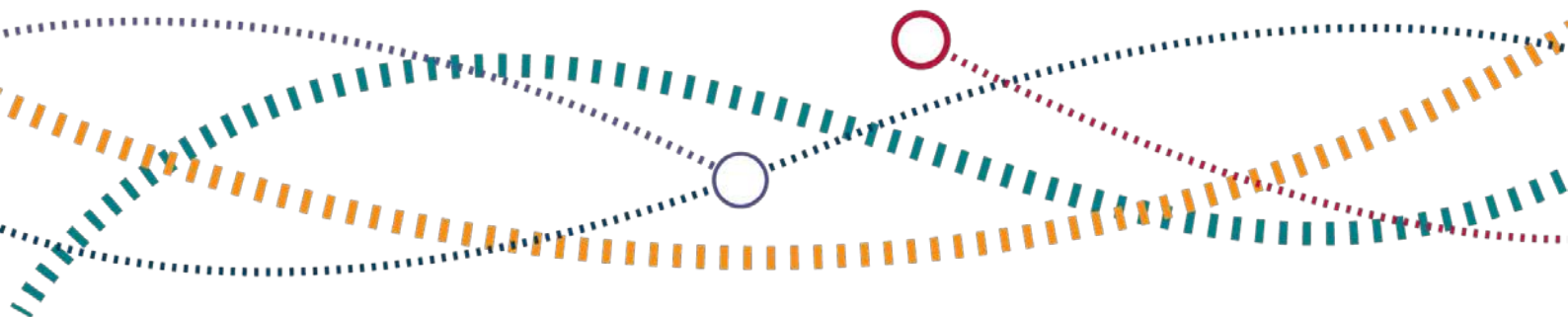




Model track access contract for passenger services

28 July 2021



Contents

Introduction	3
The front end of the contract	4
Schedule 1 – contract particulars	7
Schedule 2 – the routes	8
Schedule 3 – collateral agreements	9
Schedule 5 – the services and specified equipment	12
Schedule 6 – events of default, suspension and termination	20
Schedule 7 – access charges	21
Schedule 8 – performance regime	23
Schedule 9 – limitation on liability	25
Schedule 10 – Network Code and traction electricity modifications	26

Introduction

- 1 This module provides detailed guidance on completing our model passenger track access contract which can be found on our website [here](#).
- 2 Section 21 of the Railways Act 1993 allows ORR to prepare and publish model clauses for inclusion in access contracts and to encourage or require their use. In consultation with the industry we have developed model clauses covering all areas of access contracts and combined them into model contracts. Model contracts are extremely beneficial in maintaining standardised terms and conditions and a standard expression of access rights. We therefore encourage and usually require use of the relevant model contract by Network Rail and passenger operators.
- 3 We recognise that in certain circumstances there may be grounds for the adoption of bespoke provisions and these should be fully explained and justified when submitting a contract for our approval. Any customisations that are made should not change the numbering of any subsequent template clauses, paragraphs or Tables. In such cases, the text should be deleted and replaced with “Not used” so that the numbering of subsequent paragraphs or clauses is not affected. This is not necessary if deleting a section means there are no subsequent clauses or paragraphs. For example, if there are 6 paragraphs in a section and paragraph 5 is being deleted, you should insert: “ 5 Not used” and retain the final paragraph as number 6. However if you are deleting paragraphs 5 and 6 and there are no subsequent paragraphs, you can end the section at paragraph 4 without needing to include “5 Not used” “6 Not used”. Square brackets indicate places where text should be inserted, or choices made between options. They should be removed once the contract is completed and before it is entered into.
- 4 This guidance does not mean applicants should not take professional legal advice when producing a draft contract or amendment for approval. In particular, where special arrangements apply, this guidance alone may be insufficient. For this reason, it is important that those drafting a contract consider their specific contractual requirements and any bespoke arrangements that may be necessary.
- 5 Each model contract contains a ‘front end’ which sets out the rights and obligations of the parties to the contract, as well as incorporating various schedules that detail the nature of the rights and obligations.

The front end of the contract

The date of the contract

- 6 The very first line of the contract, just after the contents page, provides for the insertion of the date on which the contract is signed (and therefore made). The contract should be signed and dated only after ORR has directed Network Rail to enter into the track access contract with the beneficiary. It is not sufficient to put the date on the front cover of the contract (though the date should also be inserted where square brackets appear on the front cover).

Parties to the contract

- 7 This section should contain the official company name, registered address and company number of Network Rail and of the beneficiary of the contract, as registered with Companies House.

Clause 1.1 – Definitions

- 8 The terms used in the contract are defined in clause 1.1. Only two defined terms require the parties to insert specific information, which are :
- The Expiry Date requires the insertion of the date on which the contract will expire as provided for by clause 3.5;
 - The Longstop Date is the date by which the contract will lapse under clause 3.4 if the conditions precedent have not been met.

Clause 3.1 - Effective Date

- 9 This requires the insertion of the date on which the provisions of the contract (aside from clause 5) take effect. This is usually the date on which services are expected to start although it can be earlier if the contract contains contractual obligations or remedies which need to be operative before the commencement of services. Clause 5 is the clause by which Network Rail grants the operator permission to use the network. The contract will only take full effect once:
- the conditions precedent in clause 3.2 have been fully satisfied; and
 - all other provisions in the contract have taken effect (as provided for by clause 3.1).

Clause 12 – Governing law

- 10 The model contract is drafted to be consistent with the laws of England and Wales. Any railway company based in Scotland that wanted its company to be subject to Scottish law would need to amend this clause and any relevant provisions of the contract appropriately.

Clause 15 – Assignment and novation

- 11 Clause 15.2 requires Network Rail to participate in a novation under section 30 of the Act when requested by the franchising authority. (The default franchising authority in the model passenger contract is the Secretary of State. However, for situations where the Scottish Ministers hold this authority (though executed through the agency of Transport Scotland), or Welsh Ministers, the drafting of this clause should be amended to state the Scottish Ministers or Welsh Ministers.) Section 30 provides for circumstances where certain services are no longer to be run under a franchise agreement, in which case the franchising authority may need to novate the relevant contract so that it can provide the services itself or secure their provision through, for example, another train operator. However, in circumstances where there is a concession authority (such as Merseytravel or Transport for London) rather than a franchising authority, this clause will need to be amended appropriately. For open access passenger operators, the text of clauses 15.2 and 15.3 should be deleted and replaced with the words “Not used” as such operators do not provide services in accordance with a franchise or concession agreement. Clause 15.1 should be retained.

Clause 18.5 – Counterparts

- 12 Clause 18.5 provides that the contract may be executed in counterparts but please note that if signed in this way, two complete copies of the contract must be kept together to form the one contract. It is not valid just to retain one complete contract and just the signature page from the other contract. We have seen instances where someone, believing they have two copies of the same contract dispose of one. For this reason we would recommend signing in counterpart only in exceptional circumstances.

Clause 18.7 – Contracts (Rights of Third Parties) Act 1999

- 13 Clause 18.7 is designed to ensure that only the parties to the contract can enforce the terms of the contract. The only exceptions are the Secretary of State, who can enforce clauses 15.2 and 15.3 (novation) and the ORR, who can enforce any rights given to us under the contract (including the Network Code). This clause should be deleted from contracts governed by Scottish law.

- 14 Where the Secretary of State is not the franchising authority for the passenger operator (e.g. where the Scottish or Welsh Ministers hold this authority or there is a concession authority with rights under clauses 15.2 and 15.3, the drafting of this clause should be amended accordingly.
- 15 For open access passenger operators, it is normally the case that the only third party with rights under this provision would be ORR; in which case, the text of clause 18.7.3 (Application to the Secretary of State in respect of clauses 15.2 and 15.3) should be deleted and replaced with the words “Not used”.

Clause 19 – Transition (from a previous track access contract)

- 16 Clause 19 is designed to ensure a seamless transition between an expiring contract and a new one, either where the incumbent operator is renewing its contract or where a new operator is taking over following refranchising. This clause allows specific actions taken under the previous contract to have effect under the new contract, as if those actions had been taken under the new contract. This includes access proposals made during the timetabling process in Part D, any consultations undertaken, notices served, matters referred to dispute resolution, agreements reached or determinations made under Parts D, F, G H or J of the Network Code. For the purposes of Schedule 4 to the contract, notifications made in relation to restrictions of use established under the previous contract are also given effect in the new contract.
- 17 Where transition arrangements from a previous access contract are required, the definition of Previous Access Agreement should be completed in clause 19.2. If there is no Previous Access Agreement, the text of clause 19 should be deleted and marked as “Not used”.

Schedule 1 – contract particulars

- 18 This Schedule sets out the addresses and contact details of the parties for the service of notices. Fax details may be deleted and if so, any references to delivery of invoices, notices or statements in clause 16.1.2 clause 18.4, Schedule 8 paragraph 15.2, or anywhere else in the contract may be deleted.
- 19 The parties may, under clause 18.4.2 of the contract, make changes to this Schedule without ORR's approval. Any changes must be notified to the other party as soon as reasonably practicable and to ORR within 14 days of being made.

Schedule 2 – the routes

- 20 Schedule 2 is now a model schedule which does not require any adaptation. This gives the train operator permission to use the routes specified in Table 2.1 and Table 2.2 of Schedule 5. This requires the routing in the “Via” column of Table 2.1 to be clear, but it removes the requirement for all the routes over which the services are intended to operate to be listed as in the previous version of Schedule 2.
- 21 Schedule 2 also gives the train operator permission to use any reasonable route for diversionary purposes or Ancillary Movements and any reasonable location to Stable railway vehicles, subject to any necessary route clearance.

Schedule 3 – collateral agreements

- 22 This Schedule lists any collateral agreements which, under clause 3.2(c), must be entered into (executed and delivered) before the operator’s “permission to use” the network under clause 5 takes effect. In addition, Schedule 6 provides that the breach of a collateral agreement may amount to an Event of Default, which could lead to the suspension or termination of the contract.
- 23 Paragraph 1 requires the insertion of any Network Rail operated stations. If there are none, the text of paragraph 1 should be deleted and replaced with “Not used”.
- 24 Paragraph 3 (franchise agreement) will need to be amended where the franchising authority is other than the Secretary of State or where there is a concession agreement with a concession authority rather than a franchise agreement. For open access operators, the text of paragraph 3 is not required and should be deleted and replaced with “Not used”.

Schedule 4 – compensation for restrictions of use

- 25 Schedule 4 sets out the process whereby an operator is compensated by Network Rail for variations to its services as a result of planned restrictions of use (also known as “possessions”. It also incentivises Network Rail to plan restrictions of use as efficiently as possible, and give train operators as much notice as possible of a restriction of use. For historical reasons, Parts 1 and 2 and 4 are marked as “Not used” More on our policy on Schedule 4 can be found [here](#).
- 26 Schedule 4 is funded through the payment of an access charge supplement (ACS) paid by all franchised operators in return for receiving full compensation under the regime. Open Access operators could also pay the ACS and receive full compensation but so far have chosen not to adopt the full regime. Instead they only receive compensation for long or sustained disruption known as Type 3 Restrictions of Use. Schedule 4 for a new open access operator will therefore need to be adapted to remove compensation for Type 1 and Type 2 Restrictions of Use. If an open access operator wishes to have the full Schedule 4 regime of a franchised operator, it could do so in return for the payment of an access charge supplement. In such cases, the template Schedule 4 from the model passenger contract should be used.

Completing Annexes A to D to Part 3 of Schedule 4

- 27 Both the open access and franchised passenger operator regimes require the completion of Annexes A to D to Part 3 of Schedule 4. The data in these annexes is necessary to calculate both formula based revenue loss and cost compensation (which applies only where an ACS has been paid).
- 28 Annex A contains the notification factor tables. Notification factors denote the discount on the amount of revenue loss compensation Network Rail pays in relation to the time by which it notifies train operators about forthcoming possessions. There are three notification factor thresholds and Network Rail receives a greater discount the earlier it notifies operators about a possession. The table sets out the notification factor at each threshold for each operator’s service group. The notification factors level represents the maximum amount of revenue loss compensation Network Rail pays at each threshold. Notification factors are set for each control period.
- 29 Annex B contains a lookup table for estimated bus mile (“EBM”) weights. Estimated bus miles are used to calculate formula cost compensation for rail replacement

buses. Annex B describes how estimated bus miles should be calculated for each possession type and service group.

- 30 The first part of Annex B is a map which shows 'viable transfer points' – the points on the operator's network area where it is possible to transfer passengers from rail to bus transport. The second part of Annex B is the lookup table for estimated bus miles. For each route and pair of viable transfer points, this table should set out the bus replacement strategy for each type of possession. Bus replacement strategies should be separately identified where they vary according to infrastructure rules (for example which routes are open) and other operating rules (for example whether underground replacement is possible). For each service group affected by the possession, full or partial bus replacement should be identified together with the distance of the bus replacement.
- 31 Annex C contains the payment rate per train mile. This payment rate is used to calculate the change in operating costs due to a possession, for example the additional rail costs from using a diversion which is longer than the normal route. When completing the contract, Annex C should be populated with the rail operating cost per train mile for each service group based on the variable usage charge and fuel cost for the default train consist. Diesel fuel costs should be calculated in 2018/19 prices and based on a diesel rate cost of 61.30 pence per litre. Traction electricity costs for each vehicle type should be based on Network Rail's modelled traction electricity default rates for CP6 (in 2018/19 prices).
- 32 Annex D shows defined service group (DSG) revenues. DSG revenues are used to set the revenue loss thresholds that trigger the Sustained Planned Disruption provisions (SPD). Under SPD, an operator or Network Rail can initiate discussions to claim actual revenue (and costs) compensation, above or below the amount calculated by formulaic Schedule 4 payments. DSG revenues are usually derived from and are the same as Schedule 8 service group revenues. DSG revenues are determined at each periodic review and normally set for the control period. However, operators can apply to have these reset on application to ORR, for example to reflect a service group remapping

Access Charge Supplement for Restrictions of Use

- 33 Part 5 shows the ACS payable by the respective operator during each year of the control period. The ACS is set in ORR's determination for each control period but can be changed in cases of significant remapping of services.

Schedule 5 – the services and specified equipment

- 34 Schedule 5 describes the train operator's rights to run services on the network. It sets out the number of services between point of origin and destination, the stations at which the services may call and the rolling stock that may be used. Rights to other characteristics may be included such as service intervals, and maximum journey times but, as these restrict Network Rail's ability to change timetables in order to make the best overall use of the network, they will only be agreed by exception and require strong justification.
- 35 There are two types of access rights: firm rights and contingent rights. If a firm right is exercised by the Priority Date in the timetable process, Network Rail must comply with it when compiling the timetable. However, firm rights are subject to: the applicable Engineering Access Statement (EAS) and Timetable Planning Rules (TPR);
- Network Rail's rights to flex an access proposal within the terms of the contract; and
 - the operation of any other provisions of the Network Code.
- 36 Contingent rights are subject to additional factors outside the operator's control – normally other operators' firm rights but also the Decision Criteria. While Network Rail should try to accommodate access proposals underpinned by contingent rights, this may not always be possible. If Network Rail cannot accommodate all requests for train slots in the working timetable, firm rights (if exercised under Part D by the Priority Date for the timetable in question) take priority over contingent rights. Under the Decision Criteria Network Rail could, for example, refuse a request to use a contingent right if it felt the impact on performance would be unacceptable.
- 37 The template Schedule 5 provides clarity in terms of the rights an operator has, and facilitates comparison of the rights Network Rail has allocated on a particular route to different operators. We strongly recommend, and usually require, that the model clause provisions are used with as little customisation as possible.
- 38 A brief description of each table and the relevant provisions is included below. All provisions are subject to the EAS, TPR and the Network Code, notably Part D.

Paragraph 1.1 of Schedule 5 – definitions

- 39 Paragraph 1.1 sets out most of the definitions used in Schedule 5. Nearly all of these are standard and will not normally require amendment or the insertion of additional text. One exception to this is the definition of Peak Services and Off-Peak Services.
- 40 Paragraph 1.1 contains a definition of “Peak Services” and “Off-Peak Services”. The definition here should be completed if the definition of Peak Services is the same throughout Schedule 5. If different Service Groups have different Peak Services, it may be more appropriate for Peak Services and Off-Peak Services to be defined separately in the footnotes under each Service Group in table 2.1.
- 41 Where definitions are being included in paragraph 1.1, the times of the Peak Services will need to be inserted into the definition in place of the square brackets. The same applies to the footnoted definitions in Table 2.1. Either the definitions in paragraph 1.1 or the footnotes in Tables 2.1 should be used, but not both. Where one set is used, the other should be deleted. If the access rights are not divided into Peak Services and Off-Peak Services, both sets of definitions should be deleted.
- 42 For contracts relating to Scotland, the definition of Public Holiday should be amended appropriately as the model clause definition applies to public holidays in England and Wales.

Table 2.1 – Passenger Train Slots (firm rights)

- 43 Table 2.1 describes and lists the quantum (or number) of train slots in each individual service group to which the operator has firm rights. All subsequent tables in Schedule 5 add characteristics to this quantum of rights and it should be a relatively simple process to relate the rights in all subsequent Schedule 5 tables back to Table 2.1.
- 44 Column 1 of Table 2.1 (service description) - includes the start point, end point and any key intermediate points necessary to describe the route to which the operator has a firm right. Full station names should be included e.g. “Wakefield Westgate” or “Wakefield Kirkgate” rather than just “Wakefield”. Stations with double names should use the ampersand for clarity – e.g. Sandwell & Dudley (rather than Sandwell *and* Dudley).
- 45 The “Via” column should always be filled in where alternative routes are possible and the operator wants firm rights to a specific one. If there is more than one possible route and this column has not been used to specify which one, Network Rail may, subject to the decision criteria, timetable the services to use any route, subject to meeting the operator’s right to call at the stations listed in Table 4.1.

- 46 The “Description” column is intended to describe the different types of service on the route, such as “fast”, “semi-fast” or “all stations”. Alternatively, a numeric description can be used. This provides for easy cross-reference to the different calling patterns in Table 4.1.
- 47 “TSC” is the train service code for timekeeping monitoring system purposes (used for Schedule 8). If the TSC changes en route for a particular service, both TSCs should be included in the table stating, for clarity, where the change takes place.
- 48 The “Timing Load” column identifies the rolling stock to which the firm right applies. This is not just one type of rolling stock but any rolling stock which is capable of meeting the required performance characteristics e.g. a Timing Load of “150” would include class 150, 155 and 156. The firm right would apply to any of these classes of rolling stock, and to any rolling stock with better characteristics (e.g. 158). 221 would include 220 and 222, but 221T would not, as they are not capable of tilting.
- 49 Column 2 of Table 2.1 shows the quantum of train slots to which an operator is entitled on Weekdays, Saturdays and Sundays. The Weekday quantum can be split between Peak and Off-Peak. The Weekday quantum should be the sum of all Peak and Off-Peak train slots for the service. As mentioned previously, Peak and Off-Peak can be defined either in paragraph 1.1 or in the footnotes at the bottom of each Service Group.
- 50 If the access rights are not divided between Peak and Off-Peak, those columns should be deleted. If peak and off-peak are only used for certain services in a service group, for those services where they are not used, the corresponding cells in the table should be marked “N/A”.
- 51 Where Peak and Off-Peak are used for a particular service, “0” should be used instead of N/A if there are no slots in that particular period.
- 52 If an operator has distinct Summer and Winter services, these should have separate entries and the terms “Summer” and “Winter” must be defined (in paragraph 1 of Schedule 5) to include the periods to which they refer.
- 53 Table 2.1 is one table but should be divided by Service Group with a new heading within the table for each Service Group. Train slots with the same TSC should, as far as possible, be grouped together. A logical layout, such as from London terminal followed by first intermediate point, second intermediate point, etc., then starting from the opposite end of the line and moving towards London, will be more readily accessible, and assist the production of Appendix 1 of Schedule 8.

Paragraph 2.1 – Passenger Trains Slots

- 54 This paragraph gives the train operator firm rights to the train slots specified in Table 2.1 with rolling stock capable of achieving the specified timing load. If a train operator makes an access proposal to use rolling stock not capable of achieving the specified timing load, then the rights will be treated as contingent rights for the purposes of Part D.

Paragraph 2.2 – scheduling of part only of a Passenger Train Slot

- 55 Paragraph 2.2 allows for both firm and contingent rights for services to start or terminate at intermediate stations that are specified in this paragraph. The passenger operator may wish to start or terminate a service at any intermediate stopping point on the route, so long as this is permitted in the EAS and TPR. There may be some stations where it would be impractical to have many trains starting and terminating due to the capacity of the station.

Paragraph 2.3 – through services

- 56 There may be circumstances where the operator wishes to provide a through service (i.e. combining separate train slots to form one service). Paragraph 2.3 allows for the operator to be given rights to do this. The model passenger contract allows for the rights to through services to be specified as firm rights or contingent rights, depending on the circumstances.
- 57 Where a passenger operator will need to split and join trains at certain locations, providing separate portions to or from multiple locations, it would be appropriate for an additional sub-paragraph to be added to paragraph 2.3 to provide firm or contingent rights for this. For example:

“(c) Firm Rights to couple and uncouple trains at [names of locations].”

Table 2.2 – Additional Passenger Train Slots (contingent rights)

- 58 Table 2.2 describes and lists the quantum of train slots to which the operator has contingent rights. These are subject to other operators' firm rights and the Decision Criteria in Part D. Network Rail can flex access proposals using contingent rights or decline them under the timetabling process in accordance with the Decision Criteria. We would expect contingent rights to be agreed only where there is a high probability that the services could be accommodated in the timetable.
- 59 It is not possible to have firm rights attached to contingent rights. For example, a train operator cannot have firm rights for the service to run in the peak or off-peak or to a specific calling pattern if it only has contingent rights to run the service in the first place. These characteristics, or even whether the train slots will be included in the

timetable at all, will be decided by the process in Part D and the Decision Criteria. Rights in Table 2.2 are therefore specified as a daily quantum only.

- 60 Table 2.2 should be used for rights for regular scheduled services only – for example, additional summer Saturday services or services which the operator would like to run throughout the timetable but Network Rail cannot guarantee for the duration of the contract. Occasional relief services or services to sporting events, concerts etc. should not be included in Table 2.2 but are permitted by paragraph 2.8 of Schedule 5.

Paragraphs 2.4 and 2.5 – contingent rights

- 61 Paragraph 2.4 gives the operator contingent rights to the additional passenger train slots included in Table 2.2.
- 62 Paragraph 2.5 gives the operator contingent rights to:
- (a) call at any station in Table 4.1;
 - (b) to use part of any additional passenger train slot in Table 2.2 (including starting from and/or terminating at any intermediate station; and
 - (c) to combine rights to form a through service.
- 63 If any service in Table 2.2 is intend to call at any stations which are not included in Table 4.1 (this could be for any other service and whether as a firm or contingent right), an additional entry should be inserted in Table 4.1. with the required stations entered in column 3.

Paragraphs 2.6 and 2.7 – ancillary movements

- 64 Paragraphs 2.6 and 2.7 give the train operator firm rights to make ancillary movements that are necessary or reasonably required to give effect to other firm rights to services that the operator may hold. These rights are subject to Network Rail's right to vary the times in the access proposal in accordance with the Decision Criteria in Part D in order to maximise the efficient use of the network. For further guidance on ancillary movements see our guidance model on [‘the use of capacity’](#).

Paragraph 2.8 – relief services for special or seasonal events

- 65 Paragraph 2.8 gives contingent rights for additional services for seasonal or special events such as Christmas shopping services, sporting events, concerts etc. where these are necessary to accommodate increased demand created by the event and relieve overcrowding on the normal scheduled services. The services must be additional to services for which the operator has access rights in Table 2.1 or 2.2.

This is because its purpose is to provide additional relief services, rather than open up opportunities for totally new services.

Paragraphs 2.9 and 2.10 – public holidays

66 Paragraph 2.9 should be used to specify what rights (if any) the operator has on 25 and 26 December. Paragraph 2.10 should specify what rights the operator has on other public holidays – for example, whether these are the same rights as on a weekday, Saturday or Sunday. Without these paragraphs, the train operator will have the same rights as it usually has on the day of the week on which the public holiday falls.

Paragraph 2.11 – stabling

67 Clause 5.2(d) of the contract states that, for the purposes of Part D, stabling shall be treated as the use of a train slot. Paragraph 2.11 of Schedule 5 qualifies that treatment by saying that such stabling does not count against the quantum of Passenger Train Slots in Table 2.1. This paragraph should not be deleted as the operator has permission to stable under clause 5.2 even if it has no specific firm rights to stable and will need to make an Access Proposal under Part D to do so.

Paragraph 3 – Not used

68 Prior to 2014 paragraph 3 was widely used to specify rights to service intervals. As such rights may only be agreed in exceptional circumstances it has been removed from the template model contract.

Paragraph 4 and Table 4.1 – calling patterns

69 Paragraph 4 gives the train operator firm rights to the calling pattern specified in Column 2 of Table 4.1, the “Regular Calling Pattern”, or any sub-set of that calling pattern, the “Reduced Regular Calling Pattern”. Regular Calling patterns should only be specified for services for which the operator has firm rights in Table 2.1.

70 Paragraph 4.2 gives the operator Contingent Rights to call at those stations listed in column 3 (“Additional stations”).

71 In column 1 of Table 4.1 “Between” and “And” are used instead of “From” and “To”. This form of words gives the operator the right to call at the listed stations in both directions without having to have separate entries for each, thereby reducing the length of the table by 50%. In the unusual event that the services or the calling patterns are not the same in both directions, “Between” and “And” should be replaced with “From” and “To” and separate entries for each direction will be required,

- 72 Different calling patterns should be included for fast, semi-fast and all stations services, or for any other description (e.g. numerical) in the same way as they are used in the "description" column of Table 2.1. This makes it clear to which service in Table 2.1 the calling pattern refers.
- 73 Full names of stations should be used. Where relevant, "All stations" may be used instead of including the full list of stations. Only the intermediate stations should be listed in columns 2 and 3 of Table 4.1, not the origin and destination which are already included in column 1.
- 74 We expect that the calling patterns negotiated for Table 4.1 will take account of any obligations that a passenger operator may have under a franchise agreement. We expect to accept some degree of flexibility in calling patterns, if required: options could be created which enable services to stop at a range of alternative destinations (e.g. stops at A, B and one of C, D and E). However, such flexibility is more likely to be possible on the less busy parts of the network. On very congested parts, little flexibility in calling pattern is likely to be allowed since the ability to vary calling patterns could have a negative effect on available capacity. Conversely, the ability for the operator to omit intermediate stops can increase available capacity. We will expect to consider to what extent flexible calling patterns impact on available capacity on a given piece of network before approving such rights.
- 75 In the timetabling process, the train operator may make an access proposal which omits calls at stations in the Regular Calling Pattern. This is known as a Reduced Regular Calling Pattern. While the train operator retains a firm right to the Reduced Regular Calling Pattern, Network Rail may, if necessary, insert an appropriate amount of pathing time to compensate for the missed stops.

Table 5.1 Specified equipment

- 76 Paragraph 5.1 gives the operator firm rights to use the railway vehicles listed in 5.1(a) and contingent rights to operate any railway vehicles in RSSB's R2 system (incorporating the former Network Rail Rolling Stock Library). For the purposes of the contract, both categories are known as Specified Equipment.
- 77 The rights for each service specified in Table 2.1 are only treated as Firm Rights in the Part D timetable process if the operator's Access Proposal includes Specified Equipment which is capable of achieving the Timing Load. If the train operator makes an Access Proposal to use Specified Equipment which is not capable of achieving the Timing Load, then the rights will be treated as Contingent Rights for the purposes of Part D.

- 78 Paragraph 5.2 gives the train operator firm rights to operate trains up to the maximum length that the network can accommodate, subject to Network Rail having a right to vary train lengths where it cannot accommodate all access proposals to operate to the maximum length (for example, because of the non-availability of a platform of sufficient length because of the requirements of other operators). Variations of this nature will be subject to application of the Decision Criteria.

Addition access rights characteristics

- 79 Prior to 2014 access rights tended to be quite highly specified and often closely aligned with the timetable operating, or planned to operate, at the time. This included rights to intervals between services; maximum journey times; fastest journey times; turnaround times; and where trains would be stabled. The model contract catered for these in paragraphs 6 to 8 of Schedule 5. As such rights are now very rarely used, they have been removed from the template model contract.

Schedule 6 – events of default, suspension and termination

- 80 This Schedule sets out the Events of Default and provides for the suspension and, ultimately, termination of the contract where a party is in default.
- 81 In the model passenger contract, paragraph 2.4(b) of Schedule 6 relates to the abatement of payment of the Fixed Track Charge (defined in Schedule 7) where a Suspension Notice has been served by Network Rail. Where there is no Fixed Track Charge in the contract, this paragraph is not required and the text should be deleted and replaced with the words “Not used”.

Schedule 7 – access charges

- 82 Network Rail's track access charges for CP6 were established as part of PR18 and have effect from 1 April 2019 until 31 March 2024. The basis on which they are charged is contractualised in Schedule 7 which sets out the charges that the operator must pay to Network Rail in return for access to the network and for any electricity traction charges that are to be incurred. Network Rail describes the track access charges in its [Network Statement](#).
- 83 The rates for individual track access charges are set out in price lists, which Network Rail published as part of PR18 implementation. These are uplifted each year for inflation using the consumer prices index (CPI). For ease of reference, Network Rail publishes consolidated versions of the price lists each year that reflect these uplifts.
- 84 When drafting a new contract you will need to check that the charging provisions and references to the relevant price lists work correctly and, if necessary, propose any necessary bespoke. For example, the Schedule of Fixed Charges may refer to the previous train operator by name. In that case, any references in Schedule 7 to the Train Operator within the price list should instead refer to the name of the previous train operator within the price list.
- 85 If there has been a franchise remapping exercise and the Fixed Charges are being reapportioned the definitions of these terms may need to be amended to specify the charges within the definitions themselves, rather than referring to the published price lists.
- 86 If an operator is funding an enhancement, bespoke payment provisions may be added in Part 4 or Part 5 which are marked 'Not used' in the model contract. Further guidance can be found in the Enhancements section of the guidance module on [Charging](#).

Appendix 7C - Default Train Consist Data

- 87 In order to calculate the variable charge for each train movement, Network Rail needs to know the length and type of train used in that movement. This information is called the Train Consist Data. Normally, this information is input by the operator into industry systems. However, if that has not been done, it will not be possible for Network Rail to determine precisely what the train consisted of for a particular movement in order to bill correctly. Appendix 7C of Schedule 7 therefore lists the most likely formation for each service, to be used as default when the actual data is

not available. ORR has issued a [general approval](#) which permits, among other things, the amendment of data in Appendix 7C without seeking our specific approval.

Appendix 7D – “Metered Train M” for the purposes of paragraph 4.1.1 of Part 2

88 The default position is that traction electricity is charged using modelled rates for different types of rolling stock. Train operators can install electric meters on their trains and ‘opt in’ to metered billing. This will require Appendix 7 D to be populated. Further information can be found in our guidance model on charging.

Schedule 8 – performance regime

- 89 The model passenger contract performance regime provides a compensation mechanism in the event of poor operational performance and incentivises Network Rail and the passenger operator to improve operational performance. It also drives decision-making by Network Rail and the passenger operator in relation to performance management. Further information is available in the guidance module on [Performance](#).
- 90 In most cases, the main body of Schedule 8 does not need to be amended when a contract is being drafted. However, prior to control period 5 there was a Passenger's Charter element built into Schedule 8. While this was discontinued from April 2014, a small number of train operators retained a reporting obligation in their franchise agreements. In these cases, the definition of 'Charter Destination Point' and paragraph 4.1(f) (which contains the obligation on Network Rail to record arrival times at Charter Destination points) should be retained and a list of Charter Destination Points should be inserted in a table in Appendix 2. In all other cases, the definition and paragraph 4.1(f) should be deleted and Appendix 2 marked (Not used).
- 91 When completing the contract, appendices 1 and 3 of Schedule 8 should be populated.
- 92 Appendix 1 to Schedule 8 contains a table setting out performance points, payment rates, monitoring points etc. The service groups must reflect those in Table 2.1 of Schedule 5. Performance Points are specified (by reference to historical data) for both parties to the contract, and are subject to annual adjustment in accordance with ORR's final determinations of performance improvements for each control period. The direction in column I should be stated as either "Forward" or "Reverse". The weighting will normally be 50% of the whole for the service group in each direction, spread by commercial importance. Weightings may be shown either as percentages to two decimal places, or as decimals of 1, to the fourth decimal place, as long as the units used are clear. The weightings for each service group must total to either 100% or 1, as appropriate.
- 93 Each service should be monitored for performance throughout its journey and all end points should be a monitoring point, although our policy provides for certain exceptions to this.
- 94 Appendix 3 contains the Sustained Poor Performance ("SPP") thresholds. These are levels of performance over time sufficiently poor that we have deemed it a point at

which the passenger operator should be able to apply for additional compensation over and above the standard Schedule 8 compensation payable.

Schedule 9 – limitation on liability

95 This Schedule sets out the limitations on the liability of each party. Applicants will need to specify the liability cap in paragraphs 1(a) and 1(b) (i), having regard to our [policy on the liability framework](#).

Schedule 10 – Network Code and traction electricity modifications

- 96 This Schedule is the mechanism by which consequential modifications may be made to the track access contract as a result of changes to the Network Code or the traction electricity rules. When changes are made to the Network Code, under the procedure in Part C of the Network Code, or to the traction electricity rules under its internal change procedure, these are incorporated by reference into track access contracts and take effect even if the contract does not make specific reference to the changes. Consequential modifications to track access contracts may be needed to provide clarity and to avoid ambiguities developing between provisions in a consolidated track access contract and in the Network Code or the traction electricity rules (e.g. a defined term in the Network Code could be replaced or modified and consequential changes to track access contracts would bring them into line and avoid ambiguity).
- 97 This schedule does not require the applicant(s) to specify any particular information within it.



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