the term  $K_t$  means an amount in respect of the Capacity Charge in Relevant Year t which shall be derived from the following formula:

$$K_t = \left[ \sum (Pg_{twd} * Tg_{twd}) + (Pg_{twe} * Tg_{twe}) \right]$$

where:

$\sum$  means the sum across all Service Coded Groups;

$Pg_{twd}$  means the Weekday rate per Service Coded Group g in respect of Relevant Year t shown in the List of Capacity Charge Rates and indexed in accordance with the following formula:

$$Pg_{\text{twd}} = Pg_{\text{twd} - 1} \left[ 1 + \frac{RPI_{t - 1}}{100} \right]$$

where:

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

but so that in relation to the Relevant Year t commencing on 1 April 2009,  $Pg_{\text{twd}}$  shall have the value for the Weekday rate per Service Coded Group g shown for the Train Operator in the List of Capacity Charge Rates; and in relation to the next following Relevant Year,  $Pg_{\text{twd}-1}$  shall have the same value;

$Pg_{\text{twe}}$  means the weekend rate per Service Coded Group g in respect of Relevant Year t shown in the List of Capacity Charge Rates and indexed in accordance with the following formula:

$$Pg_{\text{twe}} = Pg_{\text{twe} - 1} \left[ 1 + \frac{RPI_{t - 1}}{100} \right]$$

where:

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

but so that in relation to the Relevant Year t commencing on 1 April 2009,  $Pg_{\text{tw}}$  shall have the value for the weekend rate per Service Coded Group g shown for the Train Operator in the List of Capacity Charge Rates; and in relation to the next following Relevant Year,  $Pg_{\text{tw}-1}$  shall have the same value;

$Tg_{\text{twd}}$  means the actual Train Miles run on Weekdays by Services in Service Coded Group g in the Relevant Year t;

$Tg_{\text{twe}}$  means the actual Train Miles run on weekends by Services in Service Coded Group g in the Relevant Year t; and

**“Service Coded Group”** means a Service or collection of Services specified as such in the List of Capacity Charge Rates, and any Ancillary Movements relating to such Services.

## **7 Network Rail Rebate**

7.1 For the purpose of paragraph 1, the Network Rail Rebate in respect of any Relevant Year  $t$  ( $W_t$ ) is an amount (which shall not be a negative value) by way of a return of Track Charges paid in Relevant Year  $t-1$ , derived from the following formula:

$$W_t = \frac{RA_t \cdot F_t}{AF_t}$$

where:

$RA_t$  means the Rebatable Amount declared by Network Rail in relation to Relevant Year  $t-1$  under paragraph 7.2;

$F_t$  has the meaning ascribed to it in paragraph 1 as if references to “Relevant Year  $t$ ” in the definition of “ $F_t$ ” in paragraph 1 were references to “Relevant Year  $t-1$ ”; and

$AF_t$  means the Aggregate Fixed Charge in Relevant Year  $t-1$ , calculated as if references to “Relevant Year  $t$ ” in the definition of “Aggregate Fixed Charge” and in the definition of “ $F_t$ ” in paragraph 1 were references to “Relevant Year  $t-1$ ”.

7.2 The Rebatable Amount shall be the amount, if any:

- (a) which represents such proportion of Network Rail’s total income for Relevant Year  $t-1$  as it reasonably considers that it does not require in order to discharge its obligations under its network licence and any contracts to which it is a party;
- (b) which Network Rail, in its discretion, considers it appropriate, having regard to the matters specified in paragraph 7.3, to rebate as an amount representing a return of Track Charges payable by persons who provide services for the carriage of passengers by railway under the relevant access agreements to which they are parties; and
- (c) which Network Rail notifies as such to ORR before the end of each Relevant Year  $t-1$ .

7.3 In considering the amount of the Rebatable Amount in any Relevant Year, Network Rail shall have regard to:

- (a) its obligations under its network licence and any contracts to which it is a party;
  - (b) the extent to which its efficiency and economy in discharging the obligations referred to in paragraph 7.3(a) matches or exceeds any assumption which ORR made in the 2008 Final Determinations;
  - (c) its current and foreseeable future financial position; and
  - (d) the need for long term investment in the Network.
- 7.4 No amount of Track Charges shall be rebated under this paragraph 7 unless ORR, having regard to the matters:
- (a) to which Network Rail is to have regard under paragraph 7.3; and
  - (b) in respect of which duties are imposed on it under section 4 of the Act,

has consented to such rebate.

- 7.5 Paragraphs 3.2.4 and 3.2.5 shall apply to a payment of Network Rail Rebate in the same way as they apply in relation to a payment of an Efficiency Benefit Share, as if references in paragraphs 3.2.4 and 3.2.5 to “Efficiency Benefit Share” and “EBS payment” were instead references to, respectively, “Network Rail Rebate” and “Network Rail Rebate payment”.

## **8 Electrification Asset Usage Charge**

For the purposes of paragraph 1, the term  $EAV_t$  means an amount for electrification asset usage which is derived from the following formula:

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

where:

$\sum$  means the summation across all route types;

$EV_{tk}$  means an amount in respect of the Electrification Asset Usage Charge per electrified Vehicle Mile on route type k for Relevant Year t which is derived from the following formula:

$$EV_{tk} = EV_{tk-1} \cdot \left[ 1 + \frac{RPI_{t-1} - 0}{100} \right]$$

where:

RPI<sub>t-1</sub> means the percentage change (whether of a positive or negative value) between the Retail Prices Index published or determined with respect to November in Relevant Year t-1 and the index published or determined with respect to November in Relevant Year t-2,

but so that in relation to the Relevant Year commencing on 1 April 2009, EV<sub>tk</sub> shall have, in respect of each electrified Vehicle Mile on route type k, the value per electrified Vehicle Mile for the Electrification Asset Usage Charge set out in the Track Usage Price List; and in relation to the next following Relevant Year EV<sub>tk-1</sub> shall have the same value; and

UV<sub>tk</sub> means the actual number of electrified Vehicle Miles on route type k in Relevant Year t operated by or on behalf of the Train Operator.

## **9 Changes to the List of Capacity Charge Rates, Traction Electricity Consumption Rates List and Track Usage Price List**

9.1 No supplement to the Traction Electricity Consumption Rates List or Track Usage Price List, and no change to the List of Capacity Charge Rates, shall have effect unless the supplement or change has been:

- (a) determined in accordance with the procedure set out in this paragraph 9; or
- (b) agreed between the parties,

and ORR shall have given its consent to the supplement or change.

9.2 Either of the Train Operator or Network Rail shall be entitled to propose that:

- (a) the Traction Electricity Consumption Rates List shall be supplemented or amended so as to include modelled consumption rates in respect of regenerative braking for any new or additional train category or any relevant route by tariff band (any such being a “relevant category”);

- (b) the Track Usage Price List shall be amended so as to include a vehicle category which is not included in the list;
  - (c) the List of Capacity Charge Rates shall be amended so as to take account of changes in the pattern and number of Services; or
  - (d) the Traction Electricity Consumption Rates List or Track Usage Price List shall be amended to correct any manifest error.
- 9.3 Any proposition of a kind referred to in paragraph 9.2 shall be made by notice to the other party and shall be accompanied by a specification in reasonable detail of the change proposed and the reasons for it. The parties shall thereafter negotiate in good faith the necessary supplements or changes to the list in question.
- 9.4 If the parties shall have failed to agree such supplements or changes within 45 days of the date of the notice given under paragraph 9.3, either party shall be entitled to refer the matter for resolution in accordance with the ADRR.
- 9.5 If the matter is referred for resolution under paragraph 9.4, the parties shall agree in a Procedure Agreement, as defined in the ADRR, that the remit of the relevant ADRR Forum shall be to determine:
  - (a) whether any such new relevant category or vehicle category (as the case may be) should be added to the list in question or whether changes in the pattern and/or number of Services warrant a change to the list in question; and, if so,
  - (b) which new categories should be added and what prices and/or modelled consumption rates and/or appropriate discounts should be included in relation to each such category or what change to the List of Capacity Charge Rates should be made.
- 9.6 In determining the matter referred to it under paragraph 9.4, the relevant ADRR Forum shall be required by the parties to reach a decision which is fair and reasonable to them, having regard to:
  - (a) the matters in respect of which duties are imposed on ORR by section 4 of the Act; and
  - (b) the criteria which ORR shall have most recently published (and identified as such) in relation to charging for permission to use track.
- 9.7 The parties shall procure that any determination by a relevant ADRR Forum or resolution agreed by the parties shall be delivered to ORR within 7 days after the date of the determination or resolution.

9.8 No determination by a relevant ADRR Form or resolution agreed by the parties shall have effect without the consent of the ORR.

9.9 If ORR gives its consent to:

- (a) the determination of a relevant ADRR Forum; or
- (b) a supplement of the Traction Electricity Consumption Rates List or the Track Usage Price List, or a change to the List of Capacity Charge Rates, agreed between the parties,

the supplement or change in question shall have effect from such date as ORR shall determine by notice to the parties.

## **10 Payment of access charges**

### *10.1 Payment of access charges*

(a) The Train Operator shall pay or procure the payment to Network Rail of:

- (i) the Variable Track Usage Charge;
- (ii) the Traction Electricity Charge;
- (iii) the Capacity Charge;
- (iv) the Electrification Asset Usage Charge; and
- (v) the Additional Permitted Charges,

attributable to any Period as invoiced by Network Rail on or after expiry of each such Period within 21 days of the invoice date or 28 days after the end of the Period, whichever is later.

(b) The Train Operator shall pay or procure the payment to Network Rail of that part of the Fixed Track Charge attributable to any Period as invoiced by Network Rail on or after the expiry of each such Period within 7 days of the invoice date or 7 days after the end of the Period, whichever is later.

(c) Not used.

(d) Any invoice issued by Network Rail under paragraph 5.5 of Part 2 (relating to modelled and actual rates of electricity consumption) shall be payable by the Train Operator within 21 days of the relevant invoice date.

## 10.2 *Train Consist Data*

Network Rail shall calculate the Variable Charges payable by the Train Operator in respect of each Period using the Train Consist Data supplied by the Train Operator and, to the extent such Train Consist Data is not available to Network Rail, the Default Train Consist Data.

## 10.3 *Invoices and right to object to invoices*

- (a) Network Rail will notify the Train Operator on a weekly basis of the train movements for which Default Train Consist Data has been used to establish the Variable Charges payable by the Train Operator. At either party's request, the parties shall consult with a view to substituting Train Consist Data for Default Train Consist Data but such consultation shall not delay the issue by Network Rail of the invoice for the Variable Charges in respect of the Period concerned.
- (b) For each Period, Network Rail shall be entitled to invoice the Train Operator for Variable Charges in respect of any and all train movements operated by the Train Operator during that Period based on either:
  - (i) Train Consist Data provided by the Train Operator in respect of any train movement at or prior to the time that such train movement is completed; or
  - (ii) Train Consist Data agreed by the parties under paragraph 10.3(a) in respect of any train movement; or
  - (iii) Train Consist Data provided by the Train Operator in respect of any train movement (other than any train movement where the Specified Equipment used in operating the relevant movement is loco hauled) by the end of the day on which such train movement has been completed,

or (to the extent that (i) or (ii) or (iii) above do not apply) Default Train Consist Data. Each such invoice will be payable in accordance with the provisions of paragraph 10.1.

- (c) Either party shall be entitled, at any time prior to the later of 2359 hours on the fourteenth day following the expiration of the relevant Period and seven days following receipt by the Train Operator of the relevant invoice, to notify the other that it objects to any Train Consist Data (including, where applicable, the use of Default Train Consist Data) on which the whole or any part of the Variable Charges included in the relevant invoice are based and any such notice shall specify in reasonable detail what that party believes to be the Train



Consist Data for the relevant train movement(s) (“notice of objection”). In the absence of any notice of objection being served within such time the Train Consist Data used in the relevant invoice shall be final and binding on the parties.

- (d) The parties shall seek to agree the Train Consist Data specified in any notice of objection and any consequential financial adjustment required to the relevant invoice. If the parties are unable to agree such Train Consist Data within 14 days following receipt of a notice of objection, either party may refer the matter for resolution in accordance with the ADRR:
- (e) Within seven days of any Train Consist Data being agreed or determined in accordance with paragraph 10.3(d), Network Rail shall, if any consequential or financial adjustment of the relevant invoice is required, issue a further invoice to, or (as the case may be) a credit note in favour of, the Train Operator in the amount of the relevant adjustment. The invoice or credit note shall be payable at the same time as the invoice for Variable Charges for the relevant Period or, if issued later than 21 days after the end of the relevant Period, within seven days after the date of its issue.
- (f) The actual volume of usage used to calculate any supplementary amount payable under paragraph 5 of Part 2 shall be established on the basis of the Train Consist Data and the Default Train Consist Data applied in calculating the Variable Charges for each of the Periods in Relevant Year t as adjusted in accordance with paragraph 10.3(d) on or before 90 days after the end of Relevant Year t.
- (g) Where, as a result of any invoice or credit note issued pursuant to paragraph 10.3, any sum of money which has been paid shall become repayable or any sum of money which has been unpaid shall become payable the party to whom such sum shall be paid shall be paid or allowed interest at the Default Interest Rate on such sum from the date when it (if repayable) was paid or the date when such sum (if payable) ought to have been paid until the date of payment or repayment.

#### *10.4 Unrepresentative Train Consist Data*

- (a) If at any time during this contract either party considers the Default Train Consist Data specified in Appendix 7C is not representative of the Train Operator’s Services and in particular, but without limitation, the type(s) of railway vehicles then in use and the regular number of carriages forming part of those railway vehicles in the operation of its Services, either party shall be entitled on written notice to the other to request that the Default Train Consist Data be amended. Any such

request shall specify in reasonable detail the grounds for the request and the proposed amendments to the Default Train Consist Data.

- (b) The parties shall endeavour to reach agreement on any amendments to the Default Train Consist Data within 21 days of the date of the request referred to in paragraph 10.4(a) and if the parties are unable to agree such amendments within such time period, either party may refer the matter for resolution in accordance with the ADRR.
- (c) Upon the earlier of agreement between the parties or determination by a relevant ADRR Forum, the parties shall notify ORR of the proposed amendments to the Default Train Consist Data and, subject to ORR not objecting to the proposed amendments within 14 days (the "14 day period") of receipt of the notification by ORR, such amendments shall take effect from the first day of the next Period following the earlier of ORR confirming its consent to the proposed amendments and the expiry of the 14 day period. If ORR objects to the proposed amendments within the 14 day period, the parties shall endeavour to reach agreement with ORR on the appropriate amendments, if any, to the Default Train Consist Data which shall then take effect on the first day of the Period next following that in which agreement is reached.

#### *10.5 Disputed amounts repayment and interest rate*

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

### **PART 3: NOT USED**

## **PART 3A: ENGLISH & WELSH GRANT DILUTION**

### **1 Grant Amounts**

#### *1.1 Basic Values and Payment Dates*

For the purposes of this Part 3A:

- (a) the Basic Values are the amounts by way of grant under section 6 of the Railways Act 2005 specified in the Deed of Grant as payable by the Secretary of State to Network Rail; and
- (b) the Payment Dates are the dates set out in the Deed of Grant for the payment of grant by the Secretary of State in each of the years 2009, 2010, 2011, 2012, 2013 and 2014, or such other dates for the payment of such grants as may be stipulated in the Deed of Grant.

#### *1.2 Indexation*

For the purposes of this Part 3A, the Grant Amount for each Payment Date is the Basic Value specified in the Deed of Grant as payable on that date, adjusted in accordance with any applicable indexation provisions of the Deed of Grant.

### **2 English & Welsh Grant Dilution**

#### *2.1 Meaning of English & Welsh Grant Dilution*

For the purposes of this Part 3A, there shall be an “**English & Welsh Grant Dilution**” in respect of a Payment Date if:

- (a) the Secretary of State fails, for any reason, to pay the whole or any part of the Grant Amount on or before that Payment Date; or
- (b) the payment of the whole or any part of the Grant Amount in respect of that Payment Date is:
  - (i) subject to the performance by Network Rail or any other person of any obligation;
  - (ii) subject to the exercise by the Secretary of State or any other person of any discretion; or
  - (iii) contingent upon the happening of any event or circumstance, or any act or omission of any person.

#### *2.2 Meaning of English & Welsh Grant Dilution Date*

In respect of any English & Welsh Grant Dilution:

- (a) if the English & Welsh Grant Dilution is of the kind referred to in paragraph 2.1(a), the English & Welsh Grant Dilution Date shall be the Payment Date in respect of which the Secretary of State fails to pay the whole or any part of the Grant Amount due on that date; and
- (b) if the English & Welsh Grant Dilution is of the kind referred to in paragraph 2.1(b), each Payment Date which falls during any period during which the payment of the whole or any part of a Grant Amount is:
  - (i) subject to any of the matters specified in paragraph 2.1(b)(i) or (ii); or
  - (ii) contingent upon any of the matters specified in paragraph 2.1(b)(iii),

shall be an English & Welsh Grant Dilution Date.

### **3. English & Welsh Grant Compensation Amount**

#### *3.1 Payment obligation*

If an English & Welsh Grant Dilution occurs:

- (a) Network Rail shall notify the Train Operator and ORR that an English & Welsh Grant Dilution has occurred, and the circumstances in which it has occurred; and
- (b) the Train Operator shall:
  - (i) send a copy of the notification it has received from Network Rail under paragraph 3.1(a) to any Passenger Transport Executive within whose area it provides services for the carriages of passengers by railway;
  - (ii) if the English & Welsh Grant Dilution is of the kind described in paragraph 2.1(a), pay Network Rail an English & Welsh Grant Compensation Amount calculated in accordance with paragraph 3.2 three months after the English & Welsh Grant Dilution Date; and
  - (iii) if the English & Welsh Grant Dilution is of the kind described in paragraph 2.1(b), pay Network Rail an English & Welsh Grant Compensation Amount calculated in accordance with paragraph

3.2 three months after each English & Welsh Grant Dilution Date.

### 3.2 Calculation

Any English & Welsh Grant Compensation Amount payable under paragraph 3.1 is an amount calculated in accordance with the following formula:

$$GC = (GA_p - P) \cdot \frac{F_t}{AF_t} \cdot (1.0575^{0.25})$$

where:

GC means the English & Welsh Grant Compensation Amount;

GA<sub>p</sub> means the Grant Amount for the Payment Date which is the same date as the English & Welsh Grant Dilution Date;

P means:

- (a) if the English & Welsh Grant Dilution is of the kind described in paragraph 2.1(a), the amount of any whole or part payment of the Grant Amount which Network Rail certifies to the Train Operator, within 7 days after the English & Welsh Grant Dilution Date, that it has received from the Secretary of State; and
- (b) if the English & Welsh Grant Dilution is of the kind described in paragraph 2.1(b), zero;

F<sub>t</sub> has the meaning ascribed to it in paragraph 1 of Part 2; and

AF<sub>t</sub> means the Aggregate Fixed Charge in Relevant Year t.

## **PART 4: Not Used**

## **PART 5: ADDITIONAL PERMITTED CHARGES**

### **1 Obligation to pay**

Network Rail may make and the Train Operator shall be required to pay under this contract, in addition to Track Charges, only such Additional Permitted Charges as are enumerated in paragraph 2.

### **2 Definition**

Additional Permitted Charges shall comprise the following:

- (a) such amounts payable to Network Rail as are specified in, or calculated in accordance with, Schedule 4;
- (b) such amounts payable to Network Rail as are specified in, or calculated in accordance with, Schedule 8; and
- (c) such amounts payable to Network Rail pursuant to any provision of the Network Code.

## **PART 6: SUPPLEMENTAL PROVISIONS**

Each invoice or credit note issued by Network Rail to the Train Operator shall contain or be accompanied by separate itemisation of the following charges and other information (as relevant) in respect of the period covered by the invoice or credit note:

- (a) the daily amount of the Fixed Track Charge and the number of days covered by the invoice;
- (b) the rate of Variable Track Usage Charge and the relevant number of Vehicle Miles applicable to vehicles for each service so charged;
- (c) the rate of Traction Electricity Charge and the number of Vehicle Miles applicable to vehicles for each service or Gross Tonne Miles applicable to units for each service so charged;
- (d) the amount of the Electrification Asset Usage Charge and the number of days covered by the invoice;
- (e) not used;
- (f) not used;
- (g) the amount of any Efficiency Benefit Share;
- (h) the amount of any sum  $W_t$  payable as provided in paragraph 7 of Part 2;
- (i) the amount of any sum  $S1_t$  and/or  $S2_t$  payable as provided in paragraph 5 of Part 2;
- (j) the amount of any sum  $K_t$  payable as provided in paragraph 6 of Part 2; and
- (k) in respect of any Additional Permitted Charge, separately the amount payable in respect of each head of charge for Additional Permitted Charges.

## **PART 7: FUTURE ACCESS CHARGES REVIEWS**

### **1 General**

ORR may carry out one or more access charges reviews of all or part of this contract as follows:

- (a) an access charges review such that amendments to this contract to give effect to the conclusions of such an access charges review come into operation on and from 1 April 2014 or such later date as may be specified in that review; and
- (b) as provided in paragraph 2 (and only as provided in paragraph 2), an access charges review such that amendments to this contract to give effect to the conclusions of such an access charges review come into operation before 1 April 2014.

### **2 Access charges reviews capable of coming into operation before 1 April 2014**

2.1 ORR may carry out an access charges review in relation to any relevant part or parts of this contract at any time:

2.1.1:

- (a) where it considers that there has been a material change, other than an excluded change, in the circumstances of Network Rail or in relevant financial markets or any part of such markets; or
- (b) at Network Rail's request, where Network Rail considers that it is unable, or is likely to become unable, in the next eighteen month period, to finance itself efficiently; or
- (c) at Network Rail's request, where in any Review Period, the value of the Adjusted Interest Cover Ratio (AICR) derived from the following formula is less than or equal to 1.4:

$$AICR = \frac{1 - 2 - 3 - 4}{5}$$

where:

- 1 means Network Rail's projected income in that Review Period;

- 2 means Network Rail's projected total expenditure (excluding Network Rail's projected renewals expenditure and projected enhancements expenditure to the extent that these are funded through income or the Regulatory Asset Base) in that Review Period;
- 3 means the projected corporation tax payable in that Review Period;
- 4 means the regulatory amortisation assumption made by ORR in relation to that Review Period as specified in Table 16.3 of the 2008 Final Determinations; and
- 5 means the projected net interest payable by Network Rail on its financial indebtedness in that Review Period,

provided that, where part only of a Financial Year falls within the relevant Review Period, each of the component elements of this formula shall be attributed to that Review Period on a pro rata basis reflecting the proportion of that Financial Year falling within that Review Period; and

2.1.2 where ORR considers that there are compelling reasons to initiate an access charges review, having due regard to its duties under section 4 of the Act, including in particular the duty to act in a manner which it considers will not render it unduly difficult for persons who are holders of network licences to finance any activities or proposed activities of theirs in relation to which ORR has functions under or by virtue of Part I of the Act.

### *3. Definitions and interpretation:*

In this Part 7:

- (a) “**corporation tax**” means the amount of corporation tax payable by Network Rail in accordance with the Income and Corporation Taxes Act 1988 net of any group relief;
- (b) “**enhancements expenditure**” has the meaning ascribed to it in the Regulatory Accounting Guidelines dated March 2008;
- (c) “**net interest payable**” is:
  - (i) interest, issuance costs and financing fees payable by Network Rail; less



(ii) interest receivable by Network Rail,

in each case, on an accruals basis,

and for these purposes, any calculation of interest

(iii) shall treat all amounts payable and receivable under interest rate and foreign exchange derivative transactions as though such transactions fully qualified for hedge accounting whether or not they in fact do so

but:

(iv) shall not include:

(A) capital accretion on index-linked debt; or

(B) interest that is payable but rolled-up under intercompany loan arrangements;

(d) “**renewals expenditure**” has the meaning ascribed to it in the Regulatory Accounting Guidelines dated March 2008;

(e) “**Review Period**” means a period commencing at any time and ending 36 consecutive months later, provided that if a period of 36 consecutive months would, but for this proviso, extend beyond 31 March 2014, the relevant Review Period shall be deemed to end, and shall end on 31 March 2014;

(f) “**total expenditure**” means any cost Network Rail incurs operating, maintaining, renewing and enhancing the Network where, for the purposes of this definition, the cost is net of other operating income treated by ORR as an operating cost in Table 16.3 of the 2008 Final Determinations;

(g) “**income**” is as provided in Annex B to the Regulatory Accounting Guidelines dated March 2008 except that income shall not include the final bullet of paragraph 9 of Annex B being “other income – income generated by [Network Rail] from sources other than those described above.”;

(h) Any calculation of income, expenditure and corporation tax made under or in connection with paragraph 2.1 shall be carried out on an accruals basis; and

- (i) References to ORR carrying out an access charges review shall be construed as including references to its initiating implementation of that review.

**PART 8: NOT USED**

## **APPENDIX 7A**

Not Used

## APPENDIX 7B

### The Geographic Areas

The table below describes the Geographic Areas g for the purposes of Traction Electricity Charge calculations.

<b>ESTA</b>	<b>Traction electricity Geographic Area / Tariff Zone</b>	<b>Description</b>
M	Merseyside	Comprises the Merseyside third rail electrified system between Liverpool, Southport, Ormskirk, Kirkby, Hunts Cross, Ellesmere Port, Chester, New Brighton and West Kirby
N	Midland Main Line	Comprises the overhead line electrified routes from London St Pancras, Farringdon and Moorgate (Midland) to Bedford
O	London Tilbury & Southend	Comprises the overhead line electrified London Tilbury and Southend routes from Fenchurch Street to Shoeburyness via Laindon, Rainham and Chafford Hundred; the route from Barking to Forest Gate Junction; and the route between Gas Factory Junction and Bow Junction
P	Great Eastern	Comprises the electrified Great Eastern Main Line routes from Liverpool Street to Bow Junction, Upminster, Southend Victoria, Southminster, Braintree, Sudbury, Clacton, Walton-on Naze, Harwich Town and Norwich; the West Anglia route from Liverpool Street to Hackney Downs station; the Lea Valley Line between Stratford and Coppermill Junction, and the ac & dc section of the North London Line route between Stratford and York Way neutral section (north of Kings Cross).

ESTA	Traction electricity Geographic Area / Tariff Zone	Description
Q	West Anglia	Comprises the electrified West Anglia routes from Hackney Downs station to Chingford, Enfield Town, Hertford East, Stansted Airport, Cambridge and Kings Lynn and the electrified route between Cambridge Junction (on the East Coast Main Line near Hitchin) and Cambridge
R	East Coast Main Line South	Comprises the electrified East Coast Main Line from Kings Cross to the neutral section at Tallington (between Peterborough and Grantham), the electrified route between Moorgate and Finsbury Park; the electrified route between Canonbury West Junction and Finsbury Park; and the Kings Cross Incline between Camden Road East Junction and Freight Terminal Junction.
A	East Coast Main Line Central	Comprises the electrified East Coast Main Line between the neutral sections at Tallington (between Peterborough and Grantham), South Kirkby and Hambleton Junction (between Doncaster and York).
B	East Coast Main Line North	Comprises the electrified East Coast Main Line between the neutral sections at Hambleton Junction (between Doncaster and York) and Chathill (between Alnmouth and Belford).
C	East Coast Main Line Leeds	Comprises the electrified East Coast Main Line between the neutral section at South Kirkby and Leeds, Bradford and Skipton.
S	Scotland Glasgow	Comprises the electrified routes in Scotland between the neutral sections at Coatbridge, Rutherglen, Bishopston, Lochwinnoch & Carstairs

<b>ESTA</b>	<b>Traction electricity Geographic Area / Tariff Zone</b>	<b>Description</b>
D	Scotland East	Comprises the electrified routes in Scotland between the neutral sections at Chathill (between Alnmouth and Belford) and Auchengray (between Edinburgh & Carstairs).
E	Scotland North & West	Comprises the electrified routes in Scotland on the North Clyde between the neutral sections at Coatbridge & Rutherglen, the routes from Bishopston neutral section to Gourock & Wemyss Bay and the routes from Lochwinnoch neutral section to Ayr & Largs.
F	Scotland WCML	Comprises the electrified routes in Scotland between the neutral sections at Penrith, Carstairs and Auchengray (between Edinburgh & Carstairs).
T	West Coast Main Line South	Comprises the West Coast Main Line routes from Euston to the neutral sections at Berkswell and Nuneaton; the third rail electrified lines from Euston to Watford Junction; the West London Line to the North Pole junction; the North London Line between South Acton and York Way (north of Kings Cross) and the route between the Primrose Hill tunnels and Camden Road
G	West Coast Main Line Central	Comprises the West Coast Main Line routes between Nuneaton and Liverpool bounded by the neutral sections at Nuneaton, Queensville (Stafford), Stone – Colwich, Stone - Norton Bridge, Kidsgrove, Chelford and Weaver Junction.
H	West Coast Main Line West Midlands	Comprises the West Coast Main Line routes around Birmingham between the neutral sections at Berkswell and Queensville (Stafford).

<b>ESTA</b>	<b>Traction electricity Geographic Area / Tariff Zone</b>	<b>Description</b>
I	West Coast Main Line Manchester	Comprises the West Coast Main Line routes between Manchester and Stone bounded by the neutral sections at Stone – Colwich, Stone - Norton Bridge, Kidsgrove, Chelford
J	West Coast Main Line North	Comprises the West Coast Main Line routes between Weaver Junction and Penrith (neutral sections).
U	Southern	Comprises all third rail electrified routes south from Farringdon, Cannon Street, Charing Cross, London Bridge, Waterloo and Victoria, covering the international route as far as the Network Rail/Eurotunnel boundary; the West London Line to the south of North Pole junction; and the North London Line between Richmond and Acton Central
V	Great Western	Comprises the electrified route from Paddington to Heathrow Airport
<b>ESTA</b>	<b>Traction electricity Geographic Area / Tariff Zone</b>	<b>Description</b>

## APPENDIX 7C

### Default Train Consist Data

TRAIN SERVICE CODE	TYPE OF TRAIN MOVEMENT	DEFAULT TRAIN CONSIST DATA
22710000	Train movement(s) between Farringdon/ / St Pancras and Bedford/ Luton/ St Albans to and from Moorgate Thameslink or the Brighton Main Line	2 x class 319 Electric Multiple Unit 2 Motor Coach and 6 Trailer Coaches
22710001	Train movement(s) between Farringdon/ St Pancras and Bedford/ Luton/ St Albans to and from the Sutton Loop	2 x class 319 Electric Multiple Unit 2 Motor Coaches and 6 Trailer Coaches
22710002	Train movement(s) between Farringdon/ St Pancras / and Bedford/ Luton/ St Albans to and from Moorgate Thameslink or the Brighton Mainline	2 x class 319 Electric Multiple Unit 2 Motor Coaches and 6 Trailer Coaches
22711000	Train movement(s) between Farringdon / Blackfriars and Brighton/ Gatwick Airport/ Three Bridges / East Croydon	2 x class 319 Electric Multiple Unit 2 Motor Coaches and 6 Trailer Coaches
22712000	Train movement(s) between Sutton/ Streatham/ Wimbledon/ Tulse Hill and Farringdon	2 x class 319 Electric Multiple Unit 2 Motor Coaches and 6 Trailer Coaches
21713000	Train Movements between King's Cross or Moorgate and or via Welwyn Garden City (Stopping Services).	1 x Class 313 Electric Multiple Unit 2 Motor Coaches and 1 trailer



<b>TRAIN SERVICE CODE</b>	<b>TYPE OF TRAIN MOVEMENT</b>	<b>DEFAULT TRAIN CONSIST DATA</b>
21714000	Train Movements on the Hertford Loop between King's Cross or Moorgate and Hertford North, Stevenage and Letchworth Garden City.	2 x Class 313 Electric Multiple Unit 4 Motor Coaches and 2 Trailer Coaches
21716000	Train Movements between King's Cross and Letchworth Garden City/Royston (stopping) and Cambridge (slow) stopping at all intermediate stations between Royston and Cambridge	2 x Class 317 Electric Multiple Unit 2 Motor Coaches and 6 Trailer Coaches
21715000	Train Movements between King's Cross, Cambridge (non-stop and semi-fast) and King's Lynn	1 x Class 365 Electric Multiple Unit 2 Motor Coaches and 2 trailers
21717000	Train Movements between King's Cross and Huntingdon or Peterborough.	1 x Class 317 Electric Multiple Unit 1 Motor Coaches and 3 Trailer Coaches
22709000	Train movement(s) between Farringdon/ Blackfriars and Kentish Town	2 x Class 319 Electric Multiple Unit 2 motor Coach and 6 Trailer Coaches
21718001	Non revenue earning trains (GN Route)	1 x Class 317 Electric Multiple Unit 1 Motor Coach and 3 Trailer Coaches
21718002	Non revenue earning trains (TL Route)	1 x class 319 Electric Multiple Unit 1 Motor Coach and 3 Trailer Coaches

## APPENDIX 7D

### Categories of metered trains for the purposes of paragraph 4.1.1 of Part 2

Vehicle Class	Vehicle ID	Traction type
319	004	AC/DC
319	366	AC/DC
365	504	AC
365	537	AC
365	539	AC