

**Annex B
to Part 3 of Schedule 4**

Lookup Table for EBM Weights

Viable Transfer Point (VTP)	Viable Transfer Point (VTP)	Via	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 (%)	EBM Total	
										From	To	Miles	Trains	From	To	Miles	Trains	% Trains			
[Description]																					

[Insert map]

Annex C
to Part 3 of Schedule 4
Payment Rate per train mile

Service Group	Description	Compensation Rate	Total Train Cost per Mile (Pence)

**Annex D
to Part 3 of Schedule 4**

Defined Service Group Revenue

Service Group	Description	Defined Service Group Revenue

Part 4

(Not Used)

Part 5

(Access Charge Supplement for Restrictions of Use)

1. The Train Operator shall pay or procure the payment to Network Rail of an Access Charge Supplement for Restrictions of Use (ACSRU) in respect of each Period equal to 1/13 of the amount specified below (as indexed in accordance with paragraph 2.) in respect of the Relevant Year commencing 1 April in which the first day of the relevant Period falls:

Year	£
2019-2020	[•]
2020-2021	[•]
2021-2022	[•]
2022-2023	[•]
2023-2024	[•]

Each such payment shall be made within 35 days after the end of the relevant Period.

2. Each such amount specified in paragraph 1. shall be adjusted in respect of payments made relating to Periods in the Relevant Year t in accordance with the following formula:

$$ACSRU_{pt} = ACSRU_t \bullet \left(1 + \frac{(CPI_{t-1} - CPI_{2018})}{CPI_{2018}} \right) \bullet InitialIndexationFactor$$

where:

$ACSRU_{pt}$ is the actual amount, expressed in pounds sterling and rounded to zero decimal places, payable in the Relevant Year t;

$ACSRU_t$ is the relevant amount specified in paragraph 1. of this Part 5 for the Relevant Year t (before indexation);

CPI_{t-1} has the meaning set out in paragraph 14.1 of Part 3 of this Schedule 4; and

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

but so that in relation to the Relevant Year commencing on 1 April 2019, $ACSRU_t$ shall have the relevant value specified in the relevant column of the table in paragraph 1..

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 02:00 hours and ending immediately before the next succeeding 02:00 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;

"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;

"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 [GO01]											
Service description: Somerset and Wiltshire inter urban						Passenger Train Slots					
From	To	Via	Description	TSC	Timing Load	Peak times ¹		Off-Peak Times ²	Weekday ³	Saturday	Sunday
						Morning Peak	Evening Peak				
Taunton	Weston-super-Mare	N/A		26671200	15x	N/S	N/S	N/S	2	2	2
Taunton	Westbury	Pass Frome		26671103	15x	N/S	N/S	N/S	2	1	1
Taunton	Westbury	Via Frome		26671101	15x	N/S	N/S	N/S	1	1	1
Taunton	Swindon	Via Frome and Melksham		26671100	15x	N/S	N/S	N/S	4	4	4
Frome	Westbury	N/A		26671102	15x	N/S	N/S	N/S	2	0	0
Westbury	Frome	N/A		26671102	15x	N/S	N/S	N/S	2	0	0
Swindon	Taunton	Via Frome and Melksham		26671100	15x	N/S	N/S	N/S	4	4	4
Weston-super-Mare	Taunton	N/A		26671200	15x	N/S	N/S	N/S	2	2	2
Westbury	Taunton	Via Frome		26671101	15x	N/S	N/S	N/S	1	1	1

1						2					
Westbury	Taunton	Pass Frome		26671103	15x	N/S	N/S	N/S	2	1	1

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 any Specified Equipment included in paragraph 5.1(a) that is capable of achieving the Timing Load shown. If the Train Operator makes an Access Proposal, or relies on a Rolled Over Access Proposal, to operate any of the Services specified in Table 2.1 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** In order to provide for the Scheduling of part only of Passenger Train Slots specified in Table 2.1 the Train Operator has:
- (vvvv) Firm Rights for such a Passenger Train Slot to commence from and/or terminate at **Taunton, Frome, and Westbury if that station is listed in its Calling Pattern; and firm rights to go via the Frome avoiding line in order to pass Frome, if Frome is listed in its calling pattern, and contingent rights to call at Frome if passing; and**
 - (wwwv) Contingent Rights for such a Passenger Train Slot to commence from and/or terminate at all other stations.
- 2.3** In order to provide through Services the Train Operator has:
- (xxxx) Firm Rights to combine Passenger Train Slots at **Taunton, Frome and Westbury; and**
 - (yyyy) Contingent Rights to combine Passenger Train Slots at **all other stations.**

Table 2.2: Additional Passenger Train Slots

1					2		
Service Group [GO01]							
Service description: Somerset and Wiltshire inter urban					Additional Passenger Train Slots		
From	To	Via	Description	TSC	Weekday	Saturday	Sunday
Taunton	Weston-super-Mare	N/A		26671200	2	2	2
Weston-super-Mare	Parson Street	N/A		26671201	4	4	4
Taunton	Westbury	Via Frome		26671101	2	2	2
Taunton	Swindon	Via Frome and Melksham		26671100	2	2	2
Norton Fitzwarren Junction	Taunton	N/A	To WSR	26671300	6	6	6
Taunton	Norton Fitzwarren Junction	N/A	From WSR	26671300	6	6	6
Swindon	Taunton	Via Frome and Melksham		26671100	2	2	2
Weston-super-Mare	Taunton	N/A		26671200	2	2	2
Westbury	Taunton	Via Frome		26671101	2	2	2

1					2		
Parson Street	Weston-super-Mare	N/A		26671103	4	4	4

Additional Passenger Train Slots

- 2.4** The Train Operator has Contingent Rights to additional Passenger Train Slots in the Working Timetable in respect of a Service Group up to the number listed against each Service specified in Table 2.2 and on the Days so listed.
- 2.5** A Contingent Right for an additional Passenger Train Slot under paragraph 2.4 includes:
- (zzzz) a Contingent right to call at any station listed in Table 4.1;
 - (aaaaa) a Contingent Right to have Scheduled part only of the Passenger Train Slot in question; and
 - (bbbbbb) a Contingent Right to combine Passenger Train Slots to provide a through Service.

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:
- (cccc) movements for the purpose of maintenance of rolling stock to and from maintenance depots;
 - (dddd) movements for driver training purposes; and
 - (eeee) 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:
- (ffff) 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
 - (ggggg) 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:
- (hhhhh) 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
 - (iiii) each relief Passenger Train Slot being allocated the relevant Train Service Code as shown in Schedule 7, Appendix 7C.
- 2.9** The exercise of a Stabling right shall not count against the number of Passenger Train Slots listed in Table 2.1.

3. (Not used)

4. Calling Patterns

Table 4.1: Calling Patterns

1					2	3
Service Group [GO01]						
Service description: Somerset and Wiltshire inter urban						
Between	And	Via	Description	TSC	Regular Calling Pattern	Additional stations
Taunton	Swindon	Frome, Melksham		26671100	All stations	
Taunton	Westbury	Frome		26671101	All stations	
Taunton	Westbury	Pass Frome		26671103	Castle Cary	Somerton / Langport (proposed), Bruton, Frome
Taunton	Weston-super-Mare			26671200	Bridgwater	Highbridge & Burnham
Weston-super-Mare	Parson Street			26671201		Weston Milton, Worle, Yatton, Nailsea & Backwell

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, subject to obtaining any necessary route clearance for the route in question, the Train Operator has:

(jjjjj) Firm Rights to operate the following railway vehicles:

Class 153

and

(kkkkk) Contingent Rights to operate any railway vehicles registered with RSSB's R2 system (incorporating the former Rolling Stock Library).

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.

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:

- (lllll) 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);
- (mmmmm) an Insolvency Event occurs in relation to the Train Operator or the Franchisee;
- (nnnnn)
 - (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;
- (ooooo) 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;
- (ppppp) 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;
- (qqqqq) any breach of this contract or any material breach of any of the Collateral Agreements by the Train Operator which, by itself or taken together with any other such breach, results, or is likely to result, in material disruption to train operations of other train operators; and
- (rrrrr) the Franchise Agreement is terminated.

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:

- (sssss) 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;
- (ttttt) an Insolvency Event occurs in relation to Network Rail;
- (uuuuu)
 - (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

(vvvvv) 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:

(wwwww) the nature of the relevant Event of Default;

(xxxxx) the date and time at which suspension is to take effect;

(yyyyy) 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;

(zzzzz) in the case of a Suspension Notice served on Network Rail, details of any necessary suspension of the Services; and

(aaaaa) 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:

(bbbbbb) the Train Operator shall comply with any reasonable restrictions imposed on it by the Suspension Notice;

(cccccc) 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;

(dddddd) service of the Suspension Notice shall not affect the Train Operator's continuing obligation to pay the Track Charges; and

(eeeeee) 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:

(ffffff) 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;

- (gggggg) in relation to Services suspended by the Suspension Notice, the amount of the Fixed Track Charge (as that term is defined in Schedule 7) shall be abated on a daily basis by an amount equal to the proportion of passenger vehicle miles not run on any day due to the suspension divided by the passenger vehicle miles timetabled for the Corresponding Day to that day (as that term is defined and determined under Part 3 of Schedule 4), as multiplied by the daily amount of the Fixed Track Charge (as so defined);
- (hhhhhh) 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
- (iiiiii) 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:

- (jjjjjj) railway vehicles;
- (kkkkkk) Services;
- (llllll) Routes; and
- (mmmmmm) 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:

- (nnnnnn) railway vehicles;
- (oooooo) Services;
- (pppppp) Routes; and
- (qqqqqq) 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:

- (rrrrrr) with all reasonable diligence, take such steps as are specified in the Suspension Notice to remedy the Event of Default; and
- (ssssss) 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:

- (ttttt) where the Train Operator fails to comply with any material restriction in a Suspension Notice;
- (uuuuuu) where the Train Operator fails to comply with its obligations under paragraph 2.5.3;
- (vvvvvv) where the Train Operator Event of Default specified in paragraph 1.1(a) has occurred and is continuing; or
- (wwwwww) 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:

- (xxxxxx) where Network Rail fails to comply with its obligations under paragraph 2.5.3;
- (yyyyyy) where the Network Rail Event of Default specified in paragraph 1.3(a) has occurred and is continuing; or
- (zzzzzz) 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:

- (aaaaaaa) the nature of the relevant Event of Default;
- (bbbbbbb) a date and time, which shall be reasonable in the circumstances, at which termination is to take effect; and
- (ccccccc) 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:

- (ddddddd) 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);
- (eeeeeee) 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
- (ffffff) this contract shall terminate on the later of:
 - (i) the date and time specified in the Termination Notice for the contract to terminate (or such later date and time as the party which served the Termination Notice notifies to the other before the date and time so specified); and
 - (ii) the date on which a copy of the Termination Notice is given to ORR.

4. Consequence of termination

4.1 Directions regarding location of Specified Equipment

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

4.2 *Failure to comply with directions*

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

4.3 *Evidence of costs*

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

Schedule 7

(Track Charges and Other Payments)

Part 1

(Interpretation)

1. Definitions

In 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;

"Aggregate Fixed Charges" means, in any Relevant Year t , the sum of the values of F_t under paragraph 1 of Part 2 and the corresponding provisions of each other relevant access agreement;

"Baseline timetabled traffic miles_t" has the meaning ascribed to it in paragraph 2A of Part 2;

"Basic Amount" has the meaning ascribed to it in paragraph 1.1(a) of Part 3A;

"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;

"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:

(ggggggg) 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

(hhhhhhh) 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;

"English & Welsh Grant Compensation Amount" has the meaning ascribed to it in paragraph 3.2 of Part 3A;

"English & Welsh Grant Dilution" has the meaning ascribed to it in paragraph 2.1 of Part 3A;

"English & Welsh Grant Dilution Date" has the meaning ascribed to it in paragraph 2.2 of Part 3A;

"excluded change" means, in relation to paragraph 2(a) of Part 7, a change to the arrangements established between Network Rail and any other person in respect of the payment of any amount under sections 6 or 8 of the Railways Act 2005;

"Fixed Track Charge" means a fixed annual charge, calculated in accordance with paragraph 1 of Part 2;

"Fixed Track Charge Indexation" has the meaning ascribed to it in paragraph 2 of Part 2;

“Fixed Track Charge Wash-Up” means the amount calculated in accordance with paragraph 2A 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;

“Grant Agreement” means the Grant Agreement made on or before 31 March 2019 between the Secretary of State and Network Rail for the payment of network grant;

"Grant Amount" has the meaning ascribed to it in paragraph 1.1(b) of Part 3A;

“Grant Mechanism” means the provision agreed on or before 31 January 2019 between Network Rail and the Secretary of State (and approved by ORR for the purposes of Part 3A on or before 28 February 2019) setting out how the annual amounts of network grant contained in Table E2B may vary or if no such provisions are agreed and approved, such provisions as ORR may determine on or before 31 March 2019 after consulting Network Rail and the Secretary of State;

"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:

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

where:

IIF means the Initial Indexation Factor;

CPI_{2017} means the CPI published or determined with respect to the month of November 2017; and

CPI_{2018} 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:

(iiiiiii) a train of a particular type; or

(jjjjjjj) 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;

"Network Rail Rebate" has the meaning ascribed to it in paragraph 7.1 of Part 2;

“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;

"Payment Date" has the meaning ascribed to it in paragraph 1.1(c) of Part 3A;

"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;

"**Rebatable Amount**" has the meaning ascribed to it in paragraph 7.2 of Part 2;

"**relevant access agreement**" means an access agreement under which any of the following persons obtains permission from Network Rail to use the Network:

(kkkkkkk) a franchise operator; or

(lllllll) a concession operator within the meaning of the Merseyrail Electrics Network Order 2003; or

(mmmmmmm) a TfL concessionaire within the meaning of the Railways (North and West London Lines) Exemption Order 2007; or

(nnnnnnn) any other person who benefits from a franchise exemption (within the meaning of section 24(13) of the Act) in relation to services for the carriage of passengers by railway; or

(ooooooo) a relevant franchising authority (as defined in section 30(3B) of the Act) or a person providing services for the carriage of passengers by railway on behalf of a relevant franchising authority under section 30 of the Act;

"**Relevant Year**" means a year commencing at 00:00 hours on 1 April and ending at 23:59 hours on the following 31 March; "Relevant Year t" means the Relevant Year for the purposes of which any calculation falls to be made; "Relevant Year t-1" means the Relevant Year preceding Relevant Year t; and similar expressions shall be construed accordingly;

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

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

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

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

(ppppppp) 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

(qqqqqqq) 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;

"**Schedule of Baseline Timetabled Traffic**" means the document entitled "Schedule of Baseline Timetabled Traffic" approved by ORR on or before 31 July 2019 (or, if not approved by that date, otherwise determined by ORR thereafter);

"**Schedule of Fixed Charges**" means the document entitled "Schedule of Fixed Charges" published by Network Rail on or about 20 December 2018;

"**Table E2B**" means Table E2B in ORR's document entitled "Schedule of Fixed Charges" published by Network Rail on or about 20 December 2018;

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

"**Timetabled train miles_t**" has the meaning ascribed to it in paragraph 2A of Part 2;

"**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;

"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:
 - (ii) 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
 - (iii) 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
- (rrrrrr) 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 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;

"**Volume Reconciliation**" has the meaning ascribed to it in the Traction Electricity Rules;

"**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:

(sssssss) the date on which the New Specified Equipment is first used on the Network by the Train Operator; or

(ttttttt) 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.

2. Interpretation

The provisions of clause 1.2(e) of this contract shall not apply to any references to the Grant Agreement in this Schedule 7.

Part 2

(Track Charges)

1. Principal formula

During each Relevant Year (and, in respect of F_t , prorated for each day of any period of this contract comprising less than a full Relevant Year), Network Rail shall levy and the Train Operator shall pay Track Charges in accordance with the following formula:

$$T_t = F_t + FW_t + V_t + D_t + E_t + EAV_t - W_t$$

where:

T_t means Track Charges in Relevant Year t ;

F_t means an amount in respect of the Fixed Track Charge in Relevant Year t , expressed in pounds sterling and rounded to two decimal places, which shall be:

(uuuuuuu) in respect of the Relevant Year commencing on 1 April 2019, the total of the amounts set out in the row relating to the Train Operator and the column relating to that year in the Schedule of Fixed Charges, multiplied by the Fixed Track Charge Indexation calculated in accordance with paragraph 2.1; and

(vvvvvvv) in respect of any Relevant Year t commencing on or after 1 April 2020, the total of the amounts set out in the row relating to the Train Operator and the column relating to that year in the Schedule of Fixed Charges, multiplied by the Fixed Track Charge Indexation for that year calculated in accordance with paragraph 2.2;

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

4.1 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 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.

Calculation of modelled consumption (including using PFM Rates)

4.1.2 E_{tmo} is derived from the following formula:

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

where:

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

E_{tmog} is derived from the following formula:

$$E_{tmog} = \Sigma C_i \bullet EF_{gjt} \bullet UE_{igt}$$

where:

Σ 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:

(wwwwwww) 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

(xxxxxxx) for New Modelled Trains, the Traction Electricity Modelled Default Rate shown in the Traction Electricity Modelled Consumption

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 the data to Network Rail in the format:

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

(aaaaaaaa) 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.

(bbbbbbbb) 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 seven days after the date of its issue.

(cccccccc) 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.

(dddddddd) 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**

(eeeeeeee) 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.

(ffffff) 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.

(ggggggggg) 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

(hhhhhhhhh) 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.

(iiiiiii) 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.

(jjjjjjjj) For the avoidance of doubt, nothing in this paragraph 10.5 shall apply to any sums which have fallen due in accordance with Part 3A of this Schedule 7.

Part 3

(Not used)

Part 3A

(English & Welsh Grant Dilution)

1. Grant Amounts

1.1 Grant Amounts, Basic Amounts and Payment Dates

For the purposes of this Part 3A:

(kkkkkkkkk) the Basic Amount, in respect of any Payment Date, is the amount which is notified by Network Rail to the Secretary of State in respect of that Payment Date, excluding any amounts notified by Network Rail which: (i) are not needed by Network Rail in respect of that Payment Date, or (ii) would cause the total of the Basic Amounts so notified for the Relevant Year in which the Payment Date fails to exceed the value of the Grant Amount for that Relevant Year;

(lllllllll) the Grant Amount, in respect of any Relevant Year, is the network grant amount set out in Table E2B as the annual amount to be paid in that Relevant Year by the Secretary of State to Network Rail by way of grant under section 6 of the Railways Act 2005, as adjusted from time to time in accordance with the Grant Mechanism; and

(mmmmmmmmm) the Payment Dates are the dates set out in the Grant Agreement for the payment of grant by the Secretary of State in each of the Relevant Years commencing on 1 April 2019, 1 April 2020, 1 April 2021, 1 April 2022, 1 April 2023 or, if no such dates are set out, the first Wednesday of each railway period in each such Relevant Year.

1.2 Not used.

2. English & Welsh Grant Dilution

2.1 Meaning of English & Welsh Grant Dilution

For the purposes of this Part 3A, there shall be an "English & Welsh Grant Dilution" in respect of a Payment Date if:

- (nnnnnnnn) the Secretary of State does not, for any reason, pay the whole or any part of the Basic Amount on or before the relevant Payment Date;
- (ooooo0000) the Secretary of State has not, for any reason, paid the whole of the Grant Amount for any Relevant Year minus any amounts already paid as Basic Amounts for that Relevant Year ("**the Balance of the Grant Amount**") on or before the final Payment Date of that Relevant Year; or
- (ppppppppp) the payment of the whole or any part of the Basic Amount or of the Balance of the Grant Amount in respect of that Payment Date is:
 - (i) subject to the performance by Network Rail or any other person of any obligation;
 - (ii) subject to the exercise by the Secretary of State or any other person of any discretion; or
 - (iii) contingent upon the happening of any event or circumstance, or any act or omission of any person.

2.2 Meaning of English & Welsh Grant Dilution Date

In respect of any English & Welsh Grant Dilution:

- (qqqqqqqqq) if the English & Welsh Grant Dilution is of the kind referred to in paragraph 2.1(a) or in paragraph 2.1(b), the English & Welsh Grant Dilution Date shall be the Payment Date in respect of which the Secretary of State does not pay the whole or any part of the Basic Amount or the Balance of the Grant Amount due on that date; and
- (rrrrrrrrr) if the English & Welsh Grant Dilution is of the kind referred to in paragraph 2.1(c), each Payment Date which falls during any period during which the payment of the whole or any part of a Basic Amount or the Balance of the Grant Amount is:
 - (i) subject to any of the matters specified in paragraph 2.1(c)(i) or (ii); or
 - (ii) contingent upon any of the matters specified in paragraph 2.1(c)(iii),shall be an English & Welsh Grant Dilution Date.

3. English & Welsh Grant Compensation Amount

3.1 Payment obligation

If an English & Welsh Grant Dilution occurs:

- (sssssssss) Network Rail shall notify the Train Operator and ORR that an English & Welsh Grant Dilution has occurred, and the circumstances in which it has occurred; and
- (ttttttttt) the Train Operator shall:
 - (i) send a copy of the notification it has received from Network Rail under paragraph 3.1(a) to any Passenger Transport Executive within whose area it provides services for the carriage of passengers by railway;
 - (ii) if the English & Welsh Grant Dilution is of the kind described in paragraph 2.1(a) or in paragraph 2.1(b), pay Network Rail an English & Welsh Grant Compensation Amount calculated in accordance with paragraph 3.2 three months after the English & Welsh Grant Dilution Date; and

- (iii) if the English & Welsh Grant Dilution is of the kind described in paragraph 2.1(c), pay Network Rail an English & Welsh Grant Compensation Amount calculated in accordance with paragraph 3.2 three months after each English & Welsh Grant Dilution Date.

3.2 Calculation

Any English & Welsh Grant Compensation Amount payable under paragraph 3.1 is an amount calculated in accordance with the following formula:

$$GC = (GA_p - P) \bullet \frac{F_t}{AF_t}$$

where:

GC means the English & Welsh Grant Compensation Amount;

GA_p means the Basic Amount or, as the case may be, the Balance of the Grant Amount for the Payment Date which is the same date as the English & Welsh Grant Dilution Date;

P means:

(uuuuuuuu) if the English & Welsh Grant Dilution is of the kind described in paragraph 2.1(a), the amount of any part payment of the Basic Amount or, as the case may be, the Balance of the Grant Amount which Network Rail certifies to the Train Operator, within seven days after the English & Welsh Grant Dilution Date, that it has received from the Secretary of State; and

(vvvvvvvv) if the English & Welsh Grant Dilution is of the kind described in paragraph 2.1(c), zero;

F_t has the meaning ascribed to it in paragraph 1 of Part 2; and

AF_t means the Aggregate Fixed Charge in Relevant Year t.

Part 4

(Not used)

Part 5

(Not used)

Part 6

(Supplemental Provisions)

Each invoice or credit note issued by Network Rail to the Train Operator shall contain or be accompanied by separate itemisation of the following charges and other information (as relevant) in respect of the period covered by the invoice or credit note:

(wwwwwwwww) the daily amount of the Fixed Track Charge and the number of days covered by the invoice;

(xxxxxxx) the rate of Variable Usage Charge and any VUC Default Charge and the relevant number of Vehicle Miles applicable to vehicles for each service so charged;

(yyyyyyyyy) 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;

(zzzzzzzz) the amount of the Electrification Asset Usage Charge and the number of days covered by the invoice;

(aaaaaaaaa) not used;

(bbbbbbbbb) not used;

(cccccccc) not used;

- (ddddddddd) the amount of any sum W_t payable as provided in paragraph 7 of Part 2;
- (eeeeeeeee) 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;
- (fffffffff) not used;
- (ggggggggg) in respect of any other sums which have fallen due in accordance with any provisions of this contract other than Part 3A, separately the amount payable in respect of each head of charge; and
- (hhhhhhhhh) the amount of any sum FW_t payable as provided in paragraph 2A of Part 2.

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:

- (iiiiiiii) 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
- (jjjjjjjj) as provided in paragraph 2 (and only as provided in paragraph 2), 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 before 1 April 2024.

2. Access charges reviews capable of coming into operation before 1 April 2024

ORR may carry out an access charges review in relation to any relevant part or parts of this contract at any time where it considers:

- (kkkkkkkk) that there has been, or is likely to be, a material change, other than an excluded change, in the circumstances of Network Rail or in relevant financial markets or any part of such markets; and
- (llllllll) that there are compelling reasons to initiate an access charges review, having due regard to its duties under section 4 of the Act, including in particular the duty to act in a manner which it considers will not render it unduly difficult for persons who are holders of network licences to finance any activities or proposed activities of theirs in relation to which ORR has functions under or by virtue of Part I of the Act.

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 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	Type of Train Movement	Default Train Consist Data
All	All passenger services and ECS	1 x Class 153

Appendix 7D

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

Train Type	Train ID	Traction Type
	N/A	

Schedule 8

(Performance Regime)

1. Interpretation

1.1 Definitions

In this Schedule 8 and its Appendices, unless the context otherwise requires:

"Applicable Timetable" means, in respect of a 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, and which is applicable to the Trains;

"Bi-annual Timetable" means in respect of any day or any Period the Passenger Timetable commencing on either the Principal Change Date or Subsidiary Change Date (as the case may be) in which falls the last day of the Period containing that day or the last day of that Period respectively;

"Cancelled Stop" means in relation to a Train scheduled in the Applicable Timetable to stop to set down passengers at a Monitoring Point, the Train failing to trigger that Monitoring Point (except where the failure of the train to trigger the Monitoring Point is due to a malfunction of the Monitoring Point);

"Cancellation Minutes" means, in relation to a Cancelled Stop, the number of Cancellation Minutes specified in column F of Appendix 1 for the Service Group which includes that Train;

"Cap" means, in relation to a Monitoring Point, or a Train, the cap for the relevant Service Group in column G of Appendix 1;

"Capped Value" means in relation to any Service Group, the capped value (if any) specified in respect of that Service Group in Appendix 1 (as indexed in accordance with paragraph 9);

"CPI" has the meaning ascribed to it in Schedule 7;

"Charter Destination Point" means any such station so specified in Appendix 2;

"ETCS" means the European Train Control System;

"Initial Indexation Factor" has the meaning ascribed to it in Schedule 7;

"Joint Inquiry" means a formal inquiry which is required by any of the Railway Group Standards to be held or is permitted by any of the Railway Group Standards to be held and is in fact held;

"Minutes Delay" means, in relation to a Train and a Recording Point, the delay at that Recording Point, calculated in accordance with paragraph 3;

"Minutes Late" means, in relation to a day and a Monitoring Point, the lateness at that Monitoring Point, calculated in accordance with paragraph 2;

"Monitoring Point" means, in relation to a direction of a Service, a point listed in column J of Appendix 1 as a point to be used for recording lateness of Trains in accordance with paragraph 2, and each such Monitoring Point shall be treated as a separate Monitoring Point notwithstanding that it may also be a Monitoring Point for the same Service in the opposite direction and/or for other Services;

"Network Rail Performance Point" or **"NRPP"** means, in relation to a Service Group, the Network Rail performance point specified in column B of Appendix 1;

"Off-Peak" where applicable, has the meaning ascribed to it in Schedule 5;

"Passenger's Charter" means a commitment to passengers generally (whether or not legally binding) made by the Train Operator or any Passenger Transport Executive (in respect of any services operated by the Train Operator which are the subject of arrangements between the Train Operator and that Passenger Transport Executive) in relation to the punctuality and/or reliability of all or any of the Trains. The foregoing shall not be construed as to include any specific alternative or additional arrangements with any particular passenger (whether or not legally binding);

"Passenger Timetable" means those elements of the Applicable Timetable which are intended to be advertised to the public;

"Peak" Where applicable, has the meaning ascribed to it in Schedule 5;

"Performance Data Accuracy Code" means the version of the Performance Data Accuracy Code referred to in Part B of the Network Code;

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

"Performance Sum" means, in relation to a Service Group, a sum of money which Network Rail or the Train Operator is liable to pay to the other under this Schedule 8, as calculated in accordance with paragraph 9 or 10, as the case may be;

"Period" means each consecutive period of 28 days during the term of this contract commencing at 00:00 hours on 1 April in each year, provided that the length of the first and last such Period in any year may be varied by up to seven days on reasonable prior notice from Network Rail to the Train Operator;

"Recording Point" means a point at which Network Rail records Trains using the Performance Monitoring System;

"Recovery Time" means additional time incorporated in the Applicable Timetable to allow for a Train to regain time lost during an earlier part of its journey;

"Relevant Year" has the meaning ascribed to it in Schedule 7;

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

"Season Ticket" means any ticket valid for unlimited travel on a Service for not less than a period of one calendar month;

"Service Code" means the third, fourth and fifth digits of an eight character train service code applied in the Performance Monitoring System to Trains and used to identify them;

"Service Group" means a collection of Services contained within the service groups specified in column A of Appendix 1;

"Train" means each train operating a Service which is:

(mmmmmmmmm) operated by or on behalf of the Train Operator pursuant to the permission to use the Routes granted under this contract; and

(nnnnnnnnn) used to provide services for the carriage of passengers by railway,

but excludes any and all trains making an Ancillary Movement; and

"Train Operator Performance Point" means, in relation to a Service Group, the Train Operator performance point specified in column D of Appendix 1.

1.2 **Interpretation**

For the purposes of this Schedule 8:

(oooooooo) a Train shall be treated as being in a Service Group for that part of its journey during which it satisfies the characteristics specified in columns A, H and J of Appendix 1 as forming a Service which is included in that Service Group;

(pppppppppp) events in respect of a Train shall be treated as occurring on the day on which the Train is scheduled in the Applicable Timetable to depart from the first point at which it is to pick up passengers; and

(qqqqqqqqqq) save as otherwise provided, each final calculation of minutes shall be accurate to three decimal places.

1.3 **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 8. Accordingly, for the purposes of this Schedule 8:

(rrrrrrrr) neither Network Rail nor the Train Operator shall be allocated any responsibility for those effects; and

(ssssssss) those effects shall not be regarded as causing any Minutes Late or Minutes Delay or Cancelled Stops.

2. Calculation of Minutes Late

The Minutes Late at a Monitoring Point on a day shall be derived from the following formula:

$$\text{MinutesLate} = \sum L$$

where:

L in respect of a Train is the lesser of:

(i) the number of minutes (rounded down to the nearest whole minute) by which the time at which the Train stops at the Monitoring Point is later than the time at which that Train is scheduled in the Passenger Timetable to stop at that Monitoring Point; and

(ii) the Cap,

provided that no regard shall be had for any Train which is not recorded as stopping at the Monitoring Point; and

\sum is the sum across all those Trains in the relevant Service Group which are scheduled in the Passenger Timetable to stop at that Monitoring Point on that day which do so stop.

3. Calculation of Minutes Delay

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

(tttttttt) in respect of the first 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 Recording Point is later than the time at which that Train is scheduled in the Applicable Timetable to do so; and

(uuuuuuuuu) in respect of any other Recording Point, the lesser of:

(i) the number of Minutes Delay in respect of that Recording Point calculated in accordance with paragraph 3(a) (as if that Recording Point were the first Recording Point triggered by that Train); and

(ii) the greater of $((A_1 - A_2) + B)$ and zero

where:

A_1 is the number of minutes between the time at which the Train triggers the Recording Point (rounded down to the nearest whole minute) and the time the Train last triggered a Recording Point (rounded down to the nearest whole minute);

A_2 is the relevant time lapse scheduled in the Applicable Timetable between those same two Recording Points; and

B is any Recovery Time between those Recording Points incorporated in the Applicable Timetable;

provided that:

(1) any Minutes Delay which arise from a single incident or a series of related incidents and which are less than three minutes in aggregate shall be deemed to be zero; and

(2) if for any Train the aggregate Minutes Delay in respect of all Recording Points caused by a single incident are in excess of the Cap specified in column G of Appendix 1 for that Service Group, then such excess shall be disregarded.

4. Recording of performance information

4.1 Recording of lateness, Minutes Delay and Cancelled Stops

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

- (vvvvvvvvvv) the time at which the Train stops to set down passengers at each Monitoring Point;
- (wwwwwwwwww) each Cancelled Stop and the incident(s) causing such Cancelled Stop where the incident can be identified;
- (xxxxxxxxxx) the time at which the Train triggers each Recording Point;
- (yyyyyyyyyy) the Minutes Delay for that Train at each Recording Point;
- (zzzzzzzzzz) where the Minutes Delay which that Train has accrued since the last Recording Point are greater than or equal to three minutes:
 - (i) the incident(s) causing each minute of any delay included in Minutes Delay; and
 - (ii) those Minutes Delay for which Network Rail is unable to identify a cause; and
- (aaaaaaaaaa) for each Charter Destination Point in respect of Trains for which the Charter Destination Point is a destination for the purposes of a Passenger's Charter, the time of the Train's arrival.

The provisions of this Schedule 8, 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.

4.2 Recording of allocated responsibility for Minutes Delay and Cancelled Stops

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

- (bbbbbbbbbbb) for which Network Rail is allocated responsibility in accordance with paragraph 5.2;
- (ccccccccc) for which the Train Operator is allocated responsibility in accordance with paragraph 5.3;
- (ddddddddddd) for which Network Rail and the Train Operator are allocated joint responsibility, in accordance with paragraph 5.4;
- (eeeeeeeeeee) for which no cause can be identified; and
- (fffffff) which are planned incidents in accordance with paragraph 5.7.

4.3 Failed Recording Points

Without prejudice to its obligations under Part B of the Network Code, Network Rail shall use all reasonable endeavours:

- (ggggggggggg) to restore as soon as reasonably practicable any failed Recording Point; and
- (hhhhhhhhhhh) pending such restoration, to compile such information from manual records and other sources, including the Train Operator, and otherwise to substitute such information as is appropriate to reflect as accurately as is reasonably practicable the actual performance of the relevant Trains for the purposes of this Schedule 8.

4.4 Provision of information by Train Operator

The Train Operator shall record and shall continue to record such information as Network Rail may reasonably require and which it is reasonable to expect the Train Operator to have or procure in connection with any Minutes Delay that may arise and shall provide such information to Network Rail promptly after such information first becomes available to the Train Operator.

Network Rail shall promptly notify the Train Operator upon Network Rail becoming aware of any failure or any likely failure to record accurately the information which it is required to record under paragraph 4.1. Any such notification shall be in sufficient detail to enable the Train Operator to institute the recording of such information in connection with the Trains for which the recording of information is subject to such failure or likely failure as the Train Operator may reasonably achieve. The Train Operator shall institute such recording as soon as it is reasonably able following receipt of the notification from Network Rail and will provide Network Rail with the resulting information no later than 17:00 hours two Working Days following the day on which it was recorded.

5. Allocation of responsibility for Minutes Delay and Cancelled Stops

5.1 Assessment of incidents causing Minutes Delay and Cancelled Stops

(iiiiiiiiiii) In assessing the cause of any Minutes Delay or Cancelled Stop, 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;

(jjjjjjjjjjj) The parties shall 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;

(kkkkkkkkkkk) Network Rail shall identify:

- (i) in respect of each incident recorded under paragraph 4.1(e)(i) as causing Minutes Delay, the extent to which that incident caused each of the Minutes Delay; and
- (ii) in respect of each incident recorded under paragraph 4.1(b), the extent to which that incident caused the Cancelled Stop;

(lllllllllll) So far as Network Rail is reasonably able to do so, it shall identify whether responsibility for incidents causing Minutes Delay or Cancelled Stops 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 5.

5.2 Network Rail responsibility incidents

Responsibility for Minutes Delay and Cancelled Stops on a day caused by incidents for which Network Rail is allocated responsibility pursuant to this paragraph 5.2 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 5.7), if that incident is caused wholly or mainly:

(mmmmmmmmmmm) by breach by Network Rail of any of its obligations under this contract; or

(nnnnnnnnnnn) (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

(oooooooooooo) (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 5.3(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.

5.3 Train Operator responsibility incidents

Responsibility for Minutes Delay and Cancelled Stops on a day caused by incidents for which the Train Operator is allocated responsibility pursuant to this paragraph 5.3 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 5.7) if that incident:

(pppppppppp) 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

(qqqqqqqqqq) 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.

5.4 Joint responsibility incidents

(rrrrrrrrrr) 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 5.7), caused by an act, omission or circumstance originating in connection with or at a station which:
 - (1) 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
 - (2) prevents the access of passengers through the station to or from the Train;and paragraphs 5.2 and 5.3 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 5.2 or 5.3.

(ssssssssss) Unless and to the extent otherwise agreed, Minutes Delay or Cancelled Stops caused by incidents for which Network Rail and the Train Operator are allocated joint responsibility pursuant to paragraph 5.4(a) shall be allocated 50% to Network Rail and 50% to the Train Operator.

5.5 Unidentified incidents: Minutes Delay

Responsibility for Minutes Delay on any day in respect of a Service Group caused by incidents which are unidentified, as recorded under paragraph 4.2(d), shall be allocated as follows:

(ttttttttt) if there are any Minutes Delay in respect of the Service Group recorded as being caused by incidents for which Network Rail or the Train Operator are allocated responsibility:

(i) 50% of the unidentified Minutes Delay under paragraph 4.2(d) shall be allocated to Network Rail, the Train Operator and joint responsibility incidents pro rata to the aggregate Minutes Delay for that Service Group respectively recorded as being their responsibility under this paragraph 5 for that day; and

(ii) the balance of the Minutes Delay under paragraph 4.2(d) shall be allocated to Network Rail; and

(uuuuuuuuuu) if no Minutes Delay on that day in respect of the Service Group are recorded as being caused by incidents for which Network Rail or the Train Operator are allocated responsibility, then Network Rail and the Train Operator shall each be allocated 50% of the unidentified Minutes Delay recorded under paragraph 4.2(d).

5.6 Unidentified incidents: Cancelled Stops

Responsibility for Cancelled Stops on a day in respect of a Service Group caused by incidents which are unidentified shall be allocated 50% to Network Rail and 50% to the Train Operator.

5.7 Planned incidents

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

(vvvvvvvvvv) such incident was a Restriction of Use notified in accordance with Schedule 4 by Network Rail to the Train Operator; or

(wwwwwwwwww) there is Recovery Time in respect of that incident.

5.8 Allocation of responsibility for Minutes Delay at Service Group level: aggregate Minutes Delay

In respect of a Service Group, the aggregate Minutes Delay on a day shall be the aggregate of all Minutes Delay recorded under paragraphs 4.2(a) to 4.2(d) in respect of all Trains in that Service Group scheduled in the Applicable Timetable.

5.9 Allocation of responsibility for Minutes Delay at Service Group level: Network Rail Minutes Delay

In respect of a Service Group, the Minutes Delay on a day allocated to Network Rail shall be the aggregate of any Minutes Delay allocated to Network Rail under paragraph 5.2, paragraph 5.4 and paragraph 5.5.

5.10 Allocation of responsibility for Minutes Delay at Service Group level: Train Operator Minutes Delay

In respect of a Service Group, the Minutes Delay on a day allocated to the Train Operator shall be the aggregate of any Minutes Delay allocated to the Train Operator under paragraph 5.3, paragraph 5.4 and paragraph 5.5.

5.11 Network Rail Cancelled Stops at Monitoring Point level

In respect of a Monitoring Point, the Cancelled Stops on a day allocated to Network Rail shall be the aggregate of any Cancelled Stops allocated to Network Rail under paragraph 5.2, paragraph 5.4 and paragraph 5.6.

5.12 Train Operator Cancelled Stops at Monitoring Point level

In respect of a Monitoring Point, the Cancelled Stops on a day allocated to the Train Operator shall be the aggregate of any Cancelled Stops allocated to the Train Operator under paragraph 5.3, paragraph 5.4 or paragraph 5.6.

6. Statement of allocated responsibility

6.1 Initial statement

For each day, Network Rail shall provide to the Train Operator as soon as reasonably practicable and in any event no later than the following Working Day:

(xxxxxxxxxxx) the allocation of responsibility for incidents made by Network Rail under paragraph 5; and

(yyyyyyyyyyyy) a summary for each Service Group showing:

- (i) the aggregate Minutes Delay and Cancelled Stops recorded under each category set out in paragraph 4.2; and
- (ii) a list of the Minutes Delay and Cancelled Stops (in each case broken down by incident) recorded as the responsibility of Network Rail and as the responsibility of the Train Operator.

6.2 Further statements

If Network Rail's nominated representative has reasonable grounds to believe that any further incident was the responsibility of the Train Operator or of Network Rail but was not shown as such in the information made available in accordance with paragraph 6.1, then Network Rail may, within seven days after the last Minutes Delay or Cancelled Stop caused by that incident, issue a notice in accordance with paragraph 15 revising the information and/or allocations of responsibility made available under paragraph 6.1.

6.3 Adjustment statements

If Condition B3.3 (adjustment to prior results) applies in respect of all or part of a Period, then Network Rail shall promptly issue to the Train Operator a statement showing the necessary adjustments (if any) to statements already issued and Performance Sums already paid in respect of the Period, and any such adjusting statement shall be treated as if it were a statement under paragraph 11.1 and, subject to paragraph 12.2, an adjusting payment shall be payable within 28 days of Network Rail's statement.

6.4 Disputes about statements of allocated responsibility

(zzzzzzzzzz) Except to the extent that it has, within two Working Days of receipt, notified Network Rail in accordance with paragraph 15 that it disputes the contents of a statement under paragraphs 6.1 or 6.2, the Train Operator shall be deemed to have agreed the contents of that statement. Any notification of a dispute shall specify the reasons for that dispute.

(aaaaaaaaaaaa) The parties shall attempt to resolve disputes notified in accordance with paragraph 6.4(a) as follows:

- (i) within the next two clear Working Days after notification of any dispute, nominated representatives of the parties shall attempt to resolve that dispute; and
- (ii) if agreement has not been reached after two clear Working Days, representatives authorised by a more senior level of management of the parties shall use all reasonable endeavours to negotiate a resolution of the dispute.

(bbbbbbbbbbbb) Negotiations under paragraph 6.4(b)(ii) shall continue, if necessary, until a date no earlier than five clear Working Days after the end of the Period in which the event giving rise to the dispute referred to in paragraph 6.4(a) occurred.

7. Allocation of Minutes Late to Network Rail

In respect of each Monitoring Point, the Minutes Late on a day at that Monitoring Point allocated to Network Rail (MLNR) shall be calculated according to the following formulae:

if MD is greater than zero

$$MLNR = \left(\frac{MDNR}{MD} \bullet ML \right) + DMLNR$$

or if MD is equal to zero

$$MLNR = (0.5 \bullet ML) + DMLNR$$

where:

ML is the aggregate Minutes Late at that Monitoring Point on that day for all Trains in that Service Group, calculated in accordance with paragraph 2;

MD is the aggregate Minutes Delay on that day in respect of the Service Group under which that Monitoring Point is listed in column J of Appendix 1, calculated in accordance with paragraph 5.8;

MDNR is that part of such MD allocated to Network Rail in accordance with paragraph 5.9; and

DMLNR is the deemed minutes late at that Monitoring Point on that day allocated to Network Rail, derived from the following formula:

$$DMLNR = RC \bullet CM$$

where:

RC is the number of Cancelled Stops recorded at that Monitoring Point on that day for which Network Rail is allocated responsibility in accordance with paragraph 5.11; and

CM is the Cancellation Minutes for that Service Group set out in column F of Appendix 1.

8. Allocation of Minutes Late to the Train Operator

In respect of each Monitoring Point, the Minutes Late at that Monitoring Point on a day allocated to the Train Operator (MLT) shall be calculated according to the following formulae:

if MD is greater than zero

$$MLT = \left(\frac{MDT}{MD} \bullet ML \right) + DMLT$$

or if MD is equal to zero

$$MLT = (0.5 \bullet ML) + DMLT$$

where:

ML is the aggregate Minutes Late at that Monitoring Point on that day for all Trains in that Service Group, calculated in accordance with paragraph 2;

MD is the aggregate Minutes Delay on that day in respect of the Service Group under which that Monitoring Point is listed in column J of Appendix 1, calculated in accordance with paragraph 5.8;

MDT is that part of such MD allocated to the Train Operator in accordance with paragraph 5.10; and

DMLT is the deemed minutes late at that Monitoring Point on that day allocated to the Train Operator, derived from the following formula:

$$DMLT = TC \bullet CM$$

where:

TC is the number of Cancelled Stops recorded at that Monitoring Point on that day for which the Train Operator is allocated responsibility in accordance with paragraph 5.12; and

CM is the Cancellation Minutes for that Service Group set out in column F of Appendix 1.

9. Network Rail Performance Sums

9.1 In respect of a Service Group, the Network Rail Performance Sum (NRPS) for each Period shall be calculated according to the following formula:

$$NRPS = (NRPP - NRWAML) \bullet BF \bullet NRPR$$

where:

NRPP is the Network Rail Performance Point for that Service Group specified in column B of Appendix 1 for the year in which that Period falls;

NRWAML is the aggregate for all Monitoring Points in the Service Group of the weighted average minutes late allocated to Network Rail in accordance with the following formula:

$$NRWAML = \sum \frac{(MNL \bullet MPW)}{SP}$$

where:

\sum is the sum across all Monitoring Points in the Service Group;

MNL is the Minutes Late allocated to Network Rail in respect of each Monitoring Point in that Period, in accordance with paragraph 7;

MPW is the weighting attributable to that Monitoring Point, as specified in column K of Appendix 1; and

SP is the aggregate number of stops to set down passengers at that Monitoring Point scheduled for the Period in the Applicable Timetable for which a stop or Cancelled Stop is recorded in accordance with paragraphs 4.1(a) and (b) except that if SP=0 for any Monitoring Point, then for that Monitoring Point it shall be deemed that $\frac{(MNL \bullet MPW)}{SP}$ shall equal zero;

BF is the relevant busyness factor estimated for the Period according to the following formula:

$$BF = \sum \left(MPW \bullet \frac{SD}{AS} \right)$$

where:

\sum is the sum across all Monitoring Points in the Service Group;

MPW is the weighting attributable to that Monitoring Point, as specified in column K of Appendix 1;

SD is the aggregate number of stops to set down passengers at that Monitoring Point scheduled in the Applicable Timetable for that Period for that Service Group; and

AS is the average number of stops per day at the Monitoring Point scheduled in the Bi-annual Timetable in respect of that Period except that if AS=0 for any Monitoring Point it shall be deemed that $\frac{(MPW \bullet SD)}{AS}$ shall equal zero; and

NRPR is the relevant Network Rail payment rate for that Service Group specified in column C of Appendix 1 as indexed in accordance with paragraph 13,

provided that:

- (i) if a Capped Value is specified in respect of that Service Group in Appendix 1 and the value of NRPS in respect of any Period is determined in accordance with the formula set out in this paragraph to be greater than the Capped Value in respect of such Period, then the value of NRPS shall be deemed to be equal to the Capped Value in respect of such Period;
- (ii) the Capped Value shall be multiplied by the CV indexation figure for the Relevant Year;
- (iii) the CV indexation figure in Relevant Year t shall be derived from the following formula:

$$CV_t = \left(1 + \frac{(CPI_{t-1} - CPI_{2018})}{CPI_{2018}} \right) \bullet InitialIndexationFactor$$

where:

CV_t means the CV indexation in Relevant Year t;

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

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

except that in relation to the Relevant Year commencing on 1 April 2019, CV_t shall equal 1 x Initial Indexation Factor.

9.2 Where NRPS is less than zero, Network Rail shall pay the amount of the NRPS to the Train Operator. Where NRPS is greater than zero, the Train Operator shall pay that amount to Network Rail.

10. Train Operator Performance Sums

10.1 In respect of a Service Group, the Train Operator Performance Sum (TPS) for each Period shall be calculated according to the following formula:

$$TPS = (TPP - TWAML) \bullet BF \bullet TPR$$

where:

TPP is the Train Operator Performance Point for the Service Group specified in column D of Appendix 1;

TWAML is the aggregate for all Monitoring Points in the Service Group of the weighted average minutes late allocated to the Train Operator in accordance with the following formula:

$$TWAML = \sum \frac{(MLT \bullet MPW)}{SP}$$

where:

\sum is the sum across all Monitoring Points in the Service Group;

MLT is the Minutes Late allocated to the Train Operator in respect of each Monitoring Point in that Period, in accordance with paragraph 8;

MPW is the weighting attributable to that Monitoring Point, as specified in column K of Appendix 1; and

SP is the aggregate number of stops to set down passengers at that Monitoring Point scheduled for the Period in the Applicable Timetable for which a stop or Cancelled Stop is recorded in accordance with paragraphs 4.1(a) and (b) except that if SP=0 for any Monitoring Point, then for that Monitoring Point it shall be deemed that $\frac{(MLT \bullet MPW)}{SP}$ shall equal zero;

BF is the relevant busyness factor estimated for the Period according to the following formula:

$$BF = \sum \left(MPW \bullet \frac{SD}{AS} \right)$$

where:

\sum is the sum across all Monitoring Points in the Service Group;

MPW is the weighting attributable to that Monitoring Point, as specified in column K of Appendix 1;

SD is the aggregate number of stops to set down passengers at the Monitoring Point scheduled in the Applicable Timetable for that Period for that Service Group; and

AS is the average number of stops per day at the Monitoring Point scheduled in the Bi-annual Timetable in respect of that Period except that if AS=0 for any Monitoring Point it shall be deemed that $\frac{(MPW \bullet SD)}{AS}$ shall equal zero; and

TPR is the relevant Train Operator payment rate for that Service Group specified in column E of Appendix 1 as indexed in accordance with the provisions in paragraph 13.

10.2 Where TPS is less than zero, the Train Operator shall pay the amount of the TPS to Network Rail. Where TPS is greater than zero, Network Rail shall pay that amount to the Train Operator.

11. Notification of Performance Sums

11.1 Notification

Within 14 days after the end of each Period, Network Rail shall provide the Train Operator with a statement for each Service Group for that Period showing:

(ccccccccccc) any 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

(ddddddddddd) any matter referred to in paragraph 6.1 which the Train Operator has disputed in accordance with paragraph 6.4(a) and which is still in dispute.

11.2 Disputes

Within 14 days after receipt by the Train Operator of a statement required under paragraph 11.1, the Train Operator shall notify Network Rail of any aspects of such statement 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 6. Such disputes and any matter referred to in paragraph 11.1(b) shall be resolved in accordance with the procedure in paragraph 16. Save to the extent that disputes are so notified, the Train Operator shall be deemed to have agreed the contents of each statement.

12. Payment procedures

12.1 Payments and set-off

(eeeeeeeeeee) In respect of any and all Performance Sums for which Network Rail and the Train Operator are liable in any Period, 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 after the end of the Period to which the payment relates.

(fffffffffff) Subject to paragraph 12.2, and save as otherwise provided, all other sums payable under this Schedule 8 shall be paid within 35 days after the end of the Period to which such payment relates.

12.2 Payments in the event of dispute

Where any sum which is payable under this paragraph 12 is in dispute:

(ggggggggggg) the undisputed amount shall be paid or set off (as the case may be) in accordance with paragraph 12.1;

(hhhhhhhhhhh) 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 after the end of the Period in which the dispute is resolved or determined; and

(iiiiiiiiiii) from the date at which such balance would but for the dispute have been due to be paid or set off, the disputed balance shall carry interest (incurred daily and compounded monthly) at the Default Interest Rate, unless the dispute relates to an incident the responsibility for which is the subject of a Joint Inquiry, in which case interest shall be payable at the prevailing base rate of Barclays Bank plc.

13. Payment rates

13.1 Each payment rate in columns C and E of Appendix 1, expressed in pounds sterling and rounded to two decimal places, shall be adjusted in respect of Periods in Relevant Year t in accordance with the following formula:

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

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} has the same meaning as set out in paragraph 9.1 above of this Schedule 8; and

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

but so that in relation to the Relevant Year commencing on 1 April 2019, R_t shall have the relevant value specified in the relevant column (either C or E) of Appendix 1, multiplied by the Initial Indexation Factor and in the next following Relevant Year, R_{t-1} shall have the same value.

14. Not used

15. Notices

15.1 All notices under this Schedule 8 shall be given in writing and shall be sent by prepaid first class post, email or fax or delivered by hand to the party in question at the address for service last notified by that party.

15.2 Any such notice shall be deemed to have been duly received:

(jjjjjjjjjj) if sent by prepaid first class post, three days after posting unless otherwise proven;

(kkkkkkkkkk) if sent by hand, when delivered;

(llllllllll) if sent by facsimile, (subject to confirmation of uninterrupted transmission by a transmission report) before 17:00 hours on a business day, on the day of transmission and, in any other case, at 09:00 hours on the next following business day ("business day" for these purposes being a day which is not a Saturday, Sunday or a Public Holiday in the place where the transmission is to be received); and

(mmmmmmmmmm) if sent by email, (unless a notice of non-delivery is received) upon receipt.

16. Disputes

16.1 If any dispute is notified under paragraph 11.2 it shall be resolved according to the following procedure:

(nnnnnnnnnn) 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;

(oooooooooo) if, for any reason, within seven days of the meeting referred to in paragraph 16.1(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;

(pppppppppp) 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

(qqqqqqqqqq) 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.

17. Amendments to Appendix 1

17.1 *Circumstances in which parties agree to amend Appendix 1*

Either party may by notice to the other propose that Appendix 1 be amended in accordance with this paragraph 17.

17.2 *Procedure for amendments to Appendix 1*

(rrrrrrrrrr) The party who wishes to amend Appendix 1 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 six 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.
- (sssssssssss) Any notice under paragraph 17.2(a) shall:
- (i) specify as far as possible that party's proposed amendments to Appendix 1; and
 - (ii) be accompanied by information and evidence in reasonable detail supporting the change proposed and setting out the reasons for it.
- (ttttttttttt) The party receiving a notice issued under paragraph 17.2(a) shall respond to that notice in writing, in reasonable detail and with reasons for its response, within 56 days of service of such notice.
- (uuuuuuuuuuuu) Promptly (and in any event within 34 days) following the service of any response under paragraph 17.2(c), the parties shall endeavour to agree whether Appendix 1 should be amended in accordance with this paragraph 17 and, if so, the amendments.
- (vvvvvvvvvvvv) If the parties fail to reach agreement within 90 days of service of a notice under paragraph 17.2(a), or if prior to that date both parties agree that agreement is unlikely to be reached within that period:
- (i) either party may notify ORR; and
 - (ii) if ORR elects to determine the matter, the parties shall furnish ORR with such information and evidence as ORR shall require in order to determine the matter, such determination to be binding on the parties.
- (wwwwwwwwwwww) If ORR does not elect to determine the matter within 56 days of receipt by ORR of notification in accordance with paragraph 17.2(e)(i), either party may refer the matter for resolution in accordance with the ADRR and the parties shall agree in a Procedure Agreement (such term to have the same meaning as in the ADRR) that:
- (i) the relevant ADRR Forum shall have regard to any relevant criteria and/or policy statement issued by ORR including in relation to the introduction of any capped value in respect of any Service Group in Appendix 1; and
 - (ii) that the relevant ADRR Forum will set out its reasoning in any determination.
- (xxxxxxxxxxxxx) An amendment to Appendix 1 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 17 (other than a determination by ORR pursuant to paragraph 17.2(e)(ii)), the parties shall ensure that ORR is furnished with such amendment and such information and evidence as ORR requires to decide whether or not to approve the amendment.
- (yyyyyyyyyyyyy) Any agreed amendment to Appendix 1 in connection with the proposal referred to in paragraph 17.1 which is agreed by the parties or determined by the relevant ADRR Forum, and which is approved by ORR under section 22 of the Act shall apply with effect from either:
- (i) the relevant Principal Change Date or Subsidiary Change Date (where paragraph 17.2(a)(i) applies); or
 - (ii) the date proposed by the party requesting the change (where paragraph 17.2(a)(ii) applies), unless otherwise agreed by the parties

or determined by the relevant ADRR Forum in accordance with paragraph 17.2(f).

(zzzzzzzzzzzz) Where ORR determines the matter subject to paragraph 17.2(e)(ii), it may issue a notice to the parties setting out the amendments to be made to Appendix 1 and the date, which may be retrospective, from which they shall take effect.

17.3 Adjustments to the Performance Monitoring System

Network Rail shall make appropriate amendments to the Performance Monitoring System to reflect the amendments to Appendix 1 by the date when in accordance with paragraph 17.2 such amendments are to take effect, or as soon as reasonably practicable thereafter. Where any such amendment to Appendix 1 or any consequential amendment to the Performance Monitoring System is not made until after that date, Network Rail shall, promptly following such amendments being made, issue to the Train Operator a statement showing the necessary adjustments to the statements already issued and the payments already made in respect of Performance Sums up to and including the Period commencing on the date when in accordance with paragraph 17.2 such amendments to Appendix 1 are to take effect. Any such adjusting statement shall be treated as if it were a statement under paragraph 11.1 and, subject to paragraph 12.2, an adjusting payment shall be payable within 35 days of that adjusting statement.

17.4 Costs of implementing amendment

Network Rail shall (subject to any determination of the relevant ADRR Forum as to costs, where a matter is referred to that forum under paragraph 17.2(f)) be entitled to ninety percent (90%) of costs incurred by or on behalf of Network Rail in assessing and implementing any amendments to Appendix 1 and the Performance Monitoring System, provided that those costs shall be the minimum reasonably necessary for Network Rail to assess and implement that amendment.

17.5 Relationship with Appendix 3 and remainder of Schedule 8

Amendments to Appendix 1 may require consequential amendments to Appendix 3, and therefore references in this paragraph to amendments to Appendix 1 shall include any amendments to Appendix 3 or any other relevant parts of Schedule 8 which are agreed or determined to be reasonably required in connection with those amendments to Appendix 1.

17A ETCS Amendments

17A.1 Circumstances in which ETCS Amendments can be made

(aaaaaaaaaaaa) Either party may by notice to the other propose that amendments are made to this Schedule 8 (and to any other provisions of this contract as a result of those amendments) as a consequence of the introduction of ETCS on any of the Routes that the Train Operator has permission to use ("ETCS Amendments").

(bbbbbbbbbbbb) ORR may make ETCS Amendments, subject to complying with paragraph 17A.3.

17A.2 ETCS Amendments agreed by the parties

(cccccccccccc) A party that wishes to make ETCS Amendments shall serve a notice on the other party that:

- (i) specifies as far as possible the proposed ETCS Amendments and the date from which they are to have effect; and
- (ii) is accompanied by information and evidence in reasonable detail supporting the proposed ETCS Amendments and setting out the reasons for making them.

(dddddddddddd) The party receiving a notice under paragraph 17A.2(a) shall respond in writing, in reasonable detail and with reasons for its response, within 30 Working Days of service of such notice.

(eeeeeeeeeeee) Promptly, and in any event within 20 Working Days following service of a response pursuant to paragraph 17A.2(b), the parties shall use

reasonable endeavours to agree the wording of the proposed ETCS Amendments and the date on which they are to have effect.

(ffffffffffff) If:

- (i) the parties agree to make ETCS Amendments pursuant to paragraph 17A.2(c); or
- (ii) the parties fail to reach agreement within 50 Working Days of service of a notice under paragraph 17A.2(a), or prior to that date the parties agree that it is unlikely that agreement will be reached within that period,

they shall notify ORR.

17A.3 **ORR right to approve, determine or make ETCS Amendments**

(gggggggggggg) If ORR:

- (i) receives a notification under paragraph 17A.2(d); or
- (ii) proposes to make ETCS Amendments itself,

then in deciding whether to approve, determine or make (as the case may be) the ETCS Amendments it shall:

- (A) give the parties and such other persons, if any, as it considers appropriate, the opportunity to make representations in relation to the proposed ETCS Amendments; and
- (B) take into account any representations received before making its decision, such decision to specify the date on which the ETCS Amendments shall have effect.

(hhhhhhhhhhhh) ORR may require either party to provide such information as it may reasonably require to make a decision pursuant to paragraph 17A.3(a), and such information shall be provided in accordance with any timescales and to the standard required by ORR.

18. **Compensation for sustained poor performance**

18.1 **Definitions**

In this paragraph 18, unless the context otherwise requires:

"Average Periodic Liability" means one thirteenth of the sum of all values of NRPS (as that term is defined in paragraph 9) to be calculated by deducting the sum of all values of NRPS for which the Train Operator is liable from the sum of all values of NRPS for which Network Rail is liable in each case in respect of the relevant Calculation Term;

"Calculation Term" means the 13 Periods immediately preceding each Periodic Liability Date;

"Periodic Liability Date" means the first day of the first, fourth, seventh and eleventh Periods in each Relevant Year ignoring for these purposes any Period that commences before the Transition Date as referred to in clause 19; and

"SPP Threshold" means the value specified in respect of the end of the relevant Calculation Term in Appendix 3 (as indexed in accordance with paragraph 19).

18.2 **Indemnity**

Network Rail shall indemnify the Train Operator against all Relevant Losses in accordance with this paragraph 18 if, and to the extent that, the Average Periodic Liability shows Network Rail has exceeded (that is, equalled or been worse than) the relevant SPP Threshold. For the avoidance of doubt, Relevant Losses for the purpose of providing compensation for sustained poor performance under this paragraph are to be measured in comparison to the position the Train Operator would have been in had Network Rail met the NRPP.

18.3 **Determination of Relevant Losses**

Subject to paragraph 18.4, the liability of Network Rail under paragraph 18.2 for sustained poor performance (SPPL) shall be determined in accordance with the following formula:

$$SPPL = RL - PS$$

where:

RL means the Train Operator's Relevant Losses arising as a direct result of Minutes Delay and Cancelled Stops during the Calculation 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; and

PS means the sum of all values of NRPS (as that term is defined in paragraph 9) to be calculated by deducting the sum of all values of NRPS for which the Train Operator is liable from the sum of all values of NRPS for which Network Rail is liable in each case in respect of the relevant Calculation Term;

18.4 Restrictions on claims by Train Operator

The Train Operator shall not be entitled to make a claim for Relevant Losses pursuant to this paragraph 18:

(iiiiiiiiiiii) if and to the extent that it has previously recovered those Relevant Losses whether under this paragraph 18 or otherwise; or

(jjjjjjjjjj) in relation to any Calculation Term or part of it that precedes the Transition Date as referred to in clause 19.

19. SPP Indexation

19.1 SPP Indexation

Each value specified in Appendix 3, expressed in pounds sterling and rounded to two decimal places, shall be multiplied by the SPP indexation figure for the Relevant Year.

19.2 Application of SPP Indexation

The SPP indexation figure in Relevant Year t shall be derived from the following formula:

$$SPPI_t = \left(1 + \frac{CPI_{t-1} - CPI_{2018}}{CPI_{2018}}\right) \bullet InitialIndexationFactor$$

where:

SPPI_t means the SPP indexation in Relevant Year t;

CPI_{t-1} has the meaning as set out in paragraph 9.1 above of this Schedule 8; and

CPI₂₀₁₈ has the meaning as set out in paragraph 9.1 above of this Schedule 8;

except that in relation to the Relevant Year commencing on 1 April 2019, CV_t shall equal 1 x Initial Indexation Factor.

Appendix 1

A	B	C	D	E	F	G	H		I	J	K
Service Group	Network Rail		TOC		Cancellation Minutes	Cap	Service Code		Direction	Monitoring Point	Weighting
	Performance Point	Payment Rate	Performance Point	Payment Rate							
GO01		X		X	90	180		All	All	All	x

Appendix 2

Charter Destination Points

(Not used)

Appendix 3
SPP Threshold

	Period:	3	6	10	13
2019/20					
2020/21					
2021/22					
2022/23					
2023/24					20%

Schedule 9

(Limitation on Liability)

1. Definitions

In this Schedule

"Contract Year" means each yearly period commencing on 22/05/2023 and subsequently on each anniversary of such date;

"Liability Cap" means:

(kkkkkkkkkkkk) in relation to the first Contract Year, the sum of £7.75M; and

(llllllllllll) 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 £7.75M;
- (ii) C_n is the Liability Cap in the nth 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:

(mmmmmmmmmmmm) 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

(nnnnnnnnnnnn) 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:

(oooooooooooo) 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

(pppppppppppp) 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:

(qqqqqqqqqqqq) result from a conscious and intentional breach by a party; or

(rrrrrrrrrrrr) 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:

(ssssssssssss) is a continuing breach of contract which continues for more than 12 months;

(ttttttttttt) is a continuing breach of contract which continues beyond a period within which it might reasonably be expected to have been remedied; or

(uuuuuuuuuuuu) 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:

(vvvvvvvvvvvvv)with the modifications; and

(wwwwwwwwwwwww) 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:

(xxxxxxxxxxxxx)the modifications which are to be made to this contract;

(yyyyyyyyyyyyy)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

(zzzzzzzzzzzzz)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:

(aaaaaaaaaaaaa) 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;

(bbbbbbbbbbbbbb) 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

(cccccccccccc) 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:

(dddddddddddd) stating the reasons for the agreed requisite adaptations;

(eeeeeeeeeeee) 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

(ffffffffffff) 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:

(gggggggggggggg) 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

(hhhhhhhhhhhhh) 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:

(iiiiiiiiiiii) 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

(jjjjjjjjjjjjjj) 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:

(kkkkkkkkkkkkkk) 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

(llllllllllllll) 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:

(mmmmmmmmmmmmmm) on the application of either party; and

(nnnnnnnnnnnnnn) 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:

(oooooooooooooo) the party of whom the request is made shall provide the requested information promptly and to the standard required by ORR; and

(pppppppppppppp) 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:

(qqqqqqqqqqqqqq) give to the parties any criteria which it requires to be applied in the negotiations; and

(rrrrrrrrrrrrrr) 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):

(ssssssssssssss) such procedure may be modified by ORR by a notice of procedural modification given by it to the parties; but

(ttttttttttttt) 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:

(uuuuuuuuuuuuuu) 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

(vvvvvvvvvvvvvv) 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:

(wwwwwwwwwwwwww) ORR has first consulted the parties and the Secretary of State in relation to the proposed relevant notice in question;

(xxxxxxxxxxxxxxx) 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;

(yyyyyyyyyyyyyyy) 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;

(zzzzzzzzzzzzzzz) 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

(aaaaaaaaaaaaaaaa) 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:

(bbbbbbbbbbbbbbbb) a modification notice; and

(cccccccccccccc) 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:

(dddddddddddddd) the right of either party to approach and obtain from ORR guidance in relation to the requisite adaptations; or

(eeeeeeeeeeeeeee) the right of ORR at any time to effect modifications to either 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.

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
Go-op Co-operative Limited