

TRACK ACCESS CONTRACT (PASSENGER SERVICES)

Dated

17th January 2007

Between

NETWORK RAIL INFRASTRUCTURE LIMITED

and

NORTH YORKSHIRE MOORS RAILWAY ENTERPRISES PLC

Redacted, conformed copy as at 09th September 2020**Amended by:-**

1. 1st Supplemental Agreement dated 30th March 2007
2. 2nd Supplemental Agreement dated 28th June 2007
3. 3rd Supplemental Agreement dated 16th May 2008
4. 6th Supplemental Agreement dated 23rd October 2008
5. 11th Supplemental Agreement dated 12th December 2008
6. 10th Supplemental Agreement dated 23rd January 2009
7. 13th Supplemental Agreement dated 25th March 2009
8. 9th Supplemental Agreement dated 23rd July 2009
9. 12th Supplemental Agreement dated 23rd July 2009
10. 15th Supplemental Agreement dated 23rd April 2010
11. 17th Supplemental Agreement dated 13th August 2010
12. 19th Supplemental Agreement dated 21 February 2011
13. Notice of consent to requisite adaptations dated 16 March 2011
14. Notice of ADRR consequential changes dated 11 December 2011
15. 23rd Supplemental Agreement dated 31st May 2013
16. 24th Supplemental Agreement dated 3rd October 2013
17. 25th Supplemental Agreement dated 14th February 2014
18. 26th Supplemental Agreement dated 31st March 2014
19. 29th Supplemental Agreement dated 1st June 2017
19. 27th Supplemental Agreement dated 22nd August 2018
20. 28th Supplemental Agreement dated 14th November 2018
21. 30th Supplemental Agreement dated 10th December 2018
22. 31st Supplemental Agreement dated 14th March 2019
23. 32nd Supplemental Agreement dated 14th March 2019
24. 33rd Supplemental Agreement dated 17th December 2019
25. 34th Supplemental Agreement dated 21st April 2020
26. 35th Supplemental Agreement dated 6th August 2020

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THIS CONTRACT is made the 17th day of January 2007

BETWEEN:

- (1)^{29th} Network Rail Infrastructure Limited, a company registered in England under number 2904587 having its registered office at 1 Eversholt Street, London, NW1 2DN (“Network Rail”); and
- (2) North Yorkshire Moors Railway Enterprises Plc, a company registered in England under number 2490244 having its registered office at Pickering Station, Pickering, North Yorkshire, YO18 7AJ (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 charges review**” has the meaning ascribed to it by Schedule 4A to the Act;^{31st}

“**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 1 January 2007, as from time to time amended or replaced under Part D of the Network Code;

“Applicable Timetable Planning Rules” means the Timetable Planning Rules in force in respect of the Routes on 1 January 2007, 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;

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

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

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

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

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

“Contract Year” means each yearly period commencing on 1 January 2007 and subsequently on each anniversary of such date;

“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;

“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;

“Expiry Date” means the Principal Change Date 2023^{23rd};

“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;

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

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

unless:

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

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

“Longstop Date” means 28 February 2007;

“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;

“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;

“Office of Rail Regulation” 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 Regulation;

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

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

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

“Relevant 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;

“Relevant Year” has the meaning ascribed to it in Schedule 7,^{31st}

“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” has the meaning ascribed to it under 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” has the meaning ascribed to it under the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

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

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

“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;

“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 A of the Network Code; and

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

1.2 Interpretation

In this contract, unless the context otherwise requires:

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

- (o) if there is any conflict of interpretation between this contract and the Network Code, the Network Code shall prevail; 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 the signature of this contract and 1 January 2007.

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, or a licence granted under section 8 of the Act to be the operator of trains for the provision of the Services or is exempt from the requirement to be so authorised under section 7 of the Act;
- (b) Network Rail is authorised by a licence granted under section 8 of the Act to be the operator of that part of the Network comprising the Routes or is exempt from the requirement to be so authorised under section 7 of the Act;

- (c) each of the Collateral Agreements is executed and delivered by all the parties to each such agreement and is unconditional in all respects (save only for the fulfilment of any condition relating to this contract becoming unconditional);
- (d) the Safety Case of each of the parties is accepted under the Railways (Safety Case) Regulations 2000, or a safety certificate or 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) not used;
- (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 Not Used

5.6 The Services and the Specified Equipment

Schedules 5 and 11 shall have effect.^{23rd}

5.7 Performance

Schedule 8 shall have effect.

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 AND OTHER PAYMENTS^{26th}

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 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 ADDR

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

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

13.2 Unpaid sums^{26th}

If either party fails to pay:

- (a) any invoice issued to it under this contract in respect of Track Charges; or
- (b) any other sum which has fallen due in accordance with any provision of this contract,

then:

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

13.3 Performance Orders

13.3.1 Power to order provisional relief

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

13.3.2 Performance Orders

A Performance Order:

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

13.4 Remedies

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

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

13.5 Exclusion of applications on preliminary points of law

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

14 CONFIDENTIALITY

14.1 Confidential Information

14.1.1 General obligation

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

14.1.2 Network Rail - Affiliates

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

14.1.3 Train Operator - Affiliates

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

14.2 Entitlement to divulge

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

- (a) to ORR;
- (b) not used;
- (c) to the Health and Safety Executive;
- (d) to any Affiliate of either party;
- (e) 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;
- (f) 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;
- (g) 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;
- (h) 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;

- (i) 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;
- (j) to the extent that it has become available to the public other than as a result of a breach of confidence; and
- (k) 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 following consultation with the other party, and subject to the conditions (if any) of ORR'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^{31st}

All invoices issued under Schedule 7, or statements of amounts payable under Schedule 4, Schedule 5 or Schedule 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) or by email (where both parties agree) to the address for service for the recipient specified in Schedule 1 and shall be deemed to have been received by the addressee in accordance with Clause 18.4.3.

16.1.3 Content of invoices and other statements of amounts payable

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

16.1.4 Method of payment

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

16.2 Interest

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

16.3 VAT

16.3.1 Payment of VAT

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

16.3.2 *Reimbursement of VAT*

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

16.3.3 *VAT credit note to be issued on repayment*

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

17 **FORCE MAJEURE EVENTS**

17.1 **Meaning of Force Majeure Event**

In this Clause 17:

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

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

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

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

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

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

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

17.2 Nature and extent of relief for Force Majeure

Force Majeure relief under this Clause 17:

- (a) extinguishes the obligation of the Affected Party to indemnify the other party under Clause 8.2 in respect of Relevant Losses sustained as a result of the failure of the Affected Party to perform a Relevant Obligation; but
- (b) is not available in respect of:
 - (i) any obligation to pay money under Schedules 5, 7 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^{31st}

Any notice to be given under this contract:

- (a) shall be in writing; and
- (b) shall be duly given if signed by or on behalf of a person duly authorised to do so by the party giving the notice and delivered by hand at, or by sending it by prepaid first class post, recorded delivery, or by facsimile transmission (with confirmation copy by prepaid first class post) or by email (where the parties agree) to the relevant address or email address or facsimile number as 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^{31st}

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

- (a) if sent by hand or recorded delivery, at the time of delivery;
- (b) if sent by prepaid first class post from and to any place within the United Kingdom, three Working Days after posting unless otherwise proven;
- (c) if sent by facsimile (subject to confirmation of uninterrupted transmission by a transmission report) before 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; and
- (d) if sent by email (subject to confirmation of receipt of delivery) 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

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.

19^{11th} INTERIM TREATMENT OF ACCESS REVIEWS

19.1 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 of the Act by the Current Control Period Expiry Date 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 from the day after the Current Control Period Expiry Date or from any later date (or dates) specified in the Proposed Review Notice in respect of any individual amendments.

19.2 Definitions

In this Clause 19:

“Current Control Period” means the period of five years commencing at 0000 hours on 1 April 2004 and ending at 2359 hours on 31 March 2009;

“Current Control Period Expiry Date” means the last day of the Current control Period;

“Proposed Review Notice” means as at the last day of the Current Control Period the most recent Review Notice (including any Revised Review Notice) given by the office of Rail regulation during the Current Control Period the terms of which are proposed to take effect after the Current Control Period Expiry Date;

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

“Revised Review Notice” means any new Review Notice given by the Office of Rail Regulation pursuant to paragraph 8(2) of Schedule 4A of the Act.

SCHEDULE 1: CONTACT PARTICULARS

- 1.^{29th} Network Rail's address for service of notices is:

Network Rail Infrastructure Limited
 1 Eversholt Street
 London
 NW1 2DN

Tel: 020 3356 9595

Fax: 020 3356 9300

All written notices to be marked:

“URGENT: ATTENTION THE COMPANY SECRETARY AND SOLICITOR”

and copied to:

The Route Managing Director,
 Network Rail (LNE&EM Route)
 George Stephenson House
 Toft Green
 York
 YO1 6HT

Tel: 01904 383145

Fax: 01904 383262

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

North Yorkshire Moors Railway Enterprises Plc
 Pickering Station
 Pickering
 North Yorkshire
 YO18 7AJ

Tel: 01751 473799

Fax: 01751 476970

All written notices to be marked:

“URGENT: ATTENTION THE COMPANY SECRETARY”

and copied to:

The General Manager
 North Yorkshire Moors Railway Enterprises Plc

Pickering Station

Pickering

North Yorkshire

YO18 7AJ

Tel: 01751 473799

Fax: 01751 476970

3. The Train Operator's Address for service of invoices is:

North Yorkshire Moors Railway Enterprises Plc

Pickering Station

Pickering

North Yorkshire

YO18 7AJ

Tel: 01751 473799

Fax: 01751 476970

4. Network Rail's address for service of invoices is:

Shared Services Finance

Room 313

Rail House

Store Street

Manchester

M60 7RT

SCHEDULE 2: THE ROUTES

1. Definitions

In this Schedule 2 where the context admits:

- 1.1 “Main Route” means the route listed in paragraph 2 of this Schedule; and
“Additional Route” means the route listed in paragraph 3 of this Schedule.

2. Main Routes

The Main Routes are between:

- (a) Battersby and Whitby
- (b) Sheringham and Cromer^{35th}

3. Additional Route

The Additional Route is between Battersby and Middlesbrough and shall be for the sole purpose of Train Operator Variation Request.

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: Not Used ^{19th}**SCHEDULE 5: THE SERVICES AND THE SPECIFIED EQUIPMENT****1 Definitions**

- 1.1 In this Schedule unless the context otherwise requires:

“Calling Pattern” means a list of stations related to one or more Passenger Train Slots, at which stops are to be Scheduled in the Working Timetable;

“Contingent Right” means a right under this Schedule 5 which is not a Firm Right and which is subject to the fulfilment of all Exercised competing 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” means:

- (a) in the case of a Timetable Participant, a right under its regulated access agreement in respect of the number (or

quantum) of Passenger Train Slots in any specified period (including rights to Passenger Train Slots in respect of additional trains or relief services), timing (including departure and arrival times, clockface requirements, first and last Passenger Train Slots, intervals between Passenger Train Slots, Journey Times and turnaround times), routing, Specified Equipment, Calling Patterns (including rights to vary them and rights to stop short of a terminal station), rights to use particular parts of railway facilities (such as dedicated platforms at stations and routes to maintenance facilities), and for ancillary services, connection requirements, rights to stable trains and any other characteristic of a train movement; and

- (b) in the case of Network Rail, a right under the Applicable Engineering Access Statement or the Applicable Timetable Planning Rules,

which, in either case, is not expressed to be a Contingent Right or to be subject to any contingency outside the control of the holder of the right but which is, in a case within paragraph (a) above, subject to:

- (i) the Applicable Engineering Access Statement;
- (ii) the Applicable Timetable Planning Rules;
- (iii) the exercise by Network Rail of any applicable Flexing Right; and
- (iv) the operation of any other provision of the Network Code;

“Network Change”

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

“Passenger Train Slot”

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

“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;

“Regular Calling Pattern”

has the meaning ascribed to it in paragraph 4.1;

“regulated access

means an access agreement as that term is defined in section 83 of

agreement”	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;
“Scheduled”	means, in relation to the quantum, timing or any other characteristic of a train movement, that quantum, timing or other characteristic as included in the applicable Working Timetable;
“Service Group”	means any one or more (as the context may require) of the service groups described in this Schedule;
“Standard Specified Equipment”	means, in respect of any Service, the Specified Equipment listed opposite that Service in column 2 of Table 5.1;
“Steam Driven Equipment”	means Specified Equipment which is steam driven and listed opposite that Service in column 3 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;
“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 on the Day in question, notwithstanding that a Passenger Train Slot may not be Scheduled to arrive at its end point until the immediately succeeding Day.

2 Passenger Train Slots

Table 2.1: Passenger Train Slots¹

1					2		
Service Group PR01 ^{1, 29th}							
Service description North Yorkshire Moors Railway ^{27th}					Passenger Train Slots ^{34th}		
From	To	Via	Description	TSC	Total Weekday	Saturday	Sunday
Grosmont	Whitby	N/A	N/A	22241000	5	5	N/A
Whitby	Grosmont	N/A	N/A	22241000	5	5	N/A

Notes to Table:

¹ These Services may only be scheduled to operate on the dates as set out in Appendix 1 to this Schedule 5.

- 2.1 Subject to Appendix 1 of this Schedule 5, 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 under the heading "Passenger Train Slots" and on the Days so listed.
- 2.2^{1st}¹ In order to provide for the Scheduling of part only of Passenger Train Slots specified in Table 2.1 the Train Operator has:
- (a) Firm Rights for such a Passenger Train Slot to commence from and/or terminate at Grosmont, providing that in all such cases the Specified Equipment operating that Passenger Train Slot when terminating at Grosmont shall transfer from the Network to that network owned by North Yorkshire Moors Railways Enterprises PLC and when commencing from Grosmont shall transfer from that network owned by North Yorkshire Moors Railways Enterprises PLC onto the Network;
 - (b) Not used.
- 2.3 not used.

¹ This provision is subject to the satisfaction of the Condition Precedent contained in the First Supplemental Agreement between the parties.

Table 2.2: Additional Passenger Train Slots^{29th}

1

Service Group PR01²**Service description^{27th}**

From	To	Via	Description	TSC	Total Weekday	Saturday	Sunday
Grosmont	Whitby	N/A	N/A	22241000	4	2 ^{2nd}	4
Whitby	Battersby	N/A	N/A	22241000	2	3	4
Battersby	Whitby	N/A	N/A	22241000	2	3	4
Whitby	Grosmont	N/A	N/A	22241000	4	4	4
Grosmont ^{27th}	Battersby	N/A	N/A	22241000	2	2	N/A
Battersby	Grosmont ^{27th}	N/A	N/A	22241000	2	2	N/A

2

Additional Passenger Train Slots**Service Group PR02^{3 35th}****Service description North Yorkshire Moors Railway**

From	To	Via	Description	TSC	Total Weekday	Saturday	Sunday
Sheringham	Cromer	N/A	N/A	22241001	1	1	1
Cromer	Sheringham	N/A	N/A	22241001	1	1	1

- 2.4^{6th} The Train Operator has Contingent Rights to additional Passenger Train Slots in the Working Timetable in respect of a Service Group up to the number listed against each Service specified in Table 2.2 under the heading “Additional Passenger Train Slots”.
- 2.5^{6th} In order to provide for the Scheduling of part only of Passenger Train Slots specified in Table 2.2 Service Group PR01 the train operator has:
- (a) Contingent Rights for such a Passenger Train Slot to commence from and/or terminate at Grosmont, providing that in all such cases the Specified Equipment operating that Passenger Train Slot when terminating at Grosmont shall transfer from the Network to that network owned by North Yorkshire Moors Railways Enterprises PLC onto the Network.
 - (b) Contingent Rights for such a Passenger Train Slot to commence from and/or terminate at Glaisdale.
- 2.6 not used.
- 2.7 not used.
- 2.8 not used.
- 2.9 Nothing in this Schedule 5 shall give the Train Operator any rights to Train Slots on 25 and 26 December in any year.
- 2.10 Subject to paragraph 2.9, in respect of any Public Holiday , the Train Operator has Firm Rights to operate a Weekday service on any of the Services listed in Table 2.1
- 2.11 not used.

4 Calling Patterns

Table 4.1: Calling Patterns.^{29th}

1					2	3
Service Group PR01						
Service description						
Between	And	Via	Description	TSC	Regular Calling Pattern	Additional Stations
Grosmont	Whitby	N/A	N/A	22241000		Sleights or Ruswarp
Whitby	Battersby	N/A	N/A	22241000	Grosmont, Egton, ^{2nd} Glaisdale, Danby or Castleton Moor	Ruswarp or Sleights
Battersby	Whitby	N/A	N/A	22241000	Castleton Moor, Danby, Glaisdale, Egton ^{2nd} or Grosmont	Sleights or Ruswarp
Whitby	Grosmont	N/A	N/A	22241000		Ruswarp or Sleights
1	2	3				
Service Group PR02^{35th}						
Service description						
Between	And	Via	Description	TSC	Regular Calling Pattern	Additional Stations
Sheringham	Cromer	N/A	N/A	22241001		
Cromer	Sheringham	N/A	N/A	22241001		

Regular Calling Pattern

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

Reduced calls

- 4.2 Subject to paragraph 4.3, if the Train Operator’s Access Proposal or Rolled Over Access Proposal in respect of any Passenger Train Slot contains a Calling Pattern which excludes any one or more of the stations (the “Excluded Stations”) listed in:

- (a) the relevant Service’s Regular Calling Pattern; or
- (b) not used

then the Train Operator has Firm Rights to the Calling Pattern specified in the Access Proposal or Rolled Over Access Proposal.

- 4.3 If the Train Operator makes a Access Proposal or Rolled Over Access Proposal of the kind specified in paragraph 4.2, Network Rail may insert, in respect of that Passenger Train Slot, an amount of Pathing Time up to an aggregate of:

- (a) the total of the station dwell times for the Excluded Stations; and
- (b) the time which the Specified Equipment would have required to decelerate into and accelerate out of each of the Excluded Stations.

- 4.4 not used.

Additional calls

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

5 Specified Equipment

Table 5.1: Specified Equipment.

1					2	3
Service Group PR01 ^{29th}						
Service description						
Between	And	Via	Description	TSC	Standard Specified Equipment ¹	Steam Driven Equipment ²
Battersby	Whitby	N/A	N/A	22241000	Class 24 ^{2nd}	LMS, CI 5, 4-6-0 MK 1
					Class 25 ^{2nd}	Std, CI 4, 2-6-0
					Class 33 ^{2nd}	Std, CI 4, 4-6-0
					Class 37 (all variants) ^{2nd}	Std, CI 4, 2-6-4T
					Class 40 ^{2nd}	LNER, K 1, 2-6-0
					Class 45 ^{2nd}	LNER, B 1, 4-6-0
					Class 47 (all variants) ^{2nd}	LNER, J 27, 0-6-0
					Class 50 ^{2nd}	SR, S15, 4-6-0
					Class 52 ^{2nd}	SR, WC/BB (unrebuilt), 4-6-2 ^{2nd}
					Class 55 ^{2nd}	SR, WC/BB (rebuilt), 4-6-2 ^{2nd}
					Class 57 ^{2nd}	GWR 4575 ^{2nd}
					Class 66 ^{2nd}	GWR Hall 4-6-0 ^{2nd}
					Class 67 ^{2nd}	LNER K4 2-6-0 ^{2nd}
					Class 31 ^{17th}	GW 94xx 0-6-0pt ^{2nd}
						LMS Class 4/5 2-6-0 ^{2nd}
						Standard Class 5 4-6-0 ^{2nd}
						BR Std, Class 7 4-6-2 ^{6th}

1					2	3
Service Group PR01^{29th}						
Service description						
Between	And	Via	Description	TSC	Standard Specified Equipment ¹	Steam Driven Equipment ²

BR Std, Class 8 4-6-2^{6th}
LMS 'Jubilee' Class 5xP 4-6-0^{6th}
LNER Class A1 4-6-2 (New build-
'Tornado'^{6th}
LMS Class 6 4-6-0 ('Royal Scot')^{6th}
LNER Class A4 4-6-2^{9th}
LNER Class Q6 0-8-0^{9th}
SR 'Schools' Class 4-4-0^{9th}
GWR 'King' Class 8 4-6-0^{15th}
GWR 'Castle' Class 7 4-6-0^{15th} And up
to 8 MK1 coaches^{1st}

Service Group PR02^{35th}						
Service description						
Between	And	Via	Description	TSC	Standard Specified Equipment ¹	Steam Driven Equipment ²
Sheringham	Cromer	N/A	N/A	22241001	BR Class 20 Bo-Bo Diesel Electric	BR Std, Class 4MT 2-6-0 And up to 4 MK1 Coaches

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

² Any Steam Driven 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
- (a) the Specified Equipment set out opposite that Service in column 2 of that Table (“Standard Specified Equipment”) and
 - (b) the Steam Driven Equipment set out opposite that Service in column 3 of that Table.

Additional Equipment

- 5.2 A’Class 08 Diesel Shunter’ may be used for rescue purposes only subject to the necessary route clearance being obtained.^{9th}
- 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 specific arrangements which have been approved by the Health and Safety Executive are in place to accommodate such longer trains.

6 Journey Times

Not Used

7 Provisions applicable to Journey Time Protection

Not Used

8 Other rights

Table 8.1: *Platform Rights* Not used.

Platform rights

- 8.1 Not used

8.2 Not used.

Table 8.2: *Connections* - Not used

Connections

8.3 Not used.

8.4 Not used.

Table 8.3: *Departure time ranges*. Not Used

Departure time ranges

8.5 Not used.

Table 8.4: *Stabling facilities* – not used

Stabling facilities

8.6 Not used.

Table 8.5: Turnaround times. Not used

Turnaround times

8.7 Not used.

Quantum of additional calls

8.8 Not used.

Table 8.6: *Quantum of Additional Calls*: Not used

9. Steam Operation

- 9.1 The following provisions of this paragraph 9 shall apply when the Specified Equipment requested to be operated by the Train Operator is Steam Driven Equipment.
- 9.2 The Train Operator shall take all precautions as are reasonably practicable in relation to the Steam Driven Equipment itself and shall take all necessary precautions in the operation of that equipment (including the adoption of recommendations made to it by appropriate safety bodies, including but not limited to the Health and Safety Executive and the Rail Accident Investigation Branch) to prevent:-
- a) any risk of fire occurring as a result of the operation of such equipment; and
 - b) any risk of injury or death to any person or damage to property caused by fire resulting from the operation of such equipment.
- 9.3 The Train Operator shall only be entitled to request to operate Services which are to be operated by Steam Driven Equipment if the Steam Driven Equipment is:-
- (a) an oil fired locomotive; or
 - (b) a steam locomotive fitted with spark arrestor equipment in working order, in both the chimney and the ashpan, that conforms with all applicable Railway Group Standard requirements; or
 - (c) a form of steam operation not falling within (a) or (b) above which is carefully controlled and in respect of which Network Rail has given its consent and, if such consent has been given subject to one or more conditions, the Train Operator has satisfied (to Network Rail's reasonable satisfaction) each of those conditions.
- 9.4.1. Irrespective of any procedures to which the Train Operator has in place for the prevention of fire in operating the Steam Driven Equipment, if it appears to Network Rail that there may be a serious risk of fire if a Train Slot or Train Slots is/are operated by Steam Driven Equipment, it shall use its reasonable endeavours to give the Train Operator not less than seven days' notice to that effect, provided that Network Rail shall have no liability, in part or in whole, howsoever arising, to the Train Operator as a result of its failure to do so.
- 9.4.2 The Train Operator shall have the right to make representations to Network Rail on receipt of any notice given pursuant to paragraph 9.4.1 and Network Rail shall make due consideration of such representation (including any representation made in respect of the nature and purpose of reports received from private dwelling owners); such representations shall be made by the Train Operator no later than two Working Days following receipt. While Network Rail shall make due consideration of any such representation made, it shall in no way be bound by any such representation and Network Rail shall suffer no liability to the Train Operator as a result of any action or lack of action or otherwise on its part in response to such representations.
- 9.5 Subject to paragraph 9.3 above and notwithstanding paragraph 9.4, on or at any time before 12 noon on the third Working Day prior to the day on which a Train Slot or the first of a series of Train Slots is Planned (as that term is defined in Schedule 8) to be

operated by Steam Driven Equipment (each an “Affected Train Slot”), Network Rail may give notice (“Withdrawal Notice”) to the Train Operator that, in view of one or more weather forecasts received by Network Rail from the Meteorological Office or any other like body or is in the knowledge of Network Rail or one or more reports concerning fire risks received by Network Rail from the Meteorological Office or other like body or one or more reports concerning fire risks received by Network Rail from any occupier of land adjacent to the routes over which the Affected Train Slot or Slots is/are Planned to operate:-

- (a) Network Rail considers that there is a significant risk of fire if the Affected Train Slot or Affected Train Slots is/are operated by Steam Driven Equipment; and
 - (b) accordingly, the permission granted to the Train Operator pursuant to this Agreement to operate the Affected Train Slot or Affected Train Slots by Steam Driven Equipment is withdrawn with immediate effect;
 - (c) requesting the Train Operator to notify Network Rail on or before 15:00 hours on the second Working Day prior to the day on which the Affected Train Slot or the first of series of Affected Train Slots is planned to operate whether it wishes to operate the Affected Train Slot or any one or more of the series of Affected Train Slots by Standard Specified Equipment failing which each Affected Train Slot shall be deemed to be cancelled but (subject to paragraph 9.6 below) without either party having any liability to the other under this Agreement or otherwise in respect of such cancellation and the Working Timetable shall, where necessary, be amended accordingly.
- 9.6 If the Train Operator notifies Network Rail, in accordance with paragraph 9.5, that it wishes to operate the Affected Train Slot or any one or more of the series of Affected Train Slots by Standard Specified Equipment, then such notification shall be treated as a Train Operator Variation Request accepted by Network Rail, and the Working Timetable shall, where necessary, be amended accordingly.
- 9.7 A Withdrawal Notice, which may be given either by telephone or fax (and if given by telephone, a fax shall be sent subsequently for confirmatory purposes only), shall be given by Network Rail to such representative of the Train Operator as the Train Operator may notify in writing to Network Rail from time to time for the purposes of this paragraph 9.
- 9.8 Subject to any policy excess and limit as may be agreed by the ORR when approving the Train Operator’s licence, the public liability insurance arrangements of the Train Operator shall be without restriction in respect of fire and fire related damage risks.
- 9.9 The Train Operator shall indemnify Network Rail, its employees, agents and sub-contractors and keep it indemnified (on an after tax basis) against any and all damages, losses, claims, proceeding, demands , liabilities, costs, orders and out of pocket expenses (including costs reasonably incurred in investigating or defending any claim, proceedings, demand or order and any expenses reasonably incurred in preventing, avoiding or mitigating loss, liability or damage) (hereinafter referred to as

“Losses”) incurred or suffered by Network Rail up to a limit of £20,000,000 where such Losses arise:-

- (a) as a result of the operation and or maintenance of the Steam Driven Equipment for the provision of any Service under this Agreement (which for the avoidance of doubt shall include all fire related Losses) save to the extent that any such Losses result from Network Rails’ material breach of this contract or their negligence, and provided that the indemnity in respect of the matters referred to in this sub-paragraph (a) shall not extend to loss of revenue by Network Rail, or the matters referred to in paragraph (b) below; and/or
- (b) as a result of third party death or injury and/or loss of or damage to property (including property belonging to Network Rail or for which it is responsible) caused by fire or flood; and/or
- (c) as a result of the Train Operator’s breach of statutory duty,

this indemnity shall not be subject to any limitations provided for in the Claims Allocation and Handling Agreement.

9.10 For the avoidance of doubt, nothing in this clause 9 shall limit the Train Operator’s liability for death or personal injury where caused by the Train Operator’s fault or negligence.

9.11 If any person or third party makes a claim against, or notifies an intention to make a claim against the Train Operator or Network Rail, which may reasonably be considered as likely to give rise to a liability under the indemnity in this Paragraph 9 (“a relevant claim”), Network Rail shall:

- (a) as soon as reasonably practicable give written notice of that matter to the Train Operator, specifying in reasonable detail the nature of the relevant claim;
- (b) not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the Train Operator (such consent not to be unreasonably conditioned, withheld or delayed);
- (c) give the Train Operator and its professional advisers reasonable access to the premises and personnel of Network Rail and to any relevant assets, accounts, documents and records within the power or control of Network Rail so as to enable the Train Operator and its professional advisers to examine such premises, assets, accounts, documents and records, and to take copies at their own expense for the purpose of assessing the merits of the relevant claim;
- (d) take such action as the Train Operator may reasonably request to avoid, dispute, resist, compromise or defend the relevant claim.

Appendix – Dates of operation

2007 TT	Sun	Mon	Tues	Wed	Thurs	Fri	Sat
April		09	10	11	12	06	21, 28
May		07, 28	22, 29	23, 30	24, 31		05
June			05, 12, 19, 26	06, 13, 20, 27,	07, 14, 21, 28,		16
July		16, 23, 30	03, 10, 17, 24, 31	04, 11, 18, 25	05, 12, 19, 26	27	
August		06, 13, 20, 27	07, 14, 21, 28	01, 08, 15, 22, 29	02, 09, 16, 23, 30	03, 10, 17, 24, 31	
September		03	04, 11, 18, 25	05, 12, 19, 26	06, 13, 20, 27,		08, 29
October			23	24	25		13, 27
November							

2008 TT	Sun	Mon	Tues	Wed	Thurs	Fri	Sat
March		24,	25,	26,	27,	21	22
April			01, 08, 15, 22, 29	02, 09, 16, 23, 30			
May		05, 26	06, 13, 20, 27	07,14, 21, 28	01, 08, 25, 22, 29		03, 24
June			03, 10, 17, 24	04, 11, 18, 25	05, 12, 19, 26		
July		07, 14, 21, 28	01, 08, 15, 22, 29	02, 09, 16, 23, 30	03, 10, 17, 24, 31	25	
August		04, 11, 18, 25	05, 12, 19, 26	06, 13, 20, 27	07,14, 21, 28	01, 08, 15, 22, 29	30
September		01, 08,	02, 09, 16, 23, 30	03, 10, 17, 24,	04, 11, 18, 25		
October			07,14, 21, 28	01, 08, 15, 22, 29			
November							

2009 TT	Sun	Mon	Tues	Wed	Thurs	Fri	Sat
April		13	07, 14, 21, 28	08, 15, 22, 29	09, 16, 23, 30	10	11
May		04, 25	05, 12, 19, 26	06, 13, 20, 27	07, 14, 21, 28	29	02, 23, 30
June			02, 09, 16, 23, 30	03, 10, 17, 24	04, 11, 18, 25	05	
July		06, 13, 20, 27	07, 14, 21, 28	01, 08, 15, 22, 29	02, 09, 16, 23, 30	31	
August		03, 10, 17, 24, 31	04, 11, 18, 25	05, 12, 19, 26	06, 13, 20, 27	07, 14, 21, 28	29
September		07	01, 08, 15, 22, 29	02, 09, 16, 23, 30	03, 10, 17, 24		12
October			06, 13, 20, 27	07, 14, 21, 28			
November							

2010 TT^{10th}	Sun	Mon	Tues	Wed	Thurs	Fri	Sat
April		05,	06, 13, 20, 27	07, 14, 21, 28	08, 15, 22, 29	02, 09	03, 10, 17, 24
May		03, 31	04, 11, 18, 25	05, 12, 19, 26	06, 13, 20, 27		01, 08, 15, 22, 29
June		07, 14, 21, 28	01, 08, 15, 22, 29	02, 09, 16, 23, 30	03, 10, 17, 24	04	05, 12, 19, 26
July		05, 12, 19, 26	06, 13, 20, 27	07, 14, 21, 28	01, 08, 15, 22, 29	16, 23, 30	03, 10, 17, 24. 31
August		02, 09, 16, 23, 30	03, 10, 17, 24. 31	04, 11, 18, 25	05, 12, 19, 26	06, 13, 20, 27	07, 14, 21, 28
September		06, 13, 20	07, 14, 21, 28	01, 08, 15, 22, 29	02, 09, 16, 23, 30	03	04, 11, 18, 25
October			05, 12, 19, 26	06, 13, 20, 27	07, 14, 21, 28		02, 09, 16, 23, 30
November							

2011 TT^{10th}	Sun	Mon	Tues	Wed	Thurs	Fri	Sat
April		25	05, 12, 19, 26	06, 13, 20, 27	07, 14, 21, 28	22, 29	02, 09, 16, 23, 30
May		02, 30	03, 10, 17, 24, 31	04, 11, 18, 25	05, 12, 19, 26		07, 14, 21, 28
June		06, 13, 20, 27	07, 14, 21, 28	01, 08, 15, 22, 29	02, 09, 16, 23, 30	03	04, 11, 18, 25
July		04, 11, 18, 25	05, 12, 19, 26	06, 13, 20, 27	07, 14, 21, 28	15, 22, 29	02, 09, 16, 23, 30
August		01, 08, 15, 22, 29	02, 09, 16, 23, 30	03, 10, 17, 24, 31	04, 11, 18, 25	05, 12, 19, 26	06, 13, 20, 27
September		05, 12, 19	06, 13, 20, 27	07, 14, 21, 28	01, 08, 15, 22, 29	02	03, 10, 17, 24
October			04, 11, 18, 25	05, 12, 19, 26	06, 13, 20, 27		01, 08, 15, 22, 29
November							

2012 TT^{10th}	Sun	Mon	Tues	Wed	Thurs	Fri	Sat
April		09	03, 10, 17, 24	04, 11, 18, 25	05, 12, 19, 26	06, 13	07, 14, 21, 28
May		07, 28	01, 08, 15, 22, 29	02, 09, 16, 23, 30	03, 10, 17, 24, 31		05, 12, 19, 26
June		04, 11, 18, 25	05, 12, 19, 26	06, 13, 20, 27	07, 14, 21, 28	01	02, 09, 16, 23, 30
July		02, 09, 16, 23, 30	03, 10, 17, 24, 31	04, 11, 18, 25	05, 12, 19, 26	13, 20, 27	07, 14, 21, 28
August		06, 13, 20, 27	07, 14, 21, 28	01, 08, 15, 22, 29	02, 09, 16, 23, 30	03, 10, 17, 24, 31	04, 11, 18, 25
September		03, 10, 17, 24	04, 11, 18, 25	05, 12, 19, 26	06, 13, 20, 27	07	01, 08, 15, 22, 29
October			02, 09, 16, 23,	03, 10, 17, 24	04, 11, 18, 25		06, 13, 20, 27
November							

2013 TT^{10th}	Sun	Mon	Tues	Wed	Thurs	Fri	Sat
March						29	30
April		01	02, 09, 16, 23, 30	03, 10, 17, 24	04, 11, 18, 25	05	06, 13, 20, 27
May		06, 27	07, 14, 21, 28	01, 08, 15, 22, 29	02, 09, 16, 23, 30	31	04, 11, 18, 25
June		03, 10, 17, 24	04, 11, 18, 25	05, 12, 19, 26	06, 13, 20, 27		01, 08, 15, 22, 29
July		01, 08, 15, 22, 29	02, 09, 16, 23, 30	03, 10, 17, 24, 31	04, 11, 18, 25	12, 19, 26	06, 13, 20, 27
August		05, 12, 19, 26	06, 13, 20, 27	07, 14, 21, 28	01, 08, 15, 22, 29	02, 09, 16, 23, 30	03, 10, 17, 24, 31
September		02, 09, 16, 23, 30	03, 10, 17, 24, 31	04, 11, 18, 25	05, 12, 19, 26	06	07, 14, 21, 28
October			01, 08, 15, 22, 29	02, 09, 16, 23, 30	03, 10, 17, 24, 31		05, 12, 19, 26
November							02

2014 TT^{10th}	Sun	Mon	Tues	Wed	Thurs	Fri	Sat
April		21, 28	15, 22, 29	16, 23, 30	17, 24	18	05, 12, 19, 26
May		05, 26	06, 13, 20, 27	07, 14, 21, 28	01, 08, 15, 22, 29	30	03, 10, 17, 24, 31
June		02, 09, 16, 23, 30	03, 10, 17, 24	04, 11, 18, 25	05, 12, 19, 26		07, 14, 21, 28
July		07, 14, 21, 28	01, 08, 15, 22, 29	02, 09, 16, 23, 30	03, 10, 17, 24, 31	11, 18, 25	05, 12, 19, 26
August		04, 11, 18, 25	05, 12, 19, 26	06, 13, 20, 27	07, 14, 21, 28	01, 08, 15, 22, 29	02, 09, 16, 23, 30
September		01, 08, 15, 22, 29	02, 09, 16, 23, 30	03, 10, 17, 24, 31	04, 11, 18, 25	05	06, 13, 20, 27
October			07, 14, 21, 28	01, 08, 15, 22, 29	02, 09, 16, 23, 30		04, 11, 18, 25
November							01

2015 TT^{25th}	All Weekdays and Saturdays from and inclusive of 28 March 2015 up until 31 October 2015.
2016 TT^{25th}	All Weekdays and Saturdays from and inclusive of 19 March 2016 up until 05 November 2016.
2017 TT^{25th}	All Weekdays and Saturdays from and inclusive of 08 April 2017 up until 04 November 2017.
2018 TT^{25th}	All Weekdays and Saturdays from and inclusive of 24 March 2018 up until 03 November 2018.
2019 TT^{25th}	All Weekdays and Saturdays from and inclusive of 13 April 2019 up until 02 November 2019.
2020 TT^{25th}	All Weekdays and Saturdays from and inclusive of 04 April 2020 up until 31 October 2020.
2021TT^{25th}	All Weekdays and Saturdays from and inclusive of 27 March 2021 up until 30 October 2021.
2022 TT^{25th}	All Weekdays and Saturdays from and inclusive of 09 April 2022 up until 05 November 2022.
2023 TT^{25th}	All Weekdays and Saturdays from and inclusive of 01 April 2023 up until 04 November 2023.

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 section 8 of the Act unless it is exempt from the requirement to be so authorised under section 7 of the Act;
- (b) an Insolvency Event occurs in relation to the Train Operator or the Franchisee;
- (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;
- (f) any breach of this contract or any material breach of any of the Collateral Agreements by the Train Operator which, by itself or taken together with any other such breach, results, or is likely to result, in material disruption to train operations of other train operators; and
- (g)^{35th} in any Contract Year, or part thereof, three or more incidents shall have occurred in any one service group which in each case cause 203 or more Minutes Delay to Third Party Trains Attributable to the Train Operator. In this paragraph the phrases “Minutes Delay”, “Third Party Trains”, and “Attributable to the Train Operator” shall have the meanings ascribed to them in Schedule 8: Performance Regime.”

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^{32nd}

(Track Charges and Other Payments)

Part 1

(Interpretation)

1. Definitions

In Part 1 – Part 7 inclusive, unless the context otherwise requires:

"access charges review" has the meaning ascribed to it by Schedule 4A to the Act;

"Actual Train Movements" means:

- (a) the dates on which trains ran;
- (b) the times at which trains ran; and
- (c) the stations between which trains ran;

"Capacity Charge" means a variable charge, calculated in accordance with paragraph 6 of Part 2;

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

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

"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;

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

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

where:

IIF means the Initial Indexation Factor;

CPI₂₀₁₇ means the CPI published or determined with respect to the month of November 2017; and

CPI₂₀₁₈ means the CPI published or determined with respect to the month of November 2018.

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

"New Specified Equipment" means a type of railway vehicle that is not:

- (a) a steam locomotive, with or without a tender;
- (b) a Mk1 coach; or
- (c) a 25/3 diesel locomotive,

and is not included in the section of the Track Usage Price List entitled "North Yorkshire Moors Railway Enterprises PLC Variable Usage Charge rates";

"Period" means each consecutive period for 28 days during the term of this contract commencing on 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 7 days on reasonable prior notice from Network Rail to the Train Operator;

"Planned Train Movements" means:

- (a) the dates on which trains are planned to run;
- (b) the times at which trains are planned to run; and
- (c) the stations between which trains are planned to run;

"Proposed Review Notice" means the most recently proposed Review Notice given by ORR, in accordance with Schedule 4A of the Act;

"Relevant Year" means a year commencing at 0000 hours on 1 April and ending at 2359 hours on the following 31 March;

"Relevant Year t" means the Relevant Year for the purposes of which any calculation falls to be made;

"Relevant Year t-1" means the Relevant Year preceding Relevant Year t and similar expressions shall be construed accordingly;

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

"Review Notice" has the meaning given to "review notice" in paragraph 4 of Schedule 4A of the Act;

"Route-Level Efficiency Benefit Share" has the meaning ascribed to it in paragraph 1 of Part 3;

"RPI" means the General Index of Retail Prices All Items measured by CHAW and published each month, or:

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

"Track Usage Price List" means the document entitled "Track Usage Price List" published by Network Rail on or about 20 December 2018 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 or a passenger track access contract previously held by the Train Operator;

"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;

"Variable Charges" means the Capacity Charge, the VUC Default 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;

"VUC Default Charge" means a variable charge calculated in accordance with paragraph 3.3 of Part 2;

"VUC 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 2019,
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; 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:

$$T_t = V_t + K_t + D_t$$

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 calculated in accordance with paragraph 6; and

D_t means an amount (if any) in respect of the VUC 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 , expressed in pence per Vehicle Mile and rounded to two decimal places, which is derived as follows:

- (a) in respect of the Relevant Year commencing on 1 April 2019, V_{it} shall be, in respect of each Vehicle Mile, the appropriate variable usage charge rate set out in (c) below, multiplied by the Initial Indexation Factor;
- (b) in respect of any Relevant Year t commencing on or after 1 April 2020, V_{it} shall be in respect of each Vehicle Mile, the appropriate variable usage charge

rate set out in (c) below, multiplied by the phased-in charges indexation adjustment derived from the following formula:

$$PCIA_t = \left(1 + \frac{(CPI_{t-1} - CPI_{2018})}{CPI_{2018}}\right) \times \text{Initial Indexation Factor}$$

where:

$PCIA_t$ means the phased-in charges indexation adjustment in respect of Relevant Year t ;

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

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

- (c) the appropriate variable usage charge rate for the purposes of (a) and (b) above shall be the corresponding variable usage charge rate per Vehicle Mile as set out in the section of the Track Usage Price List entitled “North Yorkshire Moors Railway Enterprises PLC Variable Usage Charge rates”;

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

\sum means the summation across all relevant categories of vehicle types i .

3.2 **Not used**

3.3 **VUC Default Charge**

For the purposes of paragraph 1, the term D_t means the amount of VUC 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 an amount for that New Specified Equipment for Relevant Year t , expressed in pence per Vehicle Mile and rounded to two decimal places, which is derived as follows:

- (a) in respect of any New Specified Equipment which is a diesel locomotive, D_{nt} shall be the corresponding rate set out in the section of the Track Usage Price List entitled “North Yorkshire Moors Railway Enterprises PLC Variable Usage Charge diesel default rate”, multiplied as follows:

- (i) in respect of the Relevant Year commencing on 1 April 2019, D_{nt} shall be multiplied by the Initial Indexation Factor;
- (ii) in respect of any Relevant Year t commencing on or after 1 April 2020, D_{nt} shall be multiplied by the phased-in charges indexation adjustment derived from the following formula:

$$PCIA_t = \left(1 + \frac{(CPI_{t-1} - CPI_{2018})}{CPI_{2018}}\right) \times \text{Initial Indexation Factor}$$

where:

$PCIA_t$ means the phased-in charges indexation adjustment in respect of Relevant Year t ;

CPI_{t-1} has the meaning set out in paragraph 3.1(b) above;

CPI_{2018} has the meaning set out in paragraph 3.1(b) above;

- (b) in respect of any New Specified Equipment which is a vehicle other than a diesel locomotive, D_{nt} shall be the corresponding passenger default rate set out in the section of the Track Usage Price List entitled “Passenger Variable Usage Charge default rates”, derived from the following formula:

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

where:

CPI_{t-1} has the meaning set out in paragraph 3.1(b) above;

CPI_{t-2} means the CPI 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 2019, D_{nt} shall have, in respect of New Specified Equipment, the corresponding passenger 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 VUC Default Period in Relevant Year t operated by or on behalf of the Train Operator; and

\sum means the summation across all relevant New Specified Equipment.

- 4. **Not used.**
- 5. **Not used.**
- 6. **Capacity Charge**

- 6.1 In respect of the Relevant Year ending 31 March 2019, the term K_t means an amount in respect of the Capacity Charge in Relevant Year t which shall be derived from the formula that was contained in paragraph 6 of Part 2 of Schedule 7 of the version of this contract that was in force up until 31 March 2019. For subsequent Relevant Years, K_t shall have a value of zero.
- 6.2 Not used.
7. **Not used.**
8. **Not used.**
9. **Bilateral supplements to the 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 VUC Default Charge during the VUC Default Period.
- 9.3 No supplement to the Track Usage Price List 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 the Track Usage Price List be supplemented as necessary to include a new vehicle type and corresponding rate.
- 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 Not used.

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 VUC 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 VUC Default Charge during the VUC Default Period and the amount that it would have paid during the VUC 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 to which Network Rail is a party.

9.14 Any supplement to the Track Usage Price List which ORR has consented to or determined pursuant to a passenger track access contract previously held by the Train Operator shall also apply to this 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 VUC Default Charge; and
- (v) 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***

- (a) The Train Operator shall, 28 days before the start of each Period, provide to Network Rail details of its Planned Train Movements for that Period, including the Planned Train Consist Data for each train movement (the "Period Plan");
- (b) Network Rail shall, within 14 days of receiving the Period Plan, calculate the Variable Charge payable by the Train Operator in respect of the Period Plan (the "VTUCP") 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;
- (c) The Train Operator shall pay the Variable Usage Charge in accordance with the provisions of paragraph 10.1 of this Schedule 7;
- (d) The Train Operator shall, within 7 days of the end of each Period, provide to Network Rail details of its Actual Train Movements for that Period, including the Train Consist Data for each train movement (the "Period Actual");
- (e) Network Rail shall, within 14 days of receiving the Period Actual, calculate the Variable Usage Charge payable by the Train Operator in respect of the Period Actual (the "VTUCA") 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; and
- (f) Network Rail shall, each period, compare the VTUCP with the VTUCA for the same period and:

- (i) if the VTUCP exceeds the VTUCA, shall credit the Train Operator with the difference between the VTUCP and the VTUCA on the next following invoice issued in accordance with paragraph 10.1 of this Schedule 7; or
- (ii) if the VTUCA exceeds the VTUCP, shall debit the Train Operator with the difference between the VTUCA and the VTUCP on the next following invoice issued in accordance with paragraph 10.1 of this Schedule 7.

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

- (a) 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 the following 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) (to the extent that (i) above does not apply) Default Train Consist Data.

Each such invoice will be payable in accordance with the provisions of paragraph 10.1.

- (b) Either party shall be entitled, at any time prior to the later of 2359 hours on the fourteenth day following receipt by the Train Operator of the relevant invoice or credit note, 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 or credit note 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 or credit note shall be final and binding on the parties. The Train Operator shall supply data to Network Rail in the format:

Train ID	Start date & time	Train Slot origin	Train slot destination	Train Consist (actual): Specified Equipment used

- (c) 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 or credit note. 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.

- (d) Within 14 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 7 days after the date of its issue.
- (e) 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. For the purposes of the calculation and payment of the Route-Level Efficiency Benefit Share for the Relevant Year ending 31 March 2019, Part 3 and Appendix 7A and Appendix 7B of Schedule 7 of the version of this contract that was in force up until 31 March 2019 shall continue to apply.

Part 3A

(Not used)

Part 4

(Not used)

Part 5

(Additional Charges)

1 The Training Charge

In respect of Network Rail providing training in the use of signalling equipment to the Train Operator's nominated staff, the Train Operator shall pay to Network Rail a signalling training charge (the "**Training Charge**"). The Training Charge shall be £522 and shall be applied to each group of two staff nominated by the Train Operator for the said signalling training. The Training Charge shall apply in circumstances where Network Rail, acting reasonably, requires the Train Operator's staff to be trained in the use of signalling equipment. While the Training Charge shall not be index linked, the parties hereby agree that the charge may be increased by Network Rail by such amount as is necessary to cover any reasonable additional costs incurred by Network Rail such as, but not limited to, salary increases, outsourcing of training and changes in technology. The Training Charge shall not represent any additional costs

related to refresher training and/or additional training required due to the overall level of competency of the Train Operator's staff members at the time of the training.

2 **The Monitoring Charge**

Network Rail shall carry out random monitoring ("**Monitoring**") to observe staff of the Train Operator who have previously had training in the use of signalling equipment. Network Rail may carry out Monitoring on up to 12 occasions in any Relevant Year where Network Rail has required further of the Train Operator's staff to be trained in the use of signalling equipment, and the Train Operator shall pay to Network Rail a charge (the "**Monitoring Charge**"). A Monitoring Charge of £276 shall apply on each occasion that Monitoring is carried out.

3 **Additional Weekend Passenger Train Slots Costs**

Such costs in respect of those additional Passenger Train Slots provided for in paragraph 2.4 and Table 2.2 to Schedule 5 incurred by Network Rail for the purpose of enabling the Train Operator to operate those additional Passenger Train Slots on Weekends, for example but not limited to, all costs relating to the opening of signal boxes. Such costs shall be in addition to any other amount payable by the Train Operator to Network Rail under the contract. All provisions of the contract relating to invoicing and payment of Track Charges shall apply to the payment of Track Charges in respect of the additional Passenger Train Slots.

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, Infrastructure Cost Charge and any VUC Default Charge and the relevant number of Vehicle Miles or Train Miles applicable to vehicles for each service so charged;
- (c) not used;
- (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 2024 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.

4. Interim treatment of future access charges reviews

4.1 *Interim 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 the date stipulated that they will come into operation in the Proposed Review Notice 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 for the period (the "Interim Period") commencing 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) following the service of a Review Implementation Notice relating to the Proposed Review Notice, the changes specified in that Review Implementation Notice come into operation; or
- (b) following a reference to the Competition and Markets Authority 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.

4.2 *Reconciliation Payment*

- (a) Within 28 days after the end of the Interim Period, Network Rail shall calculate whether a reconciliation payment is due to or from the Train Operator. In order to calculate such a reconciliation payment, Network Rail shall compare (i) the sums paid by the Train Operator during the Interim Period, with (ii) the sums which would have been payable if the amendments required by either paragraphs 4.1(a) or (b) above

had taken effect on the date(s) stipulated in the Proposed Review Notice, and shall provide to the Train Operator:

- (i) a statement of the amount due to or from the Train Operator; and
 - (ii) such background data and workings as may reasonably be required for a proper understanding of the calculation.
- (b) Within 14 days after the date upon which Network Rail shall have provided to the Train Operator the information referred to in paragraph 4.2(a) above, 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.
- (c) If any dispute is notified under paragraph 4.2(b) above, it shall be resolved according to the following procedure:
 - (i) within seven days of service of the relevant notice, the parties shall meet to discuss the disputed aspects with a view to resolving all disputes in good faith;
 - (ii) if, for any reason, with seven days of the meeting referred to in paragraph 4.2(c)(i) above, the parties are still unable to agree any disputed aspects, each party shall promptly and in any event within seven days prepare a written summary of the disputed aspects and the reasons for each such dispute and submit such summaries to the senior officer of each party;
 - (iii) within 28 days of the first meeting of the parties, the senior officers of the parties shall meet with a view to resolving all disputes; and
 - (iv) if no resolution results before the expiry of 14 days following that meeting, then either party may refer the matter for resolution in accordance with the ADRR.
- (d) Within 28 days after the date upon which Network Rail shall have provided to the Train Operator the information referred to in paragraph 4.2(a) above (if not disputed) or 28 days of resolution or determination if any dispute in accordance with paragraph 4.2(c) above, any amount due shall be invoiced (or presented in a credit note, as the case may be) for payment, and payable, as provided under this Contract.

Appendix 7A

(Not used)

Appendix 7B

(Not used)

APPENDIX 7C

Default Train Consist Data^{35th}

TRAIN SERVICE CODE	TYPE OF TRAIN MOVEMENT	DEFAULT TRAIN CONSIST DATA
22241000	Train movement(s) between Battersby and Whitby	Steam locomotive, tender and 5 Mk 1 coaches
22241001	Train movement(s) between Sheringham and Cromer	Steam locomotive, tender and 4 Mk 1 coaches

SCHEDULE 8: PERFORMANCE REGIME

1. Definitions

In this Schedule 8 unless the context otherwise requires:

“Adjustment Fraction” means the number of Charging Periods or parts of a Charging Period in the first or final Financial Year divided by 13;

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

“Attributable to Network Rail” means, in respect of any delay to or cancellation of a Service or any other matter:

- (a) any delay or cancellation or other matter, occurring on or off the Network, which is not Attributable to the Train Operator;
- (b) that portion of any such delay to or cancellation of a Service that would otherwise be Attributable to both the Train Operator and Network Rail, but which the parties agree, or it is otherwise determined, is Attributable to Network Rail; or
- (c) any delay or cancellation occurring on or off the Network, caused by an Other Train Operator Train on the Network,

in all cases having regard to the guidance on allocation of responsibility for incidents set out in the Delay Attribution Guide and the defined term ‘Attributable to Network Rail’ shall not include any delay to or cancellation of a Service as a result of the provisions in paragraph 9 to Schedule 5;

“Attributable to the Train Operator” means:

- (a) in respect of any delay to or cancellation of a Service, any such delay or cancellation arising as a result of:
 - (i) any acts or omissions of the Train Operator’s staff or its agents, contractors or sub-contractors;
 - (ii) any Train Operator Omission;
 - (iii) any failure or defect in the Specified Equipment relating to a Service;
 - (iv) not used;
 - (v) any Service not being promptly accepted off the Network at a Destination (which, for the purposes of this definition of Attributable to the Train Operator, shall include Grosmont) for reasons not caused by Network Rail

(in its capacity as operator of the Network), its agents, contractors or sub-contractors (acting as agent, contractor or sub-contractor for Network Rail in its capacity as operator of the Network) (other than the Train Operator);

- (vi) any failures or delays arising off the Network, other than those which are caused by Network Rail (in its capacity as operator of the Network), its agents, contractors or sub-contractors (acting as agent, contractor or sub-contractor for Network Rail in its capacity as operator of the Network) (other than the Train Operator); or
- (vii) that portion of any such delay to or cancellation of a Service that would otherwise be Attributable to both the Train Operator and Network Rail, but which the parties agree or it is otherwise determined is Attributable to the Train Operator;
- (b) in respect of any delay to or cancellation of a Third Party Train any such delay or cancellation arising as a result of:
 - (i) any delay to or cancellation of a Service Attributable to the Train Operator;
 - (ii) any Train Operator Omission; or
 - (iii) that portion of any such delay to, or cancellation of, a Service that would otherwise be Attributable to both the Train Operator and Network Rail, but which the parties agree or it is otherwise determined is Attributable to the Train Operator,

in all cases

- (aa) having regard to the guidance on allocation of responsibility for incidents set out in the Delay Attribution Guide; and
- (bb) ignoring any delay or cancellation under paragraph (c) of the definition of “Attributable to Network Rail”;

“Benchmarks” means the Train Operator Benchmark Per Train and the Network Rail Benchmark Per Train specified in Appendix 1;

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

- (a) the first period and the last period may be of less than 28 days if:
 - (i) the date of signature of this contract does not coincide with the first day of one of Network Rail’s accounting periods; or
 - (ii) the Expiry Date does not coincide with the last day of one of Network Rail’s accounting periods; and
- (b) the duration of the first and last such period in any Financial Year may be varied so as to coincide with the duration of Network Rail’s accounting periods by notice from Network Rail to the Train Operator;

“Cancellation Sum” means the Cancellation Sum specified in Appendix 1;

“CPI” has the meaning ascribed to it in Schedule 7;^{31st}

“Destination” means, in relation to a Service:

- (a) the location on the Network at which that Service is Planned to terminate; or
- (b) if the location at which that Service is Planned to terminate is not on the Network, the location on the Network which:
 - (i) will enable the train operating that Service to leave the Network; and
 - (ii) is the most appropriate location for such train to use to terminate that Service on the Network;

“Financial Year” means a year commencing at 0000 hours on 1 April and ending immediately before 0000 hours on the next succeeding 1 April save that:

- (a) the first such period shall commence on the date upon which all the provisions of this contract come into effect in accordance with clause 3; and
- (b) the last such period shall end on the Expiry Date;

“Full Cancellation” means, in relation to a Third Party Train, a cancellation of a train resulting in the train not operating at all when scheduled to do so as part of its Working Timetable;

“Initial Indexation Factor” has the meaning ascribed to it in Schedule 7;^{31st}

“Minutes Delay” means the number of minutes delay in respect of a Trigger of a Recording Point calculated in accordance with Appendix 2;

“Network Rail Benchmark” means the Network Rail Benchmark in relation to each Charging Period, calculated in accordance with Appendix 1;

“Network Rail Benchmark Per Train” means the Network Rail Benchmark Per Train specified in Appendix 1;

“Network Rail Cap” means the Network Rail Cap specified in Appendix 1, as adjusted under paragraph 2.7.2 of Schedule 7, save that, in respect of the first and last Financial Year, the Network Rail Cap shall be that specified in Appendix 1 multiplied by the Adjustment Fraction;

“Network Rail Charging Period Limit” means 1/13th of the Network Rail Cap;

“Network Rail Incident Cap” means that figure specified in Appendix 1;

“Network Rail Lower Review Level” means, in respect of a Financial Year, the Network Rail Lower Review Level specified in Appendix 1, save that, in respect of the first and last Financial Year, the Network Rail Lower Review Level shall be that specified in Appendix 1 multiplied by the Adjustment Fraction;

“Network Rail Payment Rate” means the Network Rail Payment Rate specified in Appendix 1, as adjusted under paragraph 2.7.2 of Schedule 7;

“Network Rail Upper Review Level” means, in respect of a Financial Year, the Network Rail Upper Review Level specified in Appendix 1, save that, in respect of the

first and last Financial Year, the Network Rail Upper Review Level shall be that specified in Appendix 1 multiplied by the Adjustment Fraction;

“Origin” means, in relation to a Service:

- (a) the location on the Network at which that Service is Planned to commence; or
- (b) if the location at which that Service is Planned to commence is not on the Network, the location on the Network which:
 - (i) will enable the train operating that Service to be presented onto the Network; and
 - (ii) is the most appropriate location for such train to use to move onto the Network to reach the Destination of that Service;

“Other Train Operator Train” means any train operated pursuant to a permission to use granted to the Train Operator by an agreement other than this contract;

“Part Cancellation” means in relation to a Third Party Train a cancellation of a train resulting in the train either not commencing at its Origin or not arriving at its Destination;

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

“Performance Sum” means an amount for which the Train Operator or Network Rail is liable under one of paragraphs 4 and 6 following a Charging Period in relation to Minutes Delay in that Charging Period and the preceding Charging Periods;

“Planned” means entered in the Working Timetable;

“Rates” means the Train Operator Payment Rate and the Network Rail Payment Rate specified in Appendix 1, as adjusted under paragraph 2.7.2 of Schedule 7;

“Recording Point” means a location on the Network at which Network Rail records the times at which trains arrive, pass or depart that location;

“Recovery Time” means additional time incorporated in the Working Timetable to allow a train to regain time lost in delay during an earlier part of its journey;

“Relevant Circumstances” means circumstances other than actual reductions or increases in delays to trains, including a change in the way in which responsibility for delays is attributed;

“Third Party Train” means any rolling stock operated by or on behalf of another train operator;

“Train Operator Benchmark” means the Train Operator Benchmark in relation to each Charging Period, calculated in accordance with Appendix 1;

“Train Operator Benchmark Per Train” means the Train Operator Benchmark Per Train specified in Appendix 1;

“Train Operator Cap” means the Train Operator Cap specified in Appendix 1, as adjusted under paragraph 2.7.2 of Schedule 7, save that, in respect of the first and last

Financial Year, the Train Operator Cap shall be that specified in Appendix 1 multiplied by the Adjustment Fraction;

“Train Operator Charging Period Limit” means 1/13th of the Train Operator Cap;

“Train Operator Incident Cap” means that figure specified in Appendix 1;

“Train Operator Lower Review Level” means, in respect of a Financial Year, the Train Operator Lower Review Level specified in Appendix 1, save that, in respect of the first and last Financial Year, the Train Operator Lower Review Level shall be that specified in Appendix 1 multiplied by the Adjustment Fraction;

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

- (a) the improper operation of trains under this contract;
- (b) a breach of the Train Operator’s Safety Obligations or of the terms of this contract; or
- (c) any act or omission of the Train Operator’s staff or agents, contractors or sub-contractors in breach of this contract;

“Train Operator Payment Rate” means the Train Operator Payment Rate specified in Appendix 1, as adjusted under paragraph 2.7.2 of Schedule 7;

“Train Operator Upper Review Level” means, in respect of a Financial Year, the Train Operator Upper Review Level specified in Appendix 1, save that, in respect of the first and last Financial Year, the Train Operator Upper Review Level shall be that specified in Appendix 1 multiplied by the Adjustment Fraction; and

“Trigger” means the act of a train arriving at, passing or departing from a Recording Point.

2. General

2.1 *Performance monitoring system recordings*

For the purposes of this Schedule 8, Network Rail shall use recordings made using the Performance Monitoring System, including the times at which Services and Third Party Trains Trigger a Recording Point. In respect of Services only, Network Rail may require the Train Operator to make the relevant entry to record such times on the Performance Monitoring System. Network Rail and the Train Operator shall each comply with and be bound by the Performance Data Accuracy Code referred to in Part B of the Network Code, and the provisions of the Performance Data Accuracy Code shall apply to this Schedule 8.

2.2 *Mitigation of delays*

Network Rail and the Train Operator shall each take reasonable steps to avoid and mitigate the effects of any incidents upon Services and Third Party Trains, whilst

taking account of the requirements, including contractual requirements (where known) of other train operators. Any failure to take such steps shall be regarded as a separate incident.

2.3 *Calculation of Minutes Delay*

The calculation of Minutes Delay shall be in accordance with Appendix 2 to this Schedule 8.

3. Diagnosis of delays

3.1 *Attributing delays*

Network Rail shall, using the information recorded under paragraph 2.1, identify whether each minute of delay included in Minutes Delay in respect of a Service and/or Third Party Train is:

- (a) Attributable to the Train Operator;
- (b) Attributable to Network Rail; or
- (c) Attributable to both the Train Operator and Network Rail.

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

If a delay is Attributable to both the Train Operator and Network Rail, the associated Minutes Delay shall be allocated equally to the Train Operator and to Network Rail.

3.3 *Unexplained delays Attributable to Network Rail*

If the cause of the delay to or cancellation of a Service which occurs on the Network cannot be explained, the responsibility for such delay or cancellation shall be deemed to be Attributable to Network Rail.

3.4 *Unexplained delays Attributable to the Train Operator*

If the cause of the delay to or cancellation of a Service which occurs off the Network cannot be explained, the responsibility for such delay or cancellation shall be deemed to be Attributable to the Train Operator.

3.5 *Identifying delaying incidents*

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

3.6 *Performance statements*

The parties shall provide performance statements in accordance with Appendix 3 to this Schedule 8.

4. Minutes Delay in respect of Train Operator performance

4.1 Prescribed delay period

- 4.1.1 For the purposes of this paragraph 4, the aggregate Minutes Delay to Third Party Trains Attributable to the Train Operator arising as a result of any one incident or event shall be capped at the Train Operator Incident Cap, so that any such minutes in excess of the Incident Cap shall be disregarded.
- 4.1.2 Any Full Cancellation which is Attributable to the Train Operator shall equate to 108 Minutes Delay and any Part Cancellation which is Attributable to the Train Operator shall equate to 36 Minutes Delay.

4.2 Train Operator performance against Train Operator Benchmark

In respect of each Charging Period:

- (a) that portion of Minutes Delay to Third Party Trains which are Attributable to the Train Operator; and
- (b) that portion of Minutes Delay to Third Party Trains which are Attributable to both the Train Operator and Network Rail which is allocated to the Train Operator (the aggregate Minutes Delay under (a) and (b) being referred to as “**MDTO**”),

in each case as adjusted in accordance with paragraph 4.1, shall be compared with the Train Operator Benchmark (“**TOB**”) and:

- (i) if MDTO exceeds TOB, the Train Operator shall be liable to Network Rail for a Performance Sum equal to:
 $(\text{MDTO} - \text{TOB}) \times \text{Train Operator Payment Rate};$
- (ii) if MDTO is equal to TOB, neither party shall be liable to the other for a Performance Sum under this paragraph 4.2.

5. Not Used.

6. Minutes Delay in respect of Network Rail performance

6.1 Prescribed delay period

- 6.1.1 For the purposes of this paragraph 6, the aggregate Minutes Delay to Third Party Trains Attributable to Network Rail arising as a result of any one incident or event shall be capped at the Network Rail Incident Cap, so that any such minutes in excess of the Incident Cap shall be disregarded.

6.1.2 Cancellations

For the purposes of this paragraph 6, in respect of any Service which is a Cancellation, if the Service is a Cancellation as defined in paragraph 8.1, there shall not be any Minutes Delay in respect of the Service Attributable to Network Rail;

6.2 *Network Rail performance against Network Rail Benchmark*

In respect of each Charging Period:

- (a) the Minutes Delay to Services which are Attributable to Network Rail; and
- (b) that portion of Minutes Delay to Services which are Attributable to both the Train Operator and Network Rail which is allocated to Network Rail (the aggregate Minutes Delay under (a) and (b) being referred to as “**MDNR**”),

in each case as adjusted in accordance with paragraph 6.1, shall be compared with the Network Rail Benchmark (“**NRB**”) and:

- (i) if MDNR exceeds NRB, Network Rail shall be liable to the Train Operator for a Performance Sum equal to:
 $(\text{MDNR} - \text{NRB}) \times \text{Network Rail Payment Rate};$
- (ii) if MDNR is equal to NRB, neither party shall be liable to the other for a Performance Sum under this paragraph 6.2.

7. **Indexation**^{28th}

7.1 *CPI Uplift in relation to Rates and Caps in Appendix 1*^{31st}

The Network Rail Payment Rate, the Train Operator Payment Rate the Network Rail Cap and the Train Operator Cap in Appendix 1 to this Schedule 8 shall be adjusted in respect of Periods in Relevant Year t in accordance with the following formula:

$$R_t = R_{t-1} (1 + \text{CPI}_{t-1})$$

where:

R_t is the relevant rate in the Relevant Year t ;

R_{t-1} is the relevant rate in the Relevant Year $t-1$; and

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

but so that in relation to the Relevant Year commencing on 1 April 2019, R_t shall have the relevant value specified in the relevant payment rate of Appendix 1 multiplied by the Initial Indexation Factor, and in the next following Relevant Year $t-1$ shall have the same value.

8A. **Advanced Cancellation**^{28th}

8A.1 (a) Advanced Cancellation 3- 7 Days notice

For the purpose of this paragraph 8A **“Cancellation 3-7 days notice”** means any service that is prevented from departing its station of origin due to a failure

Attributable to Network Rail provided that any notice given to the Train Operator by Network Rail relating to such a service was given after 2200 hours on the seventh day, and on or before 2200 hours on the third day, prior to which the Service was planned to operate.

8A.1 (b) Advanced Cancellation 8- 14 Days notice

For the purpose of this paragraph 8A **“Cancellation 8-14 days notice”** means any service that is prevented from departing its station of origin due to a failure Attributable to Network Rail provided that any notice given to the Train Operator by Network Rail relating to such a service was given after 2200 hours on the fourteenth day, and on or before 2200 hours on the seventh day, prior to which the Service was planned to operate.

8A.1 (c) Advanced Cancellation 15- 28 Days notice

For the purpose of this paragraph 8A **“Cancellation 15-28 days notice”** means any service that is prevented from departing its station of origin due to a failure Attributable to Network Rail provided that any notice given to the Train Operator by Network Rail relating to such a service was given after 2200 hours on the twenty eighth day, and on or before 2200 hours on the fourteenth day prior to which the Service was planned to operate.

8A.2 Advanced Cancellation Liability^{31st}

Subject to paragraph 8A.2.2 below, Network Rail shall be liable in any Charging Period for the Cancellation Rates listed in paragraph 8A.3 below, in respect of each Cancellation of a Service Planned to depart its Origin in that Charging Period.

8A.2.2 Network Rail shall not be liable under this paragraph 8A for any Cancellation Rate in respect of any Ancillary Movement.

8A.3 “Cancellation Rates” for the purpose of this paragraph 8A means the rates payable by Network Rail in the event of a Cancellation of a Service Planned to depart its Origin in that Charging Period. The Cancellation Rates shall be as set out in Table 8A.3, as adjusted in accordance with paragraph 8A.4.

Table 8A.3: Advanced Cancellation Rates

Notice	Cancellation 3-7 days notice	Cancellation 8-14 days notice	Cancellation 15-28 days notice
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Cancellation Rate	£408.99	£292.14	£175.29
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8A.4 CPI Uplift in relation to Advanced Cancellation^{31st}

Any payment for Advanced Cancellation shall be at the Cancellation Rate set out in Table 7.3 Advanced Cancellation Rates subject to the following variation:

For each Relevant Year, the value of the payment for Advanced Cancellation shall be calculated in accordance with the following formula:

where:

$$ACR_t = ACR_{t-1} \times \left(1 + \frac{(CPI_{t-1} - CPI_{t-2})}{CPI_{t-2}} \right)$$

ACR_t is the applicable Cancellation Rate for the relevant year t ;

ACR_{t-1} is the applicable Cancellation Rate for the relevant year $t-1$;

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

CPI_{t-2} means the CPI 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 2019, ACR_t shall have the relevant value specified in Table 7.3 multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year, ACR_{t-1} shall have the same value.

8B. Cancellation^{28th}

8B.1 Cancellation

For the purposes of this paragraph 8B, “**Cancellation**” means any Service that is prevented from departing its station of origin due to a failure Attributable to Network Rail provided that any notice given to the Train Operator by Network Rail relating to such Service was given after 2200 hours on the third day prior to the day on which the Service was planned to operate.

8B.2 Network Rail liability

8B.2.1 Subject to paragraphs 8B.2.2 and 8B.3 below, Network Rail shall be liable in any Charging Period for the Cancellation Sum in respect of each Cancellation of a Service Planned to depart its Origin in that Charging Period.

8B.2.2 Network Rail shall not be liable under this paragraph 8B for any Cancellation Sum in respect of:

- (a) an Ancillary Movement; or (b) not used.

8B.3 Late presentation of Service

Network Rail shall have no liability to the Train Operator under the terms of this Schedule 8 where a Service is presented to Network Rail after the time at which it is Planned to depart its Origin to the extent such late presentation leads to:

- (a) a Cancellation as a result of Network Rail meeting its commitments in terms of train regulation as set out in Condition H11 of the Network Code; or
- (b) a conflict with any restrictions on the use of the Network contained in the Applicable Timetable Planning Rules.

9. Payment

9.1 Aggregate net liability of Network Rail and the Train Operator for Performance Sums

9.1.1 The aggregate net liability of Network Rail for a Performance Sum in respect of any Charging Period shall not exceed the Network Rail Charging Period Limit.

9.1.2 Subject to paragraph 9.1.3, if Network Rail would otherwise be liable for a Performance Sum which exceeds the Network Rail Charging Period Limit, then the amount by which such claim exceeds the Network Rail Charging Period Limit (the “**Network Rail residual amount**”) shall be taken into account when calculating Network Rail’s aggregate net liability for a Performance Sum in respect of the subsequent Charging Period or Charging Periods in that Financial Year.

9.1.3 In respect of any Financial Year, the aggregate net liability of Network Rail under this paragraph 9.1 shall not exceed the Network Rail Cap.

9.1.4 The aggregate net liability of the Train Operator for a Performance Sum in respect of any Charging Period shall not exceed the Train Operator Charging Period Limit.

9.1.5 Subject to paragraph 9.1.6, if the Train Operator would otherwise be liable for a Performance Sum which exceeds the Train Operator Charging Period Limit, then the amount by which such claim exceeds the Train Operator Charging Period Limit (the “**Train Operator residual amount**”) shall be taken into account when calculating the

Train Operator's aggregate net liability for a Performance Sum in respect of the subsequent Charging Period or Charging Periods in that Financial Year.

- 9.1.6 In respect of any Financial Year, the aggregate net liability of the Train Operator under this paragraph 9.1 shall not exceed the Train Operator Cap.
- 9.1.7 In this paragraph 9.1, the “**aggregate net liability**” of a party means, in respect of a Charging Period or Financial Year, its liability after setting off the liability of the other party to it under the same provisions in respect of the same period.

9.2 *Issue of invoice or credit note*

- 9.2.1 In respect of each Charging Period, subject to paragraph 9.1, the liabilities of the Train Operator and of Network Rail for any Performance Sums and Cancellation Sums shall be set off against each other, and Network Rail shall issue an invoice or credit note as appropriate in respect of the balance, if any, within 28 days after the end of such Charging Period.
- 9.2.2 The invoice or credit note issued under paragraph 9.2.1 shall show:
 - (a) any Performance Sums and Cancellation Sums for which Network Rail or the Train Operator is liable; and
 - (b) any matter referred to in Appendix 3 which the Train Operator or Network Rail has disputed under paragraph 3 of Appendix 3 and which is still in dispute.

9.3 *Resolution of disputes*

- 9.3.1 Without prejudice to Clause 13, Part B of the Network Code shall apply to any dispute under this Schedule 8 in relation to the attribution of delay or cancellation.
- 9.3.2 The Train Operator shall not dispute any matter which it has agreed or is deemed to have agreed under Appendix 3.

10. **Reviews of Rates and Benchmarks**

10.1 *Referral of data*

- 10.1.1 Network Rail may by notice to the Train Operator served within 60 days after the end of a Financial Year:
 - (a) request a review of the Train Operator Benchmark Per Train if MDTO (as referred to in paragraph 4.2) in respect of that Financial Year:
 - (i) is less than the Train Operator Lower Review Level; or
 - (ii) exceeds the Train Operator Upper Review Level; and/or
 - (b) request a review of the Rates.
- 10.1.2 The Train Operator may by notice to Network Rail served within 60 days after the end of a Financial Year:

- (a) request a review of the Network Rail Benchmark Per Train if MDNR (as referred to in paragraph 6.2) in respect of that Financial Year:
 - (i) is less than the Network Rail Lower Review Level; or
 - (ii) exceeds the Network Rail Upper Review Level; and/or
- (b) request a review of the Rates.

10.2 Agreement of adjustments

10.2.1 In respect of each review requested under paragraph 10.1, the parties shall each use all reasonable endeavours to agree within 30 days from receipt of the notice given under paragraphs 10.1.1 or 10.1.2 appropriate adjustments to Appendix 1 for the matters in respect of which the review is requested.

10.2.2 Any adjustments agreed under paragraph 10.2.1 shall be made for the Financial Year during which the review is requested and for each subsequent Financial Year.

10.2.3 The adjustments agreed under paragraph 10.2.1 shall:

- (a) only take account of:
 - (i) the Relevant Circumstances; and
 - (ii) such other circumstances as ORR may from time to time determine as being relevant and notify the parties accordingly; and
- (b) preserve the basis on which the Benchmarks were established.

10.3 Expert determination

If, in respect of any review requested under paragraph 10.1, the parties fail to reach agreement on the adjustments required under paragraph 10.2 within 30 days from receipt of the notice given under paragraphs 10.1.1 or 10.1.2, either party shall be entitled to refer the matter to expert determination in accordance with Part D of the Access Dispute Resolution Rules, save that:

- (a) the terms of reference to the expert shall be that:
 - (i) the determination shall be consistent with paragraphs 10.2.2 and 10.2.3;
 - (ii) the determination shall be delivered in writing to the parties no later than 56 days after the date of referral of the matter to the expert; and
 - (iii) the expert shall establish such rules and procedures for the conduct of the determination as he sees fit having regard to that timescale;
- (b) each of the parties shall abide by the rules and procedures established by the expert; and
- (c) in the absence of manifest error, and subject to paragraph 10.4, the determination of the expert shall be final and binding on the parties.

10.4 Office of Rail Regulation's consent to adjustments

- 10.4.1 Any adjustments agreed between the parties or determined under paragraph 10.3 shall take effect only if ORR gives its consent to them, and from such date as ORR may determine in such consent.
- 10.4.2 If ORR does not give its consent to the adjustments described in paragraph 10.4.1, it may issue a notice requiring the parties to make adjustments to Appendix 1, as specified in the notice, in respect of the review requested under paragraph 10.1.
- 10.4.3 No notice of ORR under paragraph 10.4.2 shall have effect unless ORR has:
- (a) consulted the parties in relation to the issues specified in the notice;
 - (b) taken into account any representations made by the parties in response to the consultation under paragraph 10.4.3(a); and
 - (c) notified the parties as to its conclusions in relation to the issues specified in the notice and its reasons for those conclusions.

10.5 Statement of adjustments

- 10.5.1 Promptly following any adjustments to Appendix 1 taking effect under paragraph 10.4, and in order to give effect to those adjustments, Network Rail shall issue to the Train Operator a statement showing the necessary adjustments to:
- (a) the invoices and credit notes already issued in that Financial Year; and
 - (b) the payments already made in respect of Performance Sums relating to the Charging Periods from and including the first Charging Period in the Financial Year.
- 10.5.2 Any statement issued by Network Rail under paragraph 10.5.1 shall be accompanied by an adjusting invoice or credit note.

11 CPI Uplift in relation to Network Rail Cancellation Sum (Appendix 1)^{31st}

Any payment for Cancellation in relation to the Relevant Year commencing 1 April 2019 shall be the Cancellation Sum in Appendix 1 multiplied by the Initial Indexation Factor.

For each subsequent Relevant Year, the payment for the Cancellation Sum shall be calculated in accordance with the following formula:

$$CS_t = CS_{t-1} \times \left(1 + \frac{(CPI_{t-1} - CPI_{t-2})}{CPI_{t-2}} \right)$$

where:

CS_t is the applicable Cancellation Sum for the relevant year t ;

CS_{t-1} is the applicable Cancellation Sum for the relevant year $t-1$; and

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

CPI_{t-2} means the CPI published or determined with respect to the month of November in Relevant Year $t-2$."

APPENDIX 1: PERFORMANCE^{31ST}

Train Operator Performance

**Train Operator
Benchmark Per Train** 0.34 minutes

**Train Operator
Lower Review Level** 117 minutes

**Train Operator Upper
Review Level** 183 minutes

**Train Operator
Payment Rate** [redacted]

Train Operator Cap [redacted]

Network Rail Performance

**Network Rail
Payment Rate** [redacted]

Network Rail Cap [redacted]

Cancellation Sum [redacted]

**Network Rail
Benchmark per Train** 1.78 minutes

**Network Rail Lower
Review Level** 275 minutes

**Network Rail Upper
Review Level** 429 minutes

Benchmarks

The Train Operator Benchmark (TOB) in relation to a Charging Period shall be calculated in the following manner:

$$\text{TOB} = \text{TBM} \times \text{M},$$

where:

TBM means the Train Operator Benchmark Per Train in relation to the relevant Charging Period; and

M means the aggregate number of train movements made by the Train Operator under this contract in the relevant Charging Period.

The Network Rail Benchmark (NRB) in relation to a Charging Period shall be calculated in the following manner:

$$\text{NRB} = \text{NRBM} \times \text{M},$$

where:

NRBM means the Network Rail Benchmark Per Train in relation to the relevant Charging Period; and

M means the aggregate number of train movements made by the Train Operator under this contract in the relevant Charging Period.

APPENDIX 2: CALCULATION OF MINUTES DELAY

1. Subject to paragraph 2 below, the Minutes Delay for a train in respect of the Trigger of a Recording Point shall be equal to:
 - (a) in respect of the first recorded Trigger, the number of minutes (rounded down to the nearest whole minute), if any, by which the time at which the relevant train Triggers the Recording Point is later than the time at which the train is Planned to Trigger the Recording Point; and
 - (b) in respect of each other recorded Trigger, the lesser of:
 - (i) the number of minutes in respect of the first recorded Trigger calculated in accordance with paragraph 1(a); and
 - (ii) the greater of $((A1-A2) + B)$ and zero,where:
 - A1 is the number of minutes between the time at which the relevant train Triggers the Recording Point (rounded down to the nearest whole minute) and the time of that train's last recorded Trigger of a Recording Point (rounded down to the nearest whole minute);
 - A2 is the Planned time between the Triggers mentioned in (A) above; and
 - B is any Recovery Time between such Triggers.
2. The Minutes Delay calculated in accordance with paragraph 1 above shall be allocated in accordance with paragraph 3 of this Schedule 8. Any minutes of delay which are caused by the same incident or series of related incidents and which are less than three minutes in aggregate shall be deemed to be zero and for the purposes of this Schedule 8 shall not be included in the Minutes Delay.

APPENDIX 3: PERFORMANCE STATEMENTS

Interim statements provided by Network Rail

1. As soon as reasonably practicable after the end of each Week, and using all reasonable endeavours to provide such interim statement within two Working Days after the end of each Week, Network Rail shall provide to the Train Operator the following interim statements:
 - (a) an interim statement listing all incidents which:
 - (i) are in connection with Services which were Planned to depart from their Origin during that Week;
 - (ii) are Attributable to the Train Operator;
 - (iii) are wholly or partly MDTO (as calculated in accordance with paragraph 4.2 of this Schedule 8); and
 - (iv) wholly or partly caused Minutes Delay for any Third Party Train, including the aggregate number of Minutes Delay in respect of Third Party Trains for each such incident; and
 - (b) an interim statement listing all incidents which:
 - (i) are in connection with Services which were Planned to depart from their Origin during that Week;
 - (ii) are Attributable to Network Rail;
 - (iii) are wholly or partly MDNR (as calculated in accordance with paragraph 6.2 of this Schedule 8); and

Interim statements provided by the Train Operator

2. As soon as reasonably practicable after the end of each Week, and using all reasonable endeavours to provide such interim statement within two Working Days after the end of each Week, the Train Operator shall provide to Network Rail the following interim statements:
 - (a) an interim statement listing all Cancellations occurring during that Week for which the Train Operator considers it is entitled to a under paragraph 8 of this Schedule 8.

Dispute of interim statement

3. Within 20 Working Days of receipt of any interim statement under paragraph 1 or 2 of this Appendix the recipient shall notify the provider of the interim statement of any reason why it disputes the interim statement by endorsing the interim statement and returning it to the provider of such statement.
4. Within the next five Working Days after notification of any dispute under paragraph 3, nominated representatives of the parties shall meet and attempt to resolve that dispute.

5. If any matter is still in dispute ten Working Days after the meeting held under paragraph 4 above, either party may refer such matter for resolution under paragraph 9.3.1 of this Schedule 8.

Deemed agreement

6. Except to the extent that it has, within 20 Working Days of receipt, notified the provider of an interim statement under paragraph 3 that it disputes the contents of such interim statement, the recipient shall be deemed to have agreed the contents of that statement.

Further interim statement

7. If Network Rail's nominated representative under paragraph 4 has reasonable grounds to believe that any further incident was:
 - (a) Attributable to the Train Operator; or
 - (b) Attributable to Network Rail,but was not shown as such in the information made available under paragraph 1 above, Network Rail may notify the Train Operator of such further incident within five Working Days after the last Minutes Delay, cancellation of a Third Party Train or Cancellation caused by that incident.
8. If Network Rail notifies the Train Operator of any further incident under paragraph 7, Network Rail shall issue a further interim statement for the day in question showing the information required under paragraph 1, and the foregoing provisions of this Appendix shall apply to such further interim statement.

Statement of adjustment

9. If Condition B3.3 of the Network Code (Adjustment to prior results) applies in respect of all or part of a Charging Period, Network Rail shall promptly issue to the Train Operator a statement showing the necessary adjustments (if any) to any Performance Sums and Cancellation Sums already paid in respect of the Charging Period.
10. Any statement issued by Network Rail under paragraph 9 shall be accompanied by an adjusting invoice or credit note.

SCHEDULE 9: LIMITATION ON LIABILITY

1 Definitions^{31st}

In this Schedule

“Liability Cap” means:

- (a) in relation to the first Contract Year, the sum of £3M; and
- (b) in relation to any subsequent Contract Year, the sum calculated in accordance with the following formula:

$$C_n = C_{2017-18} \times \left[\frac{CPI_n}{CPI_{2017-18}} \right]$$

where:

- (i) $C_{2017-18} = C_1 \times \left[\frac{RPI_{2017-18}}{RPI_1} \right]$
- (ii) C_1 is the sum of £3M;
- (iii) C_n is the Liability Cap in the nth subsequent Contract Year;
- (iv) CPI_n is the Consumer Prices Index (as defined in Schedule 7) published or determined with respect to the first month of the subsequent Contract Year n; and
- (v) $CPI_{2017-18}$ is the Consumer Prices Index (as defined in Schedule 7) published or determined with respect to that month in which a Contract Year starts in the Relevant Year commencing on 1 April 2017 and ending on 31 March 2018;
- (vi) $RPI_{2017-18}$ is the Retail Prices Index (as defined in Schedule 7) published or determined with respect to that month in which a Contract Year starts in the Relevant Year commencing on 1 April 2017 and ending on 31 March 2018; and
- (vii) 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 on or before 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 21 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 and the ORR 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: USE OF RAILWAYS INFRASTRUCTURE REOPENER^{23rd}

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 Schedule 11 notice.

1.2 Retrospective effect

No relevant notice may have retrospective effect.

2 Schedule 11 notice

2.1 Meaning

A Schedule 11 notice is a notice given by ORR to the parties for the purposes of this contract which modifies this Schedule 11 by replacing this Schedule 11 with the specified provisions arising from the requirements of paragraph 18(5) of the Railways Infrastructure (Access and Management) Regulations 2005.

2.2 Contents of Schedule 11 notice

A Schedule 11 notice shall state—

- (a) the modifications which are to be made to this Schedule 11; and
- (b) the date from which specified modifications are to have effect.

3 Definitions

In this Schedule 11—

“**Schedule 11 notice**” has the meaning ascribed to it in paragraph 2.1; and

“**specified**” means specified in a Schedule 11 notice.

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
North Yorkshire Moors Railway Enterprises Plc

END NOTES

NORTH YORKSHIRE MOORS RAILWAY ENTERPRISES PLC

(i) First Supplemental Agreement dated 30 March 2007

This first supplemental agreement has effect from the first day of the period falling immediately after the date upon which the ORR issued its approval (such date being 30th March 2007) and on satisfaction of the Condition Precedent contained therein and shall cease to have effect at 0159 hours on the Expiry Date or on the earlier termination of the Contract.

- Schedule 5 paragraph 2.2 was deleted and replaced with the following:

“2.2 In order to provide for the Scheduling of part only of Passenger Train Slots specified in Table 2.1 the Train Operator has:

- (a) Firm Rights for such a Passenger Train Slot to commence from and/or terminate at Grosmont, providing that in all such cases the Specified Equipment operating that Passenger Train Slot when terminating at Grosmont shall transfer from the Network to that network owned by North Yorkshire Moors Railways Enterprises PLC and when commencing from Grosmont shall transfer from that network owned by North Yorkshire Moors Railways Enterprises PLC onto the Network;

- (b) Not used.”¹

¹ This provision is subject to the satisfaction of the Condition Precedent contained in the First Supplemental Agreement between the parties.

- Schedule 5 table 5.1 column 3 of the contract was amended as follows:

The words “And up to 5 MK1 coaches” was deleted and replaced with the words “And up to 8 MK1 coaches.”

(ii) Second Supplemental Agreement dated 28 June 2007

This second supplemental agreement has effect from the first day of the period falling immediately after the date upon which the ORR issued its approval (such date being 28th June 2007) and shall cease to have effect at 0159 hours on the Expiry Date or on the earlier termination of the Contract..

- Schedule 5 Table 2.2, Table 4.1 and Table 5.1 was amended as follows:

Table 2.2: Additional Passenger Train Slots¹

1					2					
Service Group [nnnn]										
Service description					Additional Passenger Train Slots					
From	To	Via	Description	TSC	Total Weekday	Peak times		Off-Peak times	Saturday	Sunday
						morning Peak	evening Peak			
Grosmont	Whitby	N/A	N/A	22241000	1	N/A	N/A	N/A	2	1
Whitby	Battersby	N/A	N/A	22241000	2	N/A	N/A	N/A	3	4
Battersby	Whitby	N/A	N/A	22241000	2	N/A	N/A	N/A	3	4
Whitby	Grosmont	N/A	N/A	22241000	1	N/A	N/A	N/A	2	1
Glaisdale	Battersby	N/A	N/A	22241000	2	N/A	N/A	N/A	2	N/A
Battersby	Glaisdale	N/A	N/A	22241000	2	N/A	N/A	N/A	2	N/A

¹ These Services may only be scheduled to operate in accordance with paragraph 2.4

Table 4.1: Calling Patterns.

1					2	3
Service Group [nnnn]						
Service description						
Between	And	Via	Description	TSC	Regular Calling Pattern	Additional stations
Grosmont	Whitby	N/A	N/A	22241000		Sleights or Ruswarp
Whitby	Battersby	N/A	N/A	22241000	Grosmont, Egton, Glaisdale, Danby or Castleton Moor	Ruswarp or Sleights
Battersby	Whitby	N/A	N/A	22241000	Castleton Moor, Danby, Glaisdale, Egton or Grosmont	Sleights or Ruswarp
Whitby	Grosmont	N/A	N/A	22241000		Ruswarp or Sleights

Table 5.1: Specified Equipment.

1					2	3
Service Group [nnnn]						
Service description						
Between	And	Via	Description	TSC	Standard Specified Equipment ¹	Steam Driven Equipment ²
Battersby	Whitby	N/A	N/A	22241000	Class 24 Class 25 Class 33 Class 37 (all variants) Class 40 Class 45 Class 47 (all variants) Class 50 Class 52 Class 55 Class 57 Class 66 Class 67	LMS, CI 5, 4-6-0 MK 1 Std, CI 4, 2-6-0 Std, CI 4, 4-6-0 Std, CI 4, 2-6-4T LNER, K 1, 2-6-0 LNER, B 1, 4-6-0 LNER, J 27, 0-6-0 SR, S15, 4-6-0 SR, WC/BB (unrebuilt), 4-6-2 SR, WC/BB (rebuilt), 4-6-2 GWR 4575 GWR Hall 4-6-0 LNER K4 2-6-0 GW 94xx 0-6-0pt LMS Class 4/5 2-6-0 Standard Class 5 4-6-0 And up to 8 MK1 coaches

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

² Any Steam Driven Equipment included in this Table 5.1 may not be used until and unless the necessary route clearance has been obtained.

- Schedule 7 Part 5 Additional permitted Charges (f) was amended to read:
 “such costs in respect of those additional Passenger Train Slots provided for in paragraph 2.4 and Table 2.2 to Schedule 5 incurred by Network Rail for the purpose of enabling the Train Operator to operate those additional Passenger Train Slots on Weekends, for example but not limited to, all costs relating to

the opening of signal boxes. Such costs shall be in addition to any other amount payable by the Train Operator to Network Rail under the contract. All provisions of the contract relating to invoicing and payment of Track Charges shall apply to the payment of Track Charges in respect of the additional passenger Train Slots.”

(iii) Third Supplemental Agreement dated 16 May 2008

This Third Supplemental Agreement has effect from the first day of the period falling immediately after the date upon which the ORR issued its approval (such date being 22nd May 2008) and shall cease to have effect at 0159 hours on the Expiry Date or on the earlier termination of the Contract.

- Schedule 7 Track Charges Part 1: Interpretation, the definition of ”Track Usage Price List” was amended to read:

Means the track usage price list published by ORR on 23 December 2003, or any relevant successor to that list that may be published as the result of an ORR access charge review, which for the purposes of this contract shall be amended to include the following:

Vehicle Type	Vehicle Description	Pence per Vehicle Mile (2005/2006 prices)
As listed in Schedule 4, table 5.1 Specified Equipment of this Access Agreement	Steam locomotive and any tender	17.15
As listed in Schedule 4, table 5.1 Specified Equipment of this Access Agreement	Diesel locomotive	40.86 (as Class 37) To be applied where a price does not exist on the current ORR published Price List

(iv) Sixth Supplemental Agreement dated 23 October 2008

This sixth Supplemental Agreement has effect from the first day of the period falling immediately after the date upon which the ORR issued its approval (such date being 23rd October 2008) and shall cease to have effect at 0159 hours on the Expiry Date or on the earlier termination of the Contract.

- In the parties clause on page 1 of the Contract, the “(1)” and the words set out against it were deleted and replaced with the following:

“(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”

- Paragraph 1 of Schedule 1 was deleted and replaced with the following:

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

Network Rail Infrastructure Limited

Kings Place

90 York Way

London

N1 9AG

Tel: 020 3356 9595

Fax: 020 3356 9300

All written notices to be marked:

“URGENT: ATTENTION THE COMPANY SECRETARY AND SOLICITOR”

and copied to:

The Route Director

Network Rail (LNE Route)

George Stephenson House

Toft Green

York

YO1 6HT

Tel: 01904 383145

Fax: 01904 383262”

- Schedule 5 was amended as follows:
 - Table 2.2 Additional Passenger Train Slots was deleted and replaced as Follows:

Table 2.2: Additional Passenger Train Slots²

1					2		
Service Group [nnnn]							
Service description					Additional Passenger Train Slots		
From	To	Via	Description	TSC	Total Weekday	Saturday	Sunday
Grosmont	Whitby	N/A	N/A	22241000	4	4	4
Whitby	Battersby	N/A	N/A	22241000	2	3	4
Battersby	Whitby	N/A	N/A	22241000	2	3	4
Whitby	Grosmont	N/A	N/A	22241000	4	4	4
Glaisdale	Battersby	N/A	N/A	22241000	2	2	N/A
Battersby	Glaisdale	N/A	N/A	22241000	2	2	N/A

- Paragraph “2.4” and the words set out against it was deleted and replaced with the following:

“2.4 The Train Operator has Contingent Rights to additional Passenger Train Slots in the Working Timetable in respect of a Service Group up to the number listed against each service specified in Table 2.2 under the heading “Additional Passenger Train Slots”. “

- Paragraph “2.5” and the words set out against it was deleted and replaced with the following:

“2.5 In order to provide for the Scheduling of part only of Passenger Train Slots specified in Table 2.2 the train operator has:

- (a) Contingent Rights for such a Passenger Train Slot to commence from and/or terminate at Grosmont, providing that in all such cases the Specified Equipment operating that Passenger Train Slot when terminating at Grosmont shall transfer from the Network to that network owned by North Yorkshire Moors Railways Enterprises PLC and when commencing from Grosmont shall transfer from that network owned by North Yorkshire Moors Railways Enterprises PLC onto the Network.
 - (b) Contingent Rights for such a Passenger Train Slot to commence from and/or terminate at Glaisdale.”
- Table 5.1: Specified Equipment, Column 3 was amended by the insertion of the following new entries (with the table headings included for ease of reference only):

² These Services may only be scheduled to operate in accordance with paragraph 2.4

Table 5.1: Specified Equipment.

1					2	3		
Service Group [nnnn]								
Service description								
Between	And	Via	Description	TSC	Standard Equipment ¹	Specified	Steam Driven Equipment ²	
Battersby	Whitby	N/A	N/A	22241000			BR Std, Class 7 4-6-2 BR Std, Class 8 4-6-2 LMS 'Jubilee' Class 5XP 4-6-0 LMS 'Stanier' Class 5 2-6-0 LNER Class A1 4-6-2 (New build–‘Tornado’) LMS Class 6 4-6-0 (‘Royal Scot’)	

(v) Eleventh Supplemental Agreement dated 12 December 2008

This Eleventh Supplemental Agreement has effect from 12 December 2008 and shall cease to have effect at 0159 hours on the Expiry Date or on the earlier termination of the Contract.

A new clause 19 was inserted into the Contract as follows:

“19 Interim Treatment of Access Charges Review

19.1 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 of the Act by the Current Control Period Expiry Date 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 from the day after the Current Control Period Expiry Date of from any later date (or dates) specified in the Proposed Review Notice in respect of any individual amendments.

19.2 Definitions

In this Clause 19:

“**Current Control Period**” means the period of five years commencing at 0000 hours on 1 April 2004 and ending at 23.59 hours on 31 March 2009;

“**Current Control Period Expiry Date**” means the last day of the Current Control Period;

“**Proposed Review Notice**” means as at the last day of the Current Control Period the most recent Review Notice (including any Revised Review Notice) given by the Office of Rail Regulation during the Current Control Period the terms of which are proposed to take effect after the Current Control Period Expiry Date;

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

“**Revised Review Notice**” means any new Review Notice given by the Office of Rail Regulation pursuant to paragraph 8(2) of Schedule 4A of the Act.”

(vi) Tenth Supplemental Agreement dated 23 January 2009

This Tenth Supplemental Agreement has effect from 01.59 hours on the Principal Change Date (December) 2009. The Contract was amended as follows:

- In clause 1 INTERPRETATION 1.1 Definitions on page 2 of the contract the words “**Expiry Date**” means the Principal Change Date (December) 2009,” were deleted and replaced with the following:

“**Expiry Date**” means the Principal Change Date (December 2014),”

- In Schedule 5 Table 2.1 Passenger Train Slots column “2” the column headed “Peak times” and the column headed “Off-Peak times” were deleted.
- In Shedule 5 *Appendix – Dates of operation* was amended by the insertion of 5 new tables.

(vii) **Thirteenth Supplemental Agreement dated 25 march 2009**

This Thirteenth Supplemental Agreement has effect from 00.00 hours on 01 April 2009. The contract was amended as follows:

- relating to the implementation of the 2008 open access passenger operator track access charges review a new Schedule 4 was included and;
- Schedule 7 was deleted in its entirety and replaced with a new Schedule 7.

(viii) **Ninth Supplemental Agreement dated 23 July 2009**

This Ninth Supplemental Agreement has effect from 23 July 2009. The contract was amended as follows:

In schedule 5 Table 5.1: Specified Equipment, Column 3 was be amended by the insertion of the following new entries (with the table headings included for ease of reference only):

Table 5.1: Specified Equipment.

1					2	3
Service Group [nnnn]						
Service description						
Between	And	Via	Description	TSC	Standard Specified Equipment1	Steam Driven Equipment2
Battersby	Whitby	N/A	N/A	22241000		LNER Class A4 4-6-2
						LNER Class Q6 0-8-0
						SR 'Schools' Class 4-4-0

Paragraph 5.2 and the words set out against it were deleted and replaced with the following:

“5.2 A ‘Class 08 Diesel Shunter’ may be used for rescue purposes only subject to the necessary route clearance being obtained.”

(ix) **Twelfth Supplemental Agreement Dated 23 July 2009**

This Twelfth Supplemental Agreement has effect from 23 July 2009. The contract was amended as follows:

In Schedule 7 Track Charges Part 1: Interpretation, the definition of “Track Usage Price List” was amended to read:

“means the track usage price list published by ORR on or about 18 December 2008, which for the purposes of this contract shall be deemed to include the following:

Vehicle Type	Vehicle Description	Pence per Vehicle Mile (2009/2010 prices)
As listed in Schedule 4, table 5.1 Specified Equipment of this Access Agreement	Steam locomotive and any tender	19.67
As listed in Schedule 4, table 5.1 Specified Equipment of this Access Agreement	Diesel locomotive	32.82 (as Class 37) To be applied where a price does not exist on the current ORR published Price List

(x) Fifteenth Supplemental Agreement dated 23 April 2010-05-07

This Fifteenth Supplemental Agreement has effect from 23 April 2010. The contract was amended as follows:

Clause 19 "RELEVANT SCHEDULE 8 MODIFICATIONS" and the words "Schedule 11 shall have effect." were deleted.

In Schedule 5, Table 5.1: Specified Equipment, Column 3 was be amended by the insertion of the following new entries (with the table headings included for ease of reference only):

Table 5.1: Specified Equipment.

1					2	3
Service Group [nnnn]						
Service description						
Between	And	Via	Description	TSC	Standard Specified Equipment1	Steam Driven Equipment2
Battersby	Whitby	N/A	N/A	22241000		GWR 'King' Class 8 4-6-0 GWR 'Castle' Class 7 4-6-0

(xi) Seventeenth Supplemental Agreement dated 13 August 2010.

This seventeenth supplemental agreement has effect from 22 July 2010. The contract was amended as follows:

In Schedule 5 Table 5.1 Specified Equipment column 2 entitled 'Standard Specified Equipment' shall be amended to include: "Class 31" and be subject to the Note to the Table regarding obtaining the necessary route clearance.

(xi) Nineteenth Supplemental Agreement Dated 21 February 2011

The nineteenth supplemental agreement has effect from 1st April 2011

Schedule 4 was deleted in its entirety and Schedule 8 was amended to include a provision for Advanced Cancellation. The cancellation sum in Appendix 1 of Schedule 8 was also amended to £450

(xii) Notice of consent to requisite adaptations dated 16th March 2011

This notice of consent was issued by the Regulator pursuant to agreed requisite adaptations in order to modify bespoke sections of the track

access contract which depart from the Model Passenger Access Contract consequential upon, or necessary to give full effect to the new Part D of the Network Code which took effect on 1 October 2010.

(xiii) Notice for ADDR consequential changes

This notice was issued under Schedule 10 in order to modify specified provisions of the track access contract as are consequential upon changes made to the Access Dispute Resolution Rules through PfC 54 which was approved by ORR on 18 January 2010 and took effect on 1 August 2010.

(xiv) Twenty Third Supplemental Agreement Dated 31 May 2013

The twenty third supplemental agreement has effect from 6th June 2013

- In clause 1 interpretation 1.1 Definitions the words “Expiry Date” means the Principal Change Date (December 2014;” were deleted and replaced with the words: “Expiry Date” means the Principal Change Date 2023;”
- A new Schedule 11 (Use of Railways Infrastructure Reopener) was added.
- In paragraph 5.6 The Services and The Specified Equipment, the words: “Schedule 5 shall have effect” were amended to read: “Schedule 5 and 11 shall have effect.”

(xv) Twenty Fifth Supplemental Agreement Dated 14th February 2014

The twenty fifth supplemental agreement has effect from 24th February 2014

Schedule 5 *Appendix – Dates of operation* were amended by the insertion of 9 new tables to set out dates of operation for the years 2015 to 2023.

(xvi) Twenty Sixth Supplemental Agreement Dated 31st March 2014

The twenty sixth supplemental agreement has effect from 01st April 2014. This agreement incorporates the 2013 Periodic Review, Review Notice: Open Access Operator Track Access Agreements as issued by the regulator.

- At the end of clause 7 the words “And Other Payments” were added
- Clause 13.2 was deleted and replaced with a new Clause 13.2
- With the exception of Appendix 7C to Schedule 7, Schedule 7 was deleted and replaced with a new Schedule 7.

(xvii) Twenty Ninth Supplemental Agreement Dated 01 June 2017

The twenty ninth supplemental agreement has effect from 02 June 2017, changes relate to the operation of upto 12 additional services per annum between Sheringham and Cromer. Changes comprise of:

- In the parties clause on page 1 and in paragraph 1 of Schedule 1 Network Rail's registered address was amended
- In Schedule 2 “Main Route” was amended to include between Sheringham and Cromer
- In Schedule 5 table 2.1 Passenger Train Slots was amended to show services between Grosmont and Battersby as Service Group PR01
- In Schedule 5 table 2.2 Additional Passenger Train Slots was amended to show services between Grosmont and Battersby as Service Group PR01
- In Schedule 5 table 2.2 Additional Passenger Train Slots was amended to include the following additions:

“Service Group PR02³

Service description

					Additional Passenger Train Slots		
From	To	Via	Description	TSC	Total Weekday	Saturday	Sunday
Sheringham	Cromer	N/A	N/A	22241001	1	1	1
Cromer	Sheringham	N/A	N/A	22241001	1	1	1”

³ These services may only be scheduled to operate up to a maximum of 12 times in any one contract year”

- In Schedule 5 paragraph 2.5 was amended to refer to services in PR01 only

- In Schedule 5 Table 4.1: Calling Patterns was amended to show services between Grosmont and Battersby as Service Group PR01
- In Schedule 5 Table 4.1: Calling Patterns was amended to include the following additions:

1					2	3
Service Group PR02						
Service description						
Between	And	Via	Description	TSC	Regular Calling Pattern	Additional Stations
Sheringham	Cromer	N/A	N/A	22241001		
Cromer	Sheringham	N/A	N/A	22241001		

- In Schedule 5 table 5.1 Specified Equipment was amended to show services between Grosmont and Battersby as Service Group PR01
- The following new entries were inserted:

“Service Group PR02						
Service description						
Between	And	Via	Description	TSC	Standard Specified Equipment ¹	Steam Driven Equipment ²
Sheringham	Cromer	N/A	N/A	22241001	BR Class 20 Bo-Bo Diesel Electric	BR Std, Class 4MT 2-6-0 And up to 4 MK1 Coaches

- Schedule 6 Paragraph 1 Events and default clause (g) was replaced as follows:
“(g) in any Contract Year, or part thereof, three or more incidents shall have occurred in any one service group which in each case cause 203 or more Minutes Delay to Third Party Trains Attributable to the Train Operator. In this paragraph the phrases “Minutes Delay”, “Third Party Trains”, and “Attributable to the Train Operator” shall have the meanings ascribed to them in Schedule 8: Performance Regime.”
- In Schedule 7 APPENDIX 7C the table Default Train Consist Data was amended to include the following new entry:

TRAIN SERVICE CODE	TYPE OF TRAIN MOVEMENT	DEFAULT TRAIN CONSIST DATA
22241001	Train movement(s) between Sheringham and Cromer	Steam locomotive, tender and 4 Mk 1 coaches

(xviii) Twenty Seventh Supplemental Agreement Dated 22nd August 2018

The twenty seventh supplemental agreement has effect from 23rd August 2018, changes relate to 2 additional firm rights between Grosmont and Whitby on Weekdays and Saturdays, the removal of all firm rights between Glaisdale and Whitby replaced with firm rights between Whitby and Grosmont and the removal of all contingent rights between Glaisdale and Battersby replaced with contingent rights between Grosmont and Battersby. Changes comprise of:

- In Schedule 5 Table 2.1: Passenger Train Slots have been deleted and replaced by a new Table 2.1: Passenger Train Slots as set out below:

Table 2.1: Passenger Train Slots¹

1					2		
Service Group PR01					Passenger Train Slots		
Service description North Yorkshire Moors Railway							
From	To	Via	Description	TSC	Total Weekday	Saturday	Sunday
Grosmont	Whitby	N/A	N/A	22241000	5	5	N/A
Whitby	Grosmont	N/A	N/A	22241000	5	5	N/A

Notes to Table:

¹ These Services may only be scheduled to operate on the dates as set out in Appendix 1 to this Schedule 5.

- In Schedule 5 Table 2.2: Additional Passenger Train Slots have been deleted and replaced by a new Table 2.2: Additional Passenger Train Slots as set out in below:

Table 2.2: Additional Passenger Train Slots

1					2		
Service Group PR01 ²					Additional Passenger Train Slots		
Service description							
From	To	Via	Description	TSC	Total Weekday	Saturday	Sunday
Grosmont	Whitby	N/A	N/A	22241000	4	2	4
Whitby	Battersby	N/A	N/A	22241000	2	3	4
Battersby	Whitby	N/A	N/A	22241000	2	3	4
Whitby	Grosmont	N/A	N/A	22241000	4	4	4
Grosmont	Battersby	N/A	N/A	22241000	2	2	N/A
Battersby	Grosmont	N/A	N/A	22241000	2	2	N/A

2

Service Group PR02³

Service description North Yorkshire Moors Railway					Additional Passenger Train Slots		
From	To	Via	Description	TSC	Total Weekday	Saturday	Sunday
Sheringham	Cromer	N/A	N/A	22241001	1	1	1
Cromer	Sheringham	N/A	N/A	22241001	1	1	1

(xix) Twenty Eighth Supplemental Agreement Dated 14th November 2018

The eighth supplemental agreement has effect from 01 April 2016 and relates to Schedule 8 payment rates in Appendix 1 to Schedule 8 and the addition of a new paragraph 7 to include Indexation of rates. Changes comprised of:

- 1 In Schedule 8 paragraph 7. Advanced Cancellation the number “7.” was deleted and replaced with the number “8A.” and the numbers of associated subparagraphs amended accordingly.
- 2 In Schedule 8 paragraph 8. Cancellation the number “8.” was deleted and replaced with the number “8B.” and associated sub paragraphs were amended accordingly.
- 3 A new paragraph 7 Indexation into Schedule 8.

4. In Schedule 9 paragraph 1 the definition "Liability Cap" was replaced to reflect the change from RPI to CPI.

(xx) Thirtieth Supplemental Agreement Dated 10th December 2018

The Thirtieth Supplemental Agreement comes into effect on 10th December 2018 and relates to amendments to the interim treatment of the 2018 periodic review. Changes comprised of:

1. Clause 19 "Interim Treatment of Access Reviews" was deleted
2. In Schedule 7 various new definitions relating to the review notice were added and a new paragraph 4 Interim treatment of 2018 Period Review was added in Part 7 Future Access Charges Reviews.

(xxi) Thirty First Supplemental Agreement Dated 14th March 2019

The Thirty First Supplemental Agreement has effect from 01 April 2019 and relates to the implementation of the 2018 Periodic Review. Changes are as follows:

1. Changes or the addition of the following Definitions in Clause 1.1 (Definitions):
 - 1.1. Access charges review
 - 1.2. Relevant Year
2. Changes to clause 16.2, 18.4
3. Schedule 7 replaced in its entirety with the exception of Appendix 7C (Default Consist Data)
4. The following changes were made to Schedule 8:
 - 4.1. The addition of a new definition: "Initial Indexation Factor"
 - 4.2. Paragraph 7 (Indexation) was replaced
 - 4.3. Paragraphs 8A.3, 8A.4 and 11 were amended to reflect the change from RPI indexation to CPI.
 - 4.4. Appendix 1 was replaced

(xxii) Thirty Second Supplemental Agreement Dated 14th March 2019

The thirty second supplemental agreement has effect from 01 April 2019. This agreement corrects errors in Schedule 7, replacing Schedule 7 in its entirety with the exception of Appendix 7C.

(xxiii) Thirty Third Supplemental Agreement Dated 17th December 2019

The thirty third supplemental agreement has effect from 17th December 2019 and extends the duration of 2 additional firm rights in table 2.1 granted under the twenty seventh supplemental agreement until the subsidiary change date 2020.

(xxiv) Thirty Fourth Supplemental Agreement Dated 21st April 2020

The thirty fourth supplemental agreement has effect from 21st April 2020 and extends the duration of 2 additional firm rights in table 2.1 granted under the twenty seventh supplemental agreement until the expiry date of this contract.

(xxv) Thirty Fifth Supplemental Agreement Dated 6th August 2020

The thirty fifth supplemental agreement has effect from the Principal Change Date 2020 and extends rights granted under the twenty ninth supplemental agreement to this track access agreement relating to the operation of up to 12 additional services per annum between Sheringham and Cromer until the principal change date 2021.