Track Access Contract (Charter Passenger Services)

(1) Network Rail Infrastructure Limited

(2) Locomotive Services (TOC) Limited

Dated 19 December 2025

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This Contract is made the nineteenth day of December 2025

Between:

(1) **Network Rail Infrastructure Limited**, a company registered in England under number 2904587 having its registered office at Waterloo General Office, London, SE1 8SW (**"Network Rail"**); and

(2) **Locomotive Services (TOC) Limited**, a company registered in England under number 10375954 having its registered office at 6th Floor, Capital Tower, 91 Waterloo Road, London SE1 8RT (the **"Train Operator"**).

Background

(A) Network Rail is the owner of the Network; and

(B) The Office of Rail and Road has issued a general approval that permits Network Rail to grant to the Train Operator permission to use the Network on the terms and conditions of this contract.

It is agreed as follows:

1. **Interpretation**

1.1 ***Definitions***

In this contract unless the context otherwise requires:

"Access Agreement" has the meaning ascribed to it in Part A of the Network Code;

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

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

"Act" means the Railways Act 1993;

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

"Affiliate" means, in relation to any company:

(a) a company which is either a holding company or a subsidiary of such company; or

(b) a company which is a subsidiary of a holding company of which such company is also a subsidiary,

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

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

"Applicable Engineering Access Statement" means the Engineering Access Statement in force in respect of the Routes on the Effective Date as from time to time amended or replaced under Part D of the Network Code;

"Applicable Timetable Planning Rules" means the Timetable Planning Rules in force in respect of the Routes on the Effective Date as from time to time amended or replaced under Part D of the Network Code;

"Applicable Timetable" has the meaning ascribed to it in Schedule 8;

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

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

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

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

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

"Contract Year" means each yearly period commencing on 1 January 2026 and subsequently on each anniversary of such date;

"Default Interest Rate" is two percent above the base lending rate of Barclays Bank PLC as varied from time to time;

"Effective Date" means the date that the provisions of this contract, other than Clause 5, take effect pursuant to Clause 3.1;

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

"Environmental Condition" has the meaning ascribed to it in Part E of the Network Code;

"Environmental Damage" has the meaning ascribed to it in Part E of the Network Code;

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

"Event of Default" means a Train Operator Event of Default or a Network Rail Event of Default;

"Expiry Date" means 31 December 2029;

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

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

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

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

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

(a) any step which has a reasonable prospect of success is taken by any person with a view to its administration under Part II of the Insolvency Act 1986;

(b) it stops or suspends or threatens to stop or suspend payment of all or a material part of its debts, or is unable to pay its debts, or is deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986, except that in the interpretation of this paragraph:

(i) not used

(ii) it shall not be deemed to be unable to pay its debts for the purposes of this paragraph if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is satisfied before the expiry of 21 days from such demand;

(c) its directors make any proposal under section 1 of the Insolvency Act 1986, or it makes any agreement for the deferral, rescheduling or other readjustment (or makes a general assignment or an arrangement or composition with or for the benefit of the relevant creditors) of all or a material part of its debts, or a moratorium is agreed or declared in respect of or affecting all or a material part of its debts;

(d) any step is taken to enforce security over or a distress, execution or other similar process is levied or sued out against the whole or a substantial part of its assets or undertaking, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;

(e) any step is taken by any person with a view to its winding up or any person presents a winding-up petition which is not dismissed within 14 days, or it ceases or threatens to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the other party before that step is taken (which approval shall not be unreasonably withheld or delayed); or

(f) any event occurs which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above,

unless:

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

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

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

"Longstop Date" means 30 April 2026;

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

"Network Code" means the document now known as the Network Code and formerly known as the Railtrack Track Access Conditions 1995;

"Network Rail Event of Default" has the meaning ascribed to it in paragraph 1.3 of Schedule 6;

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

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

"Railway Code Systems" means necessary systems within the meaning of the Systems Code;

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

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

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

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

"Relevant Losses" means, in relation to:

(a) a breach of this contract; or

(b) in the case of Clause 10, any of the matters specified in Clause 10.1(a), (b) or (c) or Clause 10.2(a), (b) or (c) (each a "breach" for the purpose of this definition),

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

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

"Routes" means that part of the Network specified in Schedule 2;

"safety authorisation" has the meaning ascribed to it by regulation 2 of, and Schedule 5 to, the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

"safety certificate" has the meaning ascribed to it by regulation 2 of, and Schedule 5 to, the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

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

"Services" means the railway passenger services specified in paragraph 2.1 of Schedule 5;

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

"Specified Equipment" has the meaning ascribed to it in Schedule 5;

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

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

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

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

"Timetable Period" has the meaning ascribed to it in Part D of the Network Code;

"Timetable Planning Rules" has the meaning ascribed to it in Part D of the Network Code;

"Track Charges" means the charges payable by or on behalf of the Train Operator to Network Rail, as set out in or calculated under Part 2 of Schedule 7;

"Train Consist Data" means information as to the number(s) and type(s) of railway vehicle comprised in a train movement;

"Train Operator Variation Request" has the meaning ascribed to it in Part D of the Network Code;

"Train Operator Event of Default" has the meaning ascribed to it in paragraph 1.1 of Schedule 6;

"Train Slot" has the meaning ascribed to it in Part D of the Network Code;

"Value Added Tax" means value added tax as provided for in the Value Added Tax Act 1994, and any tax similar or equivalent to value added tax or any turnover tax replacing or introduced in addition to them, and "VAT" shall be construed accordingly;

"Working Day" has the meaning ascribed to it in Part A of the Network Code; and

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

1.2 ***Interpretation***

In this contract, unless the context otherwise requires:

(a) the singular includes the plural and vice versa;

(b) any one gender includes the other;

(c) all headings are for convenience of reference only and shall not be used in the construction of this contract;

(d) reference to an item of primary or secondary legislation is to that item as amended or replaced from time to time;

(e) reference to a contract, instrument or other document is to that contract, instrument or other document as amended, novated, supplemented or replaced from time to time;

(f) reference to a party is to a party to this contract, its successors and permitted assigns;

(g) reference to a recital, Clause or Schedule is to a recital, clause or schedule of or to this contract; reference in a schedule to a Part of or an Appendix to a schedule is to a part of or an appendix to the schedule in which the reference appears; reference in a Part of a Schedule to a paragraph is to a paragraph of that part; reference to a Part of an appendix is to a part of the appendix in which the reference appears; and reference in a schedule to a Table is a reference to the table included in or annexed to that schedule;

(h) where a word or expression is defined, cognate words and expressions shall be construed accordingly;

(i) references to the word "person" or "persons" or to words importing persons include individuals, firms, corporations, government agencies, committees, departments, authorities and other bodies incorporated or unincorporated, whether having separate legal personality or not;

(j) "otherwise" and words following "other" shall not be limited by any foregoing words where a wider construction is possible;

(k) the words "including" and "in particular" shall be construed as being by way of illustration or emphasis and shall not limit or prejudice the generality of any foregoing words;

(l) words and expressions defined in the Railways Act 1993, the Railways and Other Guided Transport Systems (Safety) Regulations 2006 and Network Rail's network licence shall, unless otherwise defined in this contract, have the same meanings in this contract;

(m) not used;

(n) words and expressions defined in the Network Code shall have the same meanings in this contract; and

(o) if there is any conflict of interpretation between this contract and the Network Code, the Network Code shall prevail.

1.3 ***Indemnities***

Indemnities provided for in this contract are continuing indemnities in respect of the Relevant Losses to which they apply, and hold the indemnified party harmless on an after tax basis.

2. **Network Code**

2.1 ***Incorporation***

The Network Code is incorporated in and forms part of this contract.

2.2 ***Modifications to the Network Code***

If the Network Code is modified at any time, Schedule 10 shall have effect.

2.3 ***Compliance by other operators***

Except where ORR has directed otherwise in the exercise of its powers under the Act or the Network Code, and except in relation to London Underground Limited and Heathrow Express Operating Company Limited to the extent that such persons are not party to the Network Code, Network Rail shall ensure that all operators of trains having permission to use any track comprised in the Network agree to comply with the Network Code.

3. **Conditions precedent and duration**

3.1 ***Effective date***

The provisions of this contract, other than Clause 5, take effect from the later of the signature of this contract and 1 January 2026.

3.2 ***Conditions precedent to Clause 5***

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

(a) to the extent required by the Act and/or the Railways (Licensing of Railway Undertakings) Regulations 2005, the Train Operator is authorised to be the operator of trains for the provision of the Services by:

(i) a licence granted under section 8 of the Act; and/or

(ii) a European licence and corresponding SNRP;

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

(c) each of the Collateral Agreements is executed and delivered by all the parties to each such agreement and is unconditional in all respects (save only for the fulfilment of any condition relating to this contract becoming unconditional);

(d) each of the parties has, as necessary, a valid safety certificate or safety authorisation as required by the Railways and Other Guided Transport Systems (Safety) Regulations 2006 and has established and is maintaining a safety management system which meets the requirements of those Regulations; and

(e) the provisions of this contract, other than Clause 5, have taken effect in accordance with Clause 3.1.

3.3 ***Obligations to satisfy conditions precedent to Clause 5***

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

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

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

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

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

(a) this contract shall lapse save for the obligations of confidence contained in Clause 14 which shall continue in force; and

(b) neither party shall have any liability to the other except in respect of any breach of its obligations under this contract.

3.5 ***Expiry***

This contract shall continue in force until the earliest of:

(a) lapse under Clause 3.4;

(b) termination under Schedule 6; and

(c) 01:59 hours on the Expiry Date.

3.6 ***Suspension and termination***

Schedule 6 shall have effect.

4. **Standard of performance**

4.1 ***General standard***

Without prejudice to all other obligations of the parties under this contract, each party shall, in its dealings with the other for the purpose of, and in the course of performance of its

obligations under, this contract, act with due efficiency and economy and in a timely manner with that degree of skill, diligence, prudence and foresight which should be exercised by a skilled and experienced:

(a) network owner and operator (in the case of Network Rail); and

(b) train operator (in the case of the Train Operator).

4.2 ***Good faith***

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

5. **Permission to use**

5.1 ***Permission to use the Routes***

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

5.2 ***Meaning***

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

(a) to use the track comprised in the Routes for the provision of the Services using the Specified Equipment;

(b) to use the track comprised in the Network in order to implement any plan established under Part H of the Network Code;

(c) to make Ancillary Movements;

(d) to Stable, which shall be treated, for the purposes of Part D of the Network Code, as the use of a Train Slot;

(e) for the Train Operator and its associates to enter upon that part of the Network comprising the Routes, with or without vehicles; and

(f) for the Train Operator and its associates to bring things onto that part of the Network comprising the Routes and keep them there,

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

(i) the Network Code;

(ii) the Applicable Engineering Access Statement; and

(iii) the Applicable Timetable Planning Rules.

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

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

(a) the Train Operator shall, and shall procure that its associates shall, wherever reasonably practicable, first obtain the consent of Network Rail, which consent shall not be unreasonably withheld or delayed;

(b) the Train Operator shall remove any vehicle or other thing so brought onto any part of the Network when reasonably directed to do so by Network Rail; and

(c) whilst exercising any rights conferred by Clauses 5.2(e) and 5.2(f), the Train Operator shall, and shall procure that its associates shall, comply with such reasonable restrictions or instructions as Network Rail shall specify.

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

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

5.5 ***Not used***

5.6 ***The Services and the Specified Equipment***

Schedule 5 shall have effect.

5.7 ***Performance***

Schedule 8 shall have effect.

5.8 ***Stabling***

Network Rail shall use all reasonable endeavours to provide such Stabling facilities as are necessary or expedient for or in connection with the provision of the Services in accordance with the Working Timetable.

6. **Operation and maintenance of trains and Network**

6.1 ***General***

Without prejudice to the other provisions of this contract:

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

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

6.2 ***Trespass, vandalism and animals***

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

(a) trespass;

(b) vandalism; and

(c) intrusions on to the Network by animals,

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

6.3 ***Safety***

In relation to Safety Obligations:

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

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

6.4 ***Use of Railway Code Systems***

6.4.1 *General*

The parties shall:

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

(b) comply with the Systems Code.

6.4.2 *Provision of Train Consist Data*

Without prejudice to Clause 6.4.1, the Train Operator shall:

(a) provide to Network Rail such Train Consist Data as shall be necessary to enable Network Rail to calculate the amount of Track Charges; and

(b) procure that such data is true and accurate in all respects.

7. **Track Charges and other payments**

Schedule 7 shall have effect.

8. **Liability**

8.1 ***Performance Orders in relation to breach***

In relation to any breach of this contract:

(a) the Innocent Party shall be entitled to apply under Clause 13 for a Performance Order against the party in breach; and

(b) if a Performance Order is made, the party against whom it has been made shall comply with it.

8.2 ***Compensation in relation to breach***

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

9. **Not used**

10. **Liability - other matters**

10.1 ***Train Operator indemnity***

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

(a) a failure by the Train Operator to comply with its Safety Obligations;

(b) any Environmental Damage arising directly from the acts or omissions of the Train Operator or the proper taking by Network Rail under Condition E2 of the Network Code of any steps to prevent, mitigate or remedy an Environmental Condition which exists as a direct result of the acts or omissions of the Train Operator; and

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

10.2 ***Network Rail indemnity***

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

(a) a failure by Network Rail to comply with its Safety Obligations;

(b) any Environmental Damage to the Network arising directly from any acts or omissions of the British Railways Board prior to 1 April 1994 and any Environmental Damage arising directly from the acts or omissions of Network Rail; and

(c) any damage to the Specified Equipment or other vehicles or things brought onto the Network in accordance with the permission to use granted by this contract arising directly from Network Rail's negligence.

11. **Restrictions on claims**

11.1 ***Notification and mitigation***

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

(a) shall notify the other party of the relevant circumstances giving rise to that claim as soon as reasonably practicable after first becoming aware of those circumstances (and in any event within 365 days of first becoming so aware); and

(b) subject to Clause 11.1(c), shall take all reasonable steps to prevent, mitigate and restrict the circumstances giving rise to that claim and any Relevant Losses connected with that claim; but

(c) shall not be required to exercise any specific remedy available to it under this contract.

11.2 ***Restrictions on claims by Network Rail***

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

(a) shall exclude payments to any person under or in accordance with the provisions of any Access Agreement other than any such payments which are for obligations to compensate for damage to property, and so that any claim for indemnity under this contract for such payments for damage to property, in relation to any incident, shall be limited to:

(i) the maximum amount for which the Train Operator would be liable for such damage in accordance with the Claims Allocation and Handling Agreement; less

(ii) any other compensation which the Train Operator has an obligation to pay for such damage;

(b) shall exclude loss of revenue in respect of permission to use any part of the Network under or in accordance with any Access Agreement with any person; and

(c) shall:

(i) include Relevant Losses only to the extent that these constitute amounts which Network Rail would not have incurred as network owner and operator but for the relevant breach; and

(ii) give credit for any savings to Network Rail which result or are likely to result from the incurring of such amounts.

11.3 ***Restrictions on claims by Train Operator***

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

(a) shall exclude any Relevant Losses to the extent that they result from delays to or cancellations of trains; and

(b) shall:

(i) include Relevant Losses only to the extent that these constitute amounts which the Train Operator would not have incurred as train operator but for the relevant breach; and

(ii) give credit for any savings to the Train Operator which result or are likely to result from the incurring of such amounts.

11.4 ***Restriction on claims by both parties***

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

(a) do not arise naturally from the breach; and

(b) were not, or may not reasonably be supposed to have been, within the contemplation of the parties:

(i) at the time of the making of this contract; or

(ii) where the breach relates to a modification or amendment to this contract, at the time of the making of such modification or amendment,

as the probable result of the breach.

11.5 ***Limitation on liability***

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

(a) does not limit any liability arising under Schedule 5, Schedule 7 or Schedule 8;

(b) in relation to a failure to perform an obligation under the Network Code, only to the extent (including as to time and conditions) that the Network Code so provides; and

(c) subject to Clause 18.3.3.

11.6 ***Claims Allocation and Handling Agreement***

11.6.1 *General*

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

11.6.2 *Restriction of application*

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

11.6.3 *Liability for small claims*

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

12. Governing law

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

13. Dispute resolution

13.1 ***ADRR***

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

(a) any Part of the Network Code provides for an alternative dispute resolution procedure for the Relevant Dispute, in which case such alternative procedure shall apply;

(b) any Part of Schedule 5, Schedule 7 or Schedule 8 provides for an alternative dispute resolution procedure for the Relevant Dispute, in which case such alternative procedure shall apply; or

(c) Clause 13.2 applies.

13.2 ***Unpaid sums***

If either party fails to pay:

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

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

then:

(i) the amount invoiced or sum due, as referred to in Clause 13.2(a) or (b), shall immediately constitute a debt due and owing from the party who has failed to pay the invoice or sum due to the other party (and to any assignee of a party's right to payment in respect of any invoice or other sum due);

(ii) such debt shall be recoverable by any means available under the laws of England and Wales; and

(iii) the dispute resolution procedures in Clauses 13.1 and 13.3 to 13.5 shall not apply to proceedings commenced under this Clause 13.2.

13.3 ***Performance Orders***

13.3.1 *Power to order provisional relief*

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

13.3.2 *Performance Orders*

A Performance Order:

(a) is an order made under Clause 13.3.3(b), relating to a Relevant Dispute, whether by way of interim or final relief; and

(b) may be applied for by Network Rail or the Train Operator in the circumstances set out in Clause 8.1, subject to the qualifications in Clause 17.8,

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

13.3.3 *Duties of arbitrator in relation to Performance Orders*

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

(a) the arbitrator shall decide as soon as possible whether the application is well founded or not; and

(b) if the arbitrator decides that the application is well founded, he shall be required to make an interim or final declaration to that effect and, in that event, the arbitrator may also make any interim or final order directing any party to do or to refrain from doing anything arising from such declaration which he considers just and reasonable in all the circumstances.

13.4 ***Remedies***

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

(a) the powers specified in sections 48(3) to (5) of the Arbitration Act 1996;

(b) the powers specified in the ADRR;

(c) the power to make Performance Orders; and

(d) the power to order within the same reference to arbitration any relief specified in Clause 13.4(a), (b) and (c) consequent upon, or for the breach of, any interim or final Performance Order previously made.

13.5 ***Exclusion of applications on preliminary points of law***

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

14. **Confidentiality**

14.1 ***Confidential Information***

14.1.1 *General obligation*

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

14.1.2 *Network Rail - Affiliates*

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

14.1.3 *Train Operator - Affiliates*

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

14.2 ***Entitlement to divulge***

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

(a) to ORR;

(b) to the Secretary of State;

(c) to any Affiliate of either party;

(d) to any officer or employee of the party in question or any person engaged in the provision of goods or services to or for him if disclosure is necessary or reasonably required to enable the party in question to perform its obligations under this contract, upon obtaining an undertaking of strict confidentiality from such officer, employee or person;

(e) to any professional advisers or consultants of such party engaged by or on behalf of such party and acting in that capacity, upon obtaining an undertaking of strict confidentiality from such advisers or consultants;

(f) to any insurer or insurance broker from whom such party is seeking insurance or in connection with the making of any claim under any policy of insurance upon obtaining an undertaking of strict confidentiality from the insurer or insurance broker;

(g) to any lender, security trustee, bank or other institution from whom such party is seeking or obtaining finance or credit support for such finance, or any advisers to any such entity, or any rating agency from whom such party is seeking a rating in

connection with such finance or credit support, upon obtaining an undertaking of strict confidentiality from the entity, advisers or rating agency in question;

(h) to the extent required by the Act, the Railways (Licensing of Railway Undertakings) Regulations 2005, any other applicable law, the rules of any recognised stock exchange or regulatory body or any written request of any taxation authority;

(i) to the extent that it has become available to the public other than as a result of a breach of confidence; and

(j) under the order of any court or tribunal of competent jurisdiction (including the Allocation Chair or any relevant ADRR Forum, each as defined in the ADRR).

14.3 ***Return of Confidential Information***

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

(a) is made on or within 2 months after the Expiry Date or, if this contract lapses or is terminated earlier, is made within 2 months after the date on which this contract lapses or is terminated;

(b) is reasonable; and

(c) contains a sufficient description of the relevant Confidential Information to enable such information to be readily identified and located.

14.4 ***Retention or destruction of Confidential Information***

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

14.5 ***Ownership of Confidential Information***

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

14.6 ***Network Code and Schedule 7***

Nothing in this Clause 14 restricts the right of Network Rail to disclose information to which this Clause 14 applies to the extent that it is permitted or required so to do under the Network Code or Schedule 7.

15. Assignment and novation

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

16. Payments, interest and VAT

16.1 ***Payment***

16.1.1 *No deduction*

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

16.1.2 *Delivery of invoices*

All invoices issued under Schedule 7, or statements of amounts payable under Schedule 5 or Schedule 8 or the Network Code, shall be delivered by hand at, or sent by prepaid first class post or by email to, the address for service for the recipient specified in Schedule 1 and shall be deemed to have been received by the addressee in accordance with Clause 18.4.3.

16.1.3 *Content of invoices and other statements of amounts payable*

Each invoice and statement of amounts payable shall contain such detail as to the constituent elements of the amounts stated to be payable as shall be necessary or expedient so as to enable the person to whom it is given to understand and check it and, where required by either party, include a purchase order number.

16.1.4 *Method of payment*

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

16.2 ***Interest***

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

16.3 ***VAT***

16.3.1 *Payment of VAT*

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

16.3.2 *Reimbursement of VAT*

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

16.3.3 *VAT credit note to be issued on repayment*

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

17. Force Majeure Events

17.1 *Meaning of Force Majeure Event*

In this Clause 17:

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

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

(a) an act of the public enemy or terrorists or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;

(b) acts of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;

(c) natural disasters or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);

(d) nuclear, chemical or biological contamination;

(e) pressure waves caused by devices travelling at supersonic speeds;

(f) discovery of fossils, antiquities or unexploded bombs; and

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

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

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

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

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

17.2 *Nature and extent of relief for Force Majeure*

Force Majeure relief under this Clause 17:

(a) extinguishes the obligation of the Affected Party to indemnify the other party under Clause 8.2 in respect of Relevant Losses sustained as a result of the failure of the Affected Party to perform a Relevant Obligation; but

(b) is not available in respect of:

  (i) any obligation to pay money under Schedule 5, Schedule 7 and Schedule 8; or

  (ii) any other obligation to do or refrain from doing any other thing provided for in this contract; and

(c) is only available in relation to a failure to perform an obligation under the Network Code to the extent (including as to time and conditions) that the Network Code so provides.

17.3 ***Entitlement to Force Majeure relief***

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

(a) performance of the Relevant Obligation has been prevented or materially impeded by reason of a Force Majeure Event;

(b) it has taken all reasonable steps, taking account of all relevant circumstances (including as to whether the event in question could reasonably have been anticipated):

(i) to avoid the occurrence of the Force Majeure Event; and

(ii) to minimise, and where practicable avoid, the effects of the Force Majeure Event on its ability to perform the Relevant Obligation; and

(c) except in the case of Clause 17.1(f), none of the Affected Party, its officers, employees or agents caused the Force Majeure Event.

17.4 ***Procedure for claiming relief***

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

17.5 ***Force Majeure Notices and Reports***

17.5.1 *Force Majeure Notice*

In relation to any Relevant Force Majeure Event:

(a) as soon as reasonably practicable after the Affected Party becomes aware, or ought reasonably to have become aware, that such Force Majeure Event qualifies for relief under this Clause 17 (and, in any event, within 72 hours of becoming aware of such circumstances), the Affected Party shall give a Force Majeure Notice; and

(b) the Force Majeure Notice shall include detailed particulars (to the extent available) of the Relevant Force Majeure Event and its consequences, its effects on the Affected Party, the Relevant Obligations, the likely duration of such consequences and effects and the remedial measures proposed by the Affected Party to avoid or remove the Relevant Force Majeure Event or to mitigate its consequences and effects.

17.5.2 *Force Majeure Report*

Following the giving of a Force Majeure Notice:

(a) the Affected Party shall give a Force Majeure Report as soon as practicable, and in any event within 7 days of service of the Force Majeure Notice; and

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

17.5.3 *Other information*

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

17.6 ***Mitigation***

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

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

(b) minimise the duration of such Force Majeure Event,

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

17.7 ***Duration of relief for force majeure***

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

(a) the date on which its performance of the Relevant Obligations is no longer prevented or materially impeded by the Relevant Force Majeure Event; and

(b) the date on which such performance would no longer have been prevented or materially impeded if the Affected Party had complied with its obligations under Clause 17.6.

17.8 ***Availability of Performance Order***

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

18. **Miscellaneous**

18.1 ***Non waiver***

18.1.1 *No waiver*

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

18.1.2 *Failure or delay in exercising a right or remedy*

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

18.2 ***Variations***

18.2.1 *Amendments to be in writing and to be approved*

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

(a) such amendment is in writing and signed by, or on behalf of, the parties; and

(b) if it is an amendment which requires ORR's approval under section 22 of the Act, the amendment has been approved by ORR.

18.2.2 *Exceptions*

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

(a) an amendment made by virtue of a general approval issued by ORR under section 22 of the Act; and

(b) a modification made by virtue of Clause 18.4.2.

18.2.3 *No Office of Rail and Road approval needed*

Modifications of the following kinds do not require ORR's approval under section 22 of the Act and so are not subject to Clause 18.2.1(b):

(a) modifications effected by virtue of any of the Schedules to this contract; and

(b) modifications effected by virtue of the Network Code,

unless the relevant provision expressly states that it requires the approval of ORR.

18.2.4 *Conformed copy of contract*

Network Rail shall produce and send to the Train Operator and to ORR a conformed copy of this contract within 28 days of the making of any amendment or modification to it (including any modification made by virtue of Schedule 10).

18.3 ***Entire contract and exclusive remedies***

18.3.1 *Entire contract*

Subject to Clause 18.3.3:

(a) this contract contains the entire agreement between the parties in relation to the subject matter of this contract;

(b) each party acknowledges that it has not been induced to enter into this contract in reliance upon, nor has it been given, any warranty, representation, statement, agreement or undertaking of any nature whatsoever other than as expressly set out in this contract and, to the extent that this is not the case, the relevant party unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to any such matter; and

(c) neither party shall have any right to rescind or terminate this contract either for breach of contract or for misrepresentation or otherwise, except as expressly provided for in this contract.

18.3.2 *Exclusive remedies*

Subject to Clause 18.3.3 and except as expressly provided in this contract:

(a) neither party shall have any liability (including liability arising as a result of any negligence, breach of contract or breach of statutory obligation) to the other in connection with the subject matter of this contract; and

(b) the remedies provided for in this contract shall be the sole remedies available to the parties in respect of any matters for which such remedies are available.

18.3.3 *Fraud, death and personal injury*

Without prejudice to the generality of this Clause 18.3, nothing in this contract shall exclude, restrict or limit, or purport to exclude, restrict or limit:

(a) any liability which either party would otherwise have to the other party, or any right which either party may have to rescind this contract, in respect of any statement made fraudulently by the other party before the execution of this contract;

(b) any right which either party may have in respect of fraudulent concealment by the other party;

(c) any right which either party may have in respect of a statement of the kind referred to in section 146 of the Act, whether or not proceedings have been instituted in that respect; or

(d) any liability which either party may have towards the other party for death or personal injury resulting from its negligence or the negligence of any of its officers, employees or agents.

18.4 ***Notices***

18.4.1 *Giving of notices*

Any notice to be given under this contract:

(a) shall be in writing; and

(b) shall be duly given if signed by or on behalf of a person duly authorised to do so by the party giving the notice and delivered by hand at, or by sending it by prepaid first class post, recorded delivery or by email to the relevant address or email address set out in Schedule 1.

For the purposes of this Clause 18.4 and Clause 16.1.2, delivery by hand shall include delivery by a reputable firm of couriers.

18.4.2 *Right to modify registered company and communication details*

A party shall be entitled to modify in any respect:

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

(b) the communication particulars which relate to it and which are set out in Schedule 1,

by giving notice of such modification:

(i) to the other party as soon as reasonably practicable; and

(ii) to ORR within 14 days of such modification.

18.4.3 *Deemed receipt*

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

(a) if sent by hand or recorded delivery, at the time of delivery;

(b) if sent by prepaid first class post from and to any place within the United Kingdom, 3 Working Days after posting unless otherwise proven;

(c) not used; and

(d) if sent by email (subject to confirmation of receipt of delivery) before 17:00 hours on a Working Day, on the day of transmission and, in any other case, at 09:00 hours on the next following Working Day.

18.4.4 *Copyees*

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

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

(b) such copy notice shall be sent immediately after the original notice.

18.5 ***Counterparts***

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

18.6 ***Survival***

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

18.7 ***Contracts (Rights of Third Parties) Act 1999***

18.7.1 *Application to third parties*

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

18.7.2 *Application to the Office of Rail and Road*

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

19. **Transition**

19.1 ***Corresponding Rights***

In relation to any Corresponding Right:

(a) any Train Operator Variation Request made under the Previous Access Agreement in relation to a Train Slot in respect of which there is a Corresponding Right shall:

(i) cease to have effect under the Previous Access Agreement as from the Transition Date; and

(ii) be deemed to have effect under this contract as from the Transition Date;

(b) any Train Slot which is the subject of a Train Operator Variation Request referred to in Clause 19.1(a) shall for all purposes be treated as if it had been established in and under this contract and not the Previous Access Agreement; and

(c) any consultations undertaken, notices served, matters referred to dispute resolution, agreements reached or determinations made which:

(i) are made in accordance with Parts D, F, G or H of the Network Code under the Previous Access Agreement in relation to the Engineering Access Statement or the Timetable Planning Rules, Major Projects, Vehicle Change, Network Change or train regulation; and

(ii) relate to a right under the Previous Access Agreement which is the subject of a Corresponding Right,

shall:

(A) cease to have effect under the Previous Access Agreement as from the Transition Date; and

(B) be deemed to have effect under this contract as from the Transition Date.

19.2 ***Definitions***

In this Clause 19:

"Corresponding Right" means any right of a party under this contract which:

(a) relates to the permission of the Train Operator to use the Routes; and

(b) corresponds to a right which:

(i) existed under the Previous Access Agreement; and

(ii) ceased to have effect under the Previous Access Agreement as from the Transition Date.

"Previous Access Agreement" means the track access agreement dated 18 December 2024 between Network Rail Infrastructure Limited and Locomotive Services (TOC) Limited; and

"Transition Date" means the date on which this contract comes into effect for all purposes.

Schedule 1

(Contact particulars)

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

Network Rail Infrastructure Limited
Waterloo General Office
London
SE1 8SW

Tel: [redacted]

Email: notices@networkrail.co.uk

All written notices to be marked:

"URGENT: ATTENTION THE COMPANY SECRETARY AND SOLICITOR"

and copied to: Group Director, System Operator

Tel: [redacted]

Fax: [●]

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

Managing Director
Locomotive Services (TOC) Limited
Crewe Diesel Depot
Nantwich Road
Crewe
CW2 6GT

Tel: [redacted]

Fax: [●]

Email: [redacted]

All written notices to be marked:

"URGENT: ATTENTION COMPANY SECRETARY AND SOLICITOR"

and copied to: Company Secretary

Tel: [redacted]

Fax: [●]

Email: enquiries@locoservicesgroup.co.uk

Schedule 2

(The Routes)

The Routes comprise all routes which form part of the Network, subject in every case to Network Rail, acting reasonably, being satisfied as to the suitability of such routes for the intended train movement.

Schedule 3

(Collateral Agreements)

1. An agreement under which the Train Operator agrees to become a party to the Claims Allocation and Handling Agreement and, for the purpose of Schedule 6, the Claims Allocation and Handling Agreement.

2. An accession agreement to the document entitled Emergency Access Code as approved or directed by ORR and, for the purpose of Schedule 6, the Emergency Access Code.

Schedule 4

(Not Used)

Schedule 5

(The Services and the Specified Equipment)

1. **Definitions**

1.1 In this Schedule unless the context otherwise requires:

"access contract" has the meaning ascribed to it in section 17(6) of the Act.

"Diesel or Electric Equipment" means all types of self-propelled Specified Equipment, other than Steam Driven Equipment.

"Specified Equipment" means any rolling stock which:

(a) is registered with RSSB's R2 system;

(b) is able to be used on the relevant parts of the Network in accordance with the Applicable Timetable Planning Rules; and

(c) has obtained vehicle and route acceptance for its use on the relevant parts of the Network.

"Steam Driven Equipment" means Specified Equipment, of which the primary means of propulsion is steam power.

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.

2. **The Services**

2.1 Subject to paragraphs 2.2-2.5 and 3 below, the railway passenger services permitted under this contract are those for which the Train Operator has made a Train Operator Variation Request in accordance with Part D of the Network Code and which Train Operator Variation Request Network Rail has:

(a) accepted or been deemed to have accepted; or

(b) modified, and that modification has been accepted or been deemed to have been accepted by the Train Operator.

Limitation to charter services

2.2 Under this contract, the Train Operator may only operate railway passenger services that are charter services. The following factors shall be indicative but not conclusive evidence of what constitutes a charter service:

(a) the service is not contained in the National Rail Timetable published or issued, from time to time, by Network Rail;

(b) the booking arrangements for seats (or otherwise) on the service are materially different from those generally applicable to the majority of railway passenger services provided on the Network by other train operators; and

(c) tickets for the service are available on a restricted basis or on terms materially different from those generally applicable to comparable railway passenger services provided on the Network.

Access to third party facilities

2.3 It is the Train Operator's responsibility to obtain access contracts to stations, depots and any third party facilities it would need to use in conjunction with the operation of a Service. Promptly following a request by Network Rail to do so, the Train Operator shall provide evidence of such access contracts or inform Network Rail that it does not hold the access contracts concerned.

2.4 The Train Operator's right to operate a Service is subject to the Train Operator having first obtained station access contracts with the relevant facility owners for the use of any stations at which the Train Operator's Service would call (including any stations at which the service would start and terminate), except at stations for which the Train Operator is itself the facility owner.

2.5 Where, acting reasonably, Network Rail is not satisfied that the Train Operator holds, or would hold, the appropriate access contracts referred to in paragraphs 2.3 and 2.4 for a Service or proposed Service, Network Rail may:

(a) reject any associated Train Operator Variation Request made by the Train Operator; or

(b) cancel that Service.

In doing so, it shall not be liable for any costs incurred by the Train Operator. Where Network Rail cancels a Service pursuant to (b), for the purposes of paragraph 5.1 of Part 2 of Schedule 7, the Cancellation Charge shall be treated as a Train Operator Cancellation as if it had been the Train Operator cancelling the Service.

Ancillary Movements

2.6 The Train Operator may make Ancillary Movements of Specified Equipment to the extent necessary or reasonably required to give full effect to the Services, including:

(a) movements to and from maintenance depots for the purpose of maintaining rolling stock;

(b) movements for driver training purposes; and

(c) empty stock movements.

2.7 For the purposes of paragraph 2.6, Ancillary Movements shall not include movements of rolling stock for the purpose of testing in furtherance of vehicle acceptance procedures.

3. Specified Equipment

3.1 The Train Operator may only operate the Services if it does so using Specified Equipment.

Provision of information

3.2 The Train Operator shall, when making a Train Operator Variation Request, supply the information it is required to provide under Part D of the Network Code along with any other information which it considers may reasonably be required by Network Rail for the Train Operator Variation Request to be considered and accepted.

3.3 Network Rail, acting reasonably, shall promptly notify the Train Operator if, in respect of any Train Operator Variation Request, it requires any additional information as to the type and performance capability of the Specified Equipment to be operated by the Train Operator in order to enable Network Rail to carry out route investigations and timetable planning. The Train Operator shall duly provide any such information requested by Network Rail.

Train length

3.4 The Train Operator may, in making a Train Operator Variation Request to operate a Service under this contract, request to operate the maximum train length in metres which the relevant part of the Network can from time to time accommodate. Network Rail shall not unreasonably reject such request, subject to a right of Network Rail to vary the train length in cases where the Network cannot accommodate all requests to operate to the maximum length.

3.5 Nothing in paragraph 3.4 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.

Steam Driven Equipment

3.6 Without prejudice to the other provisions of this contract, the provisions below shall apply when the Specified Equipment contained in a Train Operator Variation Request includes Steam Driven Equipment:

(a) where it appears there may be a serious risk of fire if a Train Slot is operated using Steam Driven Equipment, Network Rail shall take all precautions that are reasonably practicable in assessing the weather forecasts received from the Meteorological Office or other like body and other reports referred to in paragraph (c) below and notify the Train Operator in accordance with paragraph (b);

(b) if Network Rail considers that there may be a serious risk of fire if a Train Slot is operated using Steam Driven Equipment, it shall reasonably endeavour to give the Train Operator not less than 7 days' notice to that effect, provided that Network Rail shall have no liability to the Train Operator as a result of its failure to do so;

(c) subject to paragraph (a) above and notwithstanding paragraph (b), on or at any time before noon on the third Working Day prior to the day on which a Service or the first of a series of Services is planned to be operated using Steam Driven Equipment (each an **"Affected Train Service"**), Network Rail may give notice (**"Withdrawal Notice"**) to the Train Operator that, in view of one or more weather forecasts received by Network Rail from the Meteorological Office or other like body or one or more reports concerning fire risks received by Network Rail from any occupier of land adjacent to the routes over which the Affected Train Service is planned to operate:

(i) Network Rail reasonably considers that there is a significant risk of fire if the Affected Train Service is operated using Steam Driven Equipment;

(ii) accordingly, the permission granted to the Train Operator pursuant to this contract to operate the Affected Train Service using Steam Driven Equipment is withdrawn; and

(iii) requesting the Train Operator to notify Network Rail on or before 15:00 hours on the second Working Day prior to the day on which the Affected Train Service is planned to operate whether it wishes to operate the Affected Train Service using Diesel or Electric Equipment, failing which each Affected Train Service shall be deemed to be cancelled but without either party having any liability to the other under this contract or otherwise in respect of such cancellation and the Working Timetable shall, where necessary, be amended accordingly;

(d) if the Train Operator notifies Network Rail, in accordance with paragraph (c)(iii) that it wishes to operate the Affected Train Service using Diesel or Electric Equipment, such notification shall be treated as a Train Operator Variation Request accepted by Network Rail, and the Working Timetable shall, where necessary, be amended accordingly; and

(e) a Withdrawal Notice, which may be given by telephone or email (and if given by telephone shall be subsequently confirmed in writing by email), shall be given by Network Rail to the representative of the Train Operator specified in Schedule 1.

Schedule 6

(Events of Default, Suspension and Termination)

1. **Events of Default**

1.1 ***Train Operator Events of Default***

The following are Train Operator Events of Default:

(a) the Train Operator ceases to be authorised to be the operator of trains for the provision of the Services in accordance with Clause 3.2(a);

(b) an Insolvency Event occurs in relation to the Train Operator;

(c)

(i) any breach by the Train Operator of this contract, its Safety Obligations or any of the Collateral Agreements; or

(ii) any event or circumstance which is reasonably likely to result in any such breach,

which, by itself or taken together with any other such breach, event or circumstance, Network Rail reasonably considers constitutes a threat to the safe operation of any part of the Network;

(d) any Track Charges or other amount due by the Train Operator to Network Rail under this contract remain unpaid for more than 7 days after their due date;

(e) any breach of this contract or any material breach of any of the Collateral Agreements by the Train Operator which, by itself or taken together with any other such breach, results, or is likely to result, in material financial loss to Network Rail; and

(f) any breach of this contract or any material breach of any of the Collateral Agreements by the Train Operator which, by itself or taken together with any other such breach, results, or is likely to result, in material disruption to train operations of other train operators.

(g) Not used.

1.2 ***Notification***

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

1.3 ***Network Rail Events of Default***

The following are Network Rail Events of Default:

(a) Network Rail ceases to be authorised to be the operator of that part of the Network comprising the Routes by a licence granted under section 8 of the Act unless exempt from the requirement to be so authorised under section 7 of the Act;

(b) an Insolvency Event occurs in relation to Network Rail;

(c)

(i) any breach by Network Rail of this contract, its Safety Obligations or any of the Collateral Agreements; or

(ii) any event or circumstance which is reasonably likely to result in any such breach,

which, by itself or taken together with any other such breach, event or circumstance the Train Operator reasonably considers constitutes a threat to the safe operation of the Services or any Ancillary Movements; and

(d) any breach of this contract or any material breach of any of the Collateral Agreements by Network Rail which, by itself or taken together with any other such breach, results, or is likely to result, in material financial loss to the Train Operator.

1.4 ***Notification***

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

2. **Suspension**

2.1 ***Right to suspend***

(a) Network Rail may serve a Suspension Notice where a Train Operator Event of Default has occurred and is continuing.

(b) The Train Operator may serve a Suspension Notice where a Network Rail Event of Default has occurred and is continuing.

2.2 ***Contents of Suspension Notice***

A Suspension Notice shall specify:

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

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

(c) in the case of a Suspension Notice served on the Train Operator, reasonable restrictions imposed while the Suspension Notice is in force on the permission to use the Routes or any parts of them or any other part of the Network;

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

(e) whether the party serving the Suspension Notice reasonably considers that the Event of Default is capable of remedy, and where the Event of Default is capable of remedy:

(i) the steps reasonably required to remedy the Event of Default; and

(ii) a reasonable grace period for the defaulting party to remedy it (where the Event of Default which has occurred is a failure to pay Track Charges or other amount due, 7 days shall be a reasonable grace period).

2.3 ***Effect of Suspension Notice served by Network Rail***

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

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

(b) the Suspension Notice shall remain in full force and effect in accordance with its terms until it has been revoked either in whole or in part by notice from Network Rail to the Train Operator under paragraph 2.5.4;

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

(d) service of the Suspension Notice shall not affect the Train Operator's rights (as defined in Schedule 5) for the purpose of making a Train Operator Variation Request.

2.4 ***Effect of a Suspension Notice served by the Train Operator***

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

(a) it shall have the effect of suspending the Train Operator's permission to use the Routes to provide the Services to the extent specified in the Suspension Notice;

(b) not used;

(c) the Suspension Notice shall remain in full force and effect in accordance with its terms until it has been revoked either in whole or in part by notice from the Train Operator to Network Rail under paragraph 2.5.4; and

(d) the service of the Suspension Notice shall not affect the Train Operator's Rights (as defined in Schedule 5) for the purpose of making a Train Operator Variation Request.

2.5 ***Suspension to be proportionate to breach***

2.5.1 A Suspension Notice served under paragraph 2.3 in respect of any of the Train Operator Events of Default specified in paragraphs (a) and (c) to (f) (inclusive) of paragraph 1.1 shall, so far as reasonably practicable, apply only to the:

(a) railway vehicles;

(b) Services;

(c) Routes; and

(d) categories of train movements or railway vehicles,

(or (as the case may be) parts or part of them) to which the relevant Train Operator Event of Default relates.

2.5.2 A Suspension Notice served under paragraph 2.4 in respect of any of the Network Rail Events of Default specified in paragraphs 1.3(a), (c) and (d) shall, so far as reasonably practicable, apply only to the:

(a) railway vehicles;

(b) Services;

(c) Routes; and

(d) categories of train movements or railway vehicles,

(or (as the case may be) parts or part of them) to which the relevant Network Rail Event of Default relates.

2.5.3 The party served with a Suspension Notice which specifies an Event of Default which is capable of remedy shall:

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

(b) keep the party serving the Suspension Notice fully informed of the progress which is being made in remedying the Event of Default.

2.5.4 Where a party served with a Suspension Notice has complied with its obligations under paragraph 2.5.3 (whether in whole or in part) and it is reasonable for the suspension effected by the Suspension Notice to be revoked (whether in whole or in part), the party which served the Suspension Notice shall revoke the suspension to that extent. Such revocation shall be effected as soon as practicable after the remedy in question by notice to the other party specifying the extent of the revocation and the date on which it is to have effect.

3. Termination

3.1 *Network Rail's right to terminate*

Network Rail may serve a Termination Notice on the Train Operator:

(a) where the Train Operator fails to comply with any material restriction in a Suspension Notice;

(b) where the Train Operator fails to comply with its obligations under paragraph 2.5.3;

(c) where the Train Operator Event of Default specified in paragraph 1.1(a) has occurred and is continuing; or

(d) where the Train Operator Event of Default specified in a Suspension Notice served by Network Rail is not capable of being remedied and 3 months have elapsed from the service of that Suspension Notice.

3.2 *Train Operator's right to terminate*

The Train Operator may serve a Termination Notice on Network Rail:

(a) where Network Rail fails to comply with its obligations under paragraph 2.5.3;

(b) where the Network Rail Event of Default specified in paragraph 1.3(a) has occurred and is continuing; or

(c) where the Network Rail Event of Default specified in a Suspension Notice served by the Train Operator is not capable of being remedied and 3 months have elapsed from the service of that Suspension Notice.

3.3 *Contents of Termination Notice*

A Termination Notice shall specify:

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

(b) a date and time, which shall be reasonable in the circumstances, at which termination is to take effect; and

(c) whether the party serving the Termination Notice reasonably considers that the Event of Default is capable of remedy, and where the relevant Event of Default is capable of remedy:

(i) the steps which the party serving the Termination Notice believes are reasonably required to remedy the Event of Default; and

(ii) a reasonable grace period within which such steps may be taken (where the Event of Default is a failure of the Train Operator to pay Track Charges or other amounts due, 7 days is a reasonable grace period).

3.4 ***Effect of Termination Notice***

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

(a) the service of the Termination Notice shall not affect the parties' continuing obligations under this contract up to the date of termination, which date shall be determined in accordance with paragraph 3.4(c);

(b) the party which has served the Termination Notice shall withdraw it by notice to the other party, upon being reasonably satisfied that the relevant Event of Default has been remedied; and

(c) this contract shall terminate on the later of:

(i) the date and time specified in the Termination Notice for the contract to terminate (or such later date and time as the party which served the Termination Notice notifies to the other before the date and time so specified); and

(ii) the date on which a copy of the Termination Notice is given to ORR.

4. **Consequence of termination**

4.1 ***Directions regarding location of Specified Equipment***

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

4.2 ***Failure to comply with directions***

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

4.3 ***Evidence of costs***

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

Schedule 7

(Track Charges)

Part 1

(Interpretation)

1. **Definitions**

1.1 In Parts 1-8 inclusive, unless the context otherwise requires:

"Cancellation Charge" has the meaning given to that term in paragraph 5.1 of Part 2;

"Core Operational Period" in relation to any part of the Network, means the period of the day when that part is generally open to train movements;

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

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

(b) if there is a material change in the basis of the Consumer Prices Index, such other index as ORR may (after consultation with the parties and such other persons as it considers appropriate) determine to be appropriate in the circumstances;

"Default Train Consist Data" means the Train Consist Data for a Class 67/0 locomotive plus 11 Mark 1 coaches;

"ECS" means empty coaching stock (trains used to bring carriages into or take them out of service);

"Electrification Asset Usage Charge" means the electrification asset usage charge calculated in accordance with paragraph 7.1 of Part 2, as adjusted in accordance with paragraph 7.2 of Part 2;

"kWh" means kilowatt hours;

"light locomotive movement" means the movement of

(a) a single locomotive; or

(b) a single steam locomotive hauling no more than one other item of rolling stock (not being a locomotive),

before working, or after having worked, a Relevant Service;

"Non-Core Operational Charge" means the charge calculated in accordance with paragraph 1.1 of Part 5;

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

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

"Repeat Business Slot Charge" means the charge payable in respect of a particular Service in accordance with paragraph 4.2 of Part 2;

"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 Clearance Charge" means, in respect of a particular Train Slot a charge payable in respect of works identified in paragraph 1.2 of Part 5 as calculated in accordance with that paragraph;

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

"Slot Charge" means the charge payable for vehicle type i as established in accordance with paragraph 4.1 of Part 2;

"Track Charge" means the Variable Usage Charge, Slot Charge, Cancellation Charge and where the context admits, Traction Electricity Charge and Electrification Asset Usage Charge;

"Track Usage Price List" means the document entitled "Track Usage Price List" published by Network Rail on or about 20 December 2023;

"Traction Electricity Charge" means the charge calculated in accordance with paragraph 6 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 2023 and specifying freight, passenger and charter traction electricity modelled consumption rates;

"Traction Electricity Rate" means such amount (in £ per kWh) as Network Rail shall specify for the purpose of each Relevant Year as reflecting, as accurately as reasonably practicable, the actual cost to Network Rail of providing traction electricity to the Train Operator, and subject to the agreement of the Train Operator to those amounts, such agreement not to be unreasonably withheld or delayed;

"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 and includes loaded Train Miles and ECS Train Miles;

"Variable Usage Charge" means a variable charge, calculated in accordance with paragraph 3.1 of Part 2; and

"Vehicle Mile" in relation to a railway vehicle, means a mile travelled by that vehicle on the Network.

Part 2

(Track Charges)

1. **Principal formula**

For each Relevant Year, Network Rail shall levy and the Train Operator shall pay Track Charges in accordance with the following formula:

$$T_t = V_t + S_t + E_t + EAV_t + C_t$$

where:

T_t means Track Charges for the Relevant Year t;

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

S_t means an amount in respect of the Slot Charge for the Relevant Year t which is derived from the formula in paragraph 4.1;

E_t means an amount in respect of the Traction Electricity Charge for the Relevant Year t which is derived from the formula in paragraph 6.1;

EAV_t means an amount in respect of the Electrification Asset Usage Charge for Relevant Year t which is derived from the formula in paragraph 7.1; and

C_t means an amount in respect of the Cancellation Charge (whether of a positive or negative value) for the Relevant Year t calculated in accordance with the provisions in paragraph 5.1.

2. **Not used**

3. **Variable Usage Charge**

3.1 ***Variable Usage Charge***

For the purposes of paragraph 1, the term V_t means an amount in respect of the Variable Usage Charge for the Relevant Year t (including any light locomotive movements) which is derived from the following formula:

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

where:

V_{it}, for vehicle type i in relation to any Relevant Year t, shall have, in respect of each Train Mile, the value (expressed in pounds sterling per Train Mile and rounded to four decimal places) set out in the section of the Track Usage Price List entitled "Charter Train Variable Usage Charge (VUC) rates", multiplied by the phased-in charges indexation adjustment derived from the following formula:

$$PCIA_t = \left(1 + \frac{(CPI_{t-1} - CPI_{2022})}{CPI_{2022}}\right)$$

where:

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

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

CPI_{2022} means the CPI published or determined with respect to November 2022;

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

∑ means the summation across all relevant vehicle types i.

4. **Slot Charge**

4.1 For the purposes of paragraph 1, the term S_t means an amount in respect of the Slot Charge for the Relevant Year t which is derived from the following formula:

$$S_t = \sum S_{it} \bullet US_{it}$$

where:

S_{it} means an amount in respect of the Slot Charge for vehicle type i for Relevant Year t, expressed in pounds sterling and rounded to four decimal places, which is derived from the following formula:

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

where:

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

CPI_{t-2} 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 2024, S_{it-1} shall have the value of the Slot Charge for vehicle type i set out in the section of the Track Usage Price List entitled "Charter Slot Charge rates"

US_{it} means the actual number of journeys for the Relevant Year t for vehicle type i (referred to in the Track Usage Price List) operated by or on behalf of the Train Operator under this contract; and

∑ means the summation across all relevant vehicle types i.

4.2 When a Train Operator Variation Request indicates a requirement for the Service to operate on more than one date, then, provided that all dates of operation fall within the same Timetable Period, Network Rail may levy and the Train Operator shall pay:

(a) the Slot Charge as defined in paragraph 4.1 in respect of the first such Service; and

(b) for each subsequent Service the Slot Charge shall equal the Repeat Business Slot Charge which is derived from the following formula:

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

where:

RS_t means an amount in respect of the Repeat Business Slot Charge in Relevant Year t;

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

CPI_{t-2} has the meaning set out in paragraph 4.1 above,

but so that in relation to the Relevant Year commencing on 1 April 2024 RS_{t-1} shall have the value set out in the section of the Track Usage Price List entitled "Repeat Business Slot Charge" in the table entitled “Charter Slot Charges (including repeat business slot charge) for CP7”..

4.3 When a Train Operator Variation Request is received by Network Rail on or before the Priority Date for the timetable in question, the Slot Charge S_t shall equal zero.

5. **Cancellation Charge**

5.1 In the event of a Network Rail Cancellation or a Train Operator Cancellation the party cancelling the Service (the **"Cancelled Service"**) shall pay a Cancellation Charge, C_t, which shall be equivalent to:

10% of the Slot Charge for the Cancelled Service where notice of such cancellation is given more than 25 Working Days in advance of the Planned date of operation of the Cancelled Service;

50% of the Slot Charge for the Cancelled Service where notice of such cancellation is given at least 20 but less than 26 Working Days in advance of the Planned date of the Cancelled Service;

75% of the Slot Charge for the Cancelled Service where notice of such cancellation is given at least 15 but less than 20 Working Days in advance of the Planned date of the Cancelled Service;

85% of the Slot Charge for the Cancelled Service where notice of such cancellation is given at least 5 but less than 15 Working Days in advance of the Planned date of the Cancelled Service; and

in all other cases the Slot Charge for the Cancelled Service.

6. **Traction Electricity Charge**

6.1 If the Train Operator procures the supply of electricity from or through Network Rail (whether as its agent or otherwise) for the purpose of running trains under this contract, the Traction Electricity Charge, E_t, shall be calculated in accordance with the following formula:

$$E_t = TER_t \bullet TM_t \bullet TEC_t$$

where:

TER_t means the Traction Electricity Rate for Relevant Year t;

TM_t means the total electrified Train Miles for all trains operated by or on behalf of the Train Operator under this contract in Relevant Year t; and

TEC_t means the modelled consumption rate for all charter operators set out in the section of the Traction Electricity Modelled Consumption Rate List entitled "Charter Traction Electricity Modelled Consumption Rates for CP7".

Election to introduce on-train metering for a vehicle or vehicle type

6.2

(a) If the Train Operator wishes to propose the introduction of on-train metering to measure traction electricity consumption for a vehicle or vehicles of a vehicle type that the Train Operator operates for the purposes of being invoiced by Network Rail for traction electricity, it shall notify Network Rail of any required changes to the contract in connection with that proposal.

(b) Any notice under sub-paragraph 6.2(a) shall be accompanied by information and evidence in reasonable detail supporting the changes proposed and setting out the reasons for those changes, and Network Rail shall respond in writing within 56 days of service of any such notice.

(c) Promptly following any response served by Network Rail under sub-paragraph 6.2(b), the parties shall endeavour to agree whether the contract should be amended in connection with that proposal and, if so, the amendments.

(d) If the parties agree an amendment to the contract in connection with the proposal referred to in sub-paragraph 6.2(a), that amendment shall take effect only when it has been approved by ORR under section 22 of the Act. Accordingly, as soon as reasonably practicable after any such amendment is agreed, the parties shall ensure that ORR is furnished with such amendment and such information and evidence as it shall require to determine whether or not to approve the amendment.

(e) Any agreed amendment to the contract in connection with the proposal referred to in sub-paragraph 6.2(a) which is approved by ORR under section 22 of the Act shall apply with effect from the date agreed by the parties.

(f) If the parties fail to reach agreement within 90 days after service of a notice under sub-paragraph 6.2(a), or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, either party may notify ORR and request that ORR determines the matter. The parties shall, within such timescales as ORR may specify, furnish ORR with such information and evidence as ORR shall require to determine the matter. If a party fails to furnish such information and evidence within the specified timescale, ORR shall be entitled to determine the matter without that information and evidence and the party in default shall have no grounds for complaint in that respect.

(g) Where ORR determines the matter pursuant to sub-paragraph 6.2(f), it may issue a notice to the parties setting out the amendments to be made to the contract and the date, which may be retrospective, from which they shall take effect.

7. **Electrification Asset Usage Charge**

7.1 For the purposes of paragraph 1, the term EAV_t means an amount in respect of the Electrification Asset Usage Charge for electrification asset usage which is derived from the following formula:

$$EAV_t = \sum(EV_{tk} \bullet UV_{tk})$$

where:

$\sum$ means the summation across all route types k;

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

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

where:

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

CPI_{t-2} has the meaning set out in paragraph 4.1 above,

but so that in relation to the Relevant Year commencing on 1 April 2024, EV_{t-1k} shall have, in respect of each electrified Vehicle Mile on route type k, the relevant value per electrified Vehicle Mile on route type k set out in the section of the Track Usage Price List entitled "Charter Electrification Asset Usage Charge rates"; and

UV_{tk} means the actual number of electrified Vehicle Miles for all railway vehicles operated by or on behalf of the Train Operator under this contract on route type k in Relevant Year t.

8. **Not used**

9. **Not used**

10. **Not used**

11. **Payment of Track Charges and other sums due under the Contract**

11.1 ***Payment of Track Charges and other sums due under the Contract***

(a) The Train Operator shall pay or procure the payment to Network Rail of:

(i) the Variable Usage Charge;

(ii) the Traction Electricity Charge;

(iii) not used;

(iv) the Electrification Asset Usage Charge;

(v) the Slot Charge;

(vi) the Cancellation Charge; and

(vii) any other sums which have fallen due in accordance with any provision of this contract,

attributable to any Period as invoiced by Network Rail on or after expiry of each such Period within 21 days of the invoice date or 28 days after the end of the Period, whichever is later.

(b) Not used

11.2 ***Train Consist Data***

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

11.3 ***Invoices and right to object to invoices***

(a) Not used.

(b) For each Period, Network Rail shall be entitled to invoice the Train Operator for Track Charges in respect of any and all train movements operated by the Train Operator during that Period based on:

(i) Train Consist Data provided by the Train Operator in respect of any train movement at or prior to the time that such train movement is completed;

(ii) not used; and

(iii) not used.

Each such invoice will be payable in accordance with the provisions of paragraph 11.1.

(c) Either party shall be entitled, at any time prior to the later of 23:59 hours on the fourteenth day following the expiration of the relevant Period and 7 days following receipt by the Train Operator of the relevant invoice or credit note, to notify the other that it objects to any Train Consist Data on which the whole or any part of the Track 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"**). For the avoidance of doubt, the Train Operator may serve a notice of objection in which it provides the relevant Train Consist Data where the Track Charges in the relevant invoice or credit note were based on the Default Train Consist Data. 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.

(d) The parties shall seek to agree the Train Consist Data specified in any notice of objection and any consequential financial adjustment required to the relevant invoice or credit note. If the parties are unable to agree such Train Consist Data within 14 days following receipt of a notice of objection, either party may refer the matter for resolution in accordance with the ADRR.

(e) Within 14 days of any Train Consist Data being agreed or determined in accordance with paragraph 11.3(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 Track Charges for the relevant Period or, if issued later than 21 days after the end of the relevant Period, within 7 days after the date of its issue.

(f) Not used.

(g) Where, as a result of any invoice or credit note issued pursuant to paragraph 11.3, 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.

11.4 ***Unrepresentative Train Consist Data***

Not used.

11.5 ***Disputed amounts repayment and interest rate***

(a) Where a party wishes to contest any invoice issued to it under this Schedule 7 (including any invoice in respect of Track Charges) it shall, within 14 days of receipt of the invoice, notify the other party in writing of the amount which is in dispute but shall

pay the full amount of the invoice, including the disputed amount, in accordance with the terms of the invoice.

(b) Where a party has given notice under paragraph 11.5(a) that it disputes part of any invoiced amount:

(i) payment of such sum shall be without prejudice to the determination of whether such sum is properly due or not; and

(ii) if it is subsequently determined that the disputed sum, or part of it, was not properly due the payee shall repay the disputed sum, or relevant part, to the payer together with interest (to accrue daily and be compounded monthly) at the Default Interest Rate from the date of payment until the actual date of repayment.

Part 3

(Not Used)

Part 3A

(Not Used)

Part 4

(Not Used)

Part 5

(Additional Charges)

1. Specific Additional Charges

1.1 *Non-Core Operational Charge*

The Train Operator shall, in respect of any Service (and its associated Ancillary Movements) that it wishes to operate wholly or partly outside of the Core Operational Period, or wholly or partly on routes which form part of the Network over which passenger services do not operate, pay to Network Rail a Non-Core Operational Charge. The Non-Core Operational Charge applicable to any such Service or Ancillary Movement shall consist of such reasonable out-of-pocket costs and expenses (including any costs and expenses in respect of additional staff reasonably required to facilitate that Service or Ancillary Movement) which Network Rail will incur by reason of the operation of that Service or Ancillary Movement, being costs and expenses which Network Rail, but for the operation of that Service or Ancillary Movement, would not have incurred, but only to the extent that, on or prior to accepting the Train Operator Variation Request for the Service or Ancillary Movement, Network Rail provides to the Train Operator:

(a) details, reasonably satisfactory to the Train Operator, of those items in respect of which Network Rail will, or is likely to, levy the Non-Core Operational Charge; and

(b) an estimate, prepared in good faith, of the likely amount of such costs and expenses.

1.2 *Route Clearance Charge*

Where any route clearance or investigative work is required as a result of a Train Operator Variation Request which involves in excess of checking the relevant equipment against the relevant sectional appendices for the routes concerned, Network Rail shall be entitled to charge the Train Operator its reasonable costs in carrying out such work (whether or not the Service, the subject of the Train Operator Variation Request, is operated) provided that:

(a) Network Rail notifies the Train Operator of its intention to carry out such work and obtains the Train Operator's consent (failing receipt of which within a reasonable time Network Rail shall be entitled to reject the Train Operator Variation Request in question) before incurring such costs;

(b) Network Rail shall not be entitled to charge the Train Operator for its costs in obtaining information which it has already procured or should reasonably have procured to meet the requirements of Network Rail through its Rolling Stock Acceptance Board, whether or not in connection with rolling stock operated or to be operated by the Train Operator; and

(c) Network Rail shall endeavour to keep the level of its reasonable costs to the minimum reasonably required.

Part 6

(Supplemental Provisions)

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

(a) the amount of the Slot Charge levied in respect of each vehicle type i;

(b) the rate of Variable Usage Charge and the relevant number of Train Miles applicable to vehicle type i;

(c) the rate of Traction Electricity Charge, if any, and the number of electrified Train Miles;

(d) the amount of the Cancellation Charge, if any, levied in respect of vehicle type i;

(e) the rate of the Electrification Asset Usage Charge, if any, on route type k and the number of electrified Vehicle Miles on route type k;

(f) Not used;

(g) Not used; and

(h) in respect of any other sums which have fallen due in accordance with any provisions of this contract, separately the amount payable in respect of each head of charge.

Part 7

(Future Access Charges Reviews)

1. **General**

ORR may carry out one or more access charges reviews of all or part of this contract as follows:

(a) an access charges review such that amendments to this contract to give effect to the conclusions of such an access charges review come into operation on and from 1 April 2029 or such later date as may be specified in that review; and

(b) not used.

2. **Not used**

3. **Interpretation**

3.1 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 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.

Part 8

(Not Used)

Appendix 7A

Not Used

Appendix 7B

Not Used

Appendix 7C

Not Used

Schedule 8

Explanatory Note:

(a) Where there is a CVL TAC (Charter Passenger Services), the performance regime for the CVL Network will be administered by Network Rail through (and as part of) Schedule 8 of this contract.

(b) The CVL Network will be considered to be part of the Network Rail network for the purposes of Schedule 8 of this contract and the performance regime of the CVL Network so that after the date that the CVL IM becomes the infrastructure manager of the CVL Network ("Transfer Date") the delay attribution on the CVL Network shall remain broadly consistent with the delay attribution prior to the Transfer Date.

(c) On or around the date of this contract, the CVL IM and Network Rail will have entered into a bilateral agreement which will attribute performance matters, as appropriate, between the CVL IM and Network Rail.

(d) This explanatory note does not form part of this contract.

(Performance regime)

1. **Interpretation**

1.1 ***Definitions***

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

"100 Train Operator Miles" means the distance travelled by the Combined Network Services operated by the Train Operator on the Network in any Period as recorded in Network Rail's billing systems (unless there is a manifest error in such figure), divided by 100;

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

"Applicable CVL Engineering Access Statement" has the meaning ascribed to that term in clause 1 of the CVL TAC (Charter Passenger Services);

"Applicable CVL Timetable Planning Rules" has the meaning ascribed to that term in clause 1 of the CVL TAC (Charter Passenger Services);

"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 and that part of the CVL Working Timetable in respect of that day which is required to be drawn up in accordance with Condition D2.1.1 of the CVL Network Code in both cases as at 22:00 hours on the day prior to that day, and which is applicable to the Combined Network Service or other trains;

"Baseline Annual Train Mileage" has the meaning ascribed to it in paragraph 8.2.2(b);

"Cancellation" means, in respect of any Service, the failure to operate at all and "Cancelled" shall be construed accordingly;

"Charter Service Variation Sum" means, in respect of paragraphs 3.4 and 4.4, the amount specified in Appendix 8A as the Charter Service Variation Sum (as adjusted in accordance with paragraph 7), expressed in pounds sterling and rounded to zero decimal places;

"Combined Applicable Engineering Access Statement" means (as the case may be):

(a) the Applicable Engineering Access Statement; and

(b) the Applicable CVL Engineering Access Statement;

"Combined Applicable Timetable Planning Rules" means (as the case may be):

(a) the Applicable Timetable Planning Rules; and

(b) the Applicable CVL Timetable Planning Rules;

"Combined Network" means (together):

(a) the Network; and

(b) the CVL Network;

"Combined Network Ancillary Movement" means (as the case may be):

(a) an Ancillary Movement or

(b) a CVL Ancillary Movement;

"Combined Network Cancellation" means (as the case may be):

(a) a Cancellation;or

(b) a CVL Cancellation;

"Combined Network Contract Miles" means, in relation to a train, or a portion of a train, the actual distance in miles travelled by that train, or that portion of a train, on the Combined Network as agreed by the Train Operator and Network Rail;

"Combined Network Diversion" means (as the case may be):

(a) a Diversion; or

(b) a CVL Diversion;

"Combined Network Services" means (together):

(a) the Services; and

(b) the CVL Services,

and reference in this Schedule 8 to a "Combined Network Service" shall mean, as the context requires, a Service or a CVL Service;

"Combined Network Termination" means (as the case may be):

(a) a Termination; or

(b) a CVL Termination;

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

“CVL Ancillary Movements” has the meaning ascribed to the term “Ancillary Movements” in clause 1 of the CVL TAC (Charter Passenger Services);

“CVL Cancellation” means in respect of any CVL Service, the failure to operate at all and "Cancelled" shall be construed accordingly;

“CVL Diversion” means a CVL Service which operates but which is diverted off its Planned route and for these purposes, running on different lines on the same route shall not constitute such a CVL Diversion;

“CVL Force Majeure Event” has the meaning ascribed to the term **“Force Majeure Event”** in clause 17.1 of the CVL TAC (Charter Services);

“CVL IM” means Seilwaith Amey Cymru/Amey Infrastructure Wales Limited, a company registered in England under number 11389544 having its registered office at Transport For Wales CVL Infrastructure Depot, Ty Trafnidiaeth, Treforest Industrial Estate, Gwent Road, Pontypridd, United Kingdom, CF27 5UT (including its successors and permitted assigns);

“CVL Network” has the meaning ascribed to the term “CVL” in Part A of the CVL Network Code;

“CVL Network Code” means the document by that name published by the CVL IM;

“CVL Railway Operational Code” has the meaning ascribed to that term in Part H of the CVL Network Code;

“CVL Services” has the meaning ascribed to the term “Services” in clause 1 of the CVL TAC (Charter Passenger Services);

“CVL TAC (Charter Passenger Services)” means the track access contract (charter passenger services) between the CVL IM and the Train Operator that grants the Train Operator permission to use the CVL Network;

“CVL Termination” means in respect of any CVL Service, the operation of such train in such a way that it:

(a) fails to reach its Planned final destination station; or

(b) commences at a point other than its Planned station start point and does not call at its Planned station start point

and which is not a CVL Cancellation;

“CVL Train Operator Variation Request” has the meaning ascribed to the term “Train Operator Variation Request” in clause 1 of the CVL TAC (Charter Passenger Services);

“CVL Working Timetable” has the meaning ascribed to the term “Working Timetable” in clause 1 of the CVL TAC (Charter Passenger Services);

"Diversion" means a Service which operates but which is diverted off its Planned route and for these purposes, running on different lines on the same route shall not constitute such a Diversion;

"ETCS" means the European Train Control System;

"Failure to Stop" means a Combined Network Service which, whether or not it is the subject of a Diversion, fails to call at one or more of the intermediate stations at which it is Planned to call;

"Financial Year" means a year commencing at 00:00 hours on 1 April and ending immediately before 00:00 hours on the next succeeding 1 April save that:

(a) the first such period shall commence on the date upon which all the provisions of this contract come into effect in accordance with Clause 3; and

(b) the last such period shall end on the Expiry Date;

"Indexed Figures" means the Network Rail Payment Rate, Train Operator Payment Rate, Network Rail Annual Cap and Train Operator Annual Cap, Network Rail Cancellation Sum, Joint Cancellation Sum and the Charter Service Variation Sum;

"Initial Planned Service Incident Cap Notice" has the meaning ascribed to it in paragraph 9.1.1;

"Interim Statement" means a written summary showing, in respect of Network Rail performance, the information required under paragraph 3.5 and, in respect of Train Operator performance, the information required under paragraph 4.5;

"Joint Cancellation Sum" means, in the event of a Planned Service Cancellation for which Network Rail is allocated joint responsibility under paragraph 6.5, the amount specified in Appendix 8A as the Joint Cancellation Sum for that Planned Service Cancellation (as adjusted in accordance with paragraph 7), expressed in pounds sterling and rounded to zero decimal places;

"Minutes Delay" means the number of minutes of delay in respect of a Trigger of a Recording Point calculated in accordance with paragraph 5;

"Network Rail Annual Cap" means the Network Rail Annual Cap specified in Appendix 8A and in respect of the first and last Financial Year means the Network Rail Annual Cap specified in Appendix 8A multiplied by the Adjustment Fraction, as adjusted in accordance with paragraphs 7 and 8.2 of this Schedule 8, expressed in pounds sterling and rounded to zero decimal places;

"Network Rail Benchmark" or **"NRB"** means the Network Rail Benchmark in Minutes Delay per 100 Train Operator Miles in relation to each Period, as specified in Appendix 8A;

"Network Rail Cancellation Sum" means, in the event of a Planned Service Cancellation for which Network Rail is allocated responsibility under paragraphs 2.6(b) and/or 6.3, the amount specified in Appendix 8A as the Network Rail Cancellation Sum for that Planned Service Cancellation (as adjusted in accordance with paragraph 7), expressed in pounds sterling and rounded to zero decimal places;

"Network Rail Payment Rate" means, in respect of a Planned Service, the rate, expressed as pounds per NR Performance Minute, specified in Appendix 8A as the Network Rail Payment Rate for that Planned Service (as adjusted in accordance with paragraph 7), expressed in pounds sterling and rounded to two decimal places;

"NR Performance Minute" has the meaning set out in paragraph 3.1;

"Performance Sum" means an amount for which Network Rail or the Train Operator is liable under paragraphs 3 or 4 following a Period in relation to Minutes Delay in that Period and the preceding Periods, as adjusted in accordance with paragraph 8;

"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 7 days on reasonable prior notice from Network Rail to the Train Operator;

"Planned" means entered into the Applicable Timetable;

"Planned Incident" means an incident described as such in paragraph 6.6;

"Planned Service" means a passenger carrying Combined Network Service (excluding any Combined Network Ancillary Movement) of the Train Operator under this contract which is entered in the Applicable Timetable;

"Planned Service Cancellation" means the Combined Network Cancellation or Combined Network Termination of a Planned Service;

"Planned Service Incident Cap" means, in respect of a Planned Service (and its associated Combined Network Ancillary Movements) operated by or on behalf of the Train Operator, the Planned Service Incident Cap selected by the Train Operator in accordance with paragraph 9.1;

"Planned Service Incident Cap Access Charge Supplement Rate" has the meaning ascribed to it in paragraph 9.2;

"Planned Service Incident Cap Notice" has the meaning ascribed to it in paragraph 9.1.2;

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

"Recovery Time" means additional time incorporated into the Applicable Timetable to allow a train to regain time lost earlier in its journey as a result of a Restriction of Use;

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

"Restriction of Use" means any restriction of use of all or any part of the Combined Network for the purposes of, or in connection with, inspection, maintenance, renewal or repair of the Combined Network or any other works carried out in relation to the Combined Network or any other railway asset or any other works in relation to it;

"Service Characteristics" means, in relation to any Combined Network Service, the characteristics of that Combined Network Service specified in any Train Operator Variation Request or CVL Train operator Variation Request;

"Service Incident" means an incident which arises from, is caused by or results from a Planned Service or any of its associated Combined Network Ancillary Movements;

"Termination" means, in respect of any Service, the operation of such train in such a way that it:

(a) fails to reach its Planned final destination station; or

(b) commences at a point other than its Planned station start point and does not call at its Planned station start point

and which is not a Cancellation;

"Third Party Train Cancellation" means the Cancellation or Termination of any train excluding any Combined Network Ancillary Movements and excluding any Planned Service;

"Third Party User" means the operator (including the Train Operator) of any train excluding any Combined Network Ancillary Movements and excluding any Planned Service;

"Third Party User Cancellation Minutes" means, in respect of a Third Party Train Cancellation, the number of minutes specified in Appendix 8A as the Third Party User Cancellation Minutes;

"TO Performance Minute" has the meaning set out in paragraph 4.1;

"Train Operator Annual Cap" means the Train Operator Annual Cap specified in Appendix 8A and in respect of the first and last Financial Year means the Train Operator Annual Cap specified in Appendix 8A multiplied by the Adjustment Fraction, as adjusted in accordance with paragraphs 7 and 8.2 of this Schedule 8, expressed in pounds sterling and rounded to zero decimal places;

"Train Operator Benchmark" or **"TOB"** means the Train Operator Benchmark in Minutes Delay per 100 Train Operator Miles in relation to each Period, as specified in Appendix 8A;

"Train Operator Payment Rate" means, in relation to delay caused to a Third Party User, the rate, expressed as pounds per TO Performance Minute, specified in Appendix 8A (as adjusted in accordance with paragraph 7), expressed in pounds sterling and rounded to two decimal places;

"Trigger" means the act of a train arriving at, passing or departing from a Recording Point;

"Week" means a period of 7 days beginning on Sunday and ending on the immediately following Saturday (both days inclusive), save that where that period of 7 days would otherwise fall within two Periods ("Period A" and "Period B") for the purposes of this Schedule each of the following shall constitute a Week:

(a) Sunday to the last day of Period A (both days inclusive); and

(b) the first day of Period B to the immediately following Saturday (both days inclusive).

1.2 For the purposes of Schedule 8 events in respect of a Combined Network Service shall be treated as occurring on the day on which the Combined Network Service was Planned to depart from its point of origin.

1A. Treatment of other defined terms used in this Schedule 8

1A.1 In this Schedule 8 only (except where expressly provided otherwise), the following capitalised terms shall have the following meanings (disregarding, for the avoidance of doubt, the definitions ascribed to these capitalised terms elsewhere in this contract):

(a) “Train Mile” means in relation to a Combined Network Service, a Train Mile (as defined in Schedule 7) travelled by that Combined Network Service on the Combined Network;

(b) “Performance Monitoring System” has the meaning ascribed to it in Part B of the Network Code, it being acknowledged that Network Rail has agreed to additionally operate such Performance Monitoring System so as to accurately monitor train performance on the CVL Network and record:

(i) the times at which trains arrive at, depart from and pass specified points on the CVL Network;

(ii) the difference between the time at which a train arrives at, departs from or passes a specified point on the CVL Network and the time published for such arrival, departure or passing in the CVL Working Timetable;

(iii) all Cancelled trains and trains failing to pass any specified point on the CVL Network; and

(iv) the cause of a train delay and Cancellation on the CVL Network

2. **General principles and performance information**

2.1 In respect of Combined Network Cancellation, this Schedule 8 shall only apply to any Planned Service Cancellation for which Network Rail is responsible or jointly responsible with the Train Operator and which occurs after 22:00 on the day before such Planned Service is due to run.

2.2 Each of the Train Operator and Network Rail shall use all reasonable endeavours to keep the other of them informed of any known or anticipated delay to, or Combined Network Cancellation, Combined Network Termination or Combined Network Diversion of, Planned Services or any Combined Network Ancillary Movements associated therewith.

2.3 Each of Network Rail and the Train Operator shall take reasonable steps to avoid and mitigate the effects of:

(a) any incidents upon the Planned Services; and

(b) any Service Incident affecting other trains.

2.4 Network Rail shall use recordings made using the Performance Monitoring System for the purposes of this Schedule 8 including the times at which the Combined Network Services and other trains Trigger Recording Points. Where appropriate Network Rail may require the Train Operator, in respect of Combined Network Services only, to make the relevant entry, to record such times on the Performance Monitoring System. Network Rail and the Train Operator shall each comply with and be bound by the provisions of the Performance Data Accuracy Code referred to in Part B of the Network Code and Part B of the CVL Network Code and the provisions of the Performance Data Accuracy Code shall apply to this Schedule 8. Accordingly, the provisions of this Schedule 8 concerning the recording of train performance information or which refer to information regarding train performance (including references to the time at which a train Triggers a Recording Point), and the rights and remedies of the Train Operator in respect of the same, shall be subject to and interpreted in accordance with the provisions of that Code.

2.5 In respect of each Trigger of a Recording Point Network Rail shall use its reasonable endeavours to record separately, as unexplained delay, those minutes of delay of three minutes or more included in Minutes Delay for which it is unable to identify the incident(s) which caused that delay. The Train Operator shall co-operate with Network Rail on request by providing all such information as it has in its possession regarding the identification of the incident(s) which caused that delay.

2.6 All unexplained delay recorded in accordance with paragraph 2.5 shall, notwithstanding the provisions of paragraph 6.3(b) be allocated between the parties as follows:

(a) any Minutes Delay or Cancellation Minutes in respect of Service Incidents arising either off the Combined Network or at stations at which the Train Operator's Services are Planned to call shall be included in the TO Performance Minutes; and

(b) any Minutes Delay to a Combined Network Service or Planned Service Cancellation arising on the Combined Network and which are not allocated to the Train Operator under this Schedule (including paragraph 2.6(a)) shall be included in the NR Performance Minutes.

2.7

(a) Network Rail shall provide to the Train Operator through the Performance Monitoring System as soon as reasonably practicable, and in any event no later than the following Working Day, the information recorded or provided to it under paragraphs 2.4 or 2.5.

(b) the Train Operator shall be deemed to have agreed the information recorded by Network Rail and Network Rail shall be deemed to have agreed the information recorded by the Train Operator except, in either case, to the extent that it has, within 2 clear Working Days of the information being provided, notified the other that it disputes the information. Any such notification shall specify the reasons for the dispute, so as to assist resolution of the dispute. The parties shall endeavour to resolve each such dispute within 2 Working Days of its notification.

2.8 Within 5 Working Days of a Trigger occurring, Network Rail shall be entitled to re-allocate responsibility to the Train Operator for each minute of delay included in Minutes Delay where further information becomes available to Network Rail which would otherwise result in responsibility for the relevant incident being allocated to the Train Operator in accordance with paragraph 6.4. Paragraph 2.7(b) shall apply to the allocation of responsibility under this paragraph 2.8.

2.9 Network Rail shall have no liability to the Train Operator under the terms of this Schedule in respect of Minutes Delay to a Planned Service or a Planned Service Cancellation to the extent that it is caused, in either case, by that Planned Service being presented to Network Rail on the Combined Network after the time Planned for such presentation. In such circumstances, Network Rail shall use its reasonable endeavours to facilitate the movement of the Planned Service as expeditiously as possible subject to

(a) any access rights which it may have granted to third parties; and

(b) any Restrictions of Use of the Combined Network in the Combined Applicable Engineering Access Statement or the Combined Applicable Timetable Planning Rules.

2.10 CVL Force Majeure Events

The parties hereby acknowledge and agree that the occurrence of a CVL Force Majeure Event affecting the CVL IM shall be treated for the purposes of this Schedule 8 as the occurrence of a Force Majeure Event affecting Network Rail in respect of which the provisions of Clause 17 of this contract shall apply.

3. Network Rail performance

3.1 The performance minutes allocated to Network Rail in respect of any Planned Service (the **"NR Performance Minutes"**) shall be equal to the sum of:

(a) the number of Minutes Delay caused to that Planned Service by one or more Service Incidents for which Network Rail is allocated responsibility under paragraphs 2.6(b) and 6.3; and/or

(b) 50% of the number of Minutes Delay caused to that Planned Service by one or more Service Incidents for which Network Rail is allocated joint responsibility with the Train Operator under paragraph 6.5.

3.2

3.2.1 The NR Performance Minutes shall be converted into a per 100 Train Operator Miles figure (the **"Adjusted NR Performance Minutes"**) using the formula below:

$$Adjusted\ NR\ Performance\ Minutes = \frac{NR\ Performance\ Minutes}{100\ Train\ Operator\ Miles}$$

3.2.2 The Adjusted NR Performance Minutes calculated in accordance with paragraph 3.2.1 shall then be compared with the NRB and:

(a) if the Adjusted NR Performance Minutes figure is less than NRB, the Train Operator shall be liable to Network Rail for a Performance Sum equal to:

$$\left((NRB - the\ Adjusted\ NR\ Performance\ Minutes) \times Network\ Rail\ Payment\ Rate\right) \times \left(\frac{CPCM}{100}\right)$$

where:

CPCM means the total number of Train Miles operated by the Train Operator in the relevant Period;

(b) if the Adjusted NR Performance Minutes figure exceeds NRB, Network Rail shall be liable to the Train Operator for a Performance Sum equal to:

$$\left((the\ Adjusted\ NR\ Performance\ Minutes - NRB) \times Network\ Rail\ Payment\ Rate\right) \times \left(\frac{CPCM}{100}\right)$$

where CPCM has the meaning ascribed to it in paragraph 3.2.2(a); and

(c) if the Adjusted NR Performance Minutes figure is equal to NRB, neither party shall be liable to the other for a Performance Sum under this paragraph 3.2.

3.3 In the event of a Planned Service Cancellation for which Network Rail is allocated responsibility under paragraphs 2.6(b) and/or 6.3, Network Rail shall, in respect of that Planned Service be liable to pay to the Train Operator (in substitution for and to the exclusion of any liability under paragraph 3.4) the Network Rail Cancellation Sum. In the event of a Planned Service Cancellation for which Network Rail is allocated joint responsibility under paragraph 6.5, then in respect of that Planned Service Network Rail shall be liable to pay to the Train Operator (in substitution for and to the exclusion of any liability under paragraph 3.4) the Joint Cancellation Sum.

3.4 If a Planned Service is the subject of a Combined Network Diversion or Combined Network Failure to Stop due to a Service Incident for which Network Rail is allocated responsibility under paragraph 6.3 and, as a result, the Train Operator incurs, in relation to such Planned Service, additional costs which but for the Combined Network Diversion or Combined Network Failure to Stop it would not have incurred, Network Rail shall, in addition to any liability under paragraph 3.2, pay the Train Operator the Charter Service Variation Sum in respect of the Planned Service provided that the Train Operator shall have notified to and supplied Network Rail with evidence (to its reasonable satisfaction) of such costs on or before the end of the second Working Day after the Week in which such Service Incident occurred.

3.5 Within 5 Working Days after the end of each Week, Network Rail shall provide the Train Operator with an Interim Statement showing in respect of each Planned Service which was Planned to depart from its point of origin during that Week and for which Network Rail is liable to make payment under this paragraph 3 either:

(a) the Performance Sum calculated in accordance with paragraph 3.2; or

(b) whether it is a Planned Service Cancellation for which Network Rail is liable to the Train Operator under paragraph 3.3.

Any unresolved dispute under paragraph 2.7 in relation to a Planned Service the subject of an Interim Statement shall be indicated as such on the Interim Statement. Within 2 Working Days of receipt of the Interim Statement the Train Operator shall sign and return a copy thereof to Network Rail and indicate on the copy any aspects of the Interim Statement which it disputes, giving reasons for any dispute. Save to the extent that any disputes are so notified or if the Train Operator fails to sign and return to Network Rail a copy of the Interim Statement, the Train Operator shall be deemed to have agreed the contents of the Interim Statement.

4. Train Operator performance

4.1 The performance minutes allocated to the Train Operator in respect of any Third Party User (the **"TO Performance Minutes"**) shall be calculated as follows:

$$TO\ Performance\ Minutes = (A + B) + (C + D)$$

where:

A = the total number of Minutes Delay in respect of all Triggers by each train operated by that Third Party User caused by one or more Service Incidents for which the Train Operator is allocated responsibility under paragraphs 2.6(a) and 6.4; and

B = 50% of the total number of Minutes Delay in respect of all Triggers by each train operated by that Third Party User caused by one or more Service Incidents for which the Train Operator is allocated joint responsibility with Network Rail under paragraph 6.5;

C = the Third Party User Cancellation Minutes in respect of each Third Party Train Cancellation due to a Service Incident for which the Train Operator is allocated sole responsibility under paragraphs 2.6(a) and 6.4, provided that there shall be disregarded any Minutes Delay caused as a result of such Service Incident occurring after the time at which the train of the Third Party User arrives at the point on or off the Network where it subsequently becomes a Third Party Train Cancellation; and

D = 50% of the Third Party User Cancellation Minutes in respect of each Third Party Train Cancellation due to a Service Incident for which the Train Operator is allocated joint responsibility with Network Rail under paragraph 6.5 provided that there shall be disregarded any Minutes Delay caused as a result of such Service Incident occurring after the time at which the train of the Third Party User arrives at the point on or off the Network where it subsequently becomes a Third Party Train Cancellation.

4.2 For the avoidance of doubt, in the event of a Planned Service Cancellation for which the Train Operator is allocated sole responsibility under paragraph 6.4, then in respect of that Cancellation the Train Operator shall only be liable to pay Network Rail the applicable charge under paragraph 5.1 of Part 2 of Schedule 7 and in the event of a Planned Service Cancellation for which the Train Operator is allocated joint responsibility with Network Rail under paragraph 6.5, then in respect of that Planned Service the Train Operator shall be liable to pay Network Rail 50% of the applicable charge under Schedule 7.

4.3

4.3.1 For the purposes of this paragraph 4.3, the TO Performance Minutes arising in respect of a Planned Service (and its associated Combined Network Ancillary Movements) shall be capped at the Planned Service Incident Cap, so that any such minutes in excess of the Planned Service Incident Cap shall be disregarded.

4.3.2 The TO Performance Minutes shall be converted into a per 100 Train Operator Miles figure (the **"Adjusted TO Performance Minutes"**) using the formula below:

$$Adjusted\ TO\ Performance\ Minutes = \frac{TO\ Performance\ Minutes}{100\ Train\ Operator\ Miles}$$

4.3.3 The Adjusted TO Performance Minutes calculated in accordance with paragraph 4.3.2 shall then be compared with the TOB and:

(a) if the Adjusted TO Performance Minutes figure is less than TOB, Network Rail shall be liable to the Train Operator for a Performance Sum equal to:

$$\left((TOB - the\ Adjusted\ TO\ Performance\ Minutes) \times Train\ Operator\ Payment\ Rate\right) \times \left(\frac{CPCM}{100}\right)$$

where:

CPCM means the total number of Train Miles operated by the Train Operator in the relevant Period;

(b) if the Adjusted TO Performance Minutes figure exceeds TOB, the Train Operator shall be liable to Network Rail for a Performance Sum equal to:

$$\left((the\ Adjusted\ TO\ Performance\ Minutes - TOB) \times Train\ Operator\ Payment\ Rate\right) \times \left(\frac{CPCM}{100}\right)$$

where CPCM has the meaning ascribed to it in paragraph 4.3.3(a); and

(c) if the Adjusted TO Performance Minutes figure is equal to TOB, neither party shall be liable to the other for a Performance Sum under this paragraph 4.3.

4.4 If:

(a) any service operated by a Third Party User is the subject of a Diversion or Failure to Stop but does not become a Third Party Train Cancellation for which Third Party User Cancellation Minutes are allocated to the Train Operator under paragraph 4.1; or

(b) Network Rail has to postpone a Restriction of Use or has to keep open any part of the Network beyond the time at which such part of the Network is generally open to passenger carrying movements

due to a Service Incident for which the Train Operator is allocated responsibility under paragraph 6.4 and, as a result, Network Rail incurs additional costs which, but for the Service Incident it would not have incurred, the Train Operator shall, in addition to any liability under paragraph 4.2, pay Network Rail the Charter Service Variation Sum in respect of the Planned Service provided that Network Rail shall have notified to and supplied the Train Operator with evidence (to its reasonable satisfaction) of such costs on or before the end of the Period following the Period in which such Service Incident occurred.

4.5 Within 5 Working Days after the end of each Week, Network Rail shall provide the Train Operator with an Interim Statement listing all Service Incidents during that Week for which the Train Operator is allocated responsibility under paragraph 6.4 or joint responsibility with Network Rail under paragraph 6.5 and showing, for each such Service Incident, the TO Performance Minutes. Any unresolved dispute under paragraph 2.7 in relation to any such Service Incident shall be indicated as such on the Interim Statement. Within 2 Working Days of receipt of the Interim Statement the Train Operator shall sign and return a copy thereof to Network Rail and indicate on the copy any aspects of the Interim Statement which it disputes, giving reasons for any dispute. Save to the extent that any disputes are so notified or if the Train Operator fails to sign and return to Network Rail a copy of the Interim Statement, the Train Operator shall be deemed to have agreed the contents of the Interim Statement.

5. Calculation of minutes delay

5.1 Subject to paragraph 5.2 the Minutes Delay for a Planned Service in respect of a Trigger of a Recording Point shall be equal to:

(a) in respect of the first recorded Trigger, the number of minutes (rounded down to the nearest whole minute), if any, by which the time at which the relevant train so Triggers the Recording Point is later than the time at which that train is Planned so to Trigger the Recording Point; and

(b) in respect of each other recorded Trigger by a train, the lesser of:

(v) the number of minutes in respect of the Trigger calculated as in paragraph 5.1(a) above; and

(vi) the greater of $\left((A1 - A2) + B\right)$ and zero

where:

A1 is the number of minutes, between the time at which the relevant train Triggers the Recording Point (rounded down to the nearest whole minute) and the time of that train's last recorded Trigger of a Recording Point (rounded down to the nearest whole minute);

A2 is the Planned time between such Triggers; and

B is any Recovery Time between such Triggers.

5.2 The Minutes Delay calculated in accordance with paragraph 5.1 shall be allocated to the incident(s) causing those Minutes Delay as described in paragraph 6. Any minutes of delay which are included in any Minutes Delay and which are caused by the same incident or series of related incidents and which are less than three minutes in aggregate shall for the purposes of this Schedule 8 be deemed to be zero.

6. Allocation of responsibility

6.1 For the purposes of this Schedule 8 responsibility for each minute of delay included in Minutes Delay, each Third Party Train Cancellation, each Combined Network Diversion, each Combined Network Failure to Stop and each Planned Service Cancellation shall be allocated according to the responsibility for the incident which caused such Minutes Delay, Third Party Train Cancellation, Combined Network Diversion, Combined Network Failure to Stop or Planned Service Cancellation as established in accordance with the following provisions of this paragraph 6.

6.2 In assessing the causes of any Minutes Delay, Third Party Train Cancellation, Combined Network Diversion, Combined Network Failure to Stop or Planned Service Cancellation there shall be taken into account all incidents contributing thereto including:

(a) the extent to which each party has taken reasonable steps to avoid and/or mitigate the effects of the incidents contributing thereto;

(b) where a train is affected by the Cancellation of or delay to a Combined Network Ancillary Movement, the incident(s) giving rise to that Cancellation or delay; and

(c) where a Restriction of Use overruns, due to the start of such Restriction of Use being delayed by a late running train (including a Planned Service or a Combined Network Ancillary Movement associated therewith), the incident(s) giving rise to that late running.

6.3 Subject to paragraph 6.5, Network Rail shall be allocated responsibility for an incident other than a Planned Incident if that incident is:

(a) caused by breach by Network Rail of any of its obligations under this contract or any of its obligations in its safety authorisation which are relevant to the operation of the Combined Network Services;

(b) caused by failures of or delays to Services arising on the Combined Network which are not allocated to the Train Operator under this contract; or

(c) caused by acts or omissions of Network Rail's staff or Network Rail's contractors in breach of this contract.

6.4 Subject to paragraph 6.5, the Train Operator shall be allocated responsibility for an incident other than a Planned Incident if that incident is:

(a) caused by breach by the Train Operator of any of its obligations under this contract or any of its obligations in its safety certificate which are relevant to the operation of the Combined Network Services;

(b) caused by circumstances within the control of the Train Operator (whether or not the Train Operator is at fault) in its capacity as an operator of trains under this contract; or

(c) caused (whether or not the Train Operator is at fault) by any defect in or other failure by the Specified Equipment to comply with the Service Characteristics of a Combined Network Service whether or not such Specified Equipment is owned by the Train Operator; or

(d) caused by acts, or omissions of the Train Operator's staff, customers, contractors (including any associates or associate sub-contractors of the Train Operator) in connection with this contract, or passengers using the Combined Network Services; or

(e) caused by circumstances arising:

(i) off the Combined Network and which are not caused by Network Rail in breach of its obligations under this contract; or

(ii) in connection with the operation of any station, light maintenance depot or other facility to which the Train Operator has been granted access for the purpose of the operation of the relevant Combined Network Service; or

(iii) under a connection agreement to which Network Rail is a party in relation to a light maintenance depot or other facility referred to under (ii) above.

6.5 Network Rail and the Train Operator shall be allocated joint responsibility for:

(a) any incident caused by or in connection with any incident arising at or in a station which is not within the reasonable control of either party; or

(b) 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 6.3 or 6.4.

6.6 An incident in connection with a Restriction of Use shall be treated as a Planned Incident to the extent that there is Recovery Time in respect of that Restriction of Use incorporated in the Applicable Timetable.

7. Payment terms and supplementary provisions

7.1.1 The aggregate of any and all sums for which each party is liable under this Schedule in relation to Planned Services which were Planned to depart from their point of origin during a Period shall be set off against each other and the balance, if any, shall be invoiced by Network Rail to the Train Operator or, as the case may be, shall be the subject of a credit note issued by Network Rail to the Train Operator when all outstanding disputed items have been resolved, and shall be payable within 28 days after this time.

7.1.2 In respect of any Financial Year, the aggregate liability of Network Rail to make balance payments to the Train Operator under paragraph 7.1.1 shall not exceed the Network Rail Annual Cap.

7.1.3 In respect of any Financial Year, the aggregate liability of the Train Operator to make balance payments to Network Rail under paragraph 7.1.1 shall not exceed the Train Operator Annual Cap.

7.2 ***Indexation of Indexed Figures***

7.2.1 For each Relevant Year commencing on and from 1 April 2024, the Indexed Figures shall be adjusted in accordance with paragraph 7.2.2.

7.2.2

(a) Not used.

(b) For the Relevant Year commencing on and from 1 April 2024, and for each subsequent Relevant Year, the Indexed Figures shall be adjusted as at the applicable 1 April by multiplying them by the Adjustment Factor for the Relevant Year in question (rounded to three decimal places).

For the purposes of this paragraph 7.2.2(b), the Adjustment Factor in respect of Relevant Year t shall be calculated in accordance with the following formula:

$$Adjustment\ Factor = 1 + \frac{(CPI_{t-1} - CPI_{2022})}{CPI_{2022}}$$

where:

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

CPI_{2022} means the CPI published or determined with respect to the month of November 2022.

(c) If this contract takes effect after 1 April 2024, the Indexed Figures shall be adjusted in accordance with paragraph 7.2.2(b) as if this contract had been in effect on and from 1 April 2024.

Performance Monitoring System

7.3 Each Combined Network Service shall be allocated an eight character code in the Performance Monitoring System (being a different code to that which applies to services of the Train Operator operated under any other access agreement) to allow for monitoring of each Planned Service and its associated Combined Network Ancillary Movements.

8. Reviews of Network Rail Annual Cap and Train Operator Annual Cap

8.1 *Not used*

8.2 *Adjustments to the Network Rail Annual Cap and Train Operator Annual Cap*

8.2.1 The Network Rail Annual Cap and the Train Operator Annual Cap that shall apply from 1 April in each Financial Year in relation to each Period in that Financial Year shall be the Network Rail Annual Cap and the Train Operator Annual Cap, in each case as specified in Appendix 8A and as adjusted in accordance with paragraph 7.2 and this paragraph 8.2, provided that no adjustment shall be made to the Network Rail Annual Cap or the Train Operator Annual Cap pursuant to the following subparagraphs of this paragraph 8.2 prior to 1 April 2025; and thereafter an adjustment shall only be made if the total number of Train Miles operated by the Train Operator during Financial Year t or the Baseline Annual Train Mileage is 1,000,000 or greater.

8.2.2 Within 28 days after the last day of Financial Year t, Network Rail shall notify the Train Operator in writing of:

(a) the total number of Train Miles operated by the Train Operator during Financial Year t (the **"Annual Train Mileage"**);

(b) Network Rail's determination as to whether or not the Annual Train Mileage for Financial Year t exceeds or is less than the Baseline Annual Train Mileage (as determined in accordance with paragraph 8.2.3 below (the **"Baseline Annual Train Mileage"**) by, in each case, an amount equal to or greater than 2.5% of the Baseline Annual Train Mileage (the **"Annual Train Mileage Variation"**); and

(c) if Network Rail determines that there has been an Annual Train Mileage Variation, Network Rail's proposal for an adjusted Network Rail Annual Cap and/or Train Operator Annual Cap, in each case having regard to any relevant criteria and/or policy statement most recently issued by ORR.

8.2.3

(a) The Baseline Annual Train Mileage that shall apply from 1 April in each Financial Year shall be the Baseline Annual Train Mileage specified in Appendix 8A, unless it is adjusted in accordance with paragraph 8.2.3(b).

(b) If, in accordance with paragraph 8.2.2(b), Network Rail determines that there has been an Annual Train Mileage Variation, then the Baseline Annual Train Mileage for the Financial Year immediately following Financial Year t (**"Financial Year t+1"**) and each subsequent Financial Year until any further adjustment is made to the Baseline Annual Train Mileage pursuant to this paragraph 8.2.3(b) shall be the Annual Train Mileage for the Financial Year t in which the Annual Train Mileage Variation has occurred.

8.2.4 Promptly (and in any event, within 28 days) following receipt by the Train Operator of the information and notice from Network Rail required to be provided pursuant to paragraph 8.2.2, the parties shall endeavour to agree whether the Network Rail Annual Cap and/or the Train Operator Annual Cap should be adjusted in accordance with this paragraph 8.2 and, if so, the adjustment (in each case having regard to any relevant criteria and/or policy statement most recently issued by ORR), provided that any adjustment to the Network Rail Annual Cap and/or the Train Operator Annual Cap pursuant to this paragraph 8.2 shall be subject to the prior approval of ORR.

8.2.5 If, within 56 days of receipt by the Train Operator of the information and notice from Network Rail required to be provided pursuant to paragraph 8.2.2, the Train Operator and Network Rail reach agreement as to any adjustment to the Network Rail Annual Cap and/or the Train Operator Annual Cap, the parties shall notify ORR and shall provide ORR with such information and evidence as ORR shall require to determine whether or not to approve the proposed adjustment. The parties agree to abide by any determination issued by ORR.

8.2.6 If, within 56 days of receipt by the Train Operator of the information and notice from Network Rail required to be provided pursuant to paragraph 8.2.2, either:

(a) the parties fail to reach agreement; or

(b) prior to the expiry of that 56 day period both parties agree that agreement is unlikely to be reached prior to the expiry of that period,

the parties shall notify ORR and shall provide ORR with such information and evidence as ORR shall require to determine the matter. The parties agree to abide by any determination issued by ORR.

8.2.7 Any adjustment to the Network Rail Annual Cap and/or the Train Operator Annual Cap shall take effect only when it has been approved by ORR and, unless otherwise specified by ORR, any such adjustment shall take effect from 1 April in Financial Year t.

8.2.8 Promptly following any adjustment to the Network Rail Annual Cap and/or the Train Operator Annual Cap pursuant to this paragraph 8.2, and in order to give effect to that adjustment,

Network Rail shall issue to the Train Operator a statement showing the necessary adjustments to:

(a) any invoices and credit notes already issued; and

(b) any payments already made in respect of Performance Sums,

in each case relating to the Periods in Financial Year t+1.

8.2.9 Any statement issued by Network Rail pursuant to paragraph 8.2.8 shall be accompanied by an adjusting invoice or credit note in accordance with paragraph 7.1.1.

9. Selection by the Train Operator of the Planned Service Incident Cap

9.1 *Selection by the Train Operator of the Planned Service Incident Cap*

9.1.1 On or before the date on which this paragraph 9.1 takes effect, the Train Operator shall notify Network Rail in writing of the level of Planned Service Incident Cap it wishes to apply (the "**Initial Planned Service Incident Cap Notice**"). The Planned Incident Cap Access Charge Supplement Rate applicable to the Train Operator under this contract shall be the rate set out in the column adjacent to the Planned Service Incident Cap selected by the Train Operator in the Initial Planned Service Incident Cap Notice until it is replaced by a different level of Planned Service Incident Cap selected by the Train Operator in a Planned Service Incident Cap Notice issued pursuant to paragraph 9.1.2.

9.1.2 The Train Operator may change the level of Planned Service Incident Cap previously selected by it (either in the Initial Planned Service Incident Cap Notice or any subsequent Planned Service Incident Cap Notice issued pursuant to this paragraph 9.1.2) with effect from 1 April in any Financial Year by notifying Network Rail in writing of the level of Planned Service Incident Cap it wishes to apply for that Financial Year (the "**Planned Service Incident Cap Notice**"). Any such Planned Service Incident Cap Notice must be served by the Train Operator on Network Rail by no later than 6 weeks prior to 1 April in the Financial Year from which the Train Operator wishes the new level of Planned Service Incident Cap to apply, and the Planned Service Incident Cap Access Charge Supplement Rate applicable for that and each subsequent Financial Year shall be the rate set out in the column adjacent to the Planned Service Incident Cap selected by the Train Operator in the Planned Service Incident Cap Notice until it is replaced by a different level of Planned Service Incident Cap selected by the Train Operator pursuant to this paragraph 9.1.2.

9.2 *Level of Planned Service Incident Cap and Planned Service Incident Cap Access Charge Supplement Rate*

For the purposes of paragraph 9.1, the Train Operator shall select one of the following Planned Service Incident Caps:

Planned Service Incident Cap	**Planned Service Incident Cap Access Charge Supplement Rate (£ per Train Mile operated in a Period)** expressed in pounds sterling and rounded to two decimal places –
93 minutes	[redacted]
147 minutes	[redacted]
500 minutes	[redacted]
1,000 minutes	[redacted]
5,000 minutes	[redacted]

Planned Service Incident Cap	**Planned Service Incident Cap Access Charge Supplement Rate (£ per Train Mile operated in a Period)** expressed in pounds sterling and rounded to two decimal places –
No Planned Service Incident Cap	None

10. **ETCS Amendments**

10.1

(a) 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 part of the Combined Network that is used by the Train Operator (**"ETCS Amendments"**).

(b) ORR may make ETCS Amendments, subject to complying with paragraph 10.3.

10.2

(a) 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.

(b) The party receiving a notice under paragraph 10.2(a) shall respond in writing, in reasonable detail and with reasons for its response, within 30 Working Days of service of such notice.

(c) Promptly, (and in any event within 20 Working Days) following service of a response pursuant to paragraph 10.2(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.

(d) If:

(i) the parties agree to make ETCS Amendments pursuant to paragraph 10.2(c); or

(ii) the parties fail to reach agreement within 50 Working Days of service of a notice under paragraph 10.2(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.

10.3

(a) If ORR:

(i) receives a notification under paragraph 10.2(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.

(b) ORR may require either party to provide such information as it may reasonably require to make a decision pursuant to paragraph 10.3(a), and such information shall be provided in accordance with any timescales and to the standard required by ORR.

11. **Circumstances in which ORR may amend the Planned Service Incident Cap Access Charge Supplement Rate and Appendix 8A**

11.1 ORR may amend the Planned Service Incident Cap Access Charge Supplement Rate set out in paragraph 9.2 of Schedule 8 and Appendix 8A of Schedule 8 during CP7 if ORR considers that these should be amended as a consequence of the recalibration undertaken in accordance with the approach outlined in paragraphs 3.22-3.26 of “PR23 final determination: Policy position – Schedules 4 and 8 incentives regimes”. In such event, ORR shall issue a notice to the parties setting out the amendments to be made and that they shall take effect on the date specified by ORR in its notice (save that it shall not be earlier than 1 April 2026).

11.2 Notwithstanding paragraph 11.1 above, ORR may amend the Planned Service Incident Cap Access Charge Supplement Rate set out in paragraph 9.2 of Schedule 8 and Appendix 8A of Schedule 8 where it considers that there has been a material change in circumstances. In such event, ORR shall issue a notice to the parties setting out the amendments to be made and the date, which shall not be retrospective, from which they shall take effect.

Appendix 8A

Charter Service Variation Sum: [redacted]

Joint Cancellation Sum: [redacted]

Network Rail Cancellation Sum: [redacted]

Network Rail Payment Rate: [redacted] per NR Performance Minute

Network Rail Annual Cap: [redacted]

Network Rail Benchmark (NRB): the NRB in relation to a Period shall be [redacted] Minutes Delay per 100 Train Operator Miles

Train Operator Payment Rate: [redacted] per TO Performance Minute

Train Operator Annual Cap: [redacted]

Train Operator Benchmark (TOB): the TOB in relation to each Period shall be [redacted] Minutes Delay per 100 Train Operator Miles

Third Party User Cancellation Minutes: [redacted]

Baseline Annual Train Mileage: [redacted]

Schedule 9

(Limitation on liability)

1. **Definitions**

In this Schedule

"Liability Cap" means:

the sum calculated in accordance with the following formula:

$$C_t = C_1 \bullet \left(1 + \left[\frac{CPI_{t-1} - CPI_{2022}}{CPI_{2022}}\right]\right)$$

where:

(i) C_t is the relevant figure in Relevant Year t;

(ii) C_1 is the sum of £8,300,000;

(iii) CPI_{t-1} is the Consumer Prices Index (defined as CPI in Schedule 7) published or determined with respect to the month of November in Relevant Year t-1; and

(iv) CPI_{2022} is the Consumer Prices Index (defined as CPI in Schedule 7) published or determined with respect to November 2022.

2. **Application**

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

3. **Limitation on Network Rail's liability**

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

(a) Network Rail shall not be liable to make payments in relation to such claims which are admitted in writing or finally determined in any Contract Year to the extent that its liability for such claims exceeds the Liability Cap for such Contract Year; and

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

4. **Limitation on Train Operator's liability**

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

(a) the Train Operator shall not be liable to make payments in relation to such claims which are admitted in writing or finally determined in any Contract Year to the extent that its liability for such claims exceeds the Liability Cap for such Contract Year; and

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

5. **Disapplication of limitation**

To the extent that any Relevant Losses:

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

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

such Relevant Losses:

(i) shall not be subject to the limitation of liability in Schedule 9; and

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

6. **Exclusion of legal and other costs**

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

7. **Exclusion of certain Relevant Losses**

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

8. **Continuing breaches**

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

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

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

(c) is a breach of a Performance Order in relation to a breach of contract,

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

9. **Final determination of claims**

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

Schedule 10

(Network Code modifications)

1. **Automatic effect**

1.1 ***General***

This contract shall have effect:

(a) with the modifications; and

(b) from the date,

specified by ORR in a modification notice as supplemented (where appropriate) by a notice of consent to requisite adaptations or a notice of determined requisite adaptations.

1.2 ***Retrospective effect***

No relevant notice may have retrospective effect.

2. **Modification notice**

2.1 ***Meaning***

A modification notice is a notice given by ORR to the parties for the purposes of this contract which modifies specified provisions of this contract (other than this Schedule 10) by making such modifications as are consequential upon, or necessary to give full effect to, any change to the Network Code.

2.2 ***Contents of modification notice***

A modification notice shall state:

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

(b) the date from which specified modifications are to have effect; and, if any such modifications are to have effect from different dates, the dates applicable to each modification; and

(c) which of the specified modifications are to be subject to adaptation and the backstop date for the requisite adaptations in question.

3. **Adaptation procedure**

3.1 ***Application***

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

3.2 ***Negotiation of adaptations***

In respect of the modifications in each modification notice:

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

(b) each party shall ensure that:

(i) such negotiations are conducted in good faith in a timely, efficient and economical manner, with appropriate recourse to professional advice; and

(ii) ORR's criteria are applied in the negotiations; and

(c) the negotiations shall not continue after the backstop date.

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

If the parties have agreed the requisite adaptations on or before the backstop date, not later than 7 days after the backstop date the agreed requisite adaptations shall be sent by the parties to ORR for its consent, together with a statement, signed by or on behalf of both parties:

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

(b) stating the extent to which and ways in which ORR's criteria have been applied in arriving at the agreed requisite adaptations and, in any case where they have not been applied, the reasons; and

(c) giving such other information as ORR may have requested.

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

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

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

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

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

(b) determine the requisite adaptations itself.

3.6 ***Requisite adaptations - failure to agree or submit***

If the parties have failed to submit agreed requisite adaptations to ORR for its consent within 7 days after the backstop date, it may determine the requisite adaptations itself.

3.7 ***Notice of determined requisite adaptations***

A notice of determined requisite adaptations is a notice:

(a) given by ORR to the parties for the purposes of this paragraph 3 following the failure of the parties to send to ORR within 7 days of the backstop date requisite adaptations to which it gives its consent; and

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

3.8 ***Effect of requisite adaptations***

Requisite adaptations established either:

(a) by agreement of the parties and in respect of which ORR has given a notice of consent to requisite adaptations under paragraph 3.4; or

(b) by the determination of ORR under paragraph 3.5 or 3.6 and stated in a notice of determined requisite adaptations,

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

4. Procedural matters

4.1 *More than one notice*

More than one modification notice may be given.

4.2 *Differences etc as to requisite adaptations*

Any difference or question as to whether any thing is a requisite adaptation shall be determined by ORR:

(a) on the application of either party; and

(b) in accordance with such procedure (including as to consultation) as ORR may by notice to the parties determine.

4.3 *Co-operation and information*

If ORR gives notice to either or both of the parties that it requires from either or both of them information in relation to any requisite adaptation or proposed requisite adaptation:

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

(b) if that party fails timeously to do so, ORR shall be entitled to proceed with its consideration of the matter in question and to reach a decision in relation to it without the information in question and the party in default shall have no grounds for complaint in that respect.

4.4 *Office of Rail and Road's criteria*

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

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

(b) modify the criteria after consultation.

4.5 *Procedural modifications*

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

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

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

4.6 ***Dates***

In this Schedule 10:

(a) where provision is made for a date to be specified or stated by ORR it may, instead of specifying or stating a date, specify or state a method by which a date is to be determined, and references to dates shall be construed accordingly; and

(b) any notice given by ORR which states a date may state different dates for different purposes.

4.7 ***Requirement for prior consultation***

No relevant notice shall have effect unless:

(a) ORR has first consulted the parties in relation to the proposed relevant notice in question;

(b) in the consultations referred to in paragraph 4.7(a), ORR has made available to the parties such drafts of the proposed relevant notice as it considers are necessary so as properly to inform them of its contents;

(c) ORR has given each party the opportunity to make representations in relation to the proposed relevant notice and has taken into account all such representations (other than those which are frivolous or trivial) in making its decision on the relevant notice to be given;

(d) ORR has notified the parties as to its conclusions in relation to the relevant notice in question (including by providing to each such person a copy of the text of the proposed relevant notice) and its reasons for those conclusions; and

(e) in effecting the notifications required by paragraph 4.7(d), ORR has treated as confidential any representation (including any submission of written material) which (and to the extent that) the person making the representation, by notice in writing to ORR or by endorsement on the representation of words indicating the confidential nature of such representation, has specified as confidential information.

4.8 ***Consolidated contract***

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

(a) a modification notice; and

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

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

4.9 ***Saving***

Nothing in this Schedule 10 affects:

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

(b) the right of ORR at any time to effect modifications to the Network Code under Condition C8 of that code.

5. Definitions

In this Schedule 10:

"backstop date" means the date (being not earlier than 28 days from the date of the modification notice) specified as such in a modification notice (or such later date as may be established under paragraph 3.5(a) or 4.6);

"modification notice" has the meaning ascribed to it in paragraph 2.1;

"notice of consent to requisite adaptations" means a notice given by ORR under paragraph 3.4;

"notice of determined requisite adaptations" has the meaning ascribed to it in paragraph 3.7;

"notice of procedural modification" means a notice given by ORR to the parties under paragraph 4.5 modifying any aspect of the procedure in this Schedule 10 for the agreement or establishment of requisite adaptations;

"ORR's criteria" means the criteria established by ORR for the purposes of the negotiation of requisite adaptations and given to the parties, or modified, under paragraph 4.4;

"relevant notice" means a modification notice, notice of determined requisite adaptations, notice of procedural modification or notice of modification of ORR's criteria;

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

"specified" means specified in a modification notice.

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 STEVE RHYMES

Duly authorised for and on behalf of
Network Rail Infrastructure Limited

N. J. Gibbons

Signed by

Print name NICK GIBBONS

Duly authorised for and on behalf of
Locomotive Services (TOC) Limited