

# 33<sup>rd</sup> SUPPLEMENTAL AGREEMENT

between

NETWORK RAIL INFRASTRUCTURE LIMITED  
as Network Rail

And

GOVIA THAMESLINK RAILWAY LIMITED  
as Train Operator

relating to the Track Access Contract (Passenger  
Services) dated 02 March 2016

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**THIS 33<sup>RD</sup> SUPPLEMENTAL AGREEMENT** is dated 9th February 2021 and made

**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) **GOVIA THAMESLINK RAILWAY LIMITED**, a company registered in England under number 07934306, having its registered office at 3<sup>rd</sup> Floor, 41-51 Grey Street, Newcastle upon Tyne, NE1 6EE (the "Train Operator").

**WHEREAS:**

- (A) The parties entered into a Track Access Contract (Passenger Services) dated 02 March 2016 in a form approved by the Office of Rail and Road ("ORR") pursuant to Section 18(7) of the Act, as amended by various supplemental agreements each in a form approved by ORR pursuant to Section 22 of the Act (which track access contract as subsequently amended is hereafter referred to as the "Contract").
- (B) The parties wish to amend the Contract in the terms described below.

**IT IS HEREBY AGREED** as follows:

**1. INTERPRETATION**

In this Supplemental Agreement:

- 1.1 Words and expressions defined in and rules of interpretation set out in the Contract shall have the same meaning and effect when used in this Supplemental Agreement except where the context requires otherwise; and
- 1.2 "Effective Date" means:
  - (1) the date upon which the Office of Rail and Road issues its approval, pursuant to Section 22 of the Act, of the terms of this Supplemental Agreement.
- 1.3 "Annex" shall mean the annexes and their relevant parts and attached hereto.

**2. EFFECTIVE DATE AND TERM**

- 2.1. The amendments to the Contract pursuant to this Supplemental Agreement shall have effect from the Effective Date and shall cease to have effect on the Expiry Date or earlier termination of the Contract.
- 2.2 Notwithstanding the Effective Date the amendments to the Contract shall be applied retrospectively from 27 May 2018.

### **3. AMENDMENTS TO THE CONTRACT**

- 3.1 Schedule 11 Relevant Modification to Schedule 8 of the contract shall be deleted in its entirety and replaced with:

“ Schedule 11 - NOT USED”.

- 3.2 After Schedule 11 to the Contract insert a new Schedule 12 as set out in Annex A to this Supplemental.

### **4. GENERAL**

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

### **5. THIRD PARTY RIGHTS**

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

### **6. LAW**

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

### **7. COUNTERPARTS**

This Supplemental Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original, but all the counterparts shall together constitute but one and the same document.

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



**SIGNED** by

Print name: Shaun King, RD Sussex, dated 09 Feb 21

Duly authorised for and on behalf of  
**NETWORK RAIL INFRASTRUCTURE LIMITED**



**SIGNED** by

Print name STEVE WHITE

Duly authorised for and on behalf of  
**GOVIA THAMESLINK RAILWAY LIMITED**

Schedule 12

PPM Performance Regime

1 Interpretation

1.1 Definitions

In this Schedule 12 and its Appendices, unless the context otherwise requires:

**Applicable Timetable** has the meaning ascribed to it in Schedule 8

**Attributed PPM Failure** means the failure of a Train to arrive at its PPM Recording Point within the Punctuality Threshold or call at all of its scheduled station stops in accordance with the Applicable Timetable, allocated to either Network Rail or the Train Operator in accordance with paragraph 5

**Board** means the delay attribution board defined in condition B and more particularly described in condition B6.2 of the Network Code

**Cancelled Stop** has the meaning ascribed to it in Schedule 8

**Cancellation Event** means any occasion a Train is either fully cancelled, starts at a station other than its planned origin, terminates at a station other than its planned destination, or fails to call at a scheduled station stop, each in accordance with the Applicable Timetable as recorded by the Performance Monitoring System

**Fixed Payment** means the fixed sum in relation to a Service Brand which Network Rail or the Train Operator is liable to pay to the other in each Period under this Schedule 12, as calculated in accordance with paragraph 7

**Fixed Payment Rate** means the payment rate for each Service Brand set out in columns F and L of Appendix 1 of this Schedule 12

**Initial Indexation Factor** has the meaning ascribed to it in Schedule 8

**Joint Inquiry** has the meaning ascribed to it in Schedule 8

**Lower Neutral Zone Boundary** means the lower level of the Neutral Zone as set out in columns D and J of Appendix 1 of this Schedule 12

**Minutes Delay** has the meaning ascribed to it in Schedule 8

**Minutes Late** has the meaning ascribed to it in Schedule 8

**Network Rail Attributed PPM Failure** means a PPM Failure responsibility for which is allocated to Network Rail in accordance with paragraph 6

**Neutral Zone** means the range of Attributed PPM Failure between the Lower Neutral Zone Boundary and the Upper Neutral Zone Boundary in which no Variable Payment shall be made

**ORR Approval Date** means the date on which the ORR approves the amendment under Section 22 of the Act to add this Schedule 12 to the Contract

**Performance Monitoring System** has the meaning ascribed to it in Schedule 8

**Performance Week** means a period commencing at 00:00:00 hours on any Sunday and ending at 00:00:00 hours on the next following Saturday

**Period** has the meaning ascribed to it in Schedule 8

**PFPI Minutes** means the number of minutes a PPM Regime Minutes Delay and a Cancellation Event are converted to for the purposes of comparison pursuant to the table set out in Part 2 of Appendix 2 of this Schedule 12

**PPM** means the number of Trains (expressed as a percentage of the number of Trains which are scheduled to be provided under the Applicable Timetable) to:

- (a) arrive at their PPM Recording Point within the Punctuality Threshold; and
- (b) call at all scheduled station stops in accordance with the Applicable Timetable

**PPM Failure** means the failure of a Train to:

- (a) arrive at its PPM Recording Point within the Punctuality Threshold; or
- (b) call at all of its scheduled station stops in accordance with the Applicable Timetable

**PPM Failure Benchmark** means the forecast level of PPM Failures for Network Rail and the Train Operator for each of the three Service Brands as set out in columns B and H of Appendix 1 of this Schedule 12

**PPM Regime Minutes Delay** means the number of minutes delay recorded by the Performance Monitoring System for the purposes of this Schedule 12, calculated in accordance with paragraph 2

**PPM Regime Duration** means the 11 Periods during which the performance of the Train Operator and Network Rail shall be measured in accordance with this Schedule 12, being between 27 May 2018 and 31 March 2019

**PPM Performance Sum** means, in relation to a Service Brand, a sum of money which Network Rail or the Train Operator is liable to pay to the other under this Schedule 12, as calculated in accordance with paragraph 7 of this Schedule 12

**PPM Recording Point** means a point at which Network Rail records Trains using the Performance Monitoring System for the purposes of this Schedule 12, being the final scheduled destination of the Train, or (only in respect of Trains which are split into two linked train services for the measurement of PPM) Blackfriars station (for Southbound Trains) or St Pancras station (for Northbound Trains)

**Punctuality Threshold** means a period of 4 minutes 59 seconds from the scheduled public arrival time of a Train at its final scheduled destination in accordance with the Applicable Timetable as recorded by the Performance Monitoring System

**Recovery Time** has the meaning ascribed to it in Schedule 8

**Relevant Year** has the meaning ascribed to it in Schedule 7

**Restriction of Use** has the meaning ascribed to it in Schedule 4

**RPI** has the meaning ascribed to it in Schedule 7

**Service Brand** means a collection of Service Groups as specified in column A of Appendix 2

**Service Group** has the meaning ascribed to it in Schedule 8

**Total Attributed PPM Failure** means the sum of PPM Failures allocated to either Network Rail or the Train Operator in accordance with paragraph 7

**Train** has the meaning ascribed to it in Schedule 8

**Train Operator Attributed PPM Failure** means a PPM Failure responsibility for which is allocated to the Train Operator in accordance with paragraph 6

**Upper Neutral Zone Boundary** means the upper level of the Neutral Zone as set out in columns E and K of Appendix 1 of this Schedule 12

**Variable Payment** means the variable sum in relation to a Service Brand which Network Rail or the Train Operator is liable to pay to the other under this Schedule 12, as calculated in accordance with paragraph 7

**Variable Payment Rate** means the payment rate for each Service Brand set out in columns G and M or Appendix 1 of this Schedule 12



## 1.2 *Application*

- (a) This Schedule 12 shall be used to calculate any PPM Performance Sum which accrues and Network Rail or the Train Operator is liable to pay to the other in respect of performance during the PPM Regime Duration.
- (b) In respect of Network Rail and Train Operator performance related payments during the PPM Regime Duration, paragraphs 6.3, 9, 10, 11, 12, 13, 16 and 17A of Schedule 8 were disapplied. For the avoidance of doubt, all provisions of Schedule 8 shall apply only in respect of the collation and reporting of data.

## 1.3 *Interpretation*

For the purposes of this Schedule 12:

- (a) a Train shall be treated as being in a Service Brand for that part of its journey during which it satisfies the characteristics specified in Part 1 of Appendix 2 of this Schedule 12 as forming a Service which is included in that Service Brand;
- (b) events in respect of a Train shall be treated as occurring on the day on which the Train was scheduled in the Applicable Timetable to depart from the first point at which it is to pick up passengers; and
- (c) save as otherwise provided, calculation of Attributed PPM Failures shall be accurate to three decimal places.

## **2 Calculation of PPM Regime Minutes Delay**

The PPM Regime Minutes Delay in respect of a Train when it triggers a PPM Recording Point shall be equal to:

- (a) in respect of the first PPM Recording Point triggered by that Train on any day, the number of minutes (rounded down to the nearest whole minute) by which the time at which that Train triggers the PPM Recording Point is later than the time at which that Train is scheduled in the Applicable Timetable to do so; and
- (b) in respect of any other PPM Recording Point, the lesser of:
  - (i) the PPM Regime Minutes Delay in respect of that PPM Recording Point calculated in accordance with paragraph 2(a) (as if that PPM Recording Point were the first PPM Recording Point triggered by that Train); and
  - (ii) the greater of  $((A1 - A2) + B)$  and zero

where:

- A1 is the number of minutes between the time at which the Train triggers the PPM Recording Point (rounded down to the nearest whole minute) and the time the Train last triggered a PPM Recording Point (rounded down to the nearest whole minute);
- A2 is the relevant time lapse scheduled in the Applicable Timetable between those same two PPM Recording Points; and
- B is any Recovery Time between those PPM Recording Points incorporated in the Applicable Timetable.

### **3 Recording of PPM performance information**

#### **3.1 *Recording of lateness, PPM Regime Minutes Delay and Cancellation Events***

Without prejudice to its obligations under Part B of the Network Code or under paragraph 4 of Schedule 8, Network Rail shall use the Performance Monitoring System to record for each day in respect of each Train scheduled in the Applicable Timetable:

- (a) the time at which the Train stops to set down passengers at each PPM Recording Point;
- (b) each Cancellation Event and the incident(s) causing such Cancellation Event where the incident can be identified;
- (c) the time at which the Train triggers its PPM Recording Point; and
- (d) the PPM Regime Minutes Delay for that Train at its PPM Recording Point.

The provisions of this Schedule 12, which concern the recording of train performance information or which refer to information regarding train performance, and the rights and remedies of the parties in respect of the recording of that information, shall be subject to and interpreted in accordance with the provisions of the Performance Data Accuracy Code (PDAC).

#### **3.2 *Recording of allocated responsibility for PPM Regime Minutes Delay and Cancellation Events***

Network Rail shall for each day and for each Train scheduled in the Applicable Timetable record separately in the Performance Monitoring System those PPM Regime Minutes Delay and Cancellation Events caused by incidents:

- (a) for which Network Rail is allocated responsibility in accordance with paragraph 4.2 of this Schedule 12;

- (b) for which the Train Operator is allocated responsibility in accordance with paragraph 4.3 of this Schedule 12;
- (c) for which Network Rail and the Train Operator are allocated joint responsibility, in accordance with paragraph 4.4 of this Schedule 12;
- (d) for which no cause can be identified; and
- (e) which are planned incidents in accordance with paragraph 4.7 of this Schedule 12.

#### **4 Allocation of responsibility for PPM Regime Minutes Delay and Cancellation Events**

##### **4.1 *Assessment of incidents causing PPM Regime Minutes Delay and Cancellation Events***

- (a) In assessing the cause of any PPM Regime Minutes Delay or Cancellation Events, there shall be taken into account all incidents contributing thereto including:
  - (i) the extent to which each party has taken reasonable steps to avoid and/or mitigate the effects of the incidents; and
  - (ii) where a Restriction of Use overruns due to the start of such Restriction of Use being delayed by a late running Train, the incident(s) giving rise to that late running;
- (b) The parties take reasonable steps to avoid and mitigate the effects of any incidents upon the Trains and any failure to take such steps shall be regarded as a separate incident;
- (c) Network Rail shall identify:
  - (i) in respect of each incident recorded under paragraph 3 of this Schedule 12 as causing PPM Regime Minutes Delay, the extent to which that incident caused each of the PPM Regime Minutes Delay; and
  - (ii) in respect of each incident recorded under paragraph 3 of this Schedule 12, the extent to which that incident caused the Cancellation Event;

- (d) So far as Network Rail is reasonably able to do so, it shall identify whether responsibility for incidents causing PPM Regime Minutes Delay or Cancellation Events is to be allocated to Network Rail or to the Train Operator or to them jointly in accordance with the following provisions of this paragraph 4.

#### *4.2 Network Rail responsibility incidents*

Responsibility for PPM Regime Minutes Delay and Cancellation Events on a day caused by incidents for which Network Rail is allocated responsibility pursuant to this paragraph 4.2 shall be allocated to Network Rail. Unless and to the extent otherwise agreed, Network Rail shall be allocated responsibility for an incident other than a planned incident (as defined in paragraph 4.7), if that incident is caused wholly or mainly:

- (a) by breach by Network Rail of any of its obligations under this contract;  
or
- (b) (whether or not Network Rail is at fault) by circumstances within the control of Network Rail in its capacity as operator of the Network; or
- (c) (whether or not Network Rail is at fault) by any act, omission or circumstance originating from or affecting the Network (including its operation), including, subject to paragraph 4.3(b)(i), any incident in connection with rolling stock on the Network for which any train operator other than the Train Operator would be allocated responsibility if it were the Train Operator under this contract.

#### *4.3 Train Operator responsibility incidents*

Responsibility for PPM Regime Minutes Delay and Cancellation Events on a day caused by incidents for which the Train Operator is allocated responsibility pursuant to this paragraph 4.3 shall be allocated to the Train Operator. Unless and to the extent otherwise agreed, the Train Operator shall be allocated responsibility for an incident other than a planned incident (as defined in paragraph 4.7) if that incident:

- (a) is caused wholly or mainly:
  - (i) by breach by the Train Operator of any of its obligations under this contract; or
  - (ii) (whether or not the Train Operator is at fault) by circumstances within the control of the Train Operator in its capacity as an operator of trains; or
  - (iii) (whether or not the Train Operator is at fault) by any act, omission or circumstance originating from or affecting rolling stock operated by or on behalf of the Train Operator (including its operation), including any such act, omission or circumstance

originating in connection with or at any station (other than in connection with signalling under the control of Network Rail at that station or physical works undertaken by Network Rail at that station), any light maintenance depot or any network other than the Network; or

(b) causes delay to:

- (i) rolling stock operated by or on behalf of another train operator which is delayed in entering or leaving the Network due to any act, omission or circumstance originating in connection with a light maintenance depot or network other than the Network and, as a result of that delay, rolling stock operated by or on behalf of the Train Operator which is scheduled to leave or enter the Network at the connection with that light maintenance depot or other network is then delayed behind the first mentioned rolling stock; or
- (ii) the commencement of a Train's journey, which is caused by the late running for any reason whatever of any rolling stock included in that Train when that rolling stock is operated by or on behalf of another train operator.

#### 4.4 *Joint responsibility incidents*

(a) Network Rail and the Train Operator shall be allocated joint responsibility for:

- (i) any incident which is not a planned incident (as defined in paragraph 4.7), caused by an act, omission or circumstance originating in connection with or at a station which:
  - (A) is an act, omission or circumstance which affects the Network, or its operation, and prevents a Train entering or passing through a station at the time it is scheduled to do so; and
  - (B) prevents the access of passengers through the station to or from the Train;

and paragraphs 4.2 and 4.3 shall not apply to any such incident; or

- (ii) any identified incident in respect of which Network Rail and the Train Operator are equally responsible and for which neither Network Rail nor the Train Operator is allocated responsibility under paragraph 4.2 or 4.3.

- (b) Unless and to the extent otherwise agreed, PPM Regime Minutes Delay or Cancellation Events caused by incidents for which Network Rail and the Train Operator are allocated joint responsibility pursuant to paragraph 4.4(a) shall be allocated 50% to Network Rail and 50% to the Train Operator.

#### **4.5 *Unidentified incidents: PPM Regime Minutes Delay***

Responsibility for PPM Regime Minutes Delay on any day in respect of a Service Brand caused by incidents which are unidentified, shall be allocated to Network Rail.

#### **4.6 *Unidentified incidents: Cancellation Events***

Responsibility for Cancellation Events on a day in respect of a Service Brand caused by incidents which are unidentified shall be allocated to Network Rail.

#### **4.7 *Planned incidents***

An incident shall be treated as a planned incident if and to the extent that:

- (a) such incident was a Restriction of Use notified in accordance with Schedule 4 by Network Rail to the Train Operator; or
- (b) there is Recovery Time in respect of that incident.

### **5 Notification of allocated responsibility**

#### **5.1 *Notification of PPM Regime Minutes Delay or Cancellation Events***

Network Rail will have, following the occurrence of any PPM Regime Minutes Delay or Cancellation Event, and in any case no later than 1 Working Day, notified the Train Operator of the occurrence of that PPM Regime Minutes Delay or Cancellation Event and the responsibility, if any, for that PPM Regime Minutes Delay or Cancellation Event allocated by Network Rail. Any such notification shall have been sent using the Performance Monitoring System (and/or any such other means of notification that has been agreed for this purpose between the Train Operator and Network Rail) and at the same time provide its reasons for doing so.

#### **5.2 *Consideration by a Train Operator***

The Train Operator will have considered each PPM Regime Minutes Delay or Cancellation Event allocated to it by Network Rail and, if the Train Operator disputes the attribution it shall have done so within two Working Days of receipt of that notice utilising the Performance Monitoring System (or any other means of notification that has been agreed for this purpose between the Train Operator and Network Rail), and at the same time provide its reasons for doing so.

### 5.3 *Agreement of delay attribution*

Any allocation of responsibility shall, unless disputed by the Train Operator within two Working Days of receipt of that notice in accordance with paragraph 5.2, be deemed to be agreed by the Train Operator.

### 5.4 *Matters referred for further investigation*

#### (a) *Procedure for conducting further investigation*

- (A) Within two Working Days after receipt of a notification from the Train Operator in accordance with paragraph 5.2, Network Rail and the Train Operator shall have attempted to resolve the dispute. Such further investigation shall take into account all relevant circumstances of the case and the provisions of this Schedule 12.

#### (b) *Referral for review*

- (B) If agreement was not reached within the two Working Days referred to in paragraph 5.4(a), the dispute shall have been referred for review by the designated senior manager appointed by the Train Operator and the designated senior manager appointed by Network Rail for the purposes of this paragraph 5.4(b).

#### (c) *Referral for further guidance or resolution*

- (C) If, within 20 Working Days, or such other period as may be agreed by Network Rail and the Train Operator, of the dispute referred pursuant to paragraph 5.2, Network Rail and the Train Operator were unable to agree on the attribution, they shall have sought guidance from the Board, or from any sub-committee that the Board has designated for this purpose, on the appropriate application of this Schedule or on any other relevant matter.

#### (d) *Guidance from the Board*

- (D) If, within 10 working days of guidance being received from the Board or any designated sub-committee pursuant to paragraph 5.4(c), Network Rail and the Train Operator were unable to agree on the allocation of responsibility, they shall have referred the matter for determination in accordance with the ADRR.

### 5.5 *Treatment of disputed allocations*

If, when any payment becomes payable in accordance with this Schedule 12, any allocation of responsibility for PPM Regime Minutes Delay and/or Cancellation Events remained disputed between the parties, payment shall be

made on the basis that the parties are jointly responsible pursuant to paragraph 4.4(b), until such time as the dispute is settled.

## **6 Allocation of responsibility for PPM Failures**

- 6.1 In assessing the cause of any PPM Failure, there shall be taken into account all incidents affecting a Train responsibility for which have been determined in accordance with paragraph 4.
- 6.2 Where a Train suffers a PPM Failure and is fully cancelled, responsibility for such PPM Failure shall be allocated to the party responsible for, and to which the Cancellation Event was allocated pursuant to paragraph 4.
- 6.3 Where a Train suffers a PPM Failure but is not fully cancelled, responsibility for such PPM Failure shall be apportioned between the parties according to the relevant share of PFPI Minutes for which each party is allocated responsibility pursuant to paragraph 4.
- 6.4 Where responsibility for a PPM Failure is not allocated to any particular party pursuant to this paragraph 6, then responsibility for the resulting PPM Failure shall be allocated between the Train Operator and Network Rail on a pro rata basis according to the aggregate number of PPM Failures allocated between the parties in that Performance Week.

## **7 Payments in the PPM Regime Duration**

### **7.1 Network Rail PPM Performance Sums**

In respect of each Service Brand, at the end of each Period during the PPM Regime Duration the Network Rail PPM Performance Sum (NRPPS) for each Period shall be calculated as follows:

$$\text{NRPPSp} = (\text{NRFP} + \text{NRVP}) - \text{NRPPSp-1}$$

where:

- NRFP is the Network Rail Fixed Payment for the Service Brand
- NRPPSp is the NRPPS for the relevant Period
- NRPPSp-1 is the NRPPS paid for the prior Period (if any)
- NRVP is the Network Rail Variable Payment for the Service Brand

### **7.2 Network Rail Fixed Payment**

In respect of each Service Brand, at the end of each Period during the PPM Regime Duration, the Network Rail Fixed Payment (NRFP) for each Period shall be calculated as follows:

$$\text{NRFP} = \text{NRFPR} \times \frac{\text{CP}}{11}$$



Where:

NRFPR is the Network Rail Fixed Payment Rate for the Service Brand as set out in column F Appendix 1 of this Schedule 12.

CP is the number of completed Periods since the commencement of the PPM Regime Duration

### 7.3 *Network Rail Variable Payment*

- (a) If the Network Rail Attributed PPM Failure for a Service Brand falls within the Neutral Zone no Network Rail Variable Payment shall be payable for that Service Brand for that Period.
- (b) If at the end of each Period during the PPM Regime Duration, the Network Rail Total Attributed PPM Failures in any Period for any Service Brand exceeds the Upper Neutral Zone Boundary Network Rail shall be liable to pay the Train Operator a Network Rail Variable Payment.
- (c) If at the end of each Period during the PPM Regime Duration, the Network Rail Total Attributed PPM Failures in any Period for any Service Brand is lower than the Lower Neutral Zone Boundary, then Network Rail is entitled to a credit from the Train Operator of a sum equal to the Network Rail Variable Payment.
- (d) In the case of paragraphs 7.3(b) and 7.3(c), in respect of each Service Brand, at the end of each Period during the PPM Regime Duration, the Network Rail Variable Payment (NRVP) calculated as follows:

$$\text{NRVP} = V \times \text{NRVPR} \times \frac{\text{CP}}{11}$$

Where

NRVPR is the Network Rail Variable Payment Rate applicable to each Period for each Service Brand is set out in column G of Appendix 1 of this Schedule 12.

CP is the number of completed Periods since the commencement of the PPM Regime Duration.

V is the variance between the Network Rail Total Attributed PPM Failures and either:

- (i) the Upper Neutral Zone Boundary (if the Network Rail Total Attributed PPM Failure exceeds the Upper Neutral Zone Boundary as described in paragraph 7.3(b)). In which case V is calculated as:

$V = \text{Upper Neutral Zone Boundary} - \text{Network Rail Total Attributed PPM Failures}$

- (ii) the Lower Neutral Zone Boundary (if the Network Rail Total Attributed PPM Failure is lower than the Lower Neutral Zone Boundary as described in paragraph 7.3(c)). In which case  $V$  is calculated as:

$V = \text{the Lower Neutral Zone Boundary} - \text{Network Rail Total Attributed PPM Failures}$

#### 7.4 *Train Operator PPM Performance Sums*

In respect of a Service Brand, at the end of each Period during the PPM Regime Duration, the Train Operator PPM Performance Sum (TPPS) shall be calculated as follows:

$$\text{TPPSp} = (\text{TFP} + \text{TVP}) - \text{TPPSp-1}$$

where:

- TFP is the Train Operator Fixed Payment for the Service Brand
- TPPSp is the TPPS payable in the relevant Period
- TPPSp-1 is the TPPS paid in the prior Period (if any)
- TVP is the Train Operator Variable Payment for the Service Brand

#### 7.5 *Train Operator Fixed Payment*

In respect of each Service Brand, at the end of each Period during the PPM Regime Duration, the Train Operator Fixed Payment (TFP) shall be calculated as follows:

$$\text{TFP} = \text{TFPR} \times \frac{\text{CP}}{11}$$

Where:

- TFPR is the Train Operator Fixed Payment Rate for the Service Brand as set out in column L of Appendix 1 of this Schedule 12.
- CP is the number of completed Periods since the commencement of the PPM Regime Duration

#### 7.6 *Train Operator Variable Payment*

- (a) If the Train Operator Total Attributed PPM Failures for a Service Brand falls within the Neutral Zone no Train Operator Variable Payment shall be payable for that Service Brand in that Period.
- (b) If at the end of each Period during the PPM Regime Duration, the Train Operator Total Attributed PPM Failures in any Period for any Service Brand exceeds the Upper Neutral Zone Boundary the Train Operator shall be liable to pay Network Rail a Train Operator Variable Payment.

- (c) If at the end of each Period during the PPM Regime Duration, the Network Rail Total Attributed PPM Failures in any Period for any Service Brand is lower than the Lower Neutral Zone Boundary, then the Train Operator is entitled to a credit from Network Rail of a sum equal to the Train Operator Variable Payment.
- (d) In the case of paragraphs 7.6(b) and 7.6(c), in respect of each Service Brand, at the end of each Period during the PPM Regime Duration, the Train Operator Variable Payment (NRVP) calculated as follows:

$$TVP = V \times TVPR \times \frac{CP}{11}$$

11

Where

- TVPR is the Train Operator Variable Payment Rate applicable to each Period for each Service Brand is set out in column M of Appendix 1 of this Schedule 12.
- CP is the number of completed Periods since the commencement of the PPM Regime Duration.
- V is the variance between the Train Operator Total Attributed PPM Failure and either:

- (i) the Upper Neutral Zone Boundary (if the Train Operator Total Attributed PPM Failures exceeds the Upper Neutral Zone Boundary as described in paragraph 7.6(b)). In which case V is calculated as:

$$V = \text{Upper Neutral Zone Boundary} - \text{Train Operator Total Attributed PPM Failures}$$

- (ii) the Lower Neutral Zone Boundary (if the Train Operator Total Attributed PPM Failures is lower than the Lower Neutral Zone Boundary as described in 7.6(c)). In which case V is calculated as:

$$V = \text{the Lower Neutral Zone Boundary} - \text{Train Operator Total Attributed PPM Failures}$$

## 8 Notification of PPM Performance Sums

### 8.1 Notification

Within 14 days of the ORR Approval Date, Network Rail shall provide the Train Operator with a statement for each Service Brand for the entire PPM Regime Duration showing:

- (a) any PPM Performance Sums for which Network Rail or the Train Operator is liable, together with such supporting information (other than

information in respect of incidents recorded as the responsibility of Network Rail) as the Train Operator may reasonably require; and

- (b) any matter referred to in paragraph 5.1 which the Train Operator has disputed in accordance with paragraph 5.4 and which is still in dispute.

## **8.2** *Disputes*

Within 14 days after receipt by the Train Operator of a notification required under paragraph 8.1, the Train Operator shall notify Network Rail of any aspects of such notification which it disputes, giving reasons for each such dispute. The Train Operator shall not dispute any matter which it has agreed or deemed to have agreed under paragraph 5. Such disputes and any matter referred to in paragraph 8.1(b) shall be resolved in accordance with the procedure in paragraph 12. Save to the extent that disputes are so notified, the Train Operator shall be deemed to have agreed the contents of each notification.

## **9** **Payment procedures**

### **9.1** *Payments and set-off*

- (a) In respect of any and all PPM Performance Sums for which Network Rail and the Train Operator are liable in the PPM Regime Duration, the aggregate liabilities of Network Rail and the Train Operator shall be set off against each other. The balance shall be payable by Network Rail or the Train Operator, as the case may be, within 35 days of the ORR Approval Date for the PPM Regime Duration.
- (b) Subject to paragraph 9.2, and save as otherwise provided, all other sums payable under this Schedule 12 shall be paid within 35 days of the ORR Approval Date for the PPM Regime Duration.

### **9.2** *Payments in the event of dispute*

Where any sum which is payable under this paragraph 9 is in dispute:

- (a) the undisputed amount shall be paid or set off (as the case may be) in accordance with paragraph 9.1;
- (b) the disputed balance (or such part of it as has been agreed or determined to be payable) shall be paid or set off (as the case may be) within 35 days of the ORR Approval Date in which the dispute is resolved or determined; and

## **10 Reconciliation Payment**

- (a) On the earlier of:
  - (i) the date on which all disputed allocation of responsibility for PPM Regime Minutes Delay and/or Cancellation Events pursuant to paragraph 4 are resolved; or
  - (ii) the date on which Network Rail and the Train Operator agree to waive any rights to dispute the allocation of responsibility for PPM Regime Minutes Delay and/or Cancellation Events,

Network Rail shall repeat the calculations for the PPM Performance Sums and the Variable Payments.

- (b) The aggregate liabilities of Network Rail and the Train Operator pursuant to the reconciliation calculations performed pursuant to paragraph 10(a) shall be set off against each other. The balance shall be payable by Network Rail or the Train Operator, as the case may be, within 35 days of the ORR Approval Date for the PPM Regime Duration. Such payment shall be in full and final settlement of liabilities arising out of this Schedule 12.

## **11 Notices**

- 11.1 All notices under this Schedule 12 shall be given in accordance with paragraph 15 of Schedule 8.

## **12 Disputes**

- 12.1 If any dispute is notified under paragraph 8.2 it shall be resolved according to the following procedure:
  - (a) within seven days of service of the relevant notice (or, if the dispute relates to an incident the responsibility for which is or is to be the subject of a Joint Inquiry, within seven days of publication of the conclusion of that Joint Inquiry), the parties shall meet to discuss the disputed aspects with a view to resolving all disputes in good faith;
  - (b) if, for any reason, within seven days of the meeting referred to in paragraph 12.1(a), 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;

- (c) 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
- (d) 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.

### **13 Compensation for sustained poor performance**

- 13.1 For the avoidance of doubt, the parties acknowledge that the PPM Regime Duration is for a duration of 11 Periods, and for the purposes of calculating sustained poor performance (**SPPL**), a period of 13 Periods is required.
- 13.2 Consequently the provisions of paragraphs 18 and 19 of Schedule 8 shall continue to apply as though reinstated in this Schedule 12, and references to NRPS in paragraphs 18 and 19 of Schedule 8 shall include reference to NRPPS calculated pursuant to this Schedule 12 where appropriate.
- 13.3 For the purposes of calculating SPPL for the PPM Regime Duration pursuant to paragraph 18.3 of Schedule 8 RL shall be deleted and substituted as follows:

**RL** means the Train Operator's Relevant Losses arising as a direct result of Minutes Delay, PPM Regime Minutes Delay, Cancelled Stops and Cancellation Events during the Cancellation Term in each case insofar as these do not arise as a result of an incident for which the Train Operator is allocated responsibility pursuant to paragraph 5.3 of Schedule 8 or, during the PPM Regime Duration, paragraph 4.3 of this Schedule 12.

## Appendix 1

A	B	C	D	E	F	G	H	I	J	K	L	M
	Network Rail						Train Operator					
Service Brand	PPM failure benchmark	neutral zone	lower neutral zone boundary	upper neutral zone boundary	Fixed Payment Rate (NRFPR)	Variable Payment Rate (NRVPR)	PPM failure benchmark	neutral zone	lower neutral zone boundary	upper neutral zone boundary	Fixed Payment Rate (TFPR)	Variable Payment Rate (TVPR)
Thameslink	8.541%	0.600%	7.941%	9.141%	[redacted]	[redacted]	7.059%	0.500%	6.559%	7.559%	[redacted]	[redacted]
Great Northern	8.914%	0.640%	8.274%	9.554%	-[redacted]	[redacted]	6.386%	0.460%	5.926%	6.846%	[redacted]	[redacted]
Southern/Gatwick Express	11.065%	0.660%	10.405%	11.725%	[redacted]	[redacted]	7.435%	0.440%	6.995%	7.875%	[redacted]	[redacted]

**Appendix 2**  
**Service Brands and PFPI Minutes**  
**Part 1: Service Brands**

A	B	C	D	E	F
Service Brand	Service Group	Service Group Name	Train Service Code	Contract Group	Train Service Code Description
Thameslink	ET01	Thameslink North Outer (MML)	22720000	720	TL MML outer services between The Core and Leagrave-Bedford
Thameslink	ET02	Thameslink Sussex Outer	22721000	721	TL BML services between The Core and Brighton/Littlehampton
Thameslink	ET02	Thameslink Sussex Outer	22729000	729	TL BML services between The Core and Gatwick/Horsham
Thameslink	ET02	Thameslink Sussex Outer	22729001	729	TL BML services between The Core and East Grinstead
Thameslink	ET03	Thameslink South Metro	22722000	722	TL South services between The Core and the Wimbledon Loop
Thameslink	ET03	Thameslink South Metro	22742000	742	TL South services between The Core and Sevenoaks/Orpington via Catford Loop
Great Northern	ET04	Great Northern Metro	21723000	723	GN services to/from Moorgate/King's Cross via Welwyn Garden City
Great Northern	ET04	Great Northern Metro	21724000	724	GN services to/from Moorgate/King's Cross via Hertford Loop
Great Northern	ET04	Great Northern Metro	22723100	723	TL ECML services between The Core and Welwyn Garden City
Great Northern	ET05	Great Northern Outer	21725000	725	GN services between King's Cross and Ely/Kings Lynn
Great Northern	ET05	Great Northern Outer	21726000	726	GN services between King's Cross and Letchworth-Royston/Cambridge (Slow)
Great Northern	ET05	Great Northern Outer	21727000	727	GN services between King's Cross and Peterborough
Great Northern	ET05	Great Northern Outer	22726100	726	TL ECML services between The Core and Cambridge Stations
Great Northern	ET05	Great Northern Outer	22727100	727	TL ECML services between The Core and Peterborough
Southern	ET07	Southern Coastway	24743000	743	East Coastway
Southern	ET07	Southern Coastway	24744000	744	West Coastway
Southern	ET08	Southern Outer	24745000	745	London – Redhill - Reigate/Tonbridge/Gatwick
Southern	ET08	Southern Outer	24746000	746	London – Sussex Coast via Haywards Heath
Southern	ET08	Southern Outer	24747000	747	London – Brighton (Southern)
Southern	ET08	Southern Outer	24748000	748	London – Sussex Coast via Horsham



Southern	ET08	Southern Outer	24749000	749	London – Uckfield/East Grinstead
Southern	ET08	Southern Outer	24780000	780	London – Epsom (Fast)/Dorking/Guildford/Horsham
Southern	ET09	Southern Metro	24782000	782	London Victoria to South London Metro via Streatham Hill/Norbury
Southern	ET09	Southern Metro	24783000	783	London Bridge to South London Metro via Sydenham
Southern	ET09	Southern Metro	24785000	785	London Victoria to Sutton/Epsom via Hackbridge
Southern	ET09	Southern Metro	24786000	786	London to Caterham/Tattenham Corner (Fast)
Southern	ET09	Southern Metro	24787000	787	London Bridge/Blackfriars to South London Metro via Tulse Hill
Southern	ET10	Southern West London Line	24968000	968	Southern West London Line
Southern	ET11	Gatwick Express	24969000	969	Gatwick Express
Thameslink	ET12	Thameslink North Metro (MML)	22728000	728	TL MML metro services between The Core and Luton
Thameslink	ET13	Thameslink Kent Outer	22760000	760	TL Kent services between The Core and Maidstone East/Ashford International
Thameslink	ET13	Thameslink Kent Outer	22761000	761	TL Kent services between The Core and Rainham (via Greenwich)

**Part 2: PFPI Minutes**

<b>Service Group</b>	<b>CW</b>	<b>DW</b>	<b>OW</b>	<b>PW</b>	<b>SW</b>
ET01	23	11.5	11.5	11.5	0
ET02	23	11.5	11.5	11.5	0
ET03	23	11.5	11.5	11.5	0
ET04	30	15	15	15	0
ET05	30	15	15	15	0
ET06	30	15	15	15	0
ET07	45	22.5	22.5	22.5	0
ET08	38	19	19	19	0
ET09	23	11.5	11.5	11.5	0
ET10	90	45	45	45	0
ET11	23	11.5	11.5	11.5	0
ET12	23	11.5	11.5	11.5	0
ET13	30	15	15	15	0

**Key:**

CW Full Cancellation

DW Diverted

OW Change of Origin

PW Part Cancellation

SW Scheduled Cancellation