

TRACK ACCESS CONTRACT (PASSENGER SERVICES)

Dated

4th May 2018

Between

NETWORK RAIL INFRASTRUCTURE LIMITED

and

SOUTH YORKSHIRE SUPERTRAM LIMITED

Unredacted, conformed copy as at 04 April 2019

Amended by:

1. 1st Supplemental Agreement dated 27th September 2018
2. 2nd Supplemental Agreement dated 5th July 2018
3. 3rd Supplemental Agreement dated 10th December 2018
4. 4th Supplemental Agreement dated 21st March 2019

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THIS CONTRACT is made the 4th day of May 2018

BETWEEN:

- (1) 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) South Yorkshire Supertram Limited, a company registered in England under number 02634683 having its registered office at c/o Stagecoach Services Limited, One Stockport Exchange, 20 Railway Road, Stockport, Cheshire, SK1 3SW (the "Train Operator").^{1st}

WHEREAS:

- (A) Network Rail is the owner of the Network; and South Yorkshire Supertram Limited is a train operating company
- (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;^{4th}

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

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

"Act" means the Railways Act 1993;

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

"Affiliate" means, in relation to any company:

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

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

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

“Applicable Engineering Access Statement” means the Engineering Access Statement in force in respect of the Routes on the date on which services may first be operated by the Train Operator under this contract, as from time to time amended or replaced under Part D of the Network Code;

“Applicable Timetable Planning Rules” means the Timetable Planning Rules in force in respect of the Routes on the subsidiary change date 2016, 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 and the Traction Electricity Rules;

“Contract Year” means each yearly period commencing on the Subsidiary Change Date 2018 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;

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

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

“Expiry Date” means the Subsidiary Change Date 2023^{2nd}

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

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

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

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

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

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

unless:

- (i) in any case, a railway administration order (or application for such order) has been made or such order (or application) is made within 14 days after the occurrence of such step, event, proposal or action (as the case may be) in relation to the party in question under section 60, 61 or 62 of the Act and for so long as any such order (or application) remains in force or pending; or

- (ii) in the case of paragraphs (a), (d) and (e), the relevant petition, proceeding or other step is being actively contested in good faith by that party with timely recourse to all appropriate measures and procedures;

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

“Longstop Date” means six months from the date of direction by the Office of Rail Regulation that this contract be entered into;

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

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

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

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

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

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

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

“Relevant Losses” means, in relation to:

- (a) a breach of this contract; or
- (b) in the case of Clause 10, any of the matters specified in Clause 10.1(a), (b) or (c) or Clause 10.2(a), (b) or (c) (each a “breach” for the purpose of this definition); or
- (c) in the case of Schedule 8, the matter specified in paragraph 18 of Schedule 8 (a “breach” for the purposes of this definition only),

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

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

“Relevant Year” has the meaning ascribed to it in Schedule 7;^{4th}

“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 by regulation 2 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

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

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

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

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

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

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

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

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

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

“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 or under the Traction Electricity Rules;

“Traction Electricity Rules” means the document known as the Traction Electricity Rules published on its website and as may be amended from time to time;

“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 and Other Guided Transport Systems (Safety) Regulations 2006 and Network Rail’s network licence shall, unless otherwise defined in this contract, have the same meanings in this contract;
- (m) any reference to the term “possession”, either by itself or as part of any composite definition, shall be construed as a reference to a Restriction of Use as defined in Schedule 4;
- (n) words and expressions defined in the Network Code shall have the same meanings in this contract; and
- (o) if there is any conflict of interpretation between this contract and the Network Code, the Network Code shall prevail.
- (p) words and expressions defined in the Traction Electricity Rules shall have the same meanings in this contract; and
- (q) if there is any conflict of interpretation between this contract (not including the Traction Electricity Rules, the following order of precedence shall apply: (1) the Traction Electricity Rules; and (2) this contract (not including the Traction Electricity Rules).

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 AND TRACTION ELECTRICITY RULES

2.1 Incorporation

The Network Code and the Traction Electricity Rules are incorporated in and form part of this contract.

2.2 Modifications to the Network Code or The Traction Electricity Rules

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 the Principal Change Date 2017. Permissions to use the Routes shall be subject to completion of any enhancement work to Network Rail Infrastructure that is required to enable the Specified Equipment to operate on the Routes.

3.2 Conditions precedent to Clause 5

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

- (a) to the extent required by the Act and/or the Railways (Licensing of Railway Undertakings) Regulations 2005, the Train Operator is authorised to be the operator of trains for the provision of the Services by:
 - (i) a licence granted under section 8 of the Act; and/or
 - (ii) a European licence and corresponding SNRP;
- (b) Network Rail is authorised by a licence granted under section 8 of the Act to be the operator of that part of the Network comprising the Routes or is exempt from the requirement to be so authorised under section 7 of the Act;
- (c) each of the Collateral Agreements is executed and delivered by all the parties to each such agreement and is unconditional in all respects (save only for the fulfilment of any condition relating to this contract becoming unconditional);
- (d) each of the parties has, as necessary, a valid safety certificate or safety authorisation as required by the Railways and Other Guided Transport Systems (Safety) Regulations 2006 and has established and is maintaining a safety management system which meets the requirements of those Regulations; and
- (e) the provisions of this contract, other than Clause 5, have taken effect in accordance with Clause 3.1.

3.3 Obligations to satisfy conditions precedent to Clause 5

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

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

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

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

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

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

3.5 Expiry

This contract shall continue in force until the earliest of:

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

3.6 Suspension and termination

Schedule 6 shall have effect.

4 STANDARD OF PERFORMANCE

4.1 General standard

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

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

4.2 Good faith

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

5 PERMISSION TO USE

5.1 Permission to use the Routes

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

5.2 Meaning

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

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

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

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

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

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

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

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

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

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

Schedule 4 shall have effect.

5.6 The Services and the Specified Equipment

Schedule 5 shall have effect.

5.7 Performance

Schedule 8 shall have effect.

5.8 Stabling

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

6 OPERATION AND MAINTENANCE OF TRAINS AND NETWORK

6.1 General

Without prejudice to the other provisions of this contract:

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

6.2 Trespass, vandalism and animals

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

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

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

6.3 Safety

In relation to Safety Obligations:

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

affects or is likely to affect the performance of the Train Operator's Safety Obligations.

6.4 Use of Railway Code Systems

6.4.1 General

The parties shall:

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

6.4.2 Provision of Train Consist Data

Without prejudice to Clause 6.4.1, the Train Operator shall:

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

7 TRACK CHARGES AND OTHER PAYMENTS

Schedule 7 shall have effect.

8 LIABILITY

8.1 Performance Orders in relation to breach

In relation to any breach of this contract:

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

8.2 Compensation in relation to breach

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

9 NOT USED

10 LIABILITY - OTHER MATTERS

10.1 Train Operator indemnity

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

- (a) a failure by the Train Operator to comply with its Safety Obligations;
- (b) any Environmental Damage arising directly from the acts or omissions of the Train Operator or the proper taking by Network Rail under Condition E2 of the Network Code of any steps to prevent, mitigate or remedy an

Environmental Condition which exists as a direct result of the acts or omissions of the Train Operator; and

- (c) any damage to the Network arising directly from the Train Operator's negligence.

10.2 Network Rail indemnity

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

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

11 RESTRICTIONS ON CLAIMS

11.1 Notification and mitigation

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

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

11.2 Restrictions on claims by Network Rail

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

- (a) shall exclude payments to any person under or in accordance with the provisions of any Access Agreement other than any such payments which are for obligations to compensate for damage to property, and so that any claim for indemnity under this contract for such payments for damage to property, in relation to any incident, shall be limited to:
 - (i) the maximum amount for which the Train Operator would be liable for such damage in accordance with the Claims Allocation and Handling Agreement; less
 - (ii) any other compensation which the Train Operator has an obligation to pay for such damage;

- (b) shall exclude loss of revenue in respect of permission to use any part of the Network under or in accordance with any Access Agreement with any person; and
- (c) shall:
 - (i) include Relevant Losses only to the extent that these constitute amounts which Network Rail would not have incurred as network owner and operator but for the relevant breach; and
 - (ii) give credit for any savings to Network Rail which result or are likely to result from the incurring of such amounts.

11.3 Restrictions on claims by Train Operator

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

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

11.4 Restriction on claims by both parties

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

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

11.5 Limitation on liability

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

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

(c) subject to Clause 18.3.3.

11.6 Claims Allocation and Handling Agreement

11.6.1 General

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

11.6.2 Restriction of application

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

11.6.3 Liability for small claims

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

12 GOVERNING LAW

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

13 DISPUTE RESOLUTION

13.1 ADRR^{4th}

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 or the Traction Electricity Rules provides for an alternative dispute resolution procedure for the Relevant Dispute, in which case such alternative procedure shall apply;
- (b) any Part of Schedules 4, 5, 7 or 8 provides for an alternative dispute resolution procedure for the Relevant Dispute, in which case such alternative procedure shall apply; or
- (c) Clause 13.2 applies.

13.2 Unpaid sums

If either party fails to pay:

- (a) any invoice issued to it under this contract in respect of Track Charges; or

(b) any other sum which has fallen due in accordance with any provision of this contract,

then:

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

13.3 Performance Orders

13.3.1 Power to order provisional relief

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

13.3.2 Performance Orders

A Performance Order:

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

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

13.3.3 Duties of arbitrator in relation to Performance Orders

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

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

declaration which he considers just and reasonable in all the circumstances.

13.4 Remedies

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

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

13.5 Exclusion of applications on preliminary points of law

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

14 CONFIDENTIALITY

14.1 Confidential Information

14.1.1 General obligation

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

14.1.2 Network Rail - Affiliates

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

14.1.3 Train Operator - Affiliates

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

14.2 Entitlement to divulge

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

- (a) to ORR;
- (b) to the Secretary of State;
- (c) to any Affiliate of either party;

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

14.3 Return of Confidential Information

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

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

14.4 Retention or destruction of Confidential Information

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

14.5 Ownership of Confidential Information

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

14.6 Network Code and Schedule 7 and the Traction Electricity Rules

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, the Traction Electricity Rules or Schedule 7.

15 ASSIGNMENT AND NOVATION

15.1 Assignment

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

15.2 Novation

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

- (a) agree to the novation of the rights and obligations of the Train Operator under this contract in favour of another person (including the Secretary of State or a person nominated by him) in any circumstances where the Secretary of State requests Network Rail to participate in such a novation in the course of exercising its powers under section 30 of the Act; and
- (b) execute such contracts and do such things as the Secretary of State may reasonably request to give effect to the novation.

15.3 Novation terms

Any novation under Clause 15.2 shall be on terms that:

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

agreement being a term or condition of the novation if required by the Secretary of State.

16 PAYMENTS, INTEREST AND VAT

16.1 Payment^{4th}

16.1.1 No deduction

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

16.1.2 Delivery of invoices

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 HM Revenue and Customs practice to issue a valid VAT credit note, such rebate or repayment shall be paid together with an amount representing the VAT paid on that part of the consideration in respect of which the rebate or repayment is made, and the first party shall issue an appropriate VAT credit note to the other party.

17 FORCE MAJEURE EVENTS

17.1 Meaning of Force Majeure Event

In this Clause 17:

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

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

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

- (g) strike or other industrial action which is a single circumstance and which also is a strike or industrial action in sectors of the economy other than the railway industry;

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

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

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

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

17.2 Nature and extent of relief for Force Majeure^{4th}

Force Majeure relief under this Clause 17:

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

17.3 Entitlement to Force Majeure relief

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

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

17.4 Procedure for claiming relief

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

17.5 Force Majeure Notices and Reports

17.5.1 Force Majeure Notice

In relation to any Relevant Force Majeure Event:

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

17.5.2 Force Majeure Report

Following the giving of a Force Majeure Notice:

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

17.5.3 Other information

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

17.6 Mitigation

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

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

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

17.7 Duration of relief for force majeure

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

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

17.8 Availability of Performance Order

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

18 MISCELLANEOUS

18.1 Non waiver

18.1.1 No waiver

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

18.1.2 Failure or delay in exercising a right or remedy

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

18.2 Variations

18.2.1 Amendments to be in writing and to be approved

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

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

18.2.2 Exceptions

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

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

18.2.3 No Office of Rail and Road approval needed^{4th}

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 or the Traction Electricity Rules,

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^{4th}

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 registered company and communication details

A party shall be entitled to modify in any respect:

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

by giving notice of such modification:

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

18.4.3 Deemed receipt^{4th}

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.

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

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

18.5 Counterparts

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

18.6 Survival

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

18.7 Contracts (Rights of Third Parties) Act 1999

18.7.1 Application to third parties

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

18.7.2 Application to the Office of Rail and Road

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

18.7.3 Application to the Secretary of State

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

18.7.4 Application of the Traction Electricity Rules to other train operators

Any Metered Train Operator, Prospective Metered Operator or Modelled Train Operator (as defined in the Traction Electricity Rules) shall have the right under the Contracts (Rights of Third Parties) Act 1999 directly to enforce such rights as have been granted to it under the Traction Electricity Rules.

19 NOT USED

SCHEDULE 1: CONTACT PARTICULARS

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

Network Rail Infrastructure Limited

1 Eversholt Street

London

NW1 2DN

Tel: 020 7904 4001

Email: notices@networkrail.co.uk

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 384195

Fax: 01904 383262

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

South Yorkshire Supertram Limited

Nunnery Depot

Woodbourn Road

Sheffield S9 3LS

Tel: 0114 279 2549

Fax: 0114 279 8120

Email: OCC@supertram.com

All written notices to be marked:

"URGENT: ATTENTION THE COMPANY SECRETARY"

and copied to:

The Operations Control Manager
South Yorkshire Supertram Limited
Nunnery Depot
Woodbourn Road
Sheffield
S9 3LS

Tel: 0114 279 2549
Fax: 0114 279 8120

SCHEDULE 2: THE ROUTES

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

SCHEDULE 3: COLLATERAL AGREEMENTS

1. 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. Tram Train Agreement between (1) South Yorkshire Passenger Transport Executive and (2) South Yorkshire Supertram Limited under which the Operator undertakes to provide the Services, dated 21st May 2013.
4. Concession Agreement between (1) South Yorkshire Passenger Transport Executive and (2) South Yorkshire Supertram Limited, dated 21st March 2000.
5. 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.
6. An agreement between (1) South Yorkshire Passenger Transport Executive and (2) Network Rail to allow connection, suitable for passenger trains, between Network Rail Managed Infrastructure and the South Yorkshire Supertram Network to be made.

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

PART 1: NOT USED

PART 2: NOT USED

PART 3: COMPENSATION FOR RESTRICTIONS OF USE

1. Definitions

1.1 *Defined terms*

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

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

“Bi-annual Timetable” means either of the following:

- (a) the Corresponding Day Timetable for all days in the period from and including the Principal Change Date up to but excluding the immediately following Subsidiary Change Date; or
- (b) the Corresponding Day Timetable for all days from and including the Subsidiary Change Date up to but excluding the immediately following Subsidiary Change Date or Principal Change Date, as the case may be;

“Cancellation Minutes” shall have the meaning ascribed to it in Schedule 8;

“Cap” shall have the meaning ascribed to it in Schedule 8;

“Corresponding Day” means, in respect of any day (the **“first day”**):

Section 1.01 18.7.4 Application of the Traction Electricity Rules to other train operators

- (a) a day which is contained in the same Timetable Period as the first day and on

which the Services scheduled in the New Working Timetable are the same as would have been scheduled on the first day but for Restrictions of Use reflected in the New Working Timetable for the first day; or

- (b) if no day is found under paragraph (a) above, then a day which is contained in the equivalent Timetable Period for the time of year, in the year immediately preceding the Timetable Period which includes the first day and on which the Services scheduled in the New Working Timetable are the same as would have been scheduled on the first day but for Restrictions of Use reflected in the New Working Timetable for the first day; or
- (c) if no day is found under paragraph (a) or (b) above, such other day as the parties may agree or as may be determined in accordance with paragraph 12.2;

“Corresponding Day Timetable”

means, in relation to a Corresponding Day, the New Working Timetable or such other timetable as may be agreed between the parties or otherwise determined in accordance with paragraph 12.2;

“CPI”

shall have the meaning ascribed to it in Schedule 7;^{4th}

“Day 42 Statement”

shall have the meaning ascribed to it in paragraph 13.1(a);

“Defined Service Group Revenue”

shall have the relevant value as set out in Annex D to Part 3 of this Schedule 4;^{4th}

“Disrupted”

means:

- (a) cancelled;
- (b) diverted off the Route over which it was scheduled to run in the Corresponding Day Timetable; and/or
- (c) starting or finishing short in comparison with the Service as timetabled in the

Corresponding Day Timetable;

“First Restriction”	shall have the meaning ascribed to it in paragraph 2.12(a)(i);
“First Restriction Period”	shall have the meaning ascribed to it in paragraph 2.12(a)(ii);
“Further Restriction”	shall have the meaning ascribed to it in paragraph 2.12(a)(ii)(B);
“High Speed Diversion”	means a situation in which a Train is diverted between successive Monitoring Points such that it travels a longer distance at a higher average speed than that normally scheduled and arrives at its destination at a time later than that specified in the New Working Timetable;
“Initial Indexation Factor”	shall have the meaning ascribed to it in Schedule 7;
“Monitoring Point”	shall have the meaning ascribed to it in Schedule 8;
“Network Rail Restriction of Use”	means any Restriction of Use other than an Operator Restriction of Use;
“Notification Factor” or “NF”	shall have the meaning ascribed to it in paragraph 9;
“Off Peak”	where applicable, has the meaning ascribed to it in Schedule 5;
“Operator Restriction of Use”	means a Restriction of Use of the type referred to in paragraph 2.3;
“Over-run”	shall have the meaning ascribed to it in paragraph 2.12(a);
“Peak”	where applicable, has the meaning ascribed to it in Schedule 5;
“Performance Monitoring	shall have the meaning ascribed to it in Schedule

System”	8; ^{4th}
“Period”	shall have the meaning ascribed to it in Schedule 8;
“Public Holiday”	means any day other than Saturday or Sunday on which the banks in the City of London are not open for business;
“Recovery Allowance”	means an allowance for additional time incorporated in the New Working Timetable or (where the Train Operator requests that the allowance is not incorporated in the New Working Timetable and Network Rail complies with that request) the Applicable Timetable to allow a Train to regain time lost during an earlier part of its journey;
“Restriction of Use”^{4th}	<p>means, in respect of any day, any difference from the normal capability of all or any part of the Routes (where the normal capability of the Routes is expressed in the Applicable Timetable Planning Rules relevant to that day notified to each Timetable Participant on or before D-26) which results in:</p> <ul style="list-style-type: none"> (a) a difference between the Applicable Timetable on that day as compared with the New Working Timetable in respect of that day; and/or (b) a difference between the New Working Timetable on that day as compared with the Corresponding Day Timetable in respect of the Corresponding Day;
“Restriction of Use Day”	means a day on which a Network Rail Restriction of Use is taken or deemed to be taken;
“RoU Claim Notice”	means a notice issued by either party pursuant to paragraph 2.8;
“RoU Liability”	means any costs, direct losses and expenses

	(including any loss of revenue) reasonably incurred or reasonably expected to be incurred by the Train Operator (including any increase in RoU Variable Costs but net of any benefit arising from the taking of a Restriction of Use including any decrease in RoU Variable Costs) as a consequence of a Type 3 Restriction of Use or any Restriction(s) of Use covered by an SPD Claim;
“RoU Variable Costs”	means any Train Operator costs which vary as a result of a Restriction of Use or where applicable an Over-run arising directly from changes in train mileage including maintenance, fuel or the Traction Electricity Charge, the VUC Default Charge and the Variable Usage Charge (as such terms are defined in Schedule 7); ^{4th}
“SPD Claim”	has the meaning specified in paragraph 2.10(d);
“SPD Notice”	means a notice issued by either party pursuant to paragraph 2.10(a);
“SPD Period”	means the period of any 3 or 7 (as the case may be) consecutive Periods in which it is agreed or determined that Sustained Planned Disruption has occurred in respect of the Train Operator, together with any subsequent consecutive Period up to but excluding the first Period to occur in respect of which it is agreed or determined that the test for Sustained Planned Disruption is not satisfied in respect of the Train Operator;
“SPD Cost Threshold No.1”^{4th}	means £342,223;
“SPD Cost Threshold No.2”^{4th}	means £684,447;
“SPD Revenue Threshold No.1”^{4th}	means 20% of 1/13 th of the relevant Defined Service Group Revenue over three consecutive Periods;
“SPD Revenue Threshold No.2”^{4th}	means 15% of 1/13 th of the relevant Defined Service Group Revenue over seven consecutive

“SPD Termination Notice”

**“Sustained Planned
Disruption” or “SPD”**

Periods;

has the meaning specified in paragraph 2.10(c);

means a circumstance where:

- (a) the aggregate of all of the Train Operator’s notional revenue losses calculated in accordance with paragraph 3 for any one or more Restrictions of Use during:
 - (i) 3 consecutive Periods is equal to or exceeds SPD Revenue Threshold No.1; or
 - (ii) 7 consecutive Periods is equal to or exceeds SPD Revenue Threshold No.2,and that the difference between the RoU Liability calculated in accordance with paragraph 8 and the Train Operator’s notional revenue losses calculated in accordance with paragraph 3 and paragraph 4 for such Restrictions of Use during that period would be more than £10,000; or
- (b) in respect of any one or more Restrictions of Use during:
 - (i) 3 consecutive Periods the difference between the Train Operator’s RoU Liability (excluding any loss of revenue) calculated in accordance with paragraph 8 and the Train Operator’s notional costs calculated under paragraph 4 would be more than SPD Cost Threshold No. 1; or
 - (ii) 7 consecutive Periods the difference between the Train Operator’s RoU Liability (excluding any loss of revenue) calculated in accordance with paragraph 8 and the Train Operator’s notional costs calculated under paragraph 4 would be more than SPD Cost Threshold No. 2;

“Service Code”	shall have the meaning ascribed to it in Schedule 8;
“Service Group”	shall have the meaning ascribed to it in Schedule 8;
“Train”	shall have the meaning ascribed to it in Schedule 8;
“Train–Bus–Train Pattern”	<p>means a situation where:</p> <ul style="list-style-type: none"> (a) a Restriction of Use occurs on any section of track between: <ul style="list-style-type: none"> (i) successive Monitoring Points; or (ii) the station of origin and the next Monitoring Point; and (b) the Train Operator uses a substitute bus or other alternative road service between any pair of stations situated: <ul style="list-style-type: none"> (i) between or including such successive Monitoring Points; or (ii) at or between the station of origin and the next Monitoring Point;
“Type 3 Restriction of Use”	means a single Restriction of Use (including any Over-run) of more than 120 consecutive hours (including any part of that Restriction of Use which occurs during a Public Holiday);
“Unplanned Over-run Period”	shall have the meaning ascribed to it in paragraph 2.12(a)(ii)(A);
“Viable Transfer Point”	a station normally served by the services operated by the Train Operator, and equipped to enable the efficient and safe transfer of trainloads of passengers to and from alternative modes of transport, and/or services operated by other Train Operators, and which the parties have agreed, and set out in Annex B, shall be used for the purpose of providing bus substitution services, and for calculating the cost of bus substitution services in accordance with the provisions of paragraph 4

Costs Compensation for Network Rail Restrictions of Use”;

“Week”

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

“White Period”

means any period during which the taking of a Restriction of Use would not result in any notional revenue loss being calculated in accordance with paragraph 3.

1.2 *Suspension Notices*

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

1.3 *Possession*

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

1.4 *White Period*

In respect of any Type 3 Restriction of Use, where a Restriction of Use starts before and/or ends after a White Period, the entire length of the Restriction of Use shall be taken into account when counting the cumulative total hours.

2.1 *Entry into effect*

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

2.2 *Applicable Engineering Access Statement and the Network Code*

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

- (a) Network Rail’s right to take Restrictions of Use under or pursuant to the Applicable Engineering Access Statement;
- (b) the establishment of any amended Working Timetable under Part H of the Network Code; and

- (c) any rights pursuant to the Network Code that the Train Operator may have to challenge any decision of Network Rail.

2.3 *Operator Restriction of Use*

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

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

2.4 *Network Rail payments*

Subject to paragraph 2.3, Network Rail shall make payments to the Train Operator (in accordance with the procedure in paragraph 13) in respect of a Network Rail Restriction of Use calculated in accordance with paragraph 2.7 and 2.10 where applicable.

2.5 NOT USED

2.6 NOT USED

2.7 *Type 3 Restriction of Use*

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

2.8 *RoU Claim Notice*

- (a) A Train Operator wishing to make a request for payments from Network Rail pursuant to Clause 2.7 must notify Network Rail that a Restriction of Use is a Type 3 Restriction of Use and that the circumstances in

paragraph 2.7 apply within 56 days of the date of the end of such Type 3 Restriction of Use

- (b) The notice referred to in paragraph 2.8(a) must include details of the estimate of the RoU Liability which the Train Operator has incurred in respect of the relevant Restriction of Use.

2.9 *Changes to Restrictions of Use*

- (a) Where a single Restriction of Use falls within the definition of a Type 3 Restriction of Use and there is a change which means that no Restriction of Use occurs or that the Restriction of Use no longer falls within the definition of a Type 3 Restriction of Use, then that Restriction of Use shall be treated, for the purposes of the calculation and payment of compensation, as if it had never been a Type 3 Restriction of Use (or, where applicable, as if it had not been a Restriction of Use).
- (b) Where a single Restriction of Use does not fall within the definition of a *Type 3 Restriction of Use* and there is a change which means that the Restriction of Use then falls within the definition of a Type 3 Restriction of Use, then that Restriction of Use shall be treated, for the purposes of the calculation and payment of compensation, as if it had always been a Type 3 Restriction of Use
- (c) For the purposes of paragraph 2.9(d), a Restriction of Use shall be deemed to be taken if and to the extent that it results in any difference between timetables of the type referred to in the definition of “Restriction of Use” when notified, whether or not the restriction giving rise to that Restriction of Use was subsequently cancelled in whole or in part.
- (d) Where a change to a Type 3 Restriction of Use reduces the impact of that Restriction of Use and accordingly changes it so that it no longer falls within the definition of a Type 3 Restriction of Use or means that there is no Restriction of Use in accordance with paragraph 2.9(a), the Train Operator may, within 28 days of the date on which the change to the Type 3 Restriction of Use was notified to the Train Operator by Network Rail, serve a notice on Network Rail which sets out any costs to which the Train Operator is already committed or has already incurred and any costs associated with responding to the Type 3 Restriction of Use (both before and after the change). The Train Operator shall be entitled to recover such costs provided that such costs are reasonable and were properly committed or incurred in the circumstances.

2.10 *Sustained Planned Disruption*

- (a) If either party reasonably believes that a Sustained Planned Disruption has occurred then that party will be entitled to require that the costs and losses for the Restrictions of Use for the relevant services during the relevant SPD Period be calculated in accordance with paragraph 8 by serving a notice on the other (an “SPD Notice”) in accordance with paragraph 2.10(b).
- (b) Unless otherwise agreed in writing, an SPD Notice must be served no later than the day falling 56 days after the issue of the Day 42 Statement which followed the end of the relevant SPD Period and must include a short explanation of why it reasonably believes a Sustained Planned Disruption has occurred and a statement of when the SPD Period commenced.
- (c) Following the issue of an SPD Notice, either party may serve a notice (an “SPD Termination Notice”) stating that it reasonably believes that the relevant Sustained Planned Disruption is no longer occurring, such notice to include a short explanation of why the party serving it reasonably believes that the Sustained Planned Disruption has ceased and stating the Period in which such cessation has occurred. A party receiving an SPD Termination Notice shall within 30 days of its receipt by notice to the serving party either accept or reject the SPD Termination Notice and where it rejects the notice it shall include with its rejection notice a short explanation of why it reasonably believes the Sustained Planned Disruption is continuing. If the parties fail to reach agreement within 30 days after service of a rejection notice, or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, either party may notify the other that the dispute resolution procedure set out in paragraph 13.3 is to apply (save that references to paragraph 13.2 shall be construed as being references to this paragraph).
- (d) Following the issue of an SPD Notice the party that issued that notice must serve a claim (an “SPD Claim”):
 - (i) no later than the day falling 112 days after the issue of the Day 42 Statement for the last Period in the relevant SPD Period; or
 - (ii) where an SPD Period has exceeded 13 consecutive Periods in length or upon the termination or expiry of this contract, whichever comes first, unless otherwise agreed in writing, no

later than the day falling 112 days after the issue of the Day 42 Statement which followed the 13th consecutive Period or the termination or expiry of this contract (as applicable),

whichever is the earlier.

- (e) Provided a party has issued an SPD Notice in accordance with paragraph 2.10(b), nothing in paragraph 2.10(d) shall prevent that party from issuing more than one SPD Claim in respect of the same Sustained Planned Disruption, provided that:
 - (iii) each such SPD Claim relates to a different period within the said SPD Period (so there is no double-counting); and
 - (iv) no SPD Claim can be issued after the last day for serving notice specified under paragraph 2.10(d).
- (f) An SPD Claim must include details of when and why that party reasonably believes that a Sustained Planned Disruption has occurred and in particular:
 - (i) if the claim is made by the Train Operator, such details as may reasonably be available of the RoU Liability which the Train Operator has incurred or reasonably expects to incur in respect of the relevant Restrictions of Use during the SPD Period; or
 - (ii) if the claim is made by Network Rail, the reasons why Network Rail reasonably believes that the Train Operator has been overcompensated or may be overcompensated by more than the relevant amount.
- (g) Following the service of an SPD Claim, if and to the extent it is agreed or determined that a Sustained Planned Disruption has occurred in the period covered by the claim then the relevant party shall make payments to the other (in accordance with the procedure in paragraph 13) calculated in accordance with paragraph 8 in respect of the SPD Period (or where applicable the part of the SPD Period) covered by the SPD Claim.

2.11 *Early notice of RoU Liability*

The parties may at any time engage in discussions on any matter likely to result in payments in respect of any RoU Liability and shall use reasonable endeavours to agree whether such RoU Liability calculated in accordance with paragraph 7 or 8 are likely to arise and/or what mitigating actions should be

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

2.12 *Over-runs*

- (a) An over-run ("Over-run") occurs where:
 - (i) there is a Restriction of Use which is not an Operator Restriction of Use (the "First Restriction"); and
 - (ii) following the end of the relevant period of difference between timetables referred to in sub-paragraphs (a) and (b) of the definition of Restriction of Use which served to establish the existence of that Restriction of Use (the "First Restriction Period"), there is either:
 - (A) a further period of at least one hour during which Services are Disrupted due to (1) any incident attributed under Schedule 8 to circumstances arising from any restriction of operation of the Network which are a consequence of the First Restriction or (2) any act or omission in connection with any activities planned or undertaken which are directly attributable to the First Restriction (including any failure to remove the First Restriction by the time scheduled for its removal in the Applicable Engineering Access Statement) but excluding any act or omission by the Train Operator for which it would be allocated responsibility under this contract (the "Unplanned Over-run Period"); and/or
 - (B) a further Restriction of Use is taken which is at the same location as all or part of the First Restriction and directly

connected with or attributable to any activities undertaken or planned to be undertaken under the First Restriction (a “Further Restriction”),

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

- (b) Where a Restriction of Use is subject to one or more Over-runs, then the entire duration from the start of the First Restriction to the end of the last Over-run in respect of the Restriction of Use shall be treated as making up a single Restriction of Use.
- (c) This paragraph 2.12 shall not result in any Unplanned Over-run Period being subject to either revenue loss compensation for Network Rail Restrictions of Use under paragraph 3 or costs compensation for Network Rail Restrictions of Use under paragraph 4.

3. Notional revenue loss for Network Rail Restrictions of Use

3.1 *Basis for calculations*

For each Period and for each Service Group, Network Rail shall calculate the notional revenue loss in respect of all Network Rail Restrictions of Use on each Restriction of Use Day in that Period by applying, in accordance with paragraphs 3.2 and 3.3, the formulae in paragraphs 3.4, 3.5 and 3.6. For the purposes of determining for this paragraph 3 to which Service Group a particular Train is allocated, a Train (or portion of a Train) shall be treated as allocated to a particular Service Group by reference to its Service Code, provided that where a particular Train (or portion of a Train) is given a different Service Code in the New Working Timetable from the Service Code given to it in the Applicable Timetable or a different Service Code in the Corresponding Day Timetable from the Service Code given to it in the New Working Timetable it shall be treated as part of the Service Group in relation to whichever of those Service Codes most correctly applies to that Train or, where both Service Codes could equally apply to that Train, to the Service Code applied to that Train in the New Working Timetable.

3.2 *Separate calculations*

In applying the formula in paragraph 3.4, Network Rail shall calculate the notional revenue loss separately in respect of all:

- (a) Network Rail Restrictions of Use which are taken into account in the New Working Timetable; and
- (b) Network Rail Restrictions of Use which are not so taken into account but are taken into account in the Applicable Timetable.

3.3 *Meaning of T1 and T2*

In paragraph 3.4:

- (a) where Network Rail is making the calculation for the purpose of paragraph 3.2(a), T1 shall mean the Corresponding Day Timetable and T2 shall mean the New Working Timetable for the Restriction of Use Day; and
- (b) where Network Rail is making the calculation for the purpose of paragraph 3.2(b), T1 shall mean the New Working Timetable for the Restriction of Use Day and T2 shall mean the Applicable Timetable for the Restriction of Use Day.

3.4 *Formula*

The formula referred to in paragraph 3.1 is as follows:

$$NRP = \sum((WACM + NREJT) \bullet BF \bullet NRPR \bullet NF)$$

where:

NRP is the Network Rail Payment;

- (a) Σ is the sum across all Network Rail Restrictions of Use and all Restriction of Use Days in the Period;
- (b) WACM is the weighted average of Cancellation Minutes for the Service(s) (or part(s) thereof) in that Service Group as a result of a Network Rail Restriction of Use, calculated according to the following formula:

where:

$$WACM = (CM - NPPR) \bullet 0.5 \bullet \frac{NU}{TT}$$

CM is the Network Rail Cancellation Rate for the Service Group in question specified in Appendix 1 to Schedule 8;

NPPR is the Network Rail Performance Benchmark for the Service Group in question specified in Appendix 1 to Schedule 8;

NU Is the total number of trains cancelled in each direction on that day;

TT Is the total number of trains normally scheduled to run in each direction on that day;

(c) NREJT = 0

(d) BF is the busyness factor, as calculated for each Service Group according to the following formula:

$$BF = \frac{TT}{AT}$$

where:

TT Is the total number of trains normally scheduled to run in each direction on that day;

AT Is the average number of trains a day that run in each direction;

(e) NRPR is the Network Rail payment rate specified in Appendix 1 to Schedule 8.

3.5 *Not Used*

3.6 *Not Used*

4. Notional costs consequent on Network Rail Restrictions of Use

4.1 Basis for calculations

For each Period and for each Service Group, Network Rail shall calculate the notional costs of all Network Rail Restrictions of Use on each Restriction of Use Day in that Period by applying the formulae in paragraph 4.2. For the purposes of determining for this paragraph 4 to which Service Group a particular Train is allocated, a Train (or portion of a Train) shall be treated as allocated to a particular Service Group by reference to its Service Code, provided that where a particular Train (or portion of a Train) is given a different Service Code in the New Working Timetable from the Service Code given to it in the Applicable Timetable or a different Service Code in the Corresponding

Day Timetable from the Service Code given to it in the New Working Timetable it shall be treated as part of the Service Group in relation to whichever of those Service Codes most correctly applies to that Train or, where both Service Codes could equally apply to that Train, to the Service Code applied to that Train in the New Working Timetable.

4.2 *Notional cost calculation formula^{4th}*

The formula referred to in paragraph 4.1 is as follows:

$$\text{Notional cost} = \sum (\text{RRBC} + \text{TMC})$$

where:

- (a) \sum is the sum across all applicable Network Rail Restrictions of Use and all Restriction of Use Days in the Period;
- (b) RRBC is the rail replacement bus cost, for the Service(s) (or part(s) thereof) in that Service Group as a result of a Network Rail Restriction of Use, calculated according to the following formula:

$$\text{RRBC} = \text{EBM} \times \text{EBMPR}$$

Where:

EBM is the number of estimated bus miles for the Train Operator; and

EBMPR is the payment rate per EBM, which is £10.73

If there is full bus replacement

$$\text{EBM} = \text{EBMW} \times \text{FBRmiles}$$

If there is partial bus replacement

$$\text{EBM} = \text{EBMW} \times 0.5 \times \text{PBRmiles} \times \text{ITS}$$

If there is no bus replacement (as set out in Annex B to this Part 3 of Schedule 4)

$$\text{EBM} = \text{EBMW} \times 0$$

where:

EBMW is the weighting applicable to the affected section of route, as set out in Annex B to this Part 3 of Schedule 4;

- FBRmiles is the length of route, in miles, between the applicable pair of Viable Transfer Points over which train services are affected and for which full bus replacement is required as set out in Annex B to this Part 3 of Schedule 4;
- PBRmiles is the length of route, in miles, between the applicable pair of Viable Transfer Points over which train services are affected and for which partial bus replacement is required as set out in Annex B to this Part 3 of Schedule 4;
- ITS is 1 or the percentage of trains stopping at intermediate stations for those cases where EBMW = 50%; and
- (c) TMC is the cost or saving, expressed in pence per train mile and rounded to two decimal places, resulting from train mileage change, for the Service(s) (or part(s) thereof) in that Service Group as a result of a Network Rail Restriction of Use, calculated according to the following formula:

$$TMC = TM \times TMPR$$

where:

TM is the change in train mileage; and

TMPR is the payment rate per train mile, as stipulated in Annex C to this Part 3 of Schedule 4.

5. Estimated bus miles change mechanism

5.1 *Circumstances in which parties agree to amend Annex B*

Either party may by notice to the other propose that Annex B be amended in accordance with this paragraph 5.

5.2 *Procedure for amendments to Annex B^{4th}*

- (a) The party who wishes to amend Annex B shall notify the other party of any such proposed change and the date from which it proposes that such change will have effect:
- (i) where such change relates to a forthcoming timetable change, on or before the first day of the month which falls 6 months before the relevant Principal Change Date or Subsidiary Change Date on which that timetable change is due to occur; and
 - (ii) in any other case prior to the date from which it proposes such change shall have effect.

- (b) Any notice under sub-paragraph 5.2(a) shall specify as far as possible that party's proposed amendments to Annex B. Promptly following the service of any such notice the parties shall endeavour to agree whether Annex B should be amended in accordance with this paragraph 5 and if so the amendments.
- (c) If the parties fail to reach agreement within 90 days after service of the relevant notice, or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, the matter may be referred for resolution in accordance with the ADRR. In respect of any such dispute which is referred for resolution under the ADRR the parties shall agree in a Procedure Agreement, as defined in the ADRR, that the relevant ADRR Forum shall have regard to any relevant criteria and/or policy statement most recently issued by ORR.
- (d) Any amendment to Annex B shall take effect only when it has been approved by ORR under section 22 of the Act. Accordingly, as soon as reasonably practicable after any such amendment is agreed or determined in accordance with this paragraph 5, the parties shall use all reasonable endeavours to ensure that ORR is furnished with such amendment and sufficient information and evidence as it shall require to determine whether or not to approve the amendment.
- (e) Any amendment to Annex B shall apply with effect from:
 - (i) the relevant Principal Change Date or Subsidiary Change Date (where paragraph 5.2 (a) (i) applies); or
 - (ii) subject to paragraph 5.2 (d) the date proposed by the party requesting the change in accordance with paragraph 5.2 (a) (ii) (unless otherwise agreed by the parties or determined by the expert in relation to the change).

5.3 *Costs of implementing amendment*

The party proposing the amendment to Annex B shall (subject to any determination of an expert as to costs, where a matter is referred to that expert under paragraph 5.2(c)) pay 90 percent of costs incurred by or on behalf of the other party in assessing and implementing the amendments to Annex B, provided that those costs shall be the minimum reasonably necessary to assess and implement that amendment.

6. Not Used

7. RoU Liability compensation for Type 3 Restrictions of Use

7.1 Compensation arrangements

- (a) Following receipt of an RoU Claim Notice in respect of a Type 3 Restriction of Use, Network Rail and the Train Operator shall (if they have not already done so) commence negotiations in respect of the RoU Liability compensation to be paid by Network Rail to the Train Operator in respect of the Type 3 Restriction of Use and, subject to paragraph 10, shall continue such negotiations in good faith until they are concluded.
- (b) Once the compensation referred to in paragraph 7.1(a) has been agreed or determined the compensation to be paid by Network Rail to the Train Operator shall be the full amount of the RoU Liability actually incurred by the Train Operator less any amounts received by the Train Operator from Network Rail in respect of such Restriction of Use (including in respect of the period of any Unplanned Over-run Period as referred to in paragraph 2.12(a)(ii) (A) any amounts under Schedule 8).
- (c) Network Rail shall include in the statement provided by it in respect of each Period under paragraph 13.1(a) details of the compensation agreed or determined under this paragraph 7 and paragraph 10 to be payable in respect of any Type 3 Restriction of Use taken in that Period and that compensation shall be due and payable by the relevant party to the other in accordance with paragraph 13.1.

8. Sustained Planned Disruption payments

8.1 Payment arrangements

- (a) Following an agreement or determination that a Sustained Planned Disruption has occurred during an SPD Period, Network Rail and the Train Operator shall (if they have not already done so) commence negotiations in respect of the RoU Liability compensation to be paid by Network Rail to the Train Operator in respect of the Restrictions of Use during the relevant SPD Period and, subject to paragraph 10, shall continue such negotiations in good faith until they are concluded.
- (b) Once the compensation referred to in paragraph 8.1(a) has been agreed or determined the compensation to be paid by Network Rail to

the Train Operator in respect of the Restrictions of Use during the relevant SPD Period shall be the full amount of the RoU Liability actually incurred by the Train Operator less any amounts received by the Train Operator from Network Rail in respect of such Restrictions of Use (including in respect of the period of any Unplanned Over-run Period as referred to in paragraph 2.12(a)(ii)(A) any amounts under Schedule 8)

- (c) Following any agreement or determination of an amount to be paid by Network Rail to the Train Operator in respect of a Sustained Planned Disruption that amount shall (subject to the terms of any compensation arrangements agreed in writing between the parties) be due and payable by Network Rail to the Train Operator in accordance with paragraph 13.1.
- (d) Where a Sustained Planned Disruption applies due to a circumstance which it is agreed or determined affects a part only of the Train Operator's services (including whether by reference to geographic location or Service Group), then in agreeing or determining the RoU Liability in respect of that SPD the RoU Liability in respect of the part of the Train Operator's services not affected by that circumstance shall (unless otherwise proven) be presumed to be equal to the payments made under paragraphs 3 and 4 of this Schedule 4 in respect of those other services.

9. Notification Factors^{4th}

9.1 *Early notification*

The Notification Factor in respect of a Network Rail Restriction of Use in respect of any Service Group shall have the value specified for that Service Group in column C of Annex A to this Part 3 if and to the extent that:

- (a) the Network Rail Restriction of Use is reflected in the New Working Timetable; or
- (b)
 - (i) details of the Network Rail Restriction of Use are notified to the Train Operator on or before D-26 for the Timetable Period in respect of the Restriction of Use Day but, at the request of the Train Operator (as accepted by Network Rail), are not reflected in the New Working Timetable; and

- (ii) subject to paragraph 9.1(b)(iii), the Network Rail Restriction of Use is reflected in the Working Timetable as set out in the Performance Monitoring System at 2200 hours on the day which is 12 Weeks before the Restriction of Use Day; or
- (iii) where paragraph 9.1(b)(ii) does not apply because the Train Operator has failed to give Network Rail a revised Access Proposal in accordance with Condition D3.4.9, the Network Rail Restriction of Use is reflected in the Applicable Timetable in respect of the Restriction of Use Day.

9.2 *Notification by TW-22*

The NF in respect of a Network Rail Restriction of Use in respect of any Service Group shall have the value specified for that Service Group in column D of Annex A to this Part 3 if and to the extent that paragraph 9.1 does not apply, and:

- (a) details of the Network Rail Restriction of Use are notified to the Train Operator by TW -22; and
- (b)
 - (i) the Network Rail Restriction of Use is reflected in the Working Timetable as set out in the Performance Monitoring System at 2200 hours on the day which is 12 Weeks before the Restriction of Use Day; or
 - (ii) where paragraph 9.2(b)(i) does not apply because the Train Operator has failed to give Network Rail a revised Access Proposal in accordance with Condition D3.4.9, the Network Rail Restriction of Use is reflected in the Applicable Timetable in respect of the Restriction of Use Day.

9.3 *Late Notification*

The NF in respect of a Network Rail Restriction of Use in respect of any Service Group shall have the value specified for that Service Group in column E of Annex A to this Part 3 if and to the extent paragraphs 9.1 and 9.2 do not apply but the Network Rail Restriction of Use is reflected in the Applicable Timetable, and includes where paragraph 9.1(b) or paragraph 9.2 would have been applicable but for a failure by Network Rail to fulfil the terms of paragraph 9.1(b)(ii) or paragraph 9.2(b)(i) respectively, notwithstanding the Train Operator having given a revised Access Proposal in accordance with Condition D3.4.9.

10. Dispute resolution

If the Train Operator and Network Rail fail to reach agreement as required under paragraph 2.10 (g), 2.11, 7 or 8 within 28 days following provision of the RoU Claim Notice, either party may refer the matter for resolution in accordance with the ADRR.

11. Schedule 8 application

If and to the extent that a Network Rail Restriction of Use is not reflected in the Applicable Timetable for the Restriction of Use Day, the amount of compensation (if any) shall be calculated in accordance with Schedule 8 (to the exclusion of any compensation under this Schedule 4 except as provided in paragraphs 2.12).

12. Restriction of Use Day and Corresponding Day

12.1 *Information provision*

In respect of any Restriction of Use Day for which there is either notional revenue loss or notional costs to be calculated in a Period under paragraphs 3 and 4, Network Rail shall accurately record such information as it uses and as may properly and reasonably be required to make the calculations required under paragraphs 3 and 4 (including the determination of NF and the relevant version of the Working Timetable referred to in paragraph 9.1(b)(ii) or paragraph 9.2(b)(i). Network Rail shall maintain that information until the calculations required under paragraphs 3 and 4 in respect of that Period are finally agreed or determined and provide such information to the Train Operator at its reasonable request.

12.2 *Corresponding Day*

- (a) If, for the purpose of identifying a Corresponding Day, no day is found under paragraph (a), (b) or (c) of the definition “Corresponding Day” and the parties have failed to reach agreement on the Corresponding Day by the date falling eight Weeks before the relevant Timetable Change Date then either party may require that the identification of the Corresponding Day be resolved as a dispute in accordance with the ADRR.
- (b) The parties shall agree in a Procedure Agreement, as defined in the ADRR, that the relevant ADRR Forum’s remit shall be to:
 - (i) reach a decision which is fair and reasonable; and

- (ii) identify the day in either any version of the Working Timetable or any version of the New Working Timetable on or before D -26 in either case which has been produced in accordance with the Network Code as at the Restriction of Use Day and which most closely reflects the Services which would have been scheduled on the first day (as that term is used in the definition of Corresponding Day save that in respect of any Restriction of Use lasting more than two Timetable Periods, the first day may occur in any year preceding the Timetable Period) but for Restrictions of Use reflected in the New Working Timetable for the first day; or
- (iii) where a Corresponding Day cannot be identified in accordance with paragraph 12.2(b)(ii) above, determine a notional Corresponding Day. The relevant ADRR Forum may have regard, where appropriate, to any pattern of services which may reasonably be expected to be operated during the relevant period when the Restriction of Use is being taken in the event of the permanent absence of any Corresponding Day.

13. Payment procedures

13.1 *Network Rail Restrictions of Use*

- (a) Within 14 days after the end of each Period, Network Rail shall provide to the Train Operator a statement (the “Day 42 Statement”) showing:
 - (i) all Network Rail Restrictions of Use taken during that Period;
 - (ii) any notional revenue losses and notional costs calculated in accordance with paragraphs 3 and/or 4 in respect of the Network Rail Restrictions of Use identified; and
 - (iii) following any agreement or determination in the Period referred to in paragraph 13.1(a) of any RoU Liability in respect of a Type 3 Restriction of Use or a Sustained Planned Disruption (as applicable), any payment to be made by Network Rail to the Train Operator,

in sufficient detail to enable the Train Operator to make an informed assessment thereof.

13.2 *Disputes*

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

13.3 *Dispute resolution*

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

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

13.4 *Payments in the event of a dispute*

Where any amount under paragraph 13.1 is in dispute:

- (a) the undisputed amount shall be paid in accordance with paragraph 13.1;
- (b) the disputed amount shall be paid within 28 days after the dispute is resolved or determined to the extent that the amount in dispute is adjudged or resolved to be payable; and
- (c) the disputed amount shall carry interest (incurred daily and compounded monthly) at the Default Interest Rate from the date on which such amount would but for such dispute have been due to be paid until the date of payment.

14. Indexation^{4th}

14.1 The formula applicable to this paragraph 14 is:

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

where:

R_t is the relevant value in the Relevant Year t ;

R_{t-1} is the relevant value in 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 $t-2$.

14.2 Each of the EBMPR and TMPR (respectively defined in paragraph 4.2) and Defined Service Group Revenues shall be adjusted in respect of Periods in Relevant Year t in accordance with the formula set out in paragraph 14.1 except that in relation to the Relevant Year commencing on 1 April 2019, R_t shall have the value specified in:

- (a) paragraph 4.2 in respect of the EBMPR, multiplied by the Initial Indexation Factor;
- (b) Annex C to this Part 3 of Schedule 4 in respect of TMPR, multiplied by the Initial Indexation Factor; and
- (c) Annex D to this Part 3 of Schedule 4 in respect of the Defined Service Group Revenues, multiplied by the Initial Indexation Factor,

and in the next following Relevant Year R_{t-1} shall respectively have the same value.

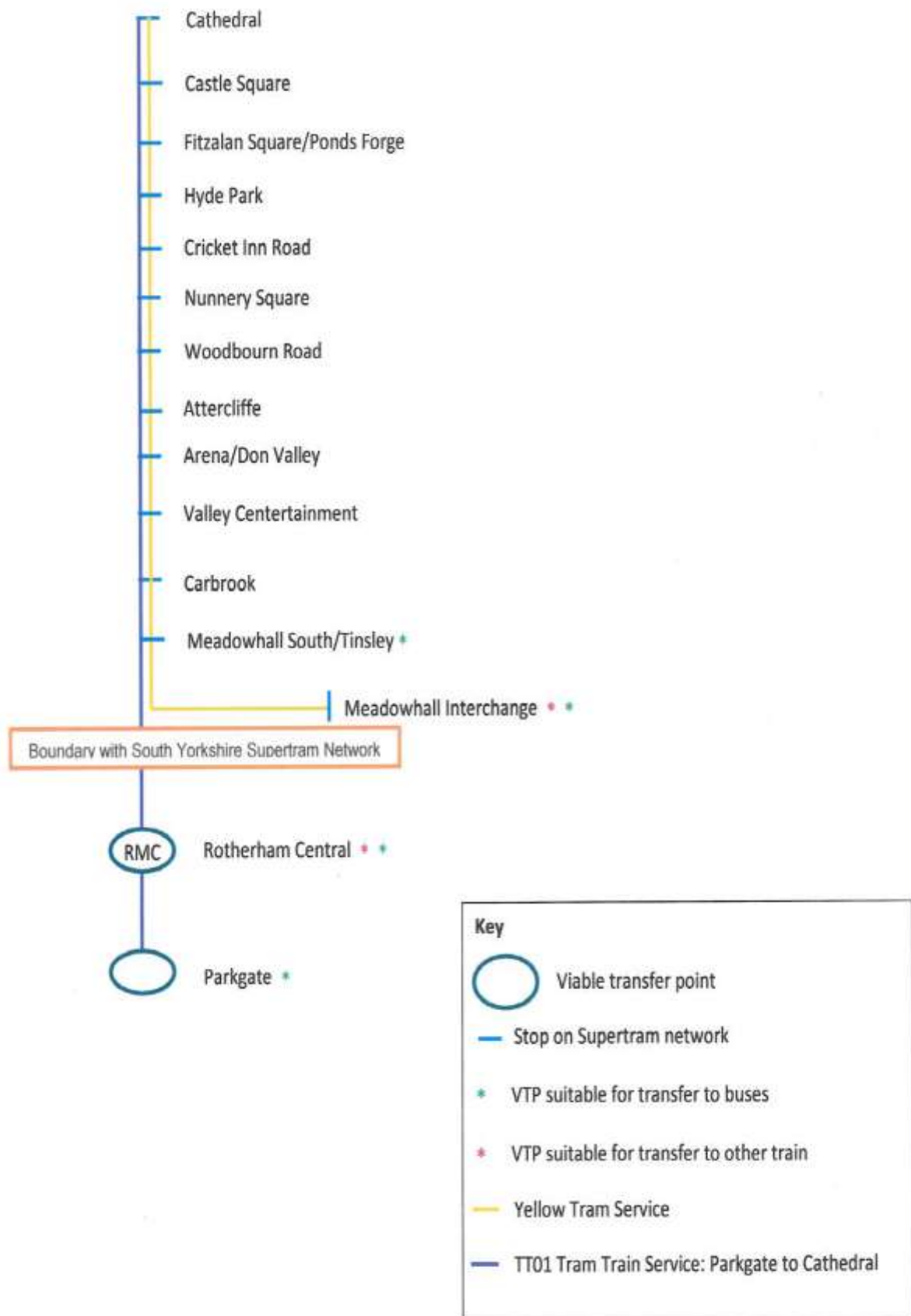
14.3 Each of the SPD Cost Threshold No.1 and SPD Cost Threshold No.2 shall be adjusted in respect of Periods in Relevant Year t in accordance with the formula set out in paragraph 14.1 except that in relation to the Relevant Year commencing on 1 April 2019, R_t shall have the relevant value specified in the definition of “SPD Cost Threshold No.1”, multiplied by the Initial Indexation Factor, or “SPD Cost Threshold No. 2, multiplied by the Initial Indexation Factor, as appropriate, set out in paragraph 1.1 of this Schedule 4 and in the next following Relevant Year R_{t-1} shall respectively have the same value.

Annex A to Part 3 of Schedule 4 – Notification Factors^{4th}

	A	B	C	D	E
Service Group Description	Service Group Code	Type	By D-26	By TW-22	After TW-22
South Yorkshire Supertram Ltd					
Tinsley North Junction – Rotherham Parkgate	SJ01	All Trains	0.6	0.6	0.88

Annex B to Part 3 of Schedule 4 – Lookup Table for EBM Weights^{2nd}

Viable Transfer Point [VTP]		Applicable Infrastructure Rules	Other Operating Rules	S4CS Code	Description of Possession Response	Comments	Service Group	% Applicable	FULL Bus Replacement (100%)				PARTIAL Bus Replacement (50% x X%)					No Bus Replacement (0%)	EB Ms Total
									From	To	Miles	Trains	From	To	Miles	Trains	% Trains		
Tinsley/Meadowhall South	Parkgate	Any blockage en route beyond Tinsley/Meadowhall South tramstop towards Parkgate		SJ01	Trams cannot turn at Rotherham Central (no crossover), so no partial running possible. Tram train services terminate at Tinsley/Meadowhall South – Rotherham Central – Parkgate. Potential to use Northern Rail Services between Rotherham Central and Meadowhall Interchange if running – subject to agreement with new franchise holder.		SJ01	100%	Tinsley/Meadowhall South	Parkgate	4 (train) 8 (bus)								



Annex C to Part 3 of Schedule 4 – Payment Rate per train mile^{4th}

Service^{2nd} Group	Description	Compensation Rate	Total Train Cost per Mile (Pence) 2017-18 prices
SJ01	Tinsley North Junction – Rotherham Parkgate	Other	[Redacted]

Annex D to Part 3 of Schedule 4 – Defined Service Group Revenue^{4th}

Service Group	Description	Defined Service Group Revenue (2017-18 Prices)
SJ01	Tinsley North Junction – Rotherham Parkgate	[Redacted]

PART 4: NOT USED

PART 5: NOT USED

SCHEDULE 5: THE SERVICES AND THE SPECIFIED EQUIPMENT

1 Definitions

1.1 In this Schedule unless the context otherwise requires:

“Calling Pattern”	means a list of stations related to one or more Passenger Train Slots, at which stops are to be Scheduled in the Working Timetable;
“Contingent Right”	means a right under this Schedule 5 which is not a Firm Right and which is subject to the fulfilment of all competing Exercised Firm Rights and any additional contingency specified in this Schedule 5;
“Day”	means any period of 24 hours beginning at 0200 hours and ending immediately before the next succeeding 0200 hours, and any reference in this Schedule to any named day of the week shall be to such period commencing on that named day;
“Exercised”	has the meaning ascribed to it in Part D of the Network Code;
“Firm Right”	has the meaning ascribed to it in Part D of the Network Code;
“Journey Time”	means the time in the Working Timetable to be taken by a Service in travelling between the specified departure point and specified destination for that Service;
“Modification Notice”	has the meaning ascribed to it in paragraph 7.10;
“Network Change”	has the meaning ascribed to it in Part G of the Network Code;
“Passenger Train Slot”	means a Train Slot intended by the Train Operator to be used for the provision of a Service;
“Public Holiday”	means any day other than Saturday or Sunday on which the banks in the City of London are not open for business;
“Reduced Regular Calling Pattern”	has the meaning ascribed to it in paragraph 4.1;
“Regular Calling Pattern”	has the meaning ascribed to it in paragraph 4.1;

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

1						2		
Service Group <i>SJ01^{2nd}</i>								
Service description						Passenger Train Slots		
From	To	Via	Description	TSC	Timing Load	Weekday	Saturday	Sunday
Tinsley North Junction.	Parkgate	Rotherham Central Station	Passenger Tram Train services	21591001	Class 399/0	54	54	51
Parkgate	Tinsley North Junction.	Rotherham Central Station	Passenger Tram Train services	21591001	Class 399/0	54	54	51

Passenger Train Slots

- 2.1 The Train Operator has Firm Rights to the number of Passenger Train Slots in the Working Timetable in respect of a Service Group as listed against each Service specified in Table 2.1 on the Days and within the Peak and Off-Peak times so listed using Specified Equipment that is capable of achieving the Timing Load shown. If the Train Operator makes an Access Proposal, or relies on a Rolled Over Access Proposal, to operate any of the Services specified in Table 2.1 using Specified Equipment that is not capable of achieving the Timing Load shown, then the rights will be treated as Contingent Rights for the purposes of Part D of the Network Code.
- 2.2 Not used
- 2.3 Not used

Additional Passenger Train Slots

- 2.4 Not used
- 2.5 Not used

Ancillary Movements

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

Relief Passenger Train Slots

- 2.8 The Train Operator has Contingent Rights to relief Passenger Train Slots for special or seasonal events, whenever the Train Operator believes (acting in a reasonable and proper manner) that a relief Passenger Train Slot is necessary to accommodate anticipated customer demand. These Contingent Rights are subject to:

- (a) the relief Passenger Train Slot being additional to a Service for which the Train Operator has access rights in table 2.1 or 2.2; and
 - (b) each relief Passenger Train Slot being allocated the relevant Train Service Code as shown in Schedule 7, Appendix 7C.
- 2.9 Nothing in this Schedule 5 shall give the Train Operator any rights to Train Slots on 25 December in any year. For each Service Group and for the purpose of any Access Proposal or Rolled Over Access Proposal, 26 December shall be treated as though it is a Sunday, and the Train Operator has Contingent Rights for up to the number of Passenger Train Slots in the Working Timetable on 26 December as listed against each Service on Sundays in Table 2.1, subject to:
 - (a) Network Rail's consent, which consent shall not be unreasonably withheld or delayed; and
 - (b) Complying with such conditions as Network Rail may reasonably impose, including paying for Network Rail's reasonable costs for providing such access.
- 2.10 The Train Operator shall be entitled to operate a Sunday service on Public Holidays with the exception of Good Friday where a Saturday service may be operated.
- 2.11 The exercise of a Stabling right shall not count against the number of Passenger Train Slots listed in Table 2.1.

Service Intervals

- 3.1 Not Used
- 3.2 Not Used.
- 3.3 Not Used
- 3.4 Not Used.

4 Calling Patterns

Table 4.1: Calling Patterns

1					2	3
Service Group SJ01^{2nd}						
Service description						
Between	And	Via	Description	TSC	Regular Calling Pattern	Additional stations
Tinsley North Junction.	Parkgate	Rotherham Central	Passenger Tram Train service	21591001	Rotherham Central	

Calling Patterns

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

Additional calls

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

5 Specified Equipment

Specified Equipment

5.1 In order to provide the Services specified in this Schedule 5 the Train Operator has:

- (a) Firm Rights to operate the following railway vehicles, subject to obtaining any necessary route clearance for the route in question:

Stadler Citylink Dual Voltage Tram Train – Class 399/0
--

and

- (b) Contingent Rights to operate any railway vehicles registered with Network Rail's rolling stock library, subject to obtaining any necessary route clearance for the route in question.

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

Train length

5.2 The Train Operator has a Firm Right to the maximum train length in metres which the Network can from time to time accommodate, subject to a right of 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.

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

6 Not Used

7 Not Used

8 Not Used

SCHEDULE 6: EVENTS OF DEFAULT, SUSPENSION AND TERMINATION

1 Events of Default

1.1 *Train Operator Events of Default*

The following are Train Operator Events of Default:

- (a) the Train Operator ceases to be authorised to be the operator of trains for the provision of the Services in accordance with Clause 3.2(a);
- (b) an Insolvency Event occurs in relation to the Train Operator
- (c)
 - (i) any breach by the Train Operator of this contract, its Safety Obligations or any of the Collateral Agreements; or
 - (ii) any event or circumstance which is reasonably likely to result in any such breach,

which, by itself or taken together with any other such breach, event or circumstance, 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 seven days after their due date;
- (e) any breach of this contract or any material breach of any of the Collateral Agreements by the Train Operator which, by itself or taken together with any other such breach, results, or is likely to result, in material financial loss to 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.

1.2 *Notification*

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

1.3 *Network Rail Events of Default*

The following are Network Rail Events of Default:

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

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

1.4 *Notification*

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

2 **Suspension**

2.1 *Right to suspend*

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

2.2 *Contents of Suspension Notice*

A Suspension Notice shall specify:

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

to pay Track Charges or other amount due, seven days shall be a reasonable grace period).

2.3 Effect of Suspension Notice served by Network Rail

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

- (a) the Train Operator shall comply with any reasonable restrictions imposed on it by the Suspension Notice;
- (b) the Suspension Notice shall remain in full force and effect in accordance with its terms until it has been revoked either in whole or in part by notice from Network Rail to the Train Operator under paragraph 2.5.4;
- (c) service of the Suspension Notice shall not affect the Train Operator's continuing obligation to pay the 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, seven days is a reasonable grace period).

3.4 *Effect of Termination Notice*

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

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

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 7th
(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;

"AC System" means the alternating current system of electricity traction supply on the Network;

"Bimodal Electric Multiple Unit" means an electric multiple unit that is capable of drawing current from the AC System and/or DC System and, in addition, being powered by an alternative source of energy, including but not limited to diesel;

"Bimodal Locomotive" means a train hauled by a locomotive that is capable of drawing current from the AC System and/or DC System and, in addition, being powered by an alternative source of energy, including but not limited to diesel;

"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;

"DC System" means the direct current system of electricity traction supply on the Network;

"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;

"Electrification Asset Usage Charge" means a charge for electrification asset usage, calculated in accordance with paragraph 8 of Part 2;

"Geographic Area g" means, for the purposes of performing the calculations set out in paragraph 4 of Part 2 and paragraph 18 of the Traction Electricity Rules, the relevant geographic section of the Network, as set out in Appendix 5 of the Traction Electricity Rules;

"Gross Tonne Mile" in relation to a train, means a mile travelled on the Network, multiplied by each tonne of the aggregate weight of the train in question;

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

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

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;

"kgtm" means 1000 Gross Tonne Miles;

"kWh" means kilowatt hours;

"Metered Train m" means, as the context requires, either:

- (a) a train of a particular type; or

(b) a specific train having a train ID,

as specified in Appendix 7D of this Schedule 7;

"Network Rail Distribution System Loss Factor" means the relevant factor that represents the electrical losses between the On-Train Meter and Network Rail's meter through which it purchases traction electricity for the AC System or the DC System in Geographic Area g, as set out in Appendix 3 of the Traction Electricity Rules;

"New Modelled Train" means a type of train for which E_{tmo} is to be calculated for the purposes of paragraph 4.1.1 of Part 2 but in relation to which no train category i, and no modelled consumption rate, is shown in either the Passenger Traction Electricity Modelled Consumption Rates for CP6 or Generic Traction Electricity Modelled Consumption Rates for CP6 tables in the Traction Electricity Modelled Consumption Rates List, or the PFM Rates List;

"New Specified Equipment" means a type of railway vehicle not included in the section of the Track Usage Price List entitled "Passenger Variable Usage Charge rates";

"On-Train Meter" and "On-Train Metering" have the meanings ascribed to them in paragraph 1.2 of the Traction Electricity Rules;

"Period" has the meaning ascribed to it in Schedule 8;

"PFM Rate" has the meaning ascribed to it in paragraph 1 of the Traction Electricity Rules;

"PFM Rates List" has the meaning ascribed to it in paragraph 1 of the Traction Electricity Rules;

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

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

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

"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;

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

"tariff band j" means the tariff zone and time band in which the train in question is operated;

"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;

"Traction Electricity Charge" means a variable charge for traction current calculated in accordance with paragraph 4 of Part 2;

"Traction Electricity Modelled Consumption Rates List" means the document entitled "Traction Electricity Modelled Consumption Rates List" published by Network Rail on or about 20 December 2018 and specifying freight and passenger traction electricity modelled consumption rates 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;

"Traction Electricity Modelled Default Rate" means, in respect of any New Modelled Train used on the Network by the Train Operator, the corresponding default consumption rate for that type of vehicle set out in the section of the Traction Electricity Modelled Consumption Rates List entitled "Traction Electricity Modelled Default Rates for CP6";

"Traction Electricity Modelled Default Rate Period" means the period from the date on which the New Modelled Train is first used on the Network by the Train Operator until the date on which ORR consents to or determines a supplement to the Traction Electricity Modelled Consumption Rates List under paragraph 9.10 of Part 2 in respect of that New Modelled Train or the train in question has been added to Appendix 7D of this Schedule 7;

"Traction Electricity Modelled Default Rate Reconciliation Period" means the period from the later of:

- (a) the date on which the New Modelled Train is first used on the Network by the Train Operator; or
- (b) 1 April of the Relevant Year in which ORR consents to or determines a supplement to the Traction Electricity Modelled Consumption Rates List under paragraph 9.10 of Part 2 in respect of that New Modelled Train,

until the date on which ORR consents to or determines a supplement to the Traction Electricity Modelled Consumption Rates List under paragraph 9.10 of Part 2 in respect of that New Modelled Train;

"Traction Electricity Usage Occurrence Data" means information as to when a Bimodal Electric Multiple Unit or Bimodal Locomotive is either drawing current from the AC System and/or the DC System, or is powered by an alternative source of energy;

"Traction-Train Compatible" means a situation in which a Bimodal Electric Multiple Unit or Bimodal Locomotive is located on the Network

with a system of electricity traction supply that the Bimodal Electric Multiple Unit or Bimodal Locomotive is capable of drawing current from;

"train category i" means train category i as identified in the relevant section of the Traction Electricity Modelled Consumption Rates List or PFM Rates List, being either:

- (a) where there is no PFM Rate for a particular passenger vehicle type operating on a particular Train Service Code:
 - (i) where there is a modelled consumption rate for a particular passenger vehicle type operating on a particular Train Service Code, the relevant category set out in the table entitled "Passenger Traction Electricity Modelled Consumption Rates for CP6"; or
 - (ii) where there is a generic consumption rate for a passenger vehicle type not referred to in paragraph (a)(i), the relevant category set out in the table entitled "Generic Traction Electricity Modelled Consumption Rates for CP6"; or
- (b) where there is a PFM Rate for a particular passenger vehicle type operating on a particular Train Service Code, the relevant category set out in the PFM Rates List;

"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;

"Train Service Code" has the meaning ascribed to it in paragraph 1.1 of Schedule 5;

"Variable Charges" means the Capacity Charge, the VUC Default Charge, the Electrification Asset Usage Charge, the Variable Usage Charge and the Traction Electricity 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;

"VUC Default Rate" means, in respect of any New Specified Equipment used on the Network by the Train Operator, the corresponding passenger default rate for that type of vehicle set out in the section of the Track Usage Price List entitled "Passenger Variable Usage Charge default rates"; 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:

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

where:

T_t means Track Charges in Relevant Year t ;

V_t means an amount in respect of the Variable Usage Charge in Relevant Year t which is derived from the formula in paragraph 3.1;

K_t means an amount in respect of the Capacity Charge in Relevant Year t which is calculated in accordance with paragraph 6;

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;

E_t means an amount in respect of the Traction Electricity Charge in Relevant Year t which is derived from the formula in paragraph 4; and

EAV_t means an amount in respect of the Electrification Asset Usage Charge, calculated in accordance with the formula in paragraph 8.

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:

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

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 from the following formula:

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

where:

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

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

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

\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 the VUC Default Rate for that New Specified Equipment for Relevant Year t , expressed in pence per Vehicle Mile and rounded to two decimal places, which is derived from the following formula:

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

where:

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

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

but so that in relation to the Relevant Year commencing on 1 April 2019, D_{nt} shall have, in respect of New Specified Equipment, the corresponding VUC 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

Σ means the summation across all relevant New Specified Equipment.

4. **Traction Electricity Charge**

4A For the purposes of paragraph 1, the term E_t means an amount in respect of the Traction Electricity Charge in Relevant Year t which is derived from the total costs and expenses to Network Rail of supplying or procuring the DC System supply of traction electricity to the Route in relevant year t , provided that:

- (a) in the event that, in any Relevant Year t , the Train Operator supplies or procures the supply of all traction current to the Route at no cost to Network Rail, E_t shall be nil;
- (b) in the event that, in any Relevant Year t , any other train operator(s) should operate services on the Route using traction electricity, the parties shall determine a fair and equitable apportionment between the Train Operator and such other train operator(s) of the total costs and expenses to Network Rail and/or the Train Operator (as the case may be) of supplying or procuring the supply of traction electricity to the Route and E_t shall reflect such fair and equitable apportionment and if the parties fail to determine such apportionment within 90 days of Network Rail notifying the Train Operator in writing that such other train operator(s) will be operating railway services on the Route using traction electricity, either party shall be entitled to refer the matter for determination in accordance with the Access Dispute Resolution Rules; and
- (c) in the event that any part of the Route shall be electrified to a 25kV AC System, for the purposes of paragraph 1, the term E_t means an amount in respect of the Traction Electricity Charge in Relevant Year t as calculated in accordance with paragraph 4.1 for that part of the Route plus an amount for any part of the

Route not electrified to a 25kV AC System calculated in accordance with paragraph 4.1.

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

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

where:

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

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

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

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

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

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

4.1.2 *Calculation of modelled consumption (including using PFM Rates)*

E_{tmo} is derived from the following formula:

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

where:

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

E_{tmog} is derived from the following formula:

$$E_{tmog} = \sum C_i \bullet EF_{git} \bullet UE_{igit}$$

where:

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

C_i means, as appropriate:

- (a) the consumption rate:
 - (i) in kWh per electrified Train Mile in relation to passenger electric multiple units (using the rate for the relevant number of units); or

- (ii) in kWh per electrified kgm in relation to locomotive-hauled units and all freight traffic,

for train category i shown in the Traction Electricity Modelled Consumption Rates List, taking into account any Regenerative Braking Discount applied in accordance with the Traction Electricity Rules or, if a PFM Rate applies in accordance with the Traction Electricity Rules, the PFM Rates List; or

- (b) for New Modelled Trains, the Traction Electricity Modelled Default Rate shown in the Traction Electricity Modelled Consumption Rates List, taking into account any Regenerative Braking Discount applied in accordance with the Traction Electricity Rules;

EF_{gjt} means the charge for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g, in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 19 of the Traction Electricity Rules; and

UE_{igjt} means the actual volume of usage (in electrified Vehicle Miles in relation to passenger electric multiple units or electrified kgm in relation to locomotive-hauled units and all freight traffic), if any, of trains operated by or on behalf of the Train Operator in train category i and New Modelled Trains operated by or on behalf of the Train Operator, in Geographic Area g, in tariff band j and in Relevant Year t, pursuant to this contract, provided that where train category i or a New Modelled Train is a Bimodal Electric Multiple Unit or Bimodal Locomotive operating in a Traction-Train Compatible situation, it shall be deemed that all mileage (in Vehicle Miles in relation to passenger electric multiple units or kgm in relation to locomotive-hauled units and all freight traffic), if any, of such trains is electrified.

4.1.3 *Calculation of consumption using metered consumption data*

E_{tme} is derived from the following formula:

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

where:

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

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

$$E_{tme g} = \sum \left((CME_{mgjt} \bullet EF_{gjt}) - (RGB_{mgjt} \bullet EF_{gjt}) \right)$$

where:

Σ means the summation across all relevant Metered Trains m (determined in accordance with paragraph 4.1.1 above) and tariff bands j , as appropriate;

CME_{mjit} means the consumption of electricity (in kWh) by Metered Trains m operated by or on behalf of the Train Operator, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g , tariff band j and in Relevant Year t ;

EF_{jit} means the charge for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g , in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 19 of the Traction Electricity Rules; and

RGB_{mjit} means the electricity (in kWh) generated by braking by Metered Trains m operated by or on behalf of the Train Operator, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g , tariff band j and in Relevant Year t .

4.1.4

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

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

where:

Σ means the summation across all Geographic Areas g , as appropriate;

E_{tmugAC} is derived from the following formula:

$$E_{tmugAC} = \Sigma (CME_{mjitAC} \bullet EF_{jit}) \bullet \lambda_{ACg}$$

where:

Σ means the summation across all relevant Metered Trains m (determined in accordance with paragraph 4.1.1 above) and tariff bands j , as appropriate;

CME_{mjitAC} means the consumption of electricity (in kWh) from the AC System by Metered Trains m operated by or on behalf of the Train Operator, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g , tariff band j and in Relevant Year t ;

EF_{jit} means the charge for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g , in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 19 of the Traction Electricity Rules; and

λ_{ACg} means the Network Rail Distribution System Loss

Factor for the AC System in Geographic Area g.

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

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

where:

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

E_{tmugDC} is derived from the following formula:

$$E_{tmugDC} = \sum (CME_{mjitDC} \bullet EF_{jit}) \bullet \lambda_{DCg}$$

where:

\sum means the summation across all relevant Metered Trains m (determined in accordance with paragraph 4.1.1 above) and tariff bands j, as appropriate;

CME_{mjitDC} means the consumption of electricity (in kWh) from the DC System by Metered Trains m operated by or on behalf of the Train Operator, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g, tariff band j and in Relevant Year t;

EF_{jit} means the charge for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g, in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 19 of the Traction Electricity Rules; and

λ_{DCg} means the Network Rail Distribution System Loss Factor for the DC System in Geographic Area g.

Metered Bimodal Electric Multiple Units and Bimodal Locomotives – deemed electrified mileage

4.1.5

- (a) Where Metered Train m is a Bimodal Electric Multiple Unit or Bimodal Locomotive, the Train Operator shall, as a minimum, within seven days of the end of each of the third, sixth, tenth and thirteenth Periods, provide to Network Rail the Traction Electricity Usage Occurrence Data for Metered Train m. The Traction Electricity Usage Occurrence Data provided: within seven days of the end of the third Period shall cover Periods one, two and three; within seven days of the end of the sixth Period shall cover Periods four, five and six; within seven days of the end of the tenth Period shall cover Periods seven, eight, nine and ten; and within seven days of the end of the thirteenth Period shall cover Periods eleven, twelve and thirteen.

- (b) Where, after seven days, any Traction Electricity Usage Occurrence Data is missing in respect of any such Bimodal Electric Multiple Unit or Bimodal Locomotive, all mileage, if any, of such Bimodal Electric Multiple Unit or Bimodal Locomotive operated by or on behalf of the Train Operator shall be deemed, for billing purposes, to be electrified in Traction-Train Compatible situations and paragraphs 4.1.3 and 4.1.4 shall apply in respect of all such mileage.

Election to introduce On-Train Metering for a vehicle or vehicle type

4.2

- (a) If the Train Operator wishes to propose the introduction of On-Train Metering to measure traction electricity consumption for a vehicle or vehicles of a vehicle type that the Train Operator operates for the purposes of being invoiced by Network Rail for traction electricity, it shall notify Network Rail of any required changes to the contract in connection with that proposal.
- (b) Any notice under sub-paragraph 4.2(a) shall be accompanied by information and evidence in reasonable detail supporting the changes proposed and setting out the reasons for those changes, and Network Rail shall respond in writing within 56 days of service of any such notice.
- (c) Promptly following any response served by Network Rail under sub-paragraph 4.2(b), the parties shall endeavour to agree whether the contract should be amended in connection with that proposal and, if so, the amendments.
- (d) If the parties agree an amendment to the contract in connection with the proposal referred to in sub-paragraph 4.2(a), that amendment shall take effect only when it has been approved by ORR under section 22 of the Act. Accordingly, as soon as reasonably practicable after any such amendment is agreed, the parties shall ensure that ORR is furnished with such amendment and such information and evidence as it shall require to determine whether or not to approve the amendment.
- (e) Any agreed amendment to the contract in connection with the proposal referred to in sub-paragraph 4.2(a) which is approved by ORR under section 22 of the Act shall apply with effect from the date agreed by the parties.
- (f) If the parties fail to reach agreement within 90 days after service of a notice under sub-paragraph 4.2(a), or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, either party may notify ORR and request that ORR determines the matter. The parties shall, within such timescales as ORR may specify,

furnish ORR with such information and evidence as ORR shall 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.

- (g) Where ORR determines the matter pursuant to subparagraph 4.2(f), it may issue a notice to the parties setting out the amendments to be made to the contract and the date, which may be retrospective, from which they shall take effect.

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. Electrification Asset Usage Charge

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

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

where:

\sum means the summation across all route types;

EV_{tk} means an amount in respect of the Electrification Asset Usage Charge per electrified Vehicle Mile on route type k for Relevant Year t , expressed in pence per electrified Vehicle Mile and rounded to two decimal places, which is derived from the following formula:

$$EV_{tk} = EV_{t-1k} \bullet \left(1 + \frac{(CPI_{t-1} - CPI_{t-2})}{CPI_{t-2}} \right)$$

where:

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

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

but so that in relation to the Relevant Year commencing on 1 April 2019, EV_{tk} shall have, in respect of each electrified Vehicle Mile on

route type k , the value per electrified Vehicle Mile for the Electrification Asset Usage Charge set out in the Track Usage Price List, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year EV_{t-1k} shall have the same value; and

UV_{tk} means the actual number of electrified Vehicle Miles on route type k in Relevant Year t operated by or on behalf of the Train Operator. Where the Train Operator operates a Bimodal Electric Multiple Unit or Bimodal Locomotive, the actual number of electrified Vehicle Miles on route type k in Relevant Year t shall be calculated as follows:

- (i) where the Bimodal Electric Multiple Unit or Bimodal Locomotive is operating in a Traction-Train Compatible situation and is not a Metered Train m , it shall be deemed that all mileage, if any, of such train is electrified; or
- (ii) where the Bimodal Electric Multiple Unit or Bimodal Locomotive is a Metered Train m , in accordance with paragraph 4.1.5 above.

9. Bilateral supplements to the Traction Electricity Modelled Consumption Rates List and Track Usage Price List

- 9.1 Where the Train Operator intends to use New Specified Equipment on the Network, it shall where reasonably practicable inform Network Rail in writing of the date or likely date from which it intends to do so.
- 9.2 Where the Train Operator uses New Specified Equipment on the Network, the Train Operator shall pay Network Rail the relevant VUC Default Charge during the VUC Default Period.
- 9.2A Where the Train Operator uses a New Modelled Train on the Network, Network Rail shall apply the Traction Electricity Modelled Default Rate in order to calculate the Traction Electricity Charge for the purposes of paragraph 4.1.2 above, during the Traction Electricity Modelled Default Rate Period.
- 9.3 No supplement to the Traction Electricity Modelled Consumption Rates List or 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:
 - (a) the Track Usage Price List be supplemented as necessary to include a new vehicle type and corresponding rate; or
 - (b) the Traction Electricity Modelled Consumption Rates List be supplemented as necessary to include a rate in respect of a new train category.
- 9.5 Any proposal of a kind referred to in paragraph 9.4 shall be made by notice to the other party and shall be accompanied by a specification of the proposal in reasonable detail and the reasons for it. The parties

shall thereafter seek to agree in good faith the necessary supplement to the list in question.

- 9.6 Either party may request from the other such information that it reasonably requires in connection with the proposal and the party from whom the information was requested shall use reasonable endeavours to provide this information promptly.
- 9.7 Where the parties agree to a supplement following a proposal under paragraph 9.4, they shall request ORR's consent to it and provide such information as ORR reasonably requires in order to decide whether to give its consent.
- 9.8 If the parties fail to reach agreement within 45 days of the date of the notice given under paragraph 9.5, at any point thereafter either party shall be entitled to refer the matter to ORR for determination.
- 9.9 Following a reference to ORR under paragraph 9.8, the parties shall, within such timescales as ORR may reasonably specify, furnish ORR with such information and evidence as ORR shall reasonably require to determine the matter. If a party fails to furnish such information and evidence within the specified timescale, ORR shall be entitled to determine the matter without that information and evidence and the party in default shall have no grounds for complaint in that respect.
- 9.10 ORR may:
 - (a) consent to any supplement that is agreed by the parties and submitted to it under paragraph 9.7, or following consultation with the parties, determine that a different supplement should apply; or
 - (b) following a referral to ORR under paragraph 9.8, determine the supplement that should apply.
- 9.11 In the case of a supplement to the Traction Electricity Modelled Consumption Rates List, the supplement shall have effect from such date as ORR shall determine by notice to the parties, provided that such date shall not be a date falling prior to the start of the Relevant Year in which ORR consented to or determined the supplement.
- 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 -
 - (A) 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;

- (B) in the case of a supplement to the Traction Electricity Modelled Consumption Rates List, this will reflect the difference between: (i) the new amount paid by the Train Operator in respect of any New Modelled Train to which the Traction Electricity Modelled Default Rate has been applied during the Traction Electricity Modelled Default Rate Reconciliation Period; and (ii) the amount that it would have paid during the Traction Electricity Modelled Default Rate Reconciliation Period in respect of the Traction Electricity Charge had the supplement been in place at the start of that period;

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 Traction Electricity Modelled Consumption Rates List or 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;
 - (v) the Traction Electricity Charge;
 - (vi) the Electrification Asset Usage Charge; and
 - (vii) 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) Any invoice issued by Network Rail under paragraph 18.5 of the Traction Electricity Rules (relating to modelled and actual rates of electricity consumption) shall be payable by the Train Operator within 21 days of the relevant invoice date.

10.2 ***Train Consist Data***

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

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

- (a) Network Rail will notify the Train Operator on a weekly basis of the train movements for which Default Train Consist Data has been used to establish the Variable Charges payable by the Train Operator. At either party's request, the parties shall consult with a view to substituting Train Consist Data for Default Train Consist Data but such consultation shall not delay the issue by Network Rail of the invoice for the Variable Charges in respect of the Period concerned.
- (b) For each Period, Network Rail shall be entitled to invoice the Train Operator for Variable Charges in respect of any and all train movements operated by the Train Operator during that Period based on either:
 - (i) Train Consist Data provided by the Train Operator in respect of any train movement at or prior to the time that such train movement is completed; or
 - (ii) Train Consist Data agreed by the parties under paragraph 10.3(a) in respect of any train movement; or
 - (iii) Train Consist Data provided by the Train Operator in respect of any train movement (other than any train movement where the Specified Equipment used in operating the relevant movement is loco hauled) by the end of the day on which such train movement has been completed,or (to the extent that (i) or (ii) or (iii) above do not apply) Default Train Consist Data. Each such invoice will be payable in accordance with the provisions of paragraph 10.1.
- (c) Either party shall be entitled, at any time prior to the later of 2359 hours on the fourteenth day following the expiration of the relevant Period and 7 days 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

- (d) The parties shall seek to agree the Train Consist Data specified in any notice of objection and any consequential financial adjustment required to the relevant invoice 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.
- (e) 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.
- (f) The actual volume of usage used to calculate any supplementary amount payable under paragraph 18 of the Traction Electricity Rules shall be established on the basis of the Train Consist Data and the Default Train Consist Data applied in calculating the Variable Charges for each of the Periods in Relevant Year t as adjusted in accordance with paragraph 10.3(d) on or before 90 days after the end of Relevant Year t.
- (g) Where, as a result of any invoice or credit note issued pursuant to paragraph 10.3, any sum of money which has been paid shall become repayable or any sum of money which has been unpaid shall become payable the party to whom such sum shall be paid shall be paid or allowed interest at the Default Interest Rate on such sum from the date when it (if repayable) was paid or the date when such sum (if payable) ought to have been paid until the date of payment or repayment.

10.4 **Unrepresentative Train Consist Data**

- (a) If at any time during this contract either party considers the Default Train Consist Data specified in Appendix 7C is not representative of the Train Operator's Services and in particular, but without limitation, the type(s) of railway vehicles then in use and the regular number of carriages forming part of those railway vehicles in the operation of its Services, either party shall be entitled on written notice to the other to request that the Default Train Consist Data be amended. Any such request shall specify in reasonable detail the grounds for the request and the proposed amendments to the Default Train Consist Data.
- (b) The parties shall endeavour to reach agreement on any amendments to the Default Train Consist Data within 21 days of the date of the request referred to in paragraph 10.4(a) and if the parties are unable to agree such amendments within such time period, either party may refer the matter for resolution in accordance with the ADRR.
- (c) Upon the earlier of agreement between the parties or determination by a relevant ADRR Forum, the parties shall notify ORR of the proposed amendments to the Default Train Consist Data and, subject to ORR not objecting to the proposed amendments within 14 days (the "**14 day period**") of receipt of the notification by ORR, such amendments shall take effect from the first day of the next Period following the earlier of ORR confirming its consent to the proposed amendments and the expiry of the 14 day period. If ORR objects to the proposed amendments within the 14 day period, the parties shall endeavour to reach agreement with ORR on the appropriate amendments, if any, to the Default Train Consist Data which shall then take effect on the first day of the Period next following that in which agreement is reached.

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

- (a) 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)

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)

Additional Boxing Day Passenger Train Slots

Such costs in respect of those additional Passenger Train Slots provided for in paragraph 2.9 to Schedule 5 incurred by Network Rail for the purpose of enabling the Train Operator to operate those additional Passenger Train Slots on Boxing Day, 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) the rate of Traction Electricity Charge and the number of Vehicle Miles applicable to vehicles for each service or Gross Tonne Miles applicable to units for each service so charged, for the purposes of calculating E_{tmo} in accordance with paragraph 4.1.2 of Part 2;

- (d) the amount of the Electrification Asset Usage Charge and the number of days covered by the invoice;
- (e) not used;
- (f) not used;
- (g) not used;
- (h) not used;
- (i) the amount of any sum $S1_{tw}$ and/or $S2_{tw}$ and/or any Charge Correction Amount payable as provided in paragraph 18 of the Traction Electricity Rules;
- (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, within 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 of 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

Train Service Code	Description of Journey	Default Train Consist Details
21591001	Train movement(s) between Tinsley North Junction and Parkgate	Stadler Citylink Dual Voltage Tram Train – 3 Car Unit

Appendix 7D

"Metered Trains M" for the purposes of paragraph 4.1.1 of Part 2

Train Type	Train ID	Traction Type
TBC	<i>[This column should include the full train ID. If all trains of the relevant train type used by the Train Operator are metered, this column should say "All".]</i>	TBC

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”	<p>means, in respect of any delay to or cancellation of a Service or any other matter:</p> <ul style="list-style-type: none">(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, <p>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</p>

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 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 Minutes”	means the Cancellation Minutes specified in Appendix 1;
“Destination”	<p>means, in relation to a Service:</p> <p>(a) the location on the Network at which that Service is Planned to terminate; or</p> <p>(b) if the location at which that Service is Planned to terminate is not on the Network, the location on the Network which:</p> <p>(i) will enable the train operating that Service to leave the Network; and</p> <p>(ii) is the most appropriate location for such train to use to terminate that Service on the Network;</p>
“ETCS”	means the European Train Control System;
“Financial Year”	<p>means a year commencing at 0000 hours on 1 April and ending immediately before 0000 hours on the next succeeding 1 April save that:</p> <p>(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</p> <p>(b) the last such period shall end on the Expiry Date;</p>
“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, ^{4th}
“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 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: <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (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 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: <ul style="list-style-type: none"> (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 45 Minutes Delay and any Part Cancellation which is Attributable to the Train Operator shall equate to 30 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.

6.2 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:
(MDNR - NRB) x 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^{4th}

7.1 CPI Uplift in relation to Rates and Caps in Appendix 1

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:

$$R_t = R_{t-1} \times (1 + CPI_{t-1})$$

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 Consumer 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.

8. Cancellation

8.1 Cancellation

For the purposes of this paragraph 8, “**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 day prior to the day on which the Service was planned to operate.

8.2 Network Rail liability

8.2.1 Subject to paragraphs 8.2.2 and 8.3 below, Network Rail shall be liable in any Charging Period for the Cancellation Minutes in respect of each Cancellation of a Service Planned to depart its Origin in that Charging Period.

8.2.2 Network Rail shall not be liable under this paragraph 8 for any Cancellation Minutes in respect of:

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

8.3 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 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.

9.1.2 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.

9.1.3 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 and Road'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.

APPENDIX 1: PERFORMANCE^{4TH}

Train Operator Performance

**Train Operator
Benchmark Per
Train** 0.06 minutes

**Train Operator
Lower Review Level** A number of minutes to be agreed no later than
the Backstop date as defined in paragraph 4
Schedule 12 Relevant Schedule 8 Modifications
of this contract.

**Train Operator
Upper Review Level** A number of minutes to be agreed no later than
the Backstop date as defined in paragraph 4
Schedule 12 Relevant Schedule 8 Modifications
of this contract.

**Train Operator
Payment Rate** [Redacted]

Train Operator Cap [Redacted]

Network Rail Performance

**Network Rail
Payment Rate** [Redacted]

Network Rail Cap [Redacted]

**Cancellation
Minutes^{2nd}** 25 minutes

**Network Rail
Benchmark per
Train** 0.35 minutes

**Network Rail
Lower Review
Level** A number of minutes to be agreed no later than the Backstop date as defined in paragraph 4 Schedule 12 Relevant Schedule 8 Modifications of this contract.

**Network Rail Upper
Review Level** A number of minutes to be agreed no later than the Backstop date as defined in paragraph 4 Schedule 12 Relevant Schedule 8 Modifications of this contract.

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^{4TH}

1 Definitions

In this Schedule

“Liability Cap” means:

- (a) in relation to the first Contract Year, the sum of £5,000,000; and
- (b) in relation to any subsequent Contract Year, the sum calculated in accordance with the following formula:

$$C_n = C_1 * \left(\frac{CPI_n}{CPI_1} \right)$$

where:

- (i) C_1 is the sum of £5,000,000;
- (ii) C_n is the Liability Cap in the n th subsequent Contract Year;
- (iii) CPI_n is the Consumer Prices Index (as defined in Schedule 7) published or determined with respect to the first month of the subsequent Contract Year n ; and
- (iv) CPI_1 is the Consumer Prices Index (as defined in Schedule 7) published or determined with respect to the month in which this contract became effective under Clause 3.1.

2 Application

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

3 Limitation on Network Rail’s liability

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

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

4 Limitation on Train Operator’s liability

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

- (a) the Train Operator shall not be liable to make payments in relation to such claims which are admitted in writing or finally determined

in any Contract Year to the extent that its liability for such claims exceeds the Liability Cap for such Contract Year; and

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

5 Disapplication of limitation

To the extent that any Relevant Losses:

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

such Relevant Losses:

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

6 Exclusion of legal and other costs

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

7 Exclusion of certain Relevant Losses

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

8 Continuing breaches

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

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

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

9 Final determination of claims

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

SCHEDULE 10: NETWORK CODE AND TRACTION ELECTRICITY 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 or the Traction Electricity Rules.

2.2 Contents of modification notice

A modification notice shall state:

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

3 Adaptation procedure

3.1 Application

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

3.2 Negotiation of adaptations

In respect of the modifications in each modification notice:

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

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

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

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

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

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

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

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

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

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

3.6 *Requisite adaptations - failure to agree or submit*

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

3.7 *Notice of determined requisite adaptations*

A notice of determined requisite adaptations is a notice:

- (a) given by ORR to the parties for the purposes of this paragraph 3 following the failure of the parties to send to ORR within seven days of the backstop date requisite adaptations to which it gives its consent; and

- (b) which states the requisite adaptations which ORR has determined should be made using its powers to do so under paragraph 3.5 or 3.6.

3.8 *Effect of requisite adaptations*

Requisite adaptations established either:

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

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

4 **Procedural matters**

4.1 *More than one notice*

More than one modification notice may be given.

4.2 *Differences etc as to requisite adaptations*

Any difference or question as to whether 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 and Road's criteria*

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

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

4.5 *Procedural modifications*

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

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

4.6 *Dates*

In this Schedule 10:

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

4.7 *Requirement for prior consultation*

No relevant notice shall have effect unless:

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

4.8 Consolidated contract

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

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

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

4.9 Saving

Nothing in this Schedule 10 affects:

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

5 Definitions

In this Schedule 10:

“backstop date”	means the date (being not earlier than 28 days from the date of the modification notice) specified as such in a modification notice (or such later date as may be established under paragraph 3.5(a) or 4.6);
“modification notice”	has the meaning ascribed to it in paragraph 2.1;
“notice of consent to requisite adaptations”	means a notice given by ORR under paragraph 3.4;
“notice of determined requisite adaptations”	has the meaning ascribed to it in paragraph 3.7;
“notice of procedural modification”	means a notice given by ORR to the parties under paragraph 4.5 modifying any aspect of the procedure in this Schedule 10 for the agreement or establishment of requisite adaptations;
“ORR’s criteria”	means the criteria established by ORR for the purposes of the negotiation of requisite adaptations and given to the parties, or modified, under paragraph 4.4;
“relevant notice”	means a modification notice, notice of determined requisite adaptations, notice of procedural modification or notice of modification of ORR’s criteria;

“requisite adaptations”

in relation to specified modifications, means the amendments (including the addition of information) to the provisions in question which are necessary or expedient so as to give full effect to them in the particular circumstances of the case, and “adaptation” shall be construed accordingly; and

“specified”

means specified in a modification notice.

SCHEDULE 11: TESTING STADLER CITYLINK DUAL VOLTAGE VEHICLE CLASS 399/0

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Schedule:

“Cancellation”	means either (a) the termination of a Train prior to reaching its destination or (b) the failure of a Train to depart from its point of departure; for which such Train was scheduled to run in the Applicable Timetable;
“NRAP”	means the Network Rail Acceptance Panel;
“Test Programme”	means a programme setting out the Train Slots for which the Train Operator intends to Bid to operate the Test Vehicles for the purpose of Tests and including information which the Train Operator should provide to Network Rail when making a Bid;
“Testing Contingency Plan”	means the plan of action which will apply in the event that any event or circumstance occurs which prevents or disrupts the operation of trains on those parts of the Network over which the Train Operator is granted permission to carry out Tests on and subject to the terms of this Schedule;
“Tests”	means the operation of non-revenue earning passenger carrying Test Vehicles for the purposes of testing the physical and operational interfaces of the Test Vehicles with Network Rail controlled infrastructure, for the purposes of testing the performance of the vehicles, for the purposes of train crew training or for the purposes of mileage accumulation;
“Test Routes”	means that part of the Network specified in Schedule 2 provided that the necessary route clearance has been obtained; and
“Test Vehicles”	Means an articulated three car Class 399/0 electric multiple units in either three or six car formations, and “Test Vehicles” shall be

construed accordingly.¹

¹ The Test Vehicles shall comprise a three car formation, unless expressly stipulated otherwise by the Train Operator when making a Bid.

1.2 Interpretation

In this Schedule:

“Track Usage Price List”, “Variable Charge”, “Capacity Charge” and “Retail Price Index” (“RPI”) have the meanings respectively ascribed to them in Schedule 7; and

“Recording Point” has the meaning ascribed to it in Schedule 8.

1.3 Disputes

Any dispute or claim arising under this Schedule shall be resolved in accordance with Clause 13 of this contract.

2 GENERAL

2.1 Part F of the Network Code

The provisions of this Schedule do not constitute (and shall not be construed as constituting) a proposal made by the Train Operator (or any other train operator) for Vehicle Change in respect of the Test Vehicles nor an acceptance by Network Rail of any such proposal.

2.2 Tests

Subject to a Summary of Compatibility issued on behalf of NRAP, the Train Operator has a Contingent Right (as that term is defined in Schedule 5) to operate the Test Vehicles on the Test Routes for the sole purpose of carrying out the Tests provided that:

- (a) operation of the Test Vehicles shall be carried out subject to any restriction or constraints detailed in the Summary of Compatibility;
- (b) the Testing Contingency Plan shall have been agreed between Network Rail and the Train Operator;
- (c) the Test Vehicles are carrying emergency coupling adaptors (mechanical only) capable of attaching to:
 - (i) 14x, 15x, 16x, 170
 - (ii) rolling stock with standard drawhook and screw or standard drawhook and screw fitted with a swing-head or buckeye coupler.

3

DISAPPLICATION OF SCHEDULE 4 AND PART G

- 3.1** The Train Operator shall not be entitled to any compensation from Network Rail under the terms of Schedule 4 of this contract or Part G of the Network Code in respect of the effect which any Restriction of Use (as defined in Schedule 4) may have on any of the Tests including that the Train Operator shall not be entitled to any compensation as a result of any service variation or other variation affecting the Tests.
- 3.2** If, in order to accommodate the carrying out of any of the Tests, Network Rail agrees to divert (on a planned basis) services of another train operator ("Third Party Operator") and Network Rail as a result of that diversion becomes liable to compensate that Third Party Operator (whether under schedule 4 of its access contract or otherwise), the Train Operator shall reimburse Network Rail with the amount of compensation so paid, subject to Network Rail having received written approval from the Train Operator for the proposed diversions.
- 3.3** All sums due or payable by the Train Operator under paragraph 4.2 shall be paid within 28 days of receipt of a valid VAT invoice. Late payment shall carry interest at the Default Interest Rate in accordance with Clause 16.2 of this contract.

4

SCHEDULE 7 – CHARGES

- 4.1** The operation of the Test Vehicles shall be subject to payment by the Train Operator to Network Rail of the Variable Charge and the Capacity Charge.
- 4.2** Until the date on which a formal amendment to the Track Usage Price List in relation to the Test Vehicles becomes effective pursuant to paragraph 9 of Part 2 of Schedule 7, the Variable Charge applicable to the Test Vehicles shall be as follows (including any indexation of that Variable Charge pursuant to Schedule 7):

Vehicle Type	Vehicle Description	Pence per Vehicle Mile (2014/15 prices)
Class 399	Citylink Dual Voltage Vehicle	6.1 per 3 car unit (vehicle cannot be split)

- 4.3** Following a formal amendment to the Track Usage Price List pursuant to paragraph 9 of Part 2 of Schedule 7 the Train Operator or Network Rail (as the case may be) shall pay to the other the difference between:
- 4.3.1** the amounts paid by the Train Operator to Network Rail under

paragraph 9 of Part 2 of Schedule 7; and

- 4.3.2 the Variable Charge which would have been payable by the Train Operator pursuant to paragraph 9 of Part 2 of Schedule 7 had such formal amendment been agreed between the parties and approved by ORR on the date on which this paragraph 4 was incorporated into the contract.

5 DISAPPLICATION OF SCHEDULE 8 – NETWORK RAIL PERFORMANCE

The Train Operator shall not be entitled to any compensation from Network Rail under Schedule 8 of this contract:

- (a) in respect of the effect which any act, omission or incident may have on any of the Tests, including cancellation of the Tests; and
- (b) where any Service of the Train Operator is delayed or otherwise affected due (directly or indirectly) to any incident caused by the Tests.

6 TRAIN OPERATOR PERFORMANCE – “TOC ON TOC DELAY”

- 6.1 If as a result of any act, omission or incident (a “TOC Incident”), for which the Train Operator would be allocated responsibility in accordance with the principles in Schedule 8 if the Tests and were treated as Services (as to which, for the purpose of this paragraph 6, they shall be so treated) arising (directly or indirectly) in the course of or as a consequence of the carrying out of any of the Tests and Network Rail incurs liability to any other train operator under the performance regime with that other train operator, then the Train Operator shall indemnify Network Rail against any such liability.

- 6.2 Within 14 days after the end of each Period, Network Rail shall provide the Train Operator with a statement (the “TOC Performance Statement”):

- (a) listing all TOC Incidents during that Period for which the Train Operator is allocated responsibility for the purposes of this paragraph 6;
- (b) showing, for each such TOC Incident, the number of Minutes Delay caused to the services of other train operators, and the number of cancellations, diversions and/or terminations so caused; and
- (c) showing the amount payable by the Train Operator to Network Rail under this paragraph 6 in respect of the Period, together with such supporting information as may be reasonably required by the Train Operator.

- 6.3** Within 14 days of receipt of the TOC Performance Statement the Train Operator shall sign and return a copy to Network Rail and indicate on the copy any aspects of the TOC Performance Statement which it disputes, giving reasons for any dispute. Save to the extent that any disputes are so notified or if the Train Operator fails to sign and return to Network Rail a copy of the TOC Performance Statement, the Train Operator shall be deemed to have agreed the contents of the TOC Performance Statement.
- 6.4** Any dispute concerning a TOC Performance Statement shall be dealt with as if it were a dispute arising under Appendix 3 of Schedule 8, and accordingly shall be dealt with in accordance with paragraph 9.3 of Schedule 8.
- 6.5** Subject to the provisions of this paragraph 6, all amounts payable under paragraph 6 shall be invoiced and fall due for payment at the same time as invoices are issued and payments fall due under Schedule 8 for that same period. The provisions of this paragraph 6 apply in addition to, and not in substitution for, the provisions of Schedule 8.

ANNEX 1: TOC ON TOC DELAY PAYMENT RATES

“TOC on TOC” Delay attributed to the Train Operator shall have a minutes delay value of £25 per minute.

Payment Rates – “TOC ON TOC” DELAY

Minutes Delay Value: [Redacted]

Full Cancellation rate per train Minutes Delay Value: 45 minutes

Part Cancellation rate per train Minutes Delay Value: [Redacted]

SCHEDULE 12: RELEVANT SCHEDULE 8 MODIFICATIONS

1. Automatic effect

1.1 General

This contract shall have effect:

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

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

1.2 Not Used^{2nd}

2. Procedures governing Relevant Schedule 8 Modifications

2.1 Negotiation of Relevant Schedule 8 Modifications

In respect of the Relevant Schedule 8 Modifications:

- (a) the parties shall, within 28 days from the Start Date, meet and negotiate and use reasonable endeavours to agree the Relevant Schedule 8 Modifications;
- (b) the parties agree that data will be collected for a total of 19 Periods and this shall be used as the basis for agreeing the Relevant Schedule 8 Modifications;
- (c) each party shall ensure that:
 - (i) such negotiations are conducted in a timely, efficient and economical manner, with appropriate recourse to professional advice; and
 - (ii) ORR's Criteria are applied in the negotiations;
- (d) the negotiations shall not continue after the Backstop Date; and
- (e) The Train Operator shall meet the costs associated with the Relevant Schedule 8 Modifications.

2.2 Relevant Schedule 8 Modifications - failure to agree

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

- (a) the matter shall be submitted to arbitration in accordance with Part C of the Access Dispute Resolution Rules; and
- (b) Network Rail shall within five Working Days notify ORR in writing of such submission to arbitration.

2.3 Use of the Office of Rail Regulation's Criteria in arbitration

If a matter is referred to arbitration under paragraph 2.2, the arbitrator shall be required by the parties to:

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

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

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

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

2.5 *Relevant Schedule 8 Modifications – the Office of Rail Regulation's consent*

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

2.6 *Relevant Schedule 8 Modifications – the Office of Rail Regulation's refusal of consent*

If:

- (a) the parties fail to submit to ORR for its consent the Relevant Schedule 8 Modifications in accordance with paragraph 2.4; or
- (b) ORR gives notice to the parties that it is not satisfied with any or all of the proposed Relevant Schedule 8 Modifications,

ORR may:

- (i) require the parties again to follow the procedure or any part of the procedure set out in paragraphs 2.1 to 2.4 for agreeing Relevant Schedule 8 Modifications (with such modifications as to time limits as it specifies), in which case they shall do so; or
- (ii) following such consultation with the parties as it considers necessary, determine the Relevant Schedule 8

Modifications itself and give a notice specifying such Relevant Schedule 8 Modifications.

2.7 Not Used^{2nd}

3. Procedural matters

3.1 *Co-operation and information*

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

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

3.2 *The Office of Rail Regulation's Criteria*

Any Relevant Schedule 8 Modifications shall:

- (a) ensure that Schedule 8 will maintain appropriate financial incentives on both parties in relation to Services, such that both parties are encouraged to maintain and improve operational performance, seeking to minimise lateness and cancellations;
- (b) be drafted to meet a high standard of simplicity, clarity and legal precision;
- (c) use definitions, terminology and numbering, including any bespoke provisions based on previous track access contracts, which are consistent with the defined terms, terminology and numbering used in this contract;
- (d) take account, where relevant, of ORR's latest policy statements on the performance regime; and
- (e) take account of the duties of ORR under section 4 of the Act.

3.3 *Procedural modifications*

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

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

3.4 *Dates*

In this Schedule:

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

3.5 *Consolidated contract*

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

3.6 *Saving*

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

4. *Definitions*

In this Schedule 12:

“Backstop Date” means 31st October 2020 (or such later date as may be established under paragraph 2.6 or 3.3);

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

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

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

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

“Relevant Schedule 8 Modifications”^{4th} means:

- (a) any modifications required to the Network Rail Benchmark per Train, Network Rail Lower Review Level, Network Rail Upper Review Level and Network Rail Payment Rate and Train Operator Benchmark per Train, Train Operator Lower Review Level, Train Operator Upper Review Level and Train Operator Payment Rate in Appendix 1 to Schedule 8 following a review against ORR’s Criteria; and
- (b) any modifications to any other part of Schedule 8 of this Contract which are necessary as a consequence of any modifications under paragraph (a);

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

“Start Date” means 31st March 2020.

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
SOUTH YORKSHIRE SUPERTRAM LIMITED

END NOTES

SOUTH YORKSHIRE SUPERTRAM LIMITED

i. First Supplemental Agreement dated 5th July 2018

This first supplemental agreement has effect from 5th July 2018 and relates to the operators registered address and the contract expiry date. Changes comprise of:

1. In the parties clause at the front of the Contract the words:

“Daw Bank, Stockport, Cheshire, SK3 ODU”

have been deleted and replaced with the following words:

“One Stockport Exchange, 20 Railway Road, Stockport, Cheshire, SK1 3SW”

2. In clause 1 INTERPRETATION 1.1 Definitions the words:

“Expiry Date means the 7th July 2018”

Have been deleted and replaced with the words:

“Expiry Date means the 30th September 2018”

ii. Second Supplemental Agreement dated 27th September 2018

This second supplemental agreement has effect from 27th September 2018 and relates to the contract expiry date, Notification Factors in Annex A to Part 3 of Schedule 4, service group codes, the Schedule 8 RPI uplift calculation, Cancellation Minutes in Appendix 1 to Schedule 8 and the application of Schedule 12 retrospectively. Changes comprise of:

1. In clause 1 INTERPRETATION 1.1 Definitions the words:

“Expiry Date means the 30th September 2018”

Have been deleted and replaced with the words:

“Expiry Date means the Subsidiary Change Date 2023”

2. The Table in Annex A to Part 3 of Schedule 4 – Notification Factors was deleted in its entirety and replaced with the following table:

“Annex A to Part 3 of Schedule 4 – Notification Factors

	A	B	C	D	E
Service Group Description	Service Group Code	Type	By D-26	By TW-22	After TW-22
South Yorkshire Supertram Ltd					
Tinsley North Junction – Rotherham Parkgate	SJ01	All Trains	0.55	0.7	0.85”

3. In Annex B to Part 3 of Schedule 4 – Lookup Table for EBM Weights in the column headed “S4CS” the letters:

“TBC”

were deleted and replaced with the S4CS Code:

“SJ01”

4. In Annex B to Part 3 of Schedule 4 – Lookup Table for EBM Weights in the column headed “Service Group” the letters:

“TBC”

were deleted and replaced with the Service Group Code:

“SJ01”

5. In Annex C to Part 3 of Schedule 4 – Payment Rate per train mile in the column headed “Service Group” the letters:

“TBC”

Were deleted and replaced with the Service Group Code:

"SJ01"

6. In Schedule 5 in Table 2.1: Passenger Train Slots in the column headed '1' the words:

"Service Group ST01"

were deleted and replaced with the words:

"Service Group SJ01"

7. In Schedule 5 in Table 4.1: Calling Patterns in the column headed "1" the words:

"Service Group ST01"

were deleted and replaced with the words:

"Service Group SJ01"

8. In Schedule 8 paragraph 7.1 RPI Uplift in relation to Rates and Caps in Appendix 1 the formula:

$R_t = R_{t-1} (1 + RPI_{t-1} - 1100)$

was deleted and replaced with the formula:

$R_t = R_{t-1} (1 + RPI_{t-1})$

9. In Schedule 8 Appendix 1 Network Rail Performance the word:

"Cancellation"

was deleted and replaced with the words:

"Cancellation Minutes"

10. In Schedule 12 paragraph 1.2 Retrospective effect was deleted in its entirety and replaced with the words:

"1.2 Not Used"

11. In Schedule 12 paragraph 2.7 Payment adjustments was deleted in its entirety and replaced with the words:

"2.7 Not Used"

iii. Third Supplemental Agreement dated 10th December 2018

This third supplemental agreement has effect from 10th December 2018 and relates to contingency provisions should the ORR implementation of the 2018 Periodic Review (PR18) be delayed for any reason. Changes comprised of revisions to Schedule 7 including the addition of new definitions in Part 1 and a new paragraph 4 "Interim treatment of 2018 Periodic Review" in Part 7 (Future Access Charges Reviews).

iv. Fourth Supplemental Agreement dated 21st March 2019

This fourth supplemental agreement has effect from 01st April 2019 and relates to the ORR implementation of the 2018 Periodic Review (PR18). Changes comprise of:

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 31.1, 16.1, 16.2, 17.2, 18.4
3. The deletion of clause 20 (Treatment of clause 20)
4. The following amendments to Schedule 4:
 - 4.1. Changes to or the addition of the following definitions:
 - 4.1.1. CPI
 - 4.1.2. Defined Service Group Revenue
 - 4.1.3. Performance Monitoring System
 - 4.1.4. Restrictions of Use
 - 4.1.5. ROU Variable Costs
 - 4.1.6. RPI (deleted)
 - 4.1.7. SPD Revenue Threshold No.1
 - 4.1.8. SPD Revenue Threshold No. 2
 - 4.1.9. SPD Cost Threshold No. 1
 - 4.1.10. SPD Cost Threshold No.2

- 4.2. Amendments to 4.2(b) Cost Compensation formula
- 4.3. Amendments to 5.2(c)
- 4.4. Amendments to paragraphs 9.1 and 9.2
- 4.5. Amendments to paragraph 14 (Indexation)
- 4.6. Annex A (Notification Factors) replaced
- 4.7. Annex C (Payment rate per train mile) replaced
- 5. Schedule 7 replaced in its entirety with the exception of Appendix 7C (Default Consist Data)
- 6. The following changes were made to Schedule 8:
 - 6.1. The addition of a new definition: "Initial Indexation Factor"
 - 6.2. Paragraph 7 (Indexation) was replaced
 - 6.3. Appendix 1 was replaced
- 7. In Schedule 9 the definition "Liability Cap" was replaced to reflect the change from RPI to CPI
- 8. In Schedule 12, paragraph 4 the definition "Relevant Schedule 8 Modifications" was replaced