

TRACK ACCESS CONTRACT (PASSENGER SERVICES)

Dated

Between

NETWORK RAIL INFRASTRUCTURE LIMITED

and

EUROSTAR INTERNATIONAL LIMITED

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THIS CONTRACT is made the

day of

2008

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) Eurostar International Limited, a company registered in England under number 2462001 having its registered office at Times House, Regent Quarter, Bravingtons Walk, London, N1 9AW (the “Train Operator”).

WHEREAS:

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

IT IS AGREED AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

In this contract unless the context otherwise requires:

“**Access Agreement**” has the meaning ascribed to it in Part A of the Network Code;

“**Access and Management Regulations**” means the Railways Infrastructure (Access and Management) Regulations 2005, as such shall be amended from time to time;

“**access charges review**” has the meaning ascribed to it in paragraph 1(1) of Schedule 4A to the Act;

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

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

“**Act**” means the Railways Act 1993;

“**Affected Party**” has the meaning ascribed to it in Clause 17.1;

“**Affiliate**” means, in relation to any company:

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

and for these purposes “holding company” and “subsidiary” have the meanings ascribed to them in section 736 of the Companies Act 1985;

“**Ancillary Movements**” has the meaning ascribed to it in Part D of the Network Code;

“Applicable Engineering Access Statement” means the Engineering Access Statement in force in respect of the Routes on 01 April 2009, as from time to time amended or replaced under Part D of the Network Code;

“Applicable Timetable Planning Rules” means the Timetable Planning Rules in force in respect of the Routes on 01 April 2009, as from time to time amended or replaced under Part D of the Network Code;

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

“Arbitrator” has the meaning given to that term in the Disputes Resolution Agreement;

“Ashford East Boundary” means the boundary of HS1 and the Network east of Ashford International station;

“Ashford West Boundary” means the boundary of HS1 and the Network west of Ashford International station;

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

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

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

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

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

“Contract Year” means each yearly period commencing on 01 April 2009 and subsequently on each anniversary of such date;

“CTRL Project” means the design, construction, financing, maintenance and operation of HS1;

“D-X” has the meaning ascribed to it in Part D of the Network Code;

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

“Disputes Resolution Agreement” means the agreement of that name dated 18 February 1999 (as amended from time to time) and made between the Secretary of State, LCR, Railtrack Group PLC and others;

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

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

“Event of Default” means a Train Operator Event of Default or a Network Rail Event of Default;

“New Working Timetable” means, in respect of any day, the version of the Working Timetable for that day provided by Network Rail in accordance with Condition D2.7.1, as amended pursuant to Condition D2.7.4;

“Expiry Date”^{“4th”} means Principal Change Date 2022;

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

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

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

“HS1” means that part of the rail link between London St Pancras and Cheriton (and for the purpose of this definition, “rail link” shall have the same meaning as in section 56 of the Channel Tunnel Rail Link Act 1996);

“Infrastructure Manager” has the meaning ascribed to “infrastructure manager” in the Access and Management Regulations except where the functions and obligations of the Infrastructure Manager pass to an allocation body by virtue of regulation 16(3) of the Access and Management Regulations and in these circumstances a reference to an Infrastructure Manager shall be a reference to the relevant allocation body;

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

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

- (a) any step which has a reasonable prospect of success is taken by any person with a view to its administration under Part II of the Insolvency Act 1986;
- (b) it stops or suspends or threatens to stop or suspend payment of all or a material part of its debts, or is unable to pay its debts, or is deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986, except that in the interpretation of this paragraph:
 - (i) section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for “£750” there were substituted “£100,000” or such higher figure as the parties may agree in writing from time to time; and
 - (ii) it shall not be deemed to be unable to pay its debts for the purposes of this paragraph if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is satisfied before the expiry of 21 days from such demand;
- (c) its directors make any proposal under section 1 of the Insolvency Act 1986, or it makes any agreement for the deferral, rescheduling or other readjustment (or makes a general assignment or an arrangement or composition with or for the benefit of the relevant creditors) of all or a material part of its debts, or a moratorium is agreed or declared in respect of or affecting all or a material part of its debts;
- (d) any step is taken to enforce security over or a distress, execution or other similar process is levied or sued out against the whole or a substantial part of its assets or undertaking, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;

- (e) any step is taken by any person with a view to its winding up or any person presents a winding-up petition which is not dismissed within 14 days, or it ceases or threatens to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the other party before that step is taken (which approval shall not be unreasonably withheld or delayed); or
- (f) any event occurs which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above,

unless:

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

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

“London & Continental Railways Limited” means London & Continental Railways Limited a company limited by shares registered in England and Wales under number 2966054, and “LCR” shall be construed accordingly;

“Longstop Date” means the date falling one day after the date this contract (other than Clauses 2.2, 3, 12, 13, 14, 15, 18, 21, 22 and 23 and Schedule 10) takes effect in accordance with Clause 3.1;

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

“Network Code” means the document now known as the Network Code and formerly known as the Railtrack Track Access Conditions 1995;

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

“Office of Rail and Road” ^{“4th”} has the meaning ascribed to it under section 15 of the Railways and Transport Safety Act 2003, and references to “ORR” shall be construed as references to the Office of Rail and Road; **“Panel”** has the meaning given to that term in the Disputes Resolution Agreement;

“Performance Order” has the meaning ascribed to it in Clause 13.4.2;

“Previous Access Agreement” means the international railway track access contract for passenger services between the parties dated 06 October 1998, as amended from time to time;

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

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

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

“relevant ADRR Panel” has the meaning ascribed to it in Part A of the Network Code;

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

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

“Relevant Losses” means, in relation to:

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

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

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

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

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

“Safety Authorisation” and **“Deemed Safety Authorisation”** have the meanings ascribed to them by regulation 2 of and Schedule 5 to the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

“Safety Case” has the meaning ascribed to it in the Railways (Safety Case) Regulations 2000;

“Safety Certificate” and **“Deemed Safety Certificate”** have the meanings ascribed to them by regulation 2 of and Schedule 5 to the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

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

“Section 1 HS1” means that part of HS1 between Cheriton and Southfleet Junction;

“Section 1 Infrastructure Operator” means CTRL (UK) Limited, a company registered in England and Wales under company number 3578740, or such other person from time to time who performs the role of Infrastructure Manager with regard to Section 1 HS1;

“Section 2 HS1” means that part of HS1 between Southfleet Junction and London St Pancras station;

“Section 2 Infrastructure Operator” means Union Railways (North) Limited, a company registered in England and Wales under company number 3539665, or such other person from time to time who performs the role of Infrastructure Manager with regard to Section 2 HS1;

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

“Specified Equipment” means, in relation to each of the Routes, the railway vehicles which the Train Operator is entitled to use in the provision of Services on that Route as specified in Schedule 5;

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

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

“Systems Code” means the Code of Practice relating to the Management and Development of Railway Information Systems as from time to time approved by ORR under Network Rail’s network licence;

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

“the Regulator” means the officer who was appointed by the Secretary of State under section 1 of the Act for the purpose of carrying out the functions assigned or transferred to him by or under the Act, which functions were subsequently transferred to the Office of Rail Regulation by virtue of section 16(1) of the Railways and Transport Safety Act 2003;

“Timetable Participant” shall have the meaning ascribed to it in Part D of the Network Code;

“Track Charges” means the charges payable by or on behalf of the Train Operator to Network Rail, as set out in or calculated under Part 2 of Schedule 7;

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

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

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

“TW-X” has the meaning ascribed to it in Part D of the Network Code;

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

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

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

1.2 Interpretation

In this contract, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) any one gender includes the other;

- (c) all headings are for convenience of reference only and shall not be used in the construction of this contract;
- (d) reference to an item of primary or secondary legislation is to that item as amended or replaced from time to time;
- (e) reference to a contract, instrument or other document is to that contract, instrument or other document as amended, novated, supplemented or replaced from time to time;
- (f) reference to a party is to a party to this contract, its successors and permitted assigns;
- (g) reference to a recital, Clause or Schedule is to a recital, clause or schedule of or to this contract; reference in a schedule to a Part of or an Appendix to a schedule is to a part of or an appendix to the schedule in which the reference appears; reference in a Part of a Schedule to a paragraph is to a paragraph of that part; reference to a Part of an appendix is to a part of the appendix in which the reference appears; and reference in a schedule to a Table is a reference to the table included in or annexed to that schedule;
- (h) where a word or expression is defined, cognate words and expressions shall be construed accordingly;
- (i) references to the word “person” or “persons” or to words importing persons include individuals, firms, corporations, government agencies, committees, departments, authorities and other bodies incorporated or unincorporated, whether having separate legal personality or not;
- (j) “otherwise” and words following “other” shall not be limited by any foregoing words where a wider construction is possible;
- (k) the words “including” and “in particular” shall be construed as being by way of illustration or emphasis and shall not limit or prejudice the generality of any foregoing words;
- (l) words and expressions defined in the Railways Act 1993, the Railways (Safety Case) Regulations 2000, the Railways and Other Guided Transport Systems (Safety) Regulations 2006 and Network Rail’s network licence shall, unless otherwise defined in this contract, have the same meanings in this contract;
- (m) any reference to the term “possession”, either by itself or as part of any composite definition, shall be construed as a reference to a Possession as defined in Schedule 4;
- (n) words and expressions defined in the Network Code shall have the same meanings in this contract;
- (o) if there is any conflict of interpretation between this contract and the Network Code, the Network Code shall prevail; and
- (p) references to the Office of Rail Regulation or ORR shall be construed as references to the "Regulator".

1.3 **Indemnities**

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

2. NETWORK CODE

2.1 Incorporation

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

2.2 Modifications to the Network Code

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

2.3 Compliance by other operators

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

3. CONDITIONS PRECEDENT AND DURATION

3.1 Effective date

The provisions of this contract, other than Clause 5, take effect from the later of:

- (a) the signature of this contract; and
- (b) the termination of the Previous Access Agreement,

save only that Clauses 2.2, 3, 12, 13, 14, 15, 18, 21, 22 and 23 and Schedule 10 shall take effect from the signature of this contract.

3.2 Conditions precedent to Clause 5

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

- (a) the Train Operator is authorised by a licence granted under regulation 6 of the Railway (Licensing of Railway Undertakings) Regulations 2005 to be the operator of trains for the provision of the Services;
- (b) Network Rail is authorised by a licence granted under section 8 of the Act to be the operator of that part of the Network comprising the Routes or is exempt from the requirement to be so authorised under section 7 of the Act;
- (c) each of the Collateral Agreements is executed and delivered by all the parties to each such agreement and is unconditional in all respects (save only for the fulfilment of any condition relating to this contract becoming unconditional);
- (d) the Safety Case of each of the parties is accepted under the Railways (Safety Case) Regulations 2000, or a Safety Certificate, Deemed Safety Certificate, Safety Authorisation or Deemed Safety Authorisation is issued under the Railways and Other Guided Transport Systems (Safety) Regulations 2006; and
- (e) the provisions of this contract, other than Clause 5, have taken effect in accordance with Clause 3.1.

3.3 **Obligations to satisfy conditions precedent to Clause 5**

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

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

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

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

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

3.5 **Expiry**

This contract shall continue in force until the earliest of:

- (a) lapse under Clause 3.4;
- (b) termination under Schedule 6; and
- (c) 0159 hours on the Expiry Date.

3.6 **Suspension and termination**

Schedule 6 shall have effect.

4. **STANDARD OF PERFORMANCE**

4.1 **General standard**

Without prejudice to all other obligations of the parties under this contract, each party shall, in its dealings with the other for the purpose of, and in the course of performance of its obligations under, this contract, act with due efficiency and economy and in a timely manner with that degree of skill, diligence, prudence and foresight which should be exercised by a skilled and experienced:

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

4.2 **Good faith**

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

5. PERMISSION TO USE

5.1 Permission to use the Routes

Network Rail grants the Train Operator permission to use the Routes.

5.2 Meaning

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

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

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

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

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

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

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

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

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

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

Schedule 4 shall have effect.

5.6 The Services and the Specified Equipment

Schedule 5 shall have effect.

5.7 Performance

Schedule 8 shall have effect.

5.8 Stabling

Without prejudice to Network Rail's obligations, if any, under Schedule 5 to provide Stabling, Network Rail shall, where a regular depot stabling facility used by the Train Operator is unavailable due to maintenance work, use all reasonable endeavours to provide such Stabling facilities as are necessary or expedient for or in connection with the provision of the Services in accordance with the Working Timetable.

6. OPERATION AND MAINTENANCE OF TRAINS AND NETWORK

6.1 General

Without prejudice to the other provisions of this contract:

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

6.2 Trespass, vandalism and animals

Without prejudice to the other provisions of this contract, each of the parties shall use all reasonable endeavours (including participating in such consultation and joint action as is reasonable in all the circumstances) to reduce:

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

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

6.3 **Safety**

In relation to Safety Obligations:

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

6.4 **Use of Railway Code Systems**

6.4.1 General

The parties shall:

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

6.4.2 Provision of Train Consist Data

Without prejudice to Clause 6.4.1, the Train Operator shall:

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

7. **TRACK CHARGES**

Schedule 7 shall have effect.

8. **LIABILITY**

8.1 **Performance Orders in relation to breach**

In relation to any breach of this contract:

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

8.2 **Compensation in relation to breach**

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

9. **NOT USED**

10. **LIABILITY - OTHER MATTERS**

10.1 **Train Operator indemnity**

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

- (a) a failure by the Train Operator to comply with its Safety Obligations;
- (b) any Environmental Damage arising directly from the acts or omissions of the Train Operator or the proper taking by Network Rail under Condition E2 of the Network Code of any steps to prevent, mitigate or remedy an Environmental Condition which exists as a direct result of the acts or omissions of the Train Operator; and
- (c) any damage to the Network arising directly from the Train Operator's negligence.

10.2 **Network Rail indemnity**

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

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

11. **RESTRICTIONS ON CLAIMS**

11.1 **Notification and mitigation**

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

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

11.2 **Restrictions on claims by Network Rail**

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

- (a) shall exclude payments to any person under or in accordance with the provisions of any Access Agreement other than any such payments which are for obligations to compensate for damage to property, and so that any claim for indemnity under this contract for such payments for damage to property, in relation to any incident, shall be limited to:

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

11.3 Restrictions on claims by Train Operator

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

- (a) shall exclude any Relevant Losses to the extent that they result from delays to or cancellations of trains; and
- (b) shall:
 - (i) include Relevant Losses only to the extent that these constitute amounts which the Train Operator would not have incurred as train operator but for the relevant breach; and
 - (ii) give credit for any savings to the Train Operator which result or are likely to result from the incurring of such amounts.

11.4 Restriction on claims by both parties

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

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

as the probable result of the breach.

11.5 Limitation on liability

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

- (a) does not limit any liability arising under Schedules 4, 5, 7 or 8;
- (b) in relation to a failure to perform an obligation under the Network Code, only to the extent (including as to time and conditions) that the Network Code so provides; and
- (c) subject to Clause 18.3.3.

11.6 **Claims Allocation and Handling Agreement**

11.6.1 General

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

11.6.2 Restriction of application

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

11.6.3 Liability for small claims

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

12. **GOVERNING LAW**

This contract shall be governed by and construed in accordance with the laws of England and Wales.

13. **DISPUTE RESOLUTION**

13.1 **ADRR**

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

- (a) any Part of the Network Code provides for an alternative dispute resolution procedure for the Relevant Dispute, in which case such alternative procedure shall apply;
- (b) any Part of Schedules 4, 5, 7 or 8 provides for an alternative dispute resolution procedure for the Relevant Dispute, in which case such alternative procedure shall apply; or
- (c) Clause 13.2 applies;
- (d) the Relevant Dispute is referred to the relevant ADRR Panel or the High Court of England and Wales under Clause 13.3;
- (e) the parties otherwise agree in writing including an agreement to refer the Relevant Dispute for expert determination under Part D of the ADRR;

- (f) the parties agree in writing to refer the Relevant Dispute for mediation under Part B of the ADRR and the Relevant Dispute is finally settled by such mediation; or
- (g) Clause 13.8 applies.

13.2 Unpaid sums

If either party fails to pay:

- (a) any invoice issued to it under this contract in respect of Track Charges in accordance with the provisions of Schedule 7; or
- (b) any sum which has fallen due in accordance with the provisions of Schedules 4, 5 or 8 or the Network Code,

then:

- (i) the amount invoiced or sum due, as referred to in Clause 13.2(a) or (b), shall immediately constitute a debt due and owing from the party who has failed to pay the invoice or sum due to the other party (and to any assignee of a party's right to payment in respect of any Track Charges or other sum due);
- (ii) such debt shall be recoverable by any means available under the laws of England and Wales; and
- (iii) the dispute resolution procedures in Clauses 13.1 and 13.3 to 13.7 shall not apply to proceedings commenced under this Clause 13.2.

13.3 Request to Change Forum

13.3.1 Request to Change Forum

Within 5 days of service of the notice of arbitration, either party:

- (a) may notify the other party and ORR in writing that it wishes to refer the Relevant Dispute to the relevant ADRR Panel or to the High Court of England and Wales instead of arbitration, as the case may be (a "Request to Change Forum"); and
- (b) shall, in such Request to Change Forum, specify its preferred forum and the reasons for that preference.

13.3.2 Response to Request to Change Forum

Within 7 days of receipt of a notice under Clause 13.3.1, the receiving party shall notify the other party and ORR in writing that:

- (a) it agrees to the specified reference, in which case the Relevant Dispute shall be referred to the specified forum; or
- (b) it objects to the specified reference and wishes the Relevant Dispute to be dealt with by arbitration, by the relevant ADRR Panel or by the High Court of England and Wales, as the case may be,

and every response under Clause 13.3.2(b) shall specify the preferred forum and the reasons for that preference.

13.3.3 Decision by the Office of Rail Regulation

If a Request to Change Forum is not agreed between the parties or the other party fails timeously to give a valid notice of objection under Clause 13.3.2(b), the Relevant Dispute shall be referred, following such consultation with the parties as ORR may determine is appropriate, in accordance with the final decision of ORR in its absolute discretion, namely whether the Relevant Dispute:

- (a) is still to be referred to arbitration;
- (b) is to be referred instead to the relevant ADRR Panel, and the arbitration reference and any pending arbitration proceedings accordingly terminated or suspended; or
- (c) is to be referred instead to the High Court of England and Wales, and the arbitration reference and any pending arbitration proceedings accordingly terminated.

13.4 Performance Orders

13.3.1 Power to order provisional relief

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

13.3.2 Performance Orders

A Performance Order:

- (a) is an order made under Clause 13.3.3(b), relating to a Relevant Dispute, whether by way of interim or final relief; and
- (b) may be applied for by Network Rail or the Train Operator in the circumstances set out in Clause 8.1, subject to the qualifications in Clause 17.8,

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

13.3.3 Duties of arbitrator in relation to Performance Orders

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

- (a) the arbitrator shall decide as soon as possible whether the application is well founded or not; and

- (b) if the arbitrator decides that the application is well founded, it shall be required to make an interim or final declaration to that effect and, in that event, the arbitrator may also make any interim or final order directing any party to do or to refrain from doing anything arising from such declaration which he considers just and reasonable in all the circumstances.

13.5 Remedies

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

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

13.6 Exclusion of applications on preliminary points of law

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

14. CONFIDENTIALITY

14.1 Confidential Information

14.1.1 General obligation

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

14.1.2 Network Rail - Affiliates

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

14.1.3 Train Operator - Affiliates

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

14.2 Entitlement to divulge

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

- (a) to ORR;
- (b) to the Secretary of State;

- (c) to any Affiliate of either party;
- (d) to any officer or employee of the party in question or any person engaged in the provision of goods or services to or for him if disclosure is necessary or reasonably required to enable the party in question to perform its obligations under this contract, upon obtaining an undertaking of strict confidentiality from such officer, employee or person;
- (e) to any professional advisers or consultants of such party engaged by or on behalf of such party and acting in that capacity, upon obtaining an undertaking of strict confidentiality from such advisers or consultants;
- (f) to any insurer or insurance broker from whom such party is seeking insurance or in connection with the making of any claim under any policy of insurance upon obtaining an undertaking of strict confidentiality from the insurer or insurance broker;
- (g) to any lender, security trustee, bank or other institution from whom such party is seeking or obtaining finance or credit support for such finance, or any advisers to any such entity, or any rating agency from whom such party is seeking a rating in connection with such finance or credit support, upon obtaining an undertaking of strict confidentiality from the entity, advisers or rating agency in question;
- (h) to the extent required by the Act, any licence under section 8 of the Act held by the party in question, any other applicable law, the rules of any recognised stock exchange or regulatory body or any written request of any taxation authority;
- (i) to the extent that it has become available to the public other than as a result of a breach of confidence; and
- (j) under the order of any court or tribunal of competent jurisdiction (including the Allocation Chair or any relevant ADRR Forum, each as defined in the ADRR).

14.3 Return of Confidential Information

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

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

14.4 Retention or destruction of Confidential Information

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

14.5 Ownership of Confidential Information

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

14.6 Network Code and Schedule 7

Nothing in this Clause 14 restricts the right of Network Rail to disclose information to which this Clause 14 applies to the extent that it is permitted or required so to do under the Network Code or Schedule 7.

15. ASSIGNMENT

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

16. PAYMENTS, INTEREST AND VAT

16.1 Payment

16.1.1 No deduction

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

16.1.2 Delivery of invoices

All invoices issued under Schedule 7, or statements of amounts payable under Schedules 4, 5 or 8 or the Network Code, shall be delivered by hand at, or sent by prepaid first class post or by facsimile transmission (with confirmation copy by prepaid first class post) to, the address for service for the recipient specified in Schedule 1 and shall be deemed to have been received by the addressee in accordance with Clause 18.4.3.

16.1.3 Content of invoices and other statements of amounts payable

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

16.1.4 Method of payment

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

16.2 Interest

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

before), except to the extent that late payment arises from any failure by the invoicing party to comply with Clause 16.1.2 or Clause 16.1.3.

16.3 VAT

16.3.1 Payment of VAT

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

16.3.2 Reimbursement of VAT

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

16.3.3 VAT credit note to be issued on repayment

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

17. FORCE MAJEURE EVENTS

17.1 Meaning of Force Majeure Event

In this Clause 17:

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

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

- (a) an act of the public enemy or terrorists or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;
- (b) acts of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;
- (c) natural disasters or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);
- (d) nuclear, chemical or biological contamination;
- (e) pressure waves caused by devices travelling at supersonic speeds;

- (f) discovery of fossils, antiquities or unexploded bombs; and
- (g) strike or other industrial action which is a single circumstance and which also is a strike or industrial action in sectors of the economy other than the railway industry;

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

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

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

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

17.2 Nature and extent of relief for Force Majeure

Force Majeure relief under this Clause 17:

- (a) extinguishes the obligation of the Affected Party to indemnify the other party under Clause 8.2 in respect of Relevant Losses sustained as a result of the failure of the Affected Party to perform a Relevant Obligation; but
- (b) is not available in respect of:
 - (i) any obligation to pay money under Schedules 4, 5, 7 and 8; or
 - (ii) any other obligation to do or refrain from doing any other thing provided for in this contract; and
- (c) is only available in relation to a failure to perform an obligation under the Network Code to the extent (including as to time and conditions) that the Network Code so provides.

17.3 Entitlement to Force Majeure relief

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

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

17.4 Procedure for claiming relief

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

17.5 Force Majeure Notices and Reports

17.5.1 Force Majeure Notice

In relation to any Relevant Force Majeure Event:

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

17.5.2 Force Majeure Report

Following the giving of a Force Majeure Notice:

- (a) the Affected Party shall give a Force Majeure Report as soon as practicable, and in any event within 7 days of service of the Force Majeure Notice; and
- (b) the Force Majeure Report shall constitute a full report on the Relevant Force Majeure Event, amplifying the information provided in the Force Majeure Notice and containing such information as may reasonably be required by the Non-affected Party, including the effect which the Relevant Force Majeure Event is estimated to have on the Affected Party's performance of the Relevant Obligations.

17.5.3 Other information

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

17.6 Mitigation

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

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

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

17.7 Duration of relief for force majeure

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

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

17.8 Availability of Performance Order

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

18. MISCELLANEOUS

18.1 Non waiver

18.1.1 No waiver

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

18.1.2 Failure or delay in exercising a right or remedy

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

18.2 Variations

18.2.1 Amendments to be in writing and to be approved

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

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

18.2.2 Exceptions

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

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

18.2.3 No Office of Rail Regulation approval needed

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

- (a) modifications effected by virtue of any of the Schedules to this contract; and
- (b) modifications effected by virtue of the Network Code,

unless the relevant provision expressly states that it requires the approval of ORR.

18.2.4 Conformed copy of contract

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

18.3 Entire contract and exclusive remedies

18.3.1 Entire contract

Subject to Clause 18.3.3:

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

18.3.2 Exclusive remedies

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

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

18.3.3 Fraud, death and personal injury

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

- (a) any liability which either party would otherwise have to the other party, or any right which either party may have to rescind this contract, in respect of any statement made fraudulently by the other party before the execution of this contract;
- (b) any right which either party may have in respect of fraudulent concealment by the other party;
- (c) any right which either party may have in respect of a statement of the kind referred to in section 146 of the Act, whether or not proceedings have been instituted in that respect; or
- (d) any liability which either party may have towards the other party for death or personal injury resulting from its negligence or the negligence of any of its officers, employees or agents.

18.4 Notices

18.4.1 Giving of notices

Any notice to be given under this contract:

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

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

18.4.2 Right to modify communication details

A party shall be entitled to modify in any respect the communication particulars which relate to it and which are set out in Schedule 1 by giving notice of such modification:

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

18.4.3 Deemed receipt

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

- (a) if sent by hand or recorded delivery, at the time of delivery;
- (b) if sent by prepaid first class post from and to any place within the United Kingdom, three Working Days after posting unless otherwise proven; and
- (c) if sent by facsimile (subject to confirmation of uninterrupted transmission by a transmission report) before 1700 hours on a Working Day, on the day of transmission and, in any other case, at 0900 hours on the next following Working Day.

18.4.4 Copyees

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

- (a) the party giving a notice in the manner required by this Clause 18.4 shall send a copy of the notice to such person at the address for sending copies as specified in Schedule 1, or to such other person or address as may, from time to time, have been notified by the party to be notified to the notifying party under this Clause 18.4; and
- (b) such copy notice shall be sent immediately after the original notice.

18.5 Counterparts

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

18.6 Survival

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

18.7 Contracts (Rights of Third Parties) Act 1999

18.7.1 Application to third parties

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

18.7.2 Application to the Office of Rail Regulation

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

18.7.3 Application to the Secretary of State

The Secretary of State shall have the right under the Contracts (Rights of Third Parties) Act 1999 directly to enforce Clause 15.

19. TRANSITION

19.1 Corresponding Rights

In relation to any Corresponding Right:

- (a) any Access Proposals or Rolled Over Access Proposal made under the Previous Access Agreement in relation to a Train Slot in respect of which there is a Corresponding Right shall:
 - (i) cease to have effect under the Previous Access Agreement as from the Transition Date; and
 - (ii) be deemed to have effect under this contract as from the Transition Date;

- (b) any Train Slot which is the subject of an Access Proposal or Rolled Over Access Proposal referred to in Clause 19.1(a) shall for all purposes be treated as if it had been established in and under this contract and not the Previous Access Agreement;
- (c) any consultations undertaken, notices served, matters referred to dispute resolution, agreements reached or determinations made which:
 - (i) are made in accordance with Parts D, F, G or H of the Network Code under the Previous Access Agreement in relation to Engineering Access Statement or Timetable Planning Rules, Major Projects, Vehicle Change, Network Change or train regulation; and
 - (ii) relate to a right under the Previous Access Agreement which is the subject of a Corresponding Right,
 shall:
 - (A) cease to have effect under the Previous Access Agreement as from the Transition Date; and
 - (B) be deemed to have effect under this contract as from the Transition Date; and
- (d) in applying Schedule 4, in relation to any Possession which was notified before the Transition Date, effect shall, where applicable, be given to any relevant Previous Notification Factor and/or any relevant bespoke compensation arrangements established under the Previous Access Agreement.

19.2 Definitions

In this Clause 19:

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

- (a) relates to the permission of the Train Operator to use the Routes; and
- (b) corresponds to a right which:
 - (i) existed under the Previous Access Agreement; and
 - (ii) ceased to have effect under the Previous Access Agreement as from the Transition Date;

“Previous Notification Factor” means the Notification Factor as established by reference to the relevant possessions agreement or possessions regime as is referred to in the Previous Access Agreement; and

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

20. CO-ORDINATION

- 20.1 **Network Rail and the Train Operator shall co-operate with each of the Section 1 Infrastructure Operator and the Section 2 Infrastructure Operator, provided only that the Section 1 Infrastructure Operator and the Section 2 Infrastructure Operator similarly co-operate, in attempting to co-ordinate the timetabling and operation of services on Section 1 HS1, Section 2 HS1 and the Network (taking into account, in**

the case of the Network, that timetabling on the Network will be carried out subject to the Network Code, and not subject to the CTRL Track Access Conditions) with a view to the Services being scheduled to operate and operating over the various networks in a co-ordinated and robust manner and in particular with a view to the timetabling of the Services which the Train Operator Bids to operate under this contract, and under any other access contract granting access over HS1 to which the Train Operator is a party, being co-ordinated so that at the Ashford West Boundary and the Ashford East Boundary the relevant Service shall form a continuous through service (save that this shall not affect any rights that the Train Operator has under this contract to call at Ashford International Station).

- 20.2 The parties agree to comply with such provisions of the Access and Management Regulations in relation to the Services as are applicable to each of them from time to time.
- 20.3 To the extent applicable to it, Network Rail shall, for the avoidance of doubt, comply with the provisions of regulations 17(2) to 17(4) (inclusive) of the Access and Management Regulations in relation to the Services. At the date of this Agreement, regulations 17(2) to 17(4) of the Access and Management Regulations are as follows (and for the purposes of this Clause 20.3 only, the words and expressions used in (a), (b) and (c) below shall have the same meanings as in the Access and Management Regulations):

“17(2) The infrastructure managers must:

- (a) co-operate to enable the efficient creation and allocation of infrastructure capacity pursuant to a request for capacity crossing more than one network; and
 - (b) before consulting on the draft working timetable agree with the other relevant infrastructure managers which international train paths are to be included in that draft working timetable.
- (3) The international train paths referred to in paragraph 2(b) may only be adjusted if absolutely necessary.
- (4) The infrastructure managers must establish such procedures as are appropriate, in accordance with the requirements set out in these Regulations, to enable the co-operation referred to in paragraph 2(a) to take place, and such procedures must include representatives of the infrastructure managers whose allocation decisions have an impact on one or more infrastructure managers.”

21. SILO CURVE

Where requested by the Train Operator in writing, the parties agree to enter into good faith negotiations to amend this contract to grant the Train Operator access in an operational emergency for turning moves originating from HS1 or St Pancras via Camden Road on the North London Line. Such negotiations would take into account route clearance issues.

22. INTERIM TREATMENT OF 2013 PERIODIC REVIEW

22.1 Treatment prior to implementation

If the terms of a Proposed Review Notice proposing amendments to the Contract are not implemented in accordance with paragraph 7 of Schedule 4A to the Act on 1 April 2014 for any reason, then, irrespective of such terms not having been so implemented, each proposed amendment to the Contract set out in the Proposed Review Notice shall have effect on that date or

from any later date (or dates) specified in the Proposed Review Notice in respect of any individual amendment, in each case until such time as:

- (a) a Review Implementation Notice is served; or
- (b) following a reference to the Competition Commission in accordance with paragraph 9 of Schedule 4A to the Act, any amendments to the Contract, made in accordance with paragraphs 12(8), 12(9) or 14(3) of Schedule 4A to the Act, come into operation.

22.2 Definitions

In this Clause 22:

“Current Control Period” means the period of five years commencing at 0000 hours on 1 April 2009 and ending at 2359 hours on 31 March 2014;

“Proposed Review Notice” means as at the last day of the Current Control Period the most recently proposed Review Notice given by ORR in accordance with Schedule 4A of the Act;

“Review Implementation Notice” has the meaning given to “review implementation notice” in paragraph 7 of Schedule 4A to the Act; and

“Review Notice” has the meaning given to “review notice” in paragraph 4 of Schedule 4A of the Act.

SCHEDULE 1: CONTACT PARTICULARS

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

Network Rail Infrastructure Limited
Kings Place
90 York Way
London
N1 9AG

Tel:

Fax: 020 3336 9300

All written notices to be marked:

“URGENT: ATTENTION THE COMPANY SECRETARY AND SOLICITOR”

and copied to:

The Route Managing Director (South East)

Network Rail Infrastructure Limited
2nd Floor Cotton Centre
Tooley Street
London
SE1 2QG

Tel:

Fax: 0207 403 1469

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

Eurostar International Limited
Times House
Regent Quarter
Bravingtons Walk
London
N1 9AW

Tel:

Fax: 020 7843 5715

All written notices to be marked:

“URGENT: ATTENTION THE COMPANY SECRETARY, LEGAL DEPARTMENT.”

and copied to:

- (1) The Department for Transport
Great Minster House
33 Horseferry Road
London
SW1P 4DR

Tel:

Fax: 020 7944 4399

All written notices to be marked:

“FOR THE ATTENTION OF THE SECRETARY OF STATE FOR RAILWAYS”

- (2) whilst the Train Operator is an Affiliate of London & Continental Railways Limited:

London & Continental Railways Limited
4th Floor
One Kemble Street
London
WC2B 4AN

Tel:

Fax: 020 7391 4401

All written notices to be marked:

“URGENT: ATTENTION THE COMPANY SECRETARY”

SCHEDULE 2: THE ROUTES

Between Ashford West Boundary and Ashford East Boundary.

SCHEDULE 3: COLLATERAL AGREEMENTS

1. Not Used
2. An agreement under which the Train Operator agrees to become a party to the Claims Allocation and Handling Agreement and, for the purpose of Schedule 6, the Claims Allocation and Handling Agreement.
3. Not Used
4. An accession agreement to the document entitled Emergency Access Code as approved or directed by ORR and, for the purpose of Schedule 6, the Emergency Access Code.

SCHEDULE 4: ENGINEERING ACCESS STATEMENT, TIMETABLE PLANNING RULES AND RESTRICTIONS OF USE

PART 1: NOT USED

PART 2: NOT USED

PART 3: COMPENSATION FOR RESTRICTIONS OF USE

1. Definitions

1.1 *Defined terms*

In this Part 3 and its Annexes, unless the context otherwise requires:

- “Applicable Timetable”** means, in respect of any day, that part of the Working Timetable in respect of that day which is required to be drawn up in accordance with Condition D2.1.1 of the Network Code as at 22:00 hours on the day prior to that day;
- “Corresponding Day”** means, in respect of any day (the **“first day”**):
- (a) a day which is contained in the same Timetable Period as the first day and on which the Services scheduled in the New Working Timetable are the same as would have been scheduled on the first day but for Restrictions of Use reflected in the New Working Timetable for the first day; or
 - (b) if no day is found under paragraph (a) above, then a day which is contained in the equivalent Timetable Period for the time of year, in the year immediately preceding the Timetable Period which includes the first day and on which the Services scheduled in the New Working Timetable are the same as would have been scheduled on the first day but for Restrictions of Use reflected in the New Working Timetable for the first day; or
 - (c) if no day is found under paragraph (a) or (b) above, such other day as the parties may agree or as may be determined in accordance with paragraph 12.2;
- “Corresponding Day Timetable”** means, in relation to a Corresponding Day, the New Working Timetable or such other timetable as may be agreed between the parties or otherwise determined in accordance with paragraph 12.2;
- “Disrupted”** means:
- (a) cancelled;
 - (b) diverted off the Route over which it was scheduled to run in the Corresponding Day Timetable; and/or
 - (c) starting or finishing short in comparison with the Service as timetabled in the Corresponding Day Timetable;

“First Restriction”	shall have the meaning ascribed to it in paragraph 2.12(a)(i);
“First Restriction Period”	shall have the meaning ascribed to it in paragraph 2.12(a)(ii);
“Further Restriction”	shall have the meaning ascribed to it in paragraph 2.12(a)(ii)(B);
“Network Rail Restriction of Use”	means any Restriction of Use other than an Operator Restriction of Use;
“Operator Restriction of Use”	means a Restriction of Use of the type referred to in paragraph 2.3;
“Over-run”	shall have the meaning ascribed to it in paragraph 2.12(a);
“Period”	Means each consecutive period of 28 days during the term of this contract commencing at 0000 hours on 1 April in each year, provided that the length of the first and last such Period in any year may be varied by up to seven days on reasonable prior notice from Network Rail to the Train Operator; “Consent Notice”
“Public Holiday”	means any day other than Saturday or Sunday on which the banks in the City of London are not open for business;
“Recovery Allowance”	means an allowance for additional time incorporated in the New Working Timetable or (where the Train Operator requests that the allowance is not incorporated in the New Working Timetable and Network Rail complies with that request) the Applicable Timetable to allow a Train to regain time lost during an earlier part of its journey;
“Restriction of Use”	means, in respect of any day, any restriction of use of all or any part of the Routes (other than one caused by a Recovery Allowance which was contained in the Applicable Timetable Planning Rules relevant to that day notified to each Timetable Participant on or before D-26) which results in: <ul style="list-style-type: none"> (a) a difference between the Applicable Timetable on that day as compared with the New Working Timetable in respect of that day; and/or (b) a difference between the New Working Timetable on that day as compared with the Corresponding Day Timetable in respect of the Corresponding Day;
“Restriction of Use Day”	means a day on which a Network Rail Restriction of Use is taken or deemed to be taken;
“RoU Claim Notice”	means a notice issued by either party pursuant to paragraph 2.8;

“RoU Liability”

means any costs, direct losses and expenses (including any loss of revenue) reasonably incurred or reasonably expected to be incurred by the Train Operator (including any increase in RoU Variable Costs but net of any benefit arising from the taking of a Restriction of Use including any decrease in RoU Variable Costs) as a consequence of a Type 2 Restriction of Use or a Type 3 Restriction of Use; “Consent Notice”

“RoU Variable Costs”

means any Train Operator costs which vary as a result of a Restriction of Use or where applicable an Over-run arising directly from changes in train mileage including maintenance, fuel or the Traction Electricity Charge, the Variable Track Usage Charge and the Capacity Charge (as such terms are defined in Schedule 7);

“Train”

means each train operating a Service which is:

- (a) operated by or on behalf of the Train Operator pursuant to the permission to use the Routes granted under this contract; and
- (b) used to provide services for the carriage of passengers by railway,

but excludes any and all trains making an Ancillary Movement; “Consent Notice”

“Type 2 Restriction of Use” “Consent Notice” means:

- (a) a single Restriction of Use (including any Over-run) of more than 60 consecutive hours (excluding any part of that Restriction of Use which occurs during a Public Holiday); and
- (b) which results in a Service being Disrupted but excluding any Restriction of Use which falls within the definition of a Type 3 Restriction of Use.

“Type 3 Restriction of Use”

means a single Restriction of Use (including any Over-run) of more than 120 consecutive hours (including any part of that Restriction of Use which occurs during a Public Holiday);

“Unplanned Over-run Period”

shall have the meaning ascribed to it in paragraph 2.12(a)(ii)(A); and

“Week”

means a period commencing at 00:00:00 hours on any Saturday and ending at 23:59:59 hours on the next following Friday.

1.2 *Suspension Notices*

Wherever a Suspension Notice is in force, the effects of that Suspension Notice shall be the subject of Clause 3.6 and not of this Schedule 4. A Restriction of Use shall only be treated as a Restriction of Use to the extent that it involves a Restriction of Use of all or any part of the Routes which is not covered by the restriction under that Suspension Notice.

1.3 *Possession*

Any reference in this contract to the term “possession”, whether on its own or in composite, should be construed as “Restriction of Use” as defined in this Part 3.

1.4 NOT USED

2.1 *Entry into effect*

This Part 3 shall apply in respect of Restrictions of Use.

2.2 *Applicable Engineering Access Statement and the Network Code*

The provisions of this Part 3 shall be without prejudice to:

- (a) Network Rail’s right to take Restrictions of Use under or pursuant to the Applicable Engineering Access Statement;
- (b) the establishment of any amended Working Timetable under Part H of the Network Code; and
- (c) any rights pursuant to the Network Code that the Train Operator may have to challenge any decision of Network Rail.

2.3 *Operator Restriction of Use*

Network Rail shall not be obliged to make any payments to the Train Operator for any one or more Restrictions of Use to the extent:

- (a) required as a result of any damage to the Network or Environmental Damage which in each case:
- (b) arises wholly or mainly from the operations of the Train Operator or its failure to comply with its obligations under this contract; and
- (c) Network Rail demonstrates is in excess of fair wear and tear arising from use of the Network by the Train Operator;
- (d) requested by the Train Operator (other than for the purposes of inspection, maintenance, renewal or repair of the Network); or
- (e) required in connection with a Network Change proposed by the Train Operator under Condition G3.

2.4 *Network Rail payments*

Subject to paragraph 2.3, Network Rail shall make payments to the Train Operator (in accordance with the procedure in paragraph 13) in respect of a Network Rail Restriction of Use calculated in accordance with paragraph 2.7 where applicable.

2.5 NOT USED

2.6 *Type 2 Restriction of Use*^{“Consent Notice”}

Where a Train Operator's RoU Liability exceeds £10,000 in respect of any Type 2 Restriction of Use Network Rail shall make payments to the Train Operator (in accordance with the procedure in paragraph 13) calculated in accordance with paragraph 7 in respect of any Type 2 Restriction of Use.

2.7 *Type 3 Restriction of Use*

Where a Train Operator's RoU Liability exceeds £10,000 in respect of any Type 3 Restriction of Use Network Rail shall make payments to the Train Operator (in accordance with the procedure in paragraph 13) calculated in accordance with paragraph 7 in respect of any Type 3 Restriction of Use.^{“Consent Notice”}

2.8 *RoU Claim Notice*

- (a) A Train Operator wishing to make a request for payments from Network Rail pursuant to paragraph 2.6 or paragraph 2.7 must notify Network Rail that a Restriction of Use is a Type 2 Restriction of Use or a Type 3 Restriction of Use and that the circumstances in paragraph 2.6 or paragraph 2.7 (as appropriate) apply within 56 days of the date of the end of such Restriction of Use^{“Consent Notice”}
- (b) The notice referred to in paragraph 2.8(a) must include details of the estimate of the RoU Liability which the Train Operator has incurred in respect of the relevant Restriction of Use.

2.9 *Changes to Restrictions of Use*

- (a) Where a single Restriction of Use falls within the definition of one type of Restriction of Use and there is a change which means that no Restriction of Use occurs or that the Restriction of Use occurs as the other type of Restriction of Use, then that Restriction of Use shall be treated, for the purposes of the calculation and payment of compensation, as if it had always been the latter type of Restriction of Use (or, where applicable, as if it had not been a Restriction of Use).^{“Consent Notice”}
- (b) Where a single Restriction of Use does not fall within the definition of either type of Restriction of Use and there is a change which means that the Restriction of Use then falls within the definition of either a Type 2 Restriction of Use or a Type 3 Restriction of Use, then that Restriction of Use shall be treated, for the purposes of the calculation and payment of compensation, as if it had always been a Type 2 Restriction of Use or a Type 3 Restriction of Use (as the case may be).^{“Consent Notice”}
- (c) For the purposes of paragraph 2.9(d), a Restriction of Use shall be deemed to be taken if and to the extent that it results in any difference between timetables of the type referred to in the definition of "Restriction of Use" when notified, whether or not the restriction giving rise to that Restriction of Use was subsequently cancelled in whole or in part.^{“Consent Notice”}
- (d) Where a change to a Restriction of Use reduces the impact of that Restriction of Use and accordingly changes its type or means that there is no Restriction of Use in

accordance with paragraph 2.9(a), the Train Operator may, within 28 days of the date on which the change to the Restriction of Use was notified to the Train Operator by Network Rail, serve a notice on Network Rail which sets out any costs to which the Train Operator is already committed or has already incurred and any costs associated with responding to the Restriction of Use (both before and after the change). The Train Operator shall be entitled to recover such costs provided that such costs are reasonable and were properly committed or incurred in the circumstances. ^{“Consent Notice”}

2.10 NOT USED

2.11 *Early notice of RoU Liability*

The parties may at any time engage in discussions on any matter likely to result in payments in respect of any RoU Liability and shall use reasonable endeavours to agree whether such RoU Liability calculated in accordance with paragraph 7 or 8 are likely to arise and/or what mitigating actions should be contemplated to reduce or avoid such RoU Liability. The party initiating such discussions shall provide to the other reasonable evidence in writing of why it thinks such RoU Liability will arise or mitigating actions should be contemplated. Following any agreement or determination that such RoU Liability are likely to arise in connection with one or more future Restrictions of Use or that mitigating actions should be contemplated, the parties shall where reasonably practicable engage in discussions on any options for mitigating costs, revenue loss and/or disruption including any advance compensation for such Restriction(s) of Use to the extent such advance compensation would or would reasonably be expected to facilitate the mitigation of the contemplated disruption. Nothing in this contract shall prevent Network Rail and the Train Operator agreeing any options for mitigating costs and disruption in respect of any Restriction(s) of Use. Unless otherwise agreed, the timescales for claiming RoU Liability shall still apply.

2.12 *Over-runs*

- (a) An over-run (“Over-run”) occurs where:
 - (i) there is a Restriction of Use which is not an Operator Restriction of Use (the "First Restriction"); and
 - (ii) following the end of the relevant period of difference between timetables referred to in sub-paragraphs (a) and (b) of the definition of Restriction of Use which served to establish the existence of that Restriction of Use (the "First Restriction Period"), there is either:
 - (A) a further period of at least one hour during which Services are Disrupted due to any act or omission in connection with any activities planned or undertaken which are directly attributable to the First Restriction (including any failure to remove the First Restriction by the time scheduled for its removal in the Applicable Engineering Access Statement) but excluding any act or omission by the Train Operator for which it would be allocated responsibility under this contract (the "**Unplanned Over-run Period**");^{“Consent Notice”} and/or

- (B) a further Restriction of Use is taken which is at the same location as all or part of the First Restriction and directly connected with or attributable to any activities undertaken or planned to be undertaken under the First Restriction (a “Further Restriction”),

in each case without there being any intervening period between the First Restriction and the relevant Unplanned Over-run Period or Further Restriction, which is not either a Unplanned Over-run Period or a Further Restriction.

- (b) Where a Restriction of Use is subject to one or more Over-runs, then the entire duration from the start of the First Restriction to the end of the last Over-run in respect of the Restriction of Use shall be treated as making up a single Restriction of Use.

3. NOT USED

4. NOT USED

5. NOT USED

6. NOT USED

7. RoU Liability compensation for Type 2 Restrictions of Use or Type 3 Restrictions of Use^{“Consent Notice”}

7.1 Compensation arrangements

- (a) Following receipt of an RoU Claim Notice in respect of a Type 2 Restriction of Use or a Type 3 Restriction of Use (as the case may be), Network Rail and the Train Operator shall (if they have not already done so) commence negotiations in respect of the RoU Liability compensation to be paid by Network Rail to the Train Operator in respect of such Restriction of Use and, subject to paragraph 10, shall continue such negotiations in good faith until they are concluded.
- (b) Once the compensation referred to in paragraph 7.1(a) has been agreed or determined the compensation to be paid by Network Rail to the Train Operator shall be the full amount of the RoU Liability actually incurred by the Train Operator less any amounts received by the Train Operator from Network Rail in respect of such Restriction of Use.
- (c) Network Rail shall include in the statement provided by it in respect of each Period under paragraph 13.1(a) details of the compensation agreed or determined under this paragraph 7 and paragraph 10 to be payable in respect of any Type 2 Restriction of Use or Type 3 Restriction of Use (as the case may be) taken in that Period and that compensation shall be due and payable by Network Rail to the Train Operator in accordance with paragraph 13.1.

8. NOT USED

9. NOT USED

10. Dispute resolution

If the Train Operator and Network Rail fail to reach agreement as required under paragraph 2.11 or 7 within 28 days following provision of the RoU Claim Notice, either party may refer the matter for resolution in accordance with the ADRR.

11. Schedule 8 application

11.1 NOT USED.

12. Restriction of Use Day and Corresponding Day

12.1 NOT USED

12.2 *Corresponding Day*

- (a) If, for the purpose of identifying a Corresponding Day, no day is found under paragraph (a), (b) or (c) of the definition “Corresponding Day” and the parties have failed to reach agreement on the Corresponding Day by the date falling eight Weeks before the relevant Timetable Change Date then either party may require that the identification of the Corresponding Day be resolved as a dispute in accordance with the ADRR.
- (b) The parties shall agree in a Procedure Agreement, as defined in the ADRR, that the relevant ADRR Forum’s remit shall be to:
 - (i) reach a decision which is fair and reasonable; and
 - (ii) identify the day in either any version of the Working Timetable or any version of the New Working Timetable on or before D -26 in either case which has been produced in accordance with the Network Code as at the Restriction of Use Day and which most closely reflects the Services which would have been scheduled on the first day (as that term is used in the definition of Corresponding Day save that in respect of any Restriction of Use lasting more than two Timetable Periods, the first day may occur in any year preceding the Timetable Period) but for Restrictions of Use reflected in the New Working Timetable for the first day; or
 - (iii) where a Corresponding Day cannot be identified in accordance with paragraph 12.2(b)(ii) above, determine a notional Corresponding Day. The relevant ADRR Forum may have regard, where appropriate, to any pattern of services which may reasonably be expected to be operated during the relevant period when the Restriction of Use is being taken in the event of the permanent absence of any Corresponding Day.

13. Payment procedures

13.1 *Network Rail Restrictions of Use*^{“Consent Notice”}

- (a) Within 14 days after the end of each Period, Network Rail shall provide to the Train Operator a statement showing:
 - (i) NOT USED;
 - (ii) NOT USED;
 - (iii) following any agreement or determination in the Period referred to in paragraph 13.1(a) of any RoU Liability in respect of a Type 2 Restriction of Use or a Type 3 Restriction of Use, any payment to be made by Network Rail to the Train Operator, in sufficient detail to enable the Train Operator to make an informed assessment thereof.

13.2 *Disputes*

Within 10 days of receipt of a statement from Network Rail under paragraph 13.1, the Train Operator shall notify Network Rail of any aspects of the statement which it disputes, giving reasons for any dispute. Save to the extent that disputes are so notified, the Train Operator shall be deemed to have agreed the contents of the statement.

13.3 *Dispute resolution*

The procedure for resolving disputes notified under paragraph 13.2 shall be as follows:

- (a) within seven days of service of any notice under paragraph 13.2, the parties shall meet to discuss the disputed aspects of the statement with a view to resolving all disputes in good faith;
- (b) if, within seven days of that meeting (the “first meeting”), the parties are for any reason still unable to agree the disputed aspects of the statement, each party shall promptly (and in any event within seven days) prepare a written summary of the disputed aspects of the statement and the reasons for each such dispute and shall submit the summaries to the senior officer of each party;
- (c) within 28 days of the first meeting, the senior officers shall meet with a view to resolving all disputes;
- (d) if no resolution results within 14 days of that meeting, either party may refer the matter for resolution in accordance with the ADRR.

13.4 *Payments in the event of a dispute*

Where any amount under paragraph 13.1 is in dispute:

- (a) the undisputed amount shall be paid in accordance with paragraph 13.1;
- (b) the disputed amount shall be paid within 28 days after the dispute is resolved or determined to the extent that the amount in dispute is adjudged or resolved to be payable; and

- (c) the disputed amount shall carry interest (incurred daily and compounded monthly) at the Default Interest Rate from the date on which such amount would but for such dispute have been due to be paid until the date of payment.

14. NOT USED

SCHEDULE 5: THE SERVICES AND THE SPECIFIED EQUIPMENT

1. Definitions

1.1 In this Schedule unless the context otherwise requires:

“Calling Pattern”	means a list of one or more stations related to one or more Passenger Train Slots, at which stops are to be Scheduled in the Working Timetable;
“Contingent Right”	means a right under this Schedule 5 which is not a Firm Right and which is subject to the fulfilment of all competing Exercised Firm Rights and any additional contingency specified in this Schedule 5;
“Day”	means any period of 24 hours beginning at 0200 hours and ending immediately before the next succeeding 0200 hours, and any reference in this Schedule to any named day of the week shall be to such period commencing on that named day;
“Exercised”	has the meaning ascribed to it in Part D of the Network Code;
“Firm Right”	Has the meaning ascribed to it in Part D of the Network Code; “4th”
“Inbound Service”	means a Service operated by the Train Operator in the direction of Cheriton to London St Pancras;
“Journey Time”	means the time in the Working Timetable to be taken by a Service in travelling between the specified departure point and specified destination for that Service; “4th”
“Maximum Journey Time”	means, in respect of a Passenger Train Slot, the corresponding Journey Time, if any, set out in column 4 of Table 6.1;
“Network Change”	has the meaning ascribed to it in Part G of the Network Code;
“Outbound Service”	means a Service operated by the Train Operator in the direction of London St Pancras to Cheriton;
“Passenger Train Slot”	means a Train Slot intended by the Train Operator to be used for the provision of a Service;
“Pathing Time”	means additional time in the schedule of a train between two points, or at a single location, caused by the application of margins required by the Timetable Planning Rules between trains proceeding along or across the same piece of the Network;
“Public Holiday”	means any day other than Saturday or Sunday on which the banks in the City of London are not open for business;
“regulated access agreement”	means an access agreement as that term is defined in section 83 of the Act;
“Rolled Over Access Proposal”	Means a Train Slot which was obtained in the Prior Working Timetable and no variation is sought in the New Working Timetable; means, in relation to the quantum, timing or any other characteristic of a

“Scheduled”	train movement, that quantum, timing or other characteristic as included in the applicable Working Timetable;
“Service Group”	means any one or more (as the context may require) of the service groups described in this Schedule;
“Standard Specified Equipment”	means, in respect of any Service, the Specified Equipment listed opposite that Service in column 2 of Table 5.1;
“Timetable Period”	means the period of time between (and including) one Timetable Change Date and (but excluding) the immediately succeeding Timetable Change Date;
“Timing Load”	Means in relation to a Service, the timing reference code as defined from time to time in the Working Timetable; “4th”
“Train Service Code” or “TSC”	means the eight character code applied in the Performance Monitoring System and used to identify Services;
“Weekday”	means any Day (including, except for the purposes of paragraphs 6 and 7, a Public Holiday) which is not a Saturday or Sunday; and
“xx20”	means, as an example of this notation, 20 minutes past the hour.

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

2. Passenger Train Slots

Revised Table 2.1 : Passenger Train Slots “4th”

	Service Group ALL											
	Service Description						Passenger Train Slots					
	From	To	Via	Description	TSC	Timing Load	Morning Peak ¹	Evening Peak ³	Off Peak Times ²	Weekday	Saturday	Sunday
December 17	Ashford West Boundary	Ashford East Boundary	Ashford International station	Outbound services	Ashford Int stop 81010002 Ashford Int & Ebbsfleet Int stop 81010004 ECS 81004009	373	1 ⁴	0	4	5 ⁹	6	4
December 17	Ashford East Boundary	Ashford West Boundary	Ashford International station	Inbound services	As above	373	0	1 ⁴	4	5	6	7
April 18	Ashford West Boundary	Ashford East Boundary	Ashford International station	Outbound services	Ashford Int stop 81010002 Ashford Int & Ebbsfleet Int stop 81010004 ECS 81004009	373	1 ⁴	0	4 ⁸	6 ¹⁰	7	5
April 18	Ashford East Boundary	Ashford West Boundary	Ashford International station	Inbound services	As above	373	0	2 ⁸	4	6	7	7
December 18	Ashford West Boundary	Ashford East Boundary	Ashford International station	Outbound services	Ashford Int stop 81010002 Ashford Int & Ebbsfleet Int stop 81010004 ECS 81004009	373	1 ⁵	1	3 ⁷	6 ¹⁰	7	5
December 18	Ashford East Boundary	Ashford West Boundary	Ashford International station	Inbound services	As above	373	0	2 ⁸	4	6 ¹⁰	7	7

Notes to Table:

The maximum number of Passenger Train Slots is two Outbound Services per hour and two Inbound Services per hour

¹ Peak times – Inbound Services departing Ashford International station on Weekdays between 06:32 and 08:32, and between 15:52 and 17:55, Outbound Services arriving Ashford International station on Weekdays between 07:35 and 09:38, and between 16:58 and 18:58

² Off-Peak times - arriving at and departing from Ashford International station on Weekdays outside Peak times

³ Passenger train slots under the sub-headings “Peak times” and “Off-peak times” are the constituent parts of, and are not in addition to, those listed under the sub-heading “Weekday”

⁴ 2 on Fridays

⁵ 2 on Mondays, Thursdays and Fridays

⁶ 3 on Fridays

⁷ 4 on Fridays

⁸ 5 on Fridays

⁹ 6 on Fridays

¹⁰ 7 on Fridays

- 2.1 The Train Operator has Firm Rights to the number of Passenger Train Slots in the Working Timetable in respect of a Service Group as listed against each Service specified in Table 2.1 and on the Days and within the Peak and Off-Peak Times so listed using any Specified Equipment included in Paragraph 5.1.(a) that is capable of achieving the Timing Load shown. If the Train Operator makes an Access Proposal or relies on a Rolled Over Access Proposal to operate any of the Services specified in Table 2. ^{“4th”}
- 2.2 Not used.
- 2.3 Not used.

Table 2.2: Additional Passenger Train Slots

Not Used

- 2.4 Not Used.
- 2.5 Not used.
- 2.6 The Train Operator has Firm Rights to make Ancillary Movements of Specified Equipment to the extent necessary or reasonably required to give full effect to the other Firm Rights of the Train Operator, including movements for driver training purposes.
- 2.7 For the purpose of paragraph 2.6, Ancillary Movements shall not include movements of rolling stock for the purpose of testing or driver training to the extent that:
- (a) the rolling stock concerned has not achieved vehicle and route acceptance necessary for its use in the carriage of passengers on the Route in question; or
 - (b) where the Route in question is not used by the Train Operator for carriage of passengers, the rolling stock concerned has not achieved vehicle and route acceptance necessary to operate on the Route without passengers on board.
- 2.8 Not used.
- 2.9 The Train Operator may operate Services on 26 December.
- 2.10 Not used.
- 2.11 The exercise of a Stabling right shall not count against the number of Passenger Train Slots listed in Tables 2.1 and 2.2.

3. **Intervals**

Not used. “4th”

Revised Table 3.3: Earliest and latest Passenger Train Slots

1					2					
Service Group All					Earliest and latest Passenger Train Slots (PTS)					
Service description Ashford International station Stopping Services										
From	To	Via	Description	TSC	Weekdays		Saturdays		Sundays	
					earliest PTS no later than	latest PTS no earlier than	earliest PTS no later than	latest PTS no earlier than	earliest PTS no later than	latest PTS no earlier than
Ashford West Boundary	Ashford East Boundary	Ashford Internationa l station	Outbound Services	Ashford Int. stop – 81010002 Ashford Int. & Ebbsfleet Int. stop – 81010004 ECS – 81004009	05.45	23.32	05.45	23.32	07.10 ¹	23.32
Ashford East Boundary	Ashford West Boundary	Ashford Internationa l station	Inbound Services	As above	06.28	23.05	06.28	23.05	07.10 ¹	23.05

Notes to Table:

During the period from 15 December to 30 April, inclusive, the earlier Passenger Train Slot on Sundays will be 06.30.

3.8 In respect of each Service specified in column 1 of Table 3.3, the Train Operator has Firm Rights to earliest Passenger Train Slots no later and latest Passenger Train Slots no earlier than the times specified in column 2.

4. **Calling Patterns – Not used**

Table 4.1: Calling Patterns – Not used

4.1	Not used
4.2	Not used
4.3	Not used
4.4	Not used
4.5	Not used

5. Specified Equipment

Revised Table 5.1: Specified Equipment.

1					2	3
Service Group All						
Service description Ashford International station Stopping Services						
Between	And	Via	Description	TSC	Standard Specified Equipment ¹	Additional Specified Equipment ¹
Ashford West Boundary	Ashford East Boundary	Ashford International station	Outbound Services	Non-stop – 8101000 1 Ashford Int. stop – 8101000 2 Ebbsfleet Int. stop – 8101000 3 Ashford Int. & Ebbsfleet Int. stop – 8101000 4 ECS – 81004009	Class 373 Class 373	None
Ashford East Boundary	Ashford West Boundary	Ashford International station	Inbound Services	As above	Class 373 Class 373	None

Notes to Table:

¹ Any Standard Specified Equipment or Additional Specified Equipment included in this Table 5.1 may not be used until and unless the necessary route clearance has been obtained

Standard equipment

- 5.1 In respect of each Service specified in column 1 of Table 5.1, the Train Operator has Firm Rights to Passenger Train Slots matching the performance characteristics of the Specified Equipment set out opposite that Service in column 2 of that Table (“Standard Specified Equipment”).

Additional equipment

- 5.2 Not used.
- 5.3 Not used.

Train length

- 5.4 In using the Standard Specified Equipment, and subject to any limit specified in Table 5.1, the Train Operator has a Firm Right to the maximum train length in metres which the Network can from time to time accommodate, subject to a right of Network Rail to vary the train length in cases where the Network cannot accommodate all Access Proposals and Rolled Over Access Proposals to operate to the maximum length.
- 5.5 Nothing in paragraph 5.4 precludes the operation of trains in excess of platform lengths where appropriate measures have been taken to control, so far as is reasonably practicable, any risks introduced by the use of such longer trains.

6. **Journey Times**

Not used. "4th"

7. **Provisions applicable to Journey Time protection**

Not used. “4th”

8. **Other rights**

Not used. “4th”

SCHEDULE 6 : EVENTS OF DEFAULT, SUSPENSION AND TERMINATION

1. Events of Default

1.1 Train Operator Events of Default

The following are Train Operator Events of Default:

- (a) the Train Operator ceases to be authorised to be the operator of trains for the provision of the Services by a licence granted under regulation 6 of the Railway (Licensing of Railway Undertakings) Regulations 2005;
- (b) an Insolvency Event occurs in relation to the Train Operator;
- (c)
 - (i) any breach by the Train Operator of this contract, its Safety Obligations or any of the Collateral Agreements; or
 - (ii) any event or circumstance which is reasonably likely to result in any such breach,

which, by itself or taken together with any other such breach, event or circumstance, Network Rail reasonably considers constitutes a threat to the safe operation of any part of the Network;
- (d) any Track Charges or other amount due by the Train Operator to Network Rail under this contract remain unpaid for more than 7 days after their due date;
- (e) any breach of this contract or any material breach of any of the Collateral Agreements by the Train Operator which, by itself or taken together with any other such breach, results, or is likely to result, in material financial loss to Network Rail; and
- (f) any breach of this contract or any material breach of any of the Collateral Agreements by the Train Operator which, by itself or taken together with any other such breach, results, or is likely to result, in material disruption to train operations of other train operators.

1.2 Notification

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

1.3 Network Rail Events of Default

The following are Network Rail Events of Default:

- (a) Network Rail ceases to be authorised to be the operator of that part of the Network comprising the Routes by a licence granted under section 8 of the Act unless exempt from the requirement to be so authorised under section 7 of the Act;

- (b) an Insolvency Event occurs in relation to Network Rail;
- (c)
 - (i) any breach by Network Rail of this contract, its Safety Obligations or any of the Collateral Agreements; or
 - (ii) any event or circumstance which is reasonably likely to result in any such breach,

which, by itself or taken together with any other such breach, event or circumstance the Train Operator reasonably considers constitutes a threat to the safe operation of the Services or any Ancillary Movements; and
- (d) any breach of this contract or any material breach of any of the Collateral Agreements by Network Rail which, by itself or taken together with any other such breach, results, or is likely to result, in material financial loss to the Train Operator.

1.4 Notification

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

2. Suspension

2.1 Right to suspend

- 2.1.1 Network Rail may serve a Suspension Notice where a Train Operator Event of Default has occurred and is continuing.
- 2.1.2 The Train Operator may serve a Suspension Notice where a Network Rail Event of Default has occurred and is continuing.

2.2 Contents of Suspension Notice

A Suspension Notice shall specify:

- (a) the nature of the relevant Event of Default;
- (b) the date and time at which suspension is to take effect;
- (c) in the case of a Suspension Notice served on the Train Operator, reasonable restrictions imposed while the Suspension Notice is in force on the permission to use the Routes or any parts of them or any other part of the Network;
- (d) in the case of a Suspension Notice served on Network Rail, details of any necessary suspension of the Services; and
- (e) whether the party serving the Suspension Notice reasonably considers that the Event of Default is capable of remedy, and where the Event of Default is capable of remedy:

- (i) the steps reasonably required to remedy the Event of Default; and
- (ii) a reasonable grace period for the defaulting party to remedy it (where the Event of Default which has occurred is a failure to pay Track Charges or other amount due, 7 days shall be a reasonable grace period).

2.3 Effect of Suspension Notice served by Network Rail

Where Network Rail has served a Suspension Notice on the Train Operator:

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

2.4 Effect of a Suspension Notice served by the Train Operator

Where the Train Operator has served a Suspension Notice on Network Rail:

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

2.5 Suspension to be proportionate to breach

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

- (a) railway vehicles;
- (b) Services;

- (c) Routes; and
 - (d) categories of train movements or railway vehicles,
- (or (as the case may be) parts or part of them) to which the relevant Train Operator Event of Default relates.
- 2.5.2 A Suspension Notice served under paragraph 2.4 in respect of any of the Network Rail Events of Default specified in paragraphs 1.3(a), (c) and (d) shall, so far as reasonably practicable, apply only to the:
- (a) railway vehicles;
 - (b) Services;
 - (c) Routes; and
 - (d) categories of train movements or railway vehicles,
- (or (as the case may be) parts or part of them) to which the relevant Network Rail Event of Default relates.
- 2.5.3 The party served with a Suspension Notice which specifies an Event of Default which is capable of remedy shall:
- (a) with all reasonable diligence, take such steps as are specified in the Suspension Notice to remedy the Event of Default; and
 - (b) keep the party serving the Suspension Notice fully informed of the progress which is being made in remedying the Event of Default.
- 2.5.4 Where a party served with a Suspension Notice has complied with its obligations under paragraph 2.5.3 (whether in whole or in part) and it is reasonable for the suspension effected by the Suspension Notice to be revoked (whether in whole or in part), the party which served the Suspension Notice shall revoke the suspension to that extent. Such revocation shall be effected as soon as practicable after the remedy in question by notice to the other party specifying the extent of the revocation and the date on which it is to have effect.

3. Termination

3.1 Network Rail's right to terminate

Network Rail may serve a Termination Notice on the Train Operator:

- (a) where the Train Operator fails to comply with any material restriction in a Suspension Notice;
- (b) where the Train Operator fails to comply with its obligations under paragraph 2.5.3;

- (c) where the Train Operator Event of Default specified in paragraph 1.1(a) has occurred and is continuing; or
- (d) where the Train Operator Event of Default specified in a Suspension Notice served by Network Rail is not capable of being remedied and three months have elapsed from the service of that Suspension Notice.

3.2 Train Operator's right to terminate

The Train Operator may serve a Termination Notice on Network Rail:

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

3.3 Contents of Termination Notice

A Termination Notice shall specify:

- (a) the nature of the relevant Event of Default;
- (b) a date and time, which shall be reasonable in the circumstances, at which termination is to take effect; and
- (c) whether the party serving the Termination Notice reasonably considers that the Event of Default is capable of remedy, and where the relevant Event of Default is capable of remedy:
 - (i) the steps which the party serving the Termination Notice believes are reasonably required to remedy the Event of Default; and
 - (ii) a reasonable grace period within which such steps may be taken (where the Event of Default is a failure of the Train Operator to pay Track Charges or other amounts due, 7 days is a reasonable grace period).

3.4 Effect of Termination Notice

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

- (a) the service of the Termination Notice shall not affect the parties' continuing obligations under this contract up to the date of termination, which date shall be determined in accordance with paragraph 3.4(c);

- (b) the party which has served the Termination Notice shall withdraw it by notice to the other party, upon being reasonably satisfied that the relevant Event of Default has been remedied; and
- (c) this contract shall terminate on the later of:
 - (i) the date and time specified in the Termination Notice for the contract to terminate (or such later date and time as the party which served the Termination Notice notifies to the other before the date and time so specified); and
 - (ii) the date on which a copy of the Termination Notice is given to ORR.

4. Consequence of termination

4.1 Directions regarding location of Specified Equipment

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

4.2 Failure to comply with directions

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

4.3 Evidence of costs

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

SCHEDULE 7: TRACK CHARGES AND OTHER PAYMENTS

PART 1: INTERPRETATION

1 Definitions

In Parts 1-7 inclusive, unless the context otherwise requires:

“2008 Final Determinations”	means the document entitled “Periodic Review 2008: Determination of Network Rail’s outputs and funding for 2009-14” published by ORR on 30 October 2008;
“2013 Final Determination”	means the document entitled “Periodic Review 2013: Final determination of Network Rail’s outputs and funding for 2014-19” published by ORR on 31 October 2013;
“access charges review”	has the meaning ascribed to it by Schedule 4A to the Act;
“Capacity Charge”	means a variable charge, calculated in accordance with paragraph 6 of Part 2;
“Capacity Charge Wash-up”	means the charge calculated in accordance with paragraph 6.2;
“Capacity Charge Wash-up Weekday Rate”	has the meaning as ascribed to it in paragraph 6.4;
“Capacity Charge Wash-up Weekend Rate”	has the meaning as ascribed to it in paragraph 6.4;
“Default Charge”	means a variable charge calculated in accordance with paragraph 3.3 of Part 2;
“Default Period”	means the period from the later of: (a) the date on which the New Specified Equipment is first used on the Network by the Train Operator; or (b) 1 April 2014, until the date on which ORR consents to or determines a supplement to the Track Usage Price List under paragraph 9.10 of Part 2 in respect of that New Specified Equipment;
“Default Rate”	means, in respect of any New Specified Equipment used on the Network by the Train Operator, the corresponding passenger default rate for that type of vehicle set out in the section of the Track Usage Price List entitled “Passenger Variable Usage Charge default rates”;

“Default Train Consist Data”	means the data listed in Appendix 7C as amended from time to time in accordance with paragraph 10.4 of Part 2;
“Delivery Plan”	means the document, including its supporting documentation, published by Network Rail on or about 31 March 2014 setting out its delivery plan for the period 1 April 2014 – 31 March 2019;
“Electrification Asset Usage Charge”	means a charge for electrification asset usage, calculated in accordance with paragraph 8 or Part 2;
“Existing Service Codes”	means each of the following Service Coded Groups: 24638004, 81001009, 81002009 and 81003109;
“Initial Indexation Factor”	is derived from the following formula:

$$IIF = \left(1 + \frac{(RPI_{2013} - RPI_{2012})}{RPI_{2012}} \right)^2$$

where:

IIF means Initial Indexation Factor;

RPI_{2012} means the RPI published or determined with respect to the month of November 2012; and

RPI_{2013} means the RPI published or determined with respect to the month of November 2013;

“List of Capacity Charge Rates”	means the document entitled “List of Capacity Charge Rates” published by Network Rail on or about 20 December 2013 which, for the purposes of this contract, shall be deemed to incorporate any supplements to that document consented to or determined pursuant to paragraph 9.10 of Part 2 of Schedule 7 to this contract;
“Material Alliance Agreement”	means a legally binding agreement between: <ul style="list-style-type: none"> (a) Network Rail and the Train Operator; or (b) Network Rail, the Train Operator and one or more other train operators; or (c) Network Rail and one or more other train operators, establishing an alliance under which the parties to such legally binding agreement agree to share risk or reward or both on a REBS Route or part thereof on which the Train Operator operates Services and which is likely to have a material direct financial impact on one or more elements of Network Rail’s costs or income included within the Route Baseline;

“New Specified Equipment”	means a type of railway vehicle not included in the section of the Track Usage Price List entitled “Passenger Variable Usage Charge rates”;
“Outperformance Cap”	means the maximum possible amount in pounds sterling that can be attributed to a REBS Outperformance as published by Network Rail in its Delivery Plan;
“Outperformance Sum”	means the lower of: (a) the Outperformance Cap as indexed in accordance with paragraph 1.11 of Part 3; and (b) 25% of the amount in pounds sterling which ORR, in its annual efficiency and finance assessment of Network Rail, determines in respect of the REBS Outperformance;
“Period”	has the meaning ascribed to it in Schedule 8;
“REBS Outperformance”	means the situation where ORR’s annual efficiency and finance assessment of Network Rail in respect of the REBS Route in Relevant Year t has identified, in accordance with the methodology and principles set out in Chapter 19 of the 2013 Final Determination, that Network Rail’s performance has exceeded the performance set in the Route Baseline as indexed in accordance with paragraph 1.10 of Part 3;
“REBS Route”	means a route specified in the table in Appendix 7A for the purposes of the Route-Level Efficiency Benefit Share Mechanism;
“REBS Underperformance”	means the situation where ORR’s annual efficiency and finance assessment of Network Rail in respect of the REBS Route in Relevant Year t has identified, in accordance with the methodology and principles set out in Chapter 19 of the 2013 Final Determination, that Network Rail’s performance has not achieved the performance set in the Route Baseline as indexed in accordance with paragraph 1.10 of Part 3;
“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;
"Route Baseline"	means the baseline value in respect of a REBS Route in Relevant Year t that is published by Network Rail in its Delivery Plan;
“Route-Level Efficiency Benefit Share”	has the meaning ascribed to it in paragraph 1.1 of Part 3;

“Route-Level Efficiency Benefit Share Mechanism”	means the provisions for the calculation and payment of the Route-Level Efficiency Benefit Share in respect of one or more REBS Routes as described in paragraph 1 of Part 3;
“RPI”	means the General Index of Retail Prices All Items measured by CHAW and published each month, or: <ul style="list-style-type: none"> (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;
“Service Coded Group”	means any Service or collection of Services or Ancillary Movements operating under a service code specified in the List of Capacity Charge Rates, and any Ancillary Movements relating to such Services;
“Track Usage Price List”	means the document entitled “Track Usage Price List” published by Network Rail on or about 20 December 2013 which, for the purposes of this contract, shall be deemed to incorporate any supplements to that document consented to or determined pursuant to paragraph 9.10 of Part 2 of Schedule 7 to this contract;
“Train Consist Data”	means the information relating to the number(s) and type(s) of railway vehicle comprised in a train movement;
“Train Mile”	in relation to a train, means a mile travelled by that train on the Network;
“Underperformance Cap”	means the maximum possible amount in pounds sterling that can be attributed to a REBS Underperformance as published by Network Rail in its Delivery Plan;
“Underperformance Sum”	means the lower of: <ul style="list-style-type: none"> (a) the Underperformance Cap as indexed in accordance with paragraph 1.11 of Part 3; and (b) 10% of the amount in pounds sterling which ORR, in its annual efficiency and finance assessment of Network Rail, determines in respect of the REBS Underperformance;
“Variable Charges”	means the Capacity Charge, the Default Charge, the Electrification Asset Usage Charge and the Variable Usage Charge;

“Variable Usage Charge”	means a variable charge, calculated in accordance with paragraph 3.1 of Part 2;
“Vehicle Mile”	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.

PART 2: TRACK CHARGES

1 Principal formula

During each Relevant Year, Network Rail shall levy and the Train Operator shall pay Track Charges in accordance with the following formula:

$$T_t = V_t + K_t + KW_t + D_t + EAV_t$$

where:

- T_t means Track Charges in Relevant Year t ;
- V_t means an amount in respect of the Variable Usage Charge in Relevant Year t which is derived from the formula in paragraph 3.1;
- K_t means an amount in respect of the Capacity Charge in Relevant Year t which is derived from the formula in paragraph 6;
- KW_t means an amount, if any, in respect of the Capacity Charge Wash-up in Relevant Year t which shall be calculated in accordance with paragraph 6.3;
- EAV_t means an amount in respect of the Electrification Asset Usage Charge, calculated in accordance with the formula in paragraph 8; and
- D_t means an amount (if any) in respect of the Default Charge in Relevant Year t which is calculated in accordance with paragraph 3.3.

2 Not used.

3 Variable Usage Charge

3.1 Variable Usage Charge

For the purposes of paragraph 1, the term V_t means an amount in respect of the Variable 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 for a type of vehicle i for Relevant Year t which is derived from the following formula:

$$V_{it} = V_{it-1} \cdot \left(1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right)$$

where:

RPI_{t-1} means the RPI published or determined with respect to the month of November in Relevant Year $t-1$;

RPI_{t-2} means the RPI published or determined with respect to the month of November in Relevant Year $t-2$,

but so that in relation to the Relevant Year commencing on 1 April 2014, V_{it} shall have, in respect of vehicle type i , the corresponding variable usage charge rate per Vehicle Mile for that vehicle type i set out in the Track Usage Price List; multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year V_{it-1} shall have the same value;

- UV_{it} 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 .

3.2 Not used

3.3 *Default Charge*

For the purposes of paragraph 1, the term D_t means the amount of Default Charge payable in respect of New Specified Equipment in Relevant Year t which is derived from the following formula:

$$D_t = \sum D_{nt} \bullet UD_{nt}$$

where:

D_{nt} means the Default Rate for that New Specified Equipment for Relevant Year t which is derived from the following formula:

$$D_{nt} = D_{nt-1} \bullet \left(1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right)$$

where:

RPI_{t-1} has the meaning set out in paragraph 3.1 above;

RPI_{t-2} has the meaning set out in paragraph 3.1 above,

but so that in relation to the Relevant Year commencing on 1 April 2014, D_{nt} shall have, in respect of New Specified Equipment, the corresponding Default Rate for that New Specified Equipment, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year D_{nt-1} shall have the same value;

UD_{nt} means the actual volume of usage of New Specified Equipment in Vehicle Miles during the Default Period in Relevant Year t operated by or on behalf of the Train Operator; and

Σ means the summation across all relevant New Specified Equipment.

4 Not used.

5. Not used.

6 **Capacity Charge and Capacity Charge Wash-up**

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:

$$K_t = \left[\sum (Pg_{twdi} \bullet T_{gtwdi}) + (Pg_{twei} \bullet T_{gtwei}) \right]$$

where:

Σ means the sum across all Service Coded Groups i ;

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

$$Pg_{twdi} = Pg_{t-1wdi} \bullet \left(1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right)$$

where:

RPI_{t-1} has the meaning set out in paragraph 3.1 above; and

RPI_{t-2} has the meaning set out in paragraph 3.1 above.

but so that in relation to the Relevant Year t commencing on 1 April 2014, Pg_{twdi} shall have the value for the Weekday rate per Service Coded Group i shown for the Train Operator in the List of Capacity Charge Rates, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year, Pg_{t-1wdi} shall have the same value;

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

$$Pg_{twei} = Pg_{t-1wei} \cdot \left(1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right)$$

where:

RPI_{t-1} has the meaning set out in paragraph 3.1 above; and

RPI_{t-2} has the meaning set out in paragraph 3.1 above,

but so that in relation to the Relevant Year t commencing on 1 April 2014, Pg_{twei} shall have the value for the weekend rate per Service Coded Group i shown for the Train Operator in the List of Capacity Charge Rates, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year, Pg_{t-1wei} shall have the same value;

Tg_{twdi} means the actual Train Miles run on Weekdays by Services or Ancillary Movements in Service Coded Group i in the Relevant Year t; and

Tg_{twei} means the actual Train Miles run on weekends by Services or Ancillary Movements in Service Coded Group i in the Relevant Year t.

6.2 Within 90 days after the end of Relevant Year t, Network Rail shall calculate any Capacity Charge Wash-up for the Train Operator (KWt) in accordance with paragraph 6.3 and provide the Train Operator such background data and workings as may reasonably be required for a proper understanding of Network Rail's calculations. If KWt is a positive sum then it shall be payable by the Train Operator. If KWt is a negative sum or equal to zero then no sum shall be payable by the Train Operator or by Network Rail.

6.3 KWt is derived from the following formula:

$$KW_t = \sum M_{te} - B_t - \sum A_{te}$$

Where \sum means the summation across all the Existing Service Codes e.

and where:

M_{te} means Network Rail's reasonable estimate of the aggregate revenue it would have been entitled to receive during Relevant Year t from the Capacity Charge for

Services or Ancillary Movements operating under Existing Service Code e under this track access agreement if, in the calculation of the Capacity Charge under paragraph 6.1 above, the weekday rate and weekend rate for any Existing Service Code e were interpreted to mean the Capacity Charge Wash-up Weekday Rate and Capacity Charge Wash-up Weekend Rate respectively, as set out in the corresponding columns in the List of Capacity Charge Rates, and had been applied as such for all Services or Ancillary Movements relating to the Existing Service Code e that had operated on the Network during Relevant Year t;

B_t means a baseline value in pounds for the Train Operator (BV_t) in Relevant Year t which shall be derived from the following formula:

$$BV_t = BV_{t-1} \cdot \left(1 + \frac{(RPI_{t-1} - RPI_{t-2})}{RPI_{t-2}} \right)$$

where:

RPI_{t-1} has the meaning set out in paragraph 3.1 above; and

RPI_{t-2} has the meaning set out in paragraph 3.1 above.

but so that in relation to the Relevant Year t commencing on 1 April 2014, BV_t , shall be the baseline value in pounds for the Train Operator as set out in Network Rail's List of Capacity Charge Baselines for CP5, published by Network Rail on or before 10 February 2014 which, for the purposes of this contract, shall be deemed to incorporate any supplements approved or directed by ORR, multiplied by the Initial Indexation Factor and in relation to the next following Relevant Year BV_{t-1} shall have the same value.

A_{te} means the aggregate income which Network Rail, acting reasonably, estimates is owed to it under paragraph 6.1 of Schedule 7 of this track access agreement in respect of the Capacity Charge for all Services or Ancillary Movements relating to Existing Service Code e that have been operated on the Network during Relevant Year t;

If KW_t is a negative sum, then for the purposes of this paragraph, it shall be zero.

6.4 NOT USED

7 Not used.

8 Electrification Asset Usage Charge

8.1 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:

$$EV_{tK} = EV_{t-1K} \cdot \left(1 + \frac{RPI_{t-1} - RPI_{t-2}}{RPI_{t-2}} \right)$$

where:

RPI_{t-1} has the meaning set out in paragraph 2.2 above; and

RPI_{t-2} has the meaning set out in paragraph 3.1 above,
but so that in relation to the Relevant Year commencing on 1 April 2014, EV_{tk} 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, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year EV_{t-1k} shall have the same value; and

UV_{tk} 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.

- 8.2 The parties acknowledge that traction current charges incurred by the Services between Ashford West Boundary and Ashford East Boundary are paid by the Train Operator direct to CTRL(UK) Limited under a separate agreement.

9 Bilateral supplements to the List of Capacity Charge Rates and Track Usage Price List

- 9.1 Where the Train Operator intends to use New Specified Equipment on the Network, it shall where reasonably practicable inform Network Rail in writing of the date or likely date from which it intends to do so.
- 9.2 Where the Train Operator uses New Specified Equipment on the Network, the Train Operator shall pay Network Rail the relevant Default Charge during the Default Period.
- 9.3 No supplement to the Track Usage Price List or List of Capacity Charge Rates shall have effect unless it has been:
- (a) agreed between the parties and ORR has consented to it; or
 - (b) determined by ORR.
- 9.4 Either the Train Operator or Network Rail shall be entitled to propose that:
- (a) the Track Usage Price List be supplemented as necessary to include a new vehicle type and corresponding rate; or
 - (b) the List of Capacity Charge Rates be supplemented as necessary to take account of changes in the pattern and number of Services or to include rates in respect of new Services.
- 9.5 Any proposal of a kind referred to in paragraph 9.4 shall be made by notice to the other party and shall be accompanied by a specification of the proposal in reasonable detail and the reasons for it. The parties shall thereafter seek to agree in good faith the necessary supplement to the list in question.
- 9.6 Either party may request from the other such information that it reasonably requires in connection with the proposal and the party from whom the information was requested shall use reasonable endeavours to provide this information promptly.
- 9.7 Where the parties agree to a supplement following a proposal under paragraph 9.4, they shall request ORR's consent to it and provide such information as ORR reasonably requires in order to decide whether to give its consent.
- 9.8 If the parties fail to reach agreement within 45 days of the date of the notice given under paragraph 9.5, at any point thereafter either party shall be entitled to refer the matter to ORR for determination.
- 9.9 Following a reference to ORR under paragraph 9.8, the parties shall, within such timescales as ORR may reasonably specify, furnish ORR with such information and evidence as ORR shall reasonably require to determine the matter. If a party fails to furnish such information and evidence within the specified timescale, ORR shall be entitled to determine the matter without that information and evidence and the party in default shall have no grounds for complaint in that respect.

- 9.10 ORR may:
- (a) consent to any supplement that is agreed by the parties and submitted to it under paragraph 9.7, or following consultation with the parties, determine that a different supplement should apply; or
 - (b) following a referral to ORR under paragraph 9.8, determine the supplement that should apply.
- 9.11 In the case of a supplement to the List of Capacity Charge Rates, the supplement shall have effect from such date as ORR shall determine by notice to the parties, provided that such date shall not be a date falling prior to 1 April 2014.
- 9.12 In the case of a supplement to the Track Usage Price List, the supplement shall have retrospective effect from the first day of the Default Period.
- 9.13 Following ORR's consent or determination under paragraph 9.10 Network Rail shall:
- (a) apply the supplement from the date in accordance with paragraph 9.11 or 9.12 above as applicable; and
 - (b) within 28 days of the date of ORR's consent or determination:
 - (i) issue any adjusting invoice or credit note to the Train Operator. In the case of a supplement to the Track Usage Price List this will reflect the difference between the amount paid by the Train Operator for the Default Charge during the Default Period and the amount that it would have paid during the Default Period in respect of the Variable Usage Charge had the supplement been in place at the time the Train Operator first used the relevant railway vehicle on the Network; and
 - (ii) publish on its website details of the supplement alongside the details of any other such supplements to which ORR has consented or determined pursuant to this or any other track access contract.

10 Payment of Track Charges and Other Sums Due under the Contract

10.1 Payment of Track Charges and Other Sums Due under the Contract

- (a) Save where the contract provides otherwise, the Train Operator shall pay or procure the payment to Network Rail of:
 - (i) the Variable Usage Charge;
 - (ii) not used;
 - (iii) the Capacity Charge;
 - (iv) the Electrification Asset Usage Charge;
 - (v) the Default Charge; and
 - (vi) any other sums which have fallen due in accordance with any provision of this contract, 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) Not used.
- (c) Not used.

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) Not used.
- (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) 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: ROUTE-LEVEL EFFICIENCY BENEFIT SHARE MECHANISM

1. **Route-Level Efficiency Benefit Share Mechanism**

Calculation of the Route-Level Efficiency Benefit Share

- 1.1 The Route-Level Efficiency Benefit Share for Relevant Year t (“ O_t ” or “ U_t ” as the case may be) is the amount (if any) that is payable by Network Rail to the Train Operator or by the Train Operator to Network Rail, as the case may be, in respect of a REBS Route, derived from the following formula:

- (a) in the case of a REBS Outperformance:

$$O_t = \left[\frac{V_t + D_t}{AV_t} \right] \cdot \text{Outperformance Sum}$$

and

- (b) in the case of a REBS Underperformance:

$$U_t = \left[\frac{V_t + D_t}{AV_t} \right] \cdot \text{Underperformance Sum}$$

where:

O_t means the amount that is payable by Network Rail to the Train Operator in respect of REBS Outperformance on the REBS Route in Relevant Year t ;

- D_t means the Default Charge payable by the Train Operator in respect of the REBS Route for Relevant Year t ;
- V_t means the Variable Usage Charge payable by the Train Operator in respect of the REBS Route for Relevant Year t ;
- AV_t means the aggregate Variable Usage Charge and Default Charge payable by all train operators providing services for the carriage of passengers in respect of the REBS Route in Relevant Year t (and calculated by summing the values of V_t and D_t under paragraph 1 of Part 2 and the corresponding provisions of each relevant train operator's access agreement) and the aggregate amounts payable under items 1 to 4 and 9 of the variable charge payable by all train operators providing services for the carriage of freight in respect of the REBS Route in Relevant Year t (and calculated by summing items 1 to 4 and 9 of the variable charge under paragraph 2.2.1 of Schedule 7 of each relevant train operator's access agreement); and
- U_t means the amount that is payable by the Train Operator to Network Rail in respect of REBS Underperformance on the REBS Route in Relevant Year t .

1.2 The Route-Level Efficiency Benefit Share (if any) calculated under paragraph 1.1 shall be payable for each REBS Route for Relevant Year t , unless the Train Operator has exercised a right to opt out in respect of a particular REBS Route in accordance with paragraph 1.3 or 1.4. Where the Train Operator has exercised such a right, no Route-Level Efficiency Benefit Share shall be payable by or to the Train Operator, in respect of that REBS Route:

- (a) for the Relevant Year in the course of which the notice referred to in paragraph 1.3 was served and all subsequent Relevant Years up to 31 March 2019; and
- (b) where Network Rail entered into a Material Alliance Agreement during the course of Relevant Year t and the Train Operator issued an Opt-out Notice pursuant to paragraph 1.4(b) in Relevant Year $t+1$, in respect of any Period in Relevant Year t commencing on or after the date of the Material Alliance Agreement.

Train Operator right to opt out of the Route-Level Efficiency Benefit Share Mechanism

1.3 The Train Operator may serve a notice, in the form set out in Appendix 7B, on Network Rail (and shall provide a copy to ORR) informing Network Rail that the Route-Level Efficiency Benefit Share Mechanism shall not apply to the Train Operator in respect of one or more REBS Routes specified in the notice for the Relevant Year in the course of which the notice was served and all subsequent Relevant Years up to 31 March 2019 (an "**Opt-out Notice**"). Unless paragraph 1.4 applies, an Opt-out Notice may be served only before 1 July 2014.

1.4 If any of the following circumstances apply, the Train Operator may serve an Opt-out Notice at any time until 31 March 2019:

- (a) the Train Operator commences operating on one or more REBS Routes on which it did not previously operate services, services for the carriage of passengers or freight by railway, as a result of entering into a new access agreement or otherwise. In these circumstances such Opt-out Notice may be served only in respect of the REBS Routes on which the Train Operator commences operating those services; or
- (b) Network Rail notifies ORR and the Train Operator that it has entered into an agreement which is, in its opinion, a Material Alliance Agreement and ORR confirms in writing that it agrees. In these circumstances the Opt-out Notice may only be served in respect of the REBS Route to which the Material Alliance Agreement applies.

In the circumstances described in paragraphs 1.4(a) and (b), the Opt-out Notice must be served within two months after:

the date on which the Train Operator commences operating the services described in paragraph 1.4(a); or

the date of receipt of written confirmation from ORR under paragraph 1.4(b),

as the case may be.

- 1.5 Network Rail shall serve notice on ORR and the Train Operator that it has entered into an agreement which it considers to be a Material Alliance Agreement within 14 days after entering into it.
- 1.6 Network Rail shall provide such information, excluding information which is subject to a legally binding duty or obligation of confidentiality (whether arising under the terms of any contract or otherwise), to the Train Operator as the Train Operator may reasonably request in order to determine whether to serve an Opt-out Notice. Network Rail shall provide such information within 14 days of the request, unless not reasonably practicable to do so, in which case it shall provide the information as soon as reasonably practicable.

Obligation to pay Route-Level Efficiency Benefit Share

- 1.7 If, pursuant to paragraph 1.1, a party is entitled to payment from the other of a Route-Level Efficiency Benefit Share in Relevant Year t, then, subject to paragraphs 1.2 and 1.8, such payment shall be made to the party entitled to the payment by the other party as a lump sum payment within 56 days after the date of publication of ORR's annual efficiency and finance assessment of Network Rail for Relevant Year t.
- 1.8 If, in respect of any Relevant Year t, a Route-Level Efficiency Benefit Share is payable in accordance with paragraph 1.7 and this contract has either commenced or expired or otherwise been terminated during the course of that Relevant Year t, the party entitled to payment shall be entitled to a pro rata payment of the Route-Level Efficiency Benefit Share payable in respect of that REBS Route for Relevant Year t. Such pro rata payment (which shall be payable in accordance with paragraph 1.9) shall be calculated as follows:

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

where:

REBS

means either O_t or U_t as the case may be; 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 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';
- (ii) if this contract expires or is otherwise terminated on or after the fifteenth day of a Period, such Period shall be included in the calculation of 'CP';
- (iii) if this contract commences on or before the fourteenth day of a Period, such Period shall be included in the calculation of 'CP'; and
- (iv) if this contract commences on or after the fifteenth day of a Period, such Period shall not be included in the calculation of 'CP'.

- 1.9 Without prejudice to the generality of Clause 16.3.1, any payment of a Route-Level Efficiency Benefit Share (a "**REBS payment**") shall be made on the basis that it is to be treated as exclusive of VAT, so that where and to the extent that the REBS payment is consideration for a supply for VAT purposes the party making that REBS payment shall in addition pay to the party receiving the REBS payment an amount equal to the amount of VAT due in respect of that REBS payment and either:

- (a) the party receiving the REBS Payment shall issue a VAT invoice to the party making such REBS payment in respect of the relevant amount; or
- (b) if the parties so agree and have entered into an applicable self-billing agreement (within the meaning of regulation 13(3A) of the Value Added Tax Regulations 1995 (the “**VAT Regulations**”)) that continues in force then the party making the REBS payment shall produce for itself a self-billed invoice (within the meaning of regulation 13(3) of the VAT Regulations) in respect of the relevant amount.

Route Baseline Indexation

1.10 The indexed Route Baseline in respect of Relevant Year t shall be derived from the following formula:

$$RBI_t = \text{Route Baseline} \cdot \left(1 + \frac{(RPI_t - RPI_{2012})}{RPI_{2012}} \right)$$

where:

- RBI_t means the indexed Route Baseline in respect of Relevant Year t;
- RPI_t means the RPI published or determined with respect to the month of November in Relevant Year t; and
- RPI₂₀₁₂ means the RPI published or determined with respect to November 2012.

Outperformance Cap and Underperformance Cap Indexation

1.11 The indexed Outperformance Cap and Underperformance Cap in respect of Relevant Year t shall be derived from the following formula:

- (a) in the case of the Outperformance Cap:

$$OCI_t = OC_t \cdot \left(1 + \frac{(RPI_t - RPI_{2012})}{RPI_{2012}} \right)$$

- (b) in the case of the Underperformance Cap:

$$UCI_t = UC_t \cdot \left(1 + \frac{(RPI_t - RPI_{2012})}{RPI_{2012}} \right)$$

where:

- OCI_t means the indexed Outperformance Cap in respect of Relevant Year t;
- OC_t means the Outperformance Cap in respect of Relevant Year t;
- UCI_t means the indexed Underperformance Cap in respect of Relevant Year t;
- UC_t means the Underperformance Cap in respect of Relevant Year t;
- RPI_t has the meaning set out in paragraph 1.10 above; and
- RPI₂₀₁₂ has the meaning set out in paragraph 1.10 above.

PART 3A: NOT USED

PART 4: NOT USED

PART 5: ADDITIONAL CHARGES

NOT USED

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) not used;
- (b) the rate of Variable Usage Charge and any Default Charge and the relevant number of Vehicle Miles applicable to vehicles for each service so charged;
- (c) the amount of the Electrification Asset Usage Charge and the number of days covered by the invoice;
- (d) not used;
- (e) not used;
- (f) not used;
- (g) not used;
- (h) not used;
- (i) not used;
- (j) the amount of any sum K_t payable as provided in paragraph 6 of Part 2; and
- (k) in respect of any other sums which have fallen due in accordance with any provisions of this contract, separately the amount payable in respect of each head of charge.

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 2019 or such later date as may be specified in that review; and
- (b) not used.

2 Not used.

3 Interpretation

In this Part 7, references to ORR carrying out an access charges review shall be construed as including references to its initiating implementation of that review.

APPENDIX 7A – REBS ROUTES TABLE

Route	Route definition
Anglia	As defined in Network Rail's Delivery Plan supporting information
East Midlands	
Kent	
London North East	
London North West	
Scotland	
Sussex	
Wales	
Wessex	
Western	

APPENDIX 7B – ROUTE-LEVEL EFFICIENCY BENEFIT SHARE MECHANISM OPT-OUT NOTICE

[Name of train operator representative]

[Position]

Telephone: [xxx]

E-mail: [xxx]

[Date]

[Enter name of person specified in paragraph 1 of Schedule 1 to the contract]

Network Rail

Kings Place

90 York Way

London

N1 9AG

Dear [Enter name of person specified in paragraph 1 of Schedule 1 to the contract]

Opt-out from the Route-Level Efficiency Benefit Share (REBS) Mechanism

This is an Opt-out Notice in respect of the REBS Mechanism in Schedule 7 of the track access contract between Network Rail Infrastructure Limited and [Enter train operator name here], dated [insert date of track access contract] (“the contract”).

[Enter train operator name here] hereby exercises its right to opt-out of the REBS Mechanism in respect of the REBS Routes identified in Table 1 below, pursuant to {delete as appropriate [paragraph 1.3 of Part 3 to Schedule 7] or [paragraph 1.4 of Part 3 to Schedule 7]} to the contract.

Table 1: REBS opt-out matrix

Route	Route definition	Opt-out (please mark with an ‘x’)
Anglia	As defined in Network Rail’s Delivery Plan supporting information	
East Midlands		
Kent		
London North East		
London North West		
Scotland		
Sussex		
Wales		
Wessex		
Western		

I have sent a copy of this notice to the Director of Railway Markets and Economics at the Office of Rail Regulation and to the Head of Regulatory Policy at Network Rail [and any other person at Network Rail entitled to a copy as set out in paragraph 1 of Schedule 1 to the contract].

Yours faithfully

[Name of train operator representative]

APPENDIX 7C – DEFAULT TRAIN CONSIST DATA

Class 373/1 electric multiple unit (20 vehicles).

SCHEDULE 8 : PERFORMANCE REGIME

Not Used.

SCHEDULE 9: LIMITATION ON LIABILITY

1. Definitions

In this Schedule

“Liability Cap” means:

- (a) not used
- (b) in relation to each Contract Year, the sum calculated in accordance with the following formula:

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

where:

- (i) C_1 is the sum of £10,000,000.00 (ten million pounds);
- (ii) C_n is the Liability Cap in the nth subsequent Contract Year;
- (iii) RPI_n is the Retail Prices Index (as defined in Schedule 7) published or determined with respect to the first month of the subsequent Contract Year n; and
- (iv) RPI_1 is the Retail Prices Index (as defined in Schedule 7) published or determined with respect to the month in which this contract became effective under Clause 3.1.

2. Application

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

3. Limitation on Network Rail’s liability

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

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

4. Limitation on Train Operator’s liability

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

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

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

5. Disapplication of limitation

To the extent that any Relevant Losses:

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

such Relevant Losses:

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

6. Exclusion of legal and other costs

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

7. Exclusion of certain Relevant Losses

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

8. Continuing breaches

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

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

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

9. Final determination of claims

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

SCHEDULE 10: NETWORK CODE MODIFICATIONS

1. **Automatic effect**

1.1 *General*

This contract shall have effect:

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

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

1.2 *Retrospective effect*

No relevant notice may have retrospective effect.

2. **Modification notice**

2.1 *Meaning*

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

2.2 *Contents of modification notice*

A modification notice shall state:

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

3. **Adaptation procedure**

3.1 *Application*

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

3.2 *Negotiation of adaptations*

In respect of the modifications in each modification notice:

- (a) within 14 days of the date of service of the relevant modification notice, the parties shall meet and in good faith negotiate and attempt to agree the requisite adaptations;

- (b) each party shall ensure that:
 - (i) such negotiations are conducted in good faith in a timely, efficient and economical manner, with appropriate recourse to professional advice; and
 - (ii) ORR's criteria are applied in the negotiations; and
- (c) the negotiations shall not continue after the backstop date.

3.3 *Agreed adaptations - notice to the Office of Rail Regulation*

If the parties have agreed the requisite adaptations on or before the backstop date, not later than 7 days after the backstop date the agreed requisite adaptations shall be sent by the parties to ORR for its consent, together with a statement, signed by or on behalf of both parties:

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

3.4 *Agreed adaptations – Office of Rail Regulation's consent*

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

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

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

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

3.6 *Requisite adaptations - failure to agree or submit*

If the parties have failed to submit agreed requisite adaptations to ORR for its consent within 7 days after the backstop date, it may determine the requisite adaptations itself.

3.7 *Notice of determined requisite adaptations*

A notice of determined requisite adaptations is a notice:

- (a) given by ORR to the parties for the purposes of this paragraph 3 following the failure of the parties to send to ORR within 7 days of the backstop date requisite adaptations to which it gives its consent; and
- (b) which states the requisite adaptations which ORR has determined should be made using its powers to do so under paragraph 3.5 or 3.6.

3.8 *Effect of requisite adaptations*

Requisite adaptations established either:

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

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

4. **Procedural matters**

4.1 *More than one notice*

More than one modification notice may be given.

4.2 *Differences etc as to requisite adaptations*

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

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

4.3 *Co-operation and information*

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

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

4.4 *Office of Rail Regulation's criteria*

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

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

4.5 *Procedural modifications*

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

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

4.6 *Dates*

In this Schedule 10:

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

4.7 *Requirement for prior consultation*

No relevant notice shall have effect unless:

- (a) ORR has first consulted the parties and the Secretary of State in relation to the proposed relevant notice in question;
- (b) in the consultations referred to in paragraph 4.7(a), ORR has made available to the parties and the Secretary of State such drafts of the proposed relevant notice as it considers are necessary so as properly to inform them of its contents;
- (c) ORR has given each party and the Secretary of State the opportunity to make representations in relation to the proposed relevant notice and has taken into account all such representations (other than those which are frivolous or trivial) in making its decision on the relevant notice to be given;
- (d) ORR has notified the parties and the Secretary of State as to its conclusions in relation to the relevant notice in question (including by providing to each such person a copy of the text of the proposed relevant notice) and its reasons for those conclusions; and
- (e) in effecting the notifications required by paragraph 4.7(d), ORR has treated as confidential any representation (including any submission of written material) which (and to the extent that) the person making the representation, by notice in writing to ORR or by endorsement on the representation of words indicating the confidential nature of such representation, has specified as confidential information.

4.8 *Consolidated contract*

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

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

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

4.9 *Saving*

Nothing in this Schedule 10 affects:

- (a) the right of either party to approach and obtain from ORR guidance in relation to the requisite adaptations; or
- (b) the right of ORR at any time to effect modifications to the Network Code under Condition C8 of that code.

5. **Definitions**

In this Schedule 10:

“backstop date”	means the date (being not earlier than 28 days from the date of the modification notice) specified as such in a modification notice (or such later date as may be established under paragraph 3.5(a) or 4.6);
“modification notice”	has the meaning ascribed to it in paragraph 2.1;
“notice of consent to requisite adaptations”	means a notice given by ORR under paragraph 3.4;
“notice of determined requisite adaptations”	has the meaning ascribed to it in paragraph 3.7;
“notice of procedural modification”	means a notice given by ORR to the parties under paragraph 4.5 modifying any aspect of the procedure in this Schedule 10 for the agreement or establishment of requisite adaptations;
“ORR’s criteria”	means the criteria established by ORR for the purposes of the negotiation of requisite adaptations and given to the parties, or modified, under paragraph 4.4;
“relevant notice”	means a modification notice, notice of determined requisite adaptations, notice of procedural modification or notice of modification of ORR’s criteria;
“requisite adaptations”	in relation to specified modifications, means the amendments (including the addition of information) to the provisions in question which are necessary or expedient so as to give full effect to them in the particular circumstances of the case, and “adaptation” shall be construed accordingly; and
“specified”	means specified in a modification notice.

SCHEDULE 11: RELEVANT SCHEDULE 8 MODIFICATIONS

1. Automatic Effect

1.1 General

This contract shall have effect:

- (a) with the Relevant Schedule 8 Modifications specified; and
- (b) from the date,

specified by ORR in a Notice of Consent or Notice of Determined Relevant Schedule 8 Modifications.

1.2 Retrospective effect

ORR's Notice of Consent or Notice of Determined Relevant Schedule 8 Modifications may have retrospective effect provided that such modifications shall not take effect earlier than 1 April 2014.

2. Procedures Governing Relevant Schedule 8 Modifications

2.1 Negotiation of Relevant Schedule 8 Modifications

In respect of the Relevant Schedule 8 Modifications:

- (a) the parties shall, within 8 weeks from the Start Date, meet and negotiate and attempt to agree the Relevant Schedule 8 Modifications;
- (b) each party shall ensure that:
 - (i) such negotiations are conducted in a timely, efficient and economical manner, with appropriate recourse to professional advice; and
 - (ii) ORR's Criteria are applied in the negotiations; and
- (c) the negotiations shall not continue after the Backstop Date.

2.2 Relevant Schedule 8 Modifications – failure to agree

If the parties fail to agree the Relevant Schedule 8 Modifications on or before the Backstop Date:

- (a) Network Rail shall notify ORR; and
- (b) ORR may, within 56 days of receipt of the notification under paragraph 2.2(a), elect to determine the Relevant Schedule 8 Modifications itself..

2.3 ORR's determination of Relevant Schedule 8 Modifications

If ORR elects to determine the Relevant Schedule 8 Modifications itself in accordance with paragraph 2.2(b), then, following such consultation with the parties as it considers necessary, ORR may determine the Relevant Schedule 8 Modifications and give a notice specifying such Relevant Schedule 8 Modifications.

2.4 Use of ORR's Criteria by the relevant ADRR Forum

If ORR does not elect to determine the Relevant Schedule 8 Modifications within 56 days of receipt by ORR of notification in accordance with paragraph 2.2(a), either party may refer the matter for resolution in accordance with the ADRR and the parties shall agree in a Procedure Agreement (such term to have the same meaning as in the ADRR) that the relevant ADRR Forum shall:

- (a) have regard to ORR's Criteria and make such orders in its award as it considers necessary to establish the requisite Relevant Schedule 8 Modifications;
- (b) provide reasons for its award; and
- (c) state the extent to which and ways in which ORR's Criteria have been applied in determining the Relevant Schedule 8 Modifications and, in any case where they have not been applied, give the reasons.

2.5 Relevant Schedule 8 Modifications – notice to the Office of Rail Regulation

Not later than seven days after the Backstop Date or the determination by the relevant ADRR Forum, as the case may be, the Relevant Schedule 8 Modifications shall be sent by the parties to ORR for its consent, together with a statement, signed by or on behalf of both parties:

- (a) stating the reasons for the Relevant Schedule 8 Modifications;
- (b) stating the extent to which and ways in which ORR's Criteria have been applied in determining the Relevant Schedule * Modifications and, in any case where they have not been applied, the reasons; and
- (c) giving such other information as ORR may have requested.

2.6 Relevant Schedule 8 Modifications – ORR's consent

If ORR is satisfied with the Relevant Schedule 8 Modifications submitted to it pursuant to paragraph 2.4, and it gives a notice to that effect, such modifications shall have effect as provided for in paragraph 1.1.

2.7 Relevant Schedule 8 Modifications – ORR's refusal of consent

If ORR gives notice to the parties that it is not satisfied with any or all of the proposed Relevant Schedule 8 Modifications, it may:

- (a) require the parties again to follow the procedure or any part of the procedure set out in paragraphs 2.1 to 2.5 for agreeing Relevant Schedule 8 Modifications (with such modifications as to time limits as it specifies), in which case they shall do so; or
- (b) following such consultation with the parties as it considers necessary, determine the Relevant Schedule 8 Modifications itself and give a notice specifying such Relevant Schedule 8 Modifications.

2.8 Payment adjustments

Within 10 Working Days of the date of any notice referred to in paragraph 1.1 the parties shall make such adjustments to the payments made under Schedule 8 as are necessary to ensure that the

parties are in the financial position in respect of the Relevant Schedule 8 Modifications as if those modifications had had effect from the date specified in the notice given under paragraph 1.1.

3. Procedural Matters

3.1 *Co-operation and information*

If ORR gives notice to either or both of the parties that it requires from either or both of them information in relation to the Relevant Schedule 8 Modifications or proposed Relevant Schedule 8 Modifications:

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

3.2 *ORR's Criteria*

Any Relevant Schedule 8 Modifications shall:

- (a) ensure that Schedule 8 will provide appropriate incentives on both parties in relation to Services, such that both parties are appropriately encouraged to maintain and improve operational performance, seeking to minimise lateness and cancellations;
- (b) be consistent with the Railways Infrastructure (Access and Management) Regulations 2005;
- (c) be drafted to meet a high standard of simplicity, clarity and legal precision;
- (d) use definitions, terminology and numbering, including any bespoke provisions based on previous track access contracts, which are consistent with the defined terms, terminology and numbering used in this contract;
- (e) take account, where relevant, of the document named 'Criteria and procedures for the approval of track access contracts' published by ORR, as may be re-issues from time to time;
- (f) take account, where relevant, of ORR's latest policy statements on the performance regime; and
- (g) take account of the duties of ORR under section 4 of the Act.

3.3 *Procedural modifications*

In relation to the procedure in paragraph 2 for the Relevant Schedule 8 Modifications (including the times within which any step or thing requires to be done or achieved):

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

3.4 *Dates*

In this Schedule:

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

3.5 *Consolidated contract*

Not later than 28 days after the giving of a Notice of Consent or Notice of Determined Relevant Schedule 8 Modifications, Network Rail shall prepare and send to the Train Operator and ORR a copy of this contract as so modified.

3.6 *Saving*

Nothing in this Schedule affects the right of either party to approach and obtain from ORR guidance in relation to Relevant Schedule 8 Modifications.

4. **Definitions**

In this Schedule 11:

“Backstop Date” means 27 May 2014 (or such later date as may be established under paragraph 2.6 (a) or 3.3);

“Notice of Consent” means a notice given by ORR to the parties under paragraph 2.5;

“Notice of Determined Relevant Schedule 8 Modifications” means a notice given by ORR to the parties under either paragraph 2.3 or paragraph 2.6 (b);

“Notice of Procedural Modifications” means a notice given by ORR to the parties under paragraph 3.3 modifying any aspect of the procedures in this Schedule;

“ORR’s Criteria” means the criteria set out in paragraph 3.2;

“Start Date” means 1 April 2014;

“Relevant Schedule 8 Modifications” means:

- (a) any modifications required to Schedule 8; and
- (b) any modifications to any other part of this Contract which are necessary as a consequence of any modifications under paragraph (a);

to reflect the alterations which are necessary or desirable to achieve the objectives set out in ORR’s Criteria in the most efficient and economic manner.

SCHEDULE 12: RELEVANT SCHEDULE 4 MODIFICATIONS

1. Automatic Effect

1.1 General

This contract shall have effect;

- (a) with the Relevant Schedule 4 Modifications; and
- (b) from the date,

specified by ORR in a Notice of Consent or Notice of Determined Relevant Schedule 4 Modifications.

1.2 Retrospective effect

ORR's Notice of Consent or Notice of Determined Relevant Schedule 4 Modifications may have retrospective effect provided that such modifications shall not take effect earlier than 1 April 2014.

2. Procedures Governing Relevant Schedule 4 Modifications

2.1 Negotiation of Relevant Schedule 4 Modifications

In respect of the Relevant Schedule 4 Modifications:

- (a) the parties shall, within 8 weeks from the Start Date, meet and negotiate and attempt to agree the Relevant Schedule 4 Modifications;
- (b) each party shall ensure that:
 - (i) such negotiations are conducted in a timely, efficient and economical manner, with appropriate recourse to professional advice; and
 - (ii) ORR's Criteria are applied in the negotiations; and
- (c) the negotiations shall not continue after the Backstop Date.

2.2 Relevant Schedule 4 Modifications – failure to agree

If the parties fail to agree the Relevant Schedule 4 Modifications on or before the Backstop Date:

- (a) Network Rail shall notify ORR; and
- (b) ORR may, within 56 days of receipt of the notification under paragraph 2.2(a), elect to determine the Relevant Schedule 4 Modifications itself.

2.3 ORR's determination of Relevant Schedule 4 Modifications

If ORR elects to determine the Relevant Schedule 4 Modifications itself in accordance with paragraph 2.2(b), then, following such consultation with the parties as it considers necessary, ORR may determine the Relevant Schedule 4 Modifications and give a notice specifying such Relevant Schedule 4 Modifications.

2.4 Use of ORR's Criteria by the relevant ADRR Forum

If ORR does not elect to determine the Relevant Schedule 4 Modifications within 56 days of receipt by ORR of notification in accordance with paragraph 2.2(a), either party may refer the matter for resolution in accordance with the ADRR and the parties shall agree in a Procedure Agreement (such term to have the same meaning as in the ADRR) that the relevant ADRR Forum shall:

- (a) have regard to ORR's Criteria and make such orders in its award as it considers necessary to establish the requisite Relevant Schedule 4 Modifications;
- (b) provide reasons for its award; and
- (c) state the extent to which and ways in which ORR's Criteria have been applied in determining the Relevant Schedule 4 Modifications and, in any case where they have not been applied, give the reasons.

2.5 Relevant Schedule 4 Modifications – notice to the Office of Rail Regulation

Not later than seven days after the Backstop Date or the determination by the relevant ADRR Forum, as the case may be, the Relevant Schedule 4 Modifications shall be sent by the parties to ORR for its consent, together with a statement, signed by or on behalf of both parties:

- (a) stating the reasons for the Relevant Schedule 4 Modifications;
- (b) stating the extent to which and ways in which ORR's Criteria have been applied in determining the Relevant Schedule 4 Modifications and, in any case where they have not been applied, the reasons; and
- (c) giving such other information as ORR may have requested.

2.6 Relevant Schedule 4 Modifications – ORR's consent

If ORR is satisfied with the Relevant Schedule 4 Modifications submitted to it pursuant to paragraph 2.4, and it gives a notice to that effect, such modifications shall have effect as provided for in paragraph 1.1.

2.7 Relevant Schedule 4 Modifications – ORR's refusal of consent

If ORR gives notice to the parties that it is not satisfied with any or all of the proposed Relevant Schedule 4 Modifications, it may:

- (a) require the parties again to follow the procedure or any part of the procedure set out in paragraphs 2.1 to 2.5 for agreeing Relevant Schedule 4 Modifications (with such modifications as to time limits as it specifies), in which case they shall do so; or
- (b) following such consultation with the parties as it considers necessary, determine the Relevant Schedule 4 Modifications itself and give a notice specifying such Relevant Schedule 4 Modifications.

2.8 Payment adjustments

Within 10 Working Days of the date of any notice referred to in paragraph 1.1 the parties shall make such adjustments to the payments made under Schedule 4 as are necessary to ensure that the

parties are in the financial position in respect of the Relevant Schedule 4 Modifications as if those modifications had had effect from the date specified in the notice given under paragraph 1.1.

3. Procedural Matters

3.1 Co-operation and information

If ORR gives notice to either or both of the parties that it requires from either or both of them information in relation to the Relevant Schedule 4 Modifications or proposed Relevant Schedule 4 Modifications:

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

3.2 ORR's Criteria

Any Relevant Schedule 4 Modifications shall:

- (a) provide protection to the Train Operator that is reasonably equivalent to the Standard Sustained Planned Disruption Arrangements;
- (b) take account, where relevant, of Chapter 20 of the document named "Periodic Review 2013: Final Determination of Network Rail's outputs and funding for 2014-19" published by ORR on 31 October 2013, in relation to Sustained Planned Disruption;
- (c) be drafted to meet a high standard of simplicity, clarity and legal precision;
- (d) use definitions, terminology and numbering, including any bespoke provisions based on previous track access contracts, which are consistent with the defined terms, terminology and numbering used in this contract;
- (e) take account, where relevant, of the document named 'Criteria and procedures for the approval of track access contracts' published by ORR, as may be re-issued from time to time; and
- (f) take account of the duties of ORR under section 4 of the Act.

3.3 Procedural modifications

In relation to the procedure in paragraph 2 for the Relevant Schedule 4 Modifications (including the times within which any step or thing requires to be done or achieved):

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

3.4 Dates

In this Schedule:

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

3.5 *Consolidated contract*

Not later than 28 days after the giving of a Notice of Consent or Notice of Determined Relevant Schedule 4 Modifications, Network Rail shall prepare and send to the Train Operator and ORR a copy of this contract as so modified.

3.6 *Saving*

Nothing in this Schedule affects the right of either party to approach and obtain from ORR guidance in relation to Relevant Schedule 4 Modifications.

4. **Definitions**

In this Schedule 12:

“Backstop Date” means 27 May 2014 (or such later date as may be established under paragraph 2.6 (a) or 3.3);

“Notice of Consent” means a notice given by ORR to the parties under paragraph 2.5;

“Notice of Determined Relevant Schedule 4 Modifications” means a notice given by ORR to the parties under paragraph 2.6 (b);

“Notice of Procedural Modifications” means a notice given by ORR to the parties under paragraph 3.3 modifying any aspect of the procedures in this Schedule;

“ORR’s Criteria” means the criteria set out in paragraph 3.2;

“Standard Sustained Planned Disruption Arrangements” means the Sustained Planned Disruption compensation arrangements that are typically available to operators of regular scheduled non-franchised passenger services and which are set out in Part 3 to Schedule 4 to the track access agreements between those operators and Network Rail;

“Start Date” means 1 April 2014;

“Relevant Schedule 4 Modifications” means:

- (a) any modifications required to Schedule 4; and
- (b) any modifications to any other part of this Contract which are necessary as a consequence of any modifications under paragraph (a);

to reflect the alterations which are necessary or desirable to achieve the objectives set out in ORR’s Criteria in the most efficient and economic manner.

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

Signed by

Print name

Duly authorised for and on behalf of
NETWORK RAIL INFRASTRUCTURE LIMITED

Signed by

Print name

Duly authorised for and on behalf of
EUROSTAR INTERNATIONAL LIMITED