Track Access

Contract (Passenger Services)

between

(1) Network Rail Infrastructure Limited

(2) Chiltern Rail Limited

Dated 7 October 2022

As amended by

1. 3rd Supplemental dated 25 September 2023, changes to schedule 5 tables 2.1 and 4.1.
2. Correction to 3rd Supplemental made to include contract date and update Network Rail registered address.
3. 7th Supplemental dated 6 December 2023, amendments to Appendix 1.
4. 9th Supplemental (General Approval) dated 22 December 2023, amendments to schedule 5 table 2.1.
5. 8th Supplemental dated 16 February, amendments to Schedule 5 table 2.1 and 4.1 for June 2024 timetable, and update Network Rail registered address in Schedule 1.
6. 6th Supplemental dated 16 February, amendments to Schedule 5 table 2.1 and 4.1.
7. 11th Supplemental dated 25 March 2024, PR23 Review Implementation Notice.
8. 5th Supplemental dated 26 March 2024, amendments to Schedule 5 to incorporate driver training clause.

9. 10th Supplemental dated 17 May 2024, amendments to Schedule 5 Tables 2.1 and 4.1.

10. 13th Supplemental (General Approval) dated 22 October 2024, amendments to Schedule 5 relating to Specified Equipment.

11. 12th Supplemental dated 11 December 2024, amendments to Schedule 5 tables 2.2 and 4.1.

12. 14th Supplemental Agreement dated 23rd April 2025 has removed Schedule 5 Table 2.2 and amendments to Schedule 5 Tables 2.1 and 4.1. 16th Supplemental (General Approval) dated 09th May 2025, amendments to Appendix 1.

13. 15th Supplemental Agreement dated 13th June 2025 has amended the expiry date from Subsidiary Change Date 2026 to Principal Change Date 2029.

14. 17th Supplemental Agreement dated 11th September 2025 amendments to Schedule 5 Table 2.2

15. Update to Chiltern contact particulars in Schedule 1 dated 16 January 2026

16. Issuance of notice – modification of Schedules 4 and 8 following the recalibration of the parameters in the schedules for CP7 years 3 to 5, dated 20th March 2026, applicable from 1st April 2026.

17. 20th Supplemental Agreement dated 5th June 2026 amendments to Schedule 5 Table 2.1, Table 2.2, and Table 4.1.

18. 22nd Supplemental Agreement dated 23rd July 2026 amendments to Schedule 5 Table 2.1.

19. 25th Supplemental Agreement dated 10th September 2026 amendments to Schedule 5 Table 2.1, 2.2 and 4.1 transfer to excel tables Annex 1

20. Registered Company Details and Schedule 1 modification dated 28 September 2026

Unredacted conformed copy as of 29 September 2026

Contents

1. Interpretation 1
2. Network Code and Traction Electricity Rules 6
3. Conditions precedent and duration 7
4. Standard of performance 8
5. Permission to use 8
6. Operation and maintenance of trains and Network 9
7. Track Charges and other payments 11
8. Liability 11
9. Not used 11
10. Liability - other matters 11
11. Restrictions on claims 11
12. Governing law 13
13. Dispute resolution 13
14. Confidentiality 15
15. Assignment and novation 17
16. Payments, interest and VAT 17
17. Force Majeure Events 19
18. Miscellaneous 21
19. Transition 25
Schedule 1 27
(Contract Particulars) 27
Schedule 2 28
(The Routes) 28
Schedule 3 29
(Collateral Agreements) 29
Schedule 4 30
(Engineering Access Statement, Timetable Planning Rules and Restrictions of Use) 30
Part 1 30
(Not used) 30
Part 2 30
(Not used) 30
Part 3 31
(Compensation for Restrictions of Use) 31
Annex A 54
Notification Factors 54
Annex B 55
Lookup Table for EBM Weights 55
Annex C 61
Payment Rate per train mile 61
Annex D 62
Defined Service Group Revenue 62
Part 4 63
(Not Used) 63
Part 5 63
(Access Charge Supplement for Restrictions of Use) 63
Schedule 5 66
(The Services and the Specified Equipment) 66
Schedule 6 87
(Events of Default, Suspension and Termination) 87
Schedule 7 92
Track Charges 92
Part 1 92
(Interpretation) 92
Part 2 100
(Track Charges) 100
Part 3 139
(Not used) 139
Part 3A 139

(English & Welsh Grant Dilution) 139
Part 4 142
(Not used) 142
Part 5 142
(Not used) 142
Part 6 142
(Supplemental Provisions) 142
Part 7 143
(Future Access Charges Reviews) 143
Appendix 7A 145
(Not used) 145
Appendix 7B 145
(Not used) 145
Appendix 7C 146
Default Train Consist Data 146
Appendix 7D 147
"Metered Trains M" for the purposes of paragraph 4.1.1 of Part 2 147
Schedule 8 148
(Performance Regime) 148
Appendix 1 169
Appendix 2 173
Charter Destination Points 173
(Not used) 173
Appendix 3 174
SPP Threshold 174
Schedule 9 175
(Limitation on Liability) 175
Schedule 10 177
(Network Code and Traction Electricity Modifications) 177

This Contract is made on 7 October 2022

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) **Chiltern Rail Limited**, a company registered in England and Wales under number 12544800 having its registered office at Great Central House, Marylebone Station, Melcombe Place, London, NW1 6JJ **(the "Train Operator").**

Background:

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

(B) Network Rail has been directed by ORR to grant to the Train Operator permission to use certain track comprised in the Network on the terms and conditions of this contract.

It is agreed as follows:

1. **Interpretation**

1.1 ***Definitions***

In this contract unless the context otherwise requires:

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

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

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

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

"Act" means the Railways Act 1993;

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

"Affiliate" means, in relation to any company:

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

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

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

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

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

"Applicable Timetable Planning Rules" means the Timetable Planning Rules in force in respect of the Routes on the date on which Services may first be operated by the Train Operator

under this contract, as from time to time amended or replaced under Part D of the Network Code;

"Applicable Timetable" 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, the Network Code and the Traction Electricity Rules;

"D-X" has the meaning ascribed to it in Part D of the Network Code;

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

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

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

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

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

"Expiry Date" means the Principal Change Date in 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;

"Franchise Agreement" means the franchise agreement with the Secretary of State referred to in Schedule 3;

"Franchisee" means the person defined as such in the Franchise Agreement;

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

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

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

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

(i) section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for "£750" there were substituted "£100,000" or such higher figure as the parties may agree in writing from time to time; and

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

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

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

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

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

unless:

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

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

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

"Longstop Date" means the Subsidiary Change Date in 2023;

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

"Network Code" means the document by that name published by Network Rail;

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

"New Working Timetable" means, in respect of any day, the version of the Working Timetable for that day provided by Network Rail in accordance with Condition D2.7.1, as amended pursuant to Condition D2.7.4;

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

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

"Public Holiday" means any day other than Saturday or Sunday on which the banks in the City of London are not open for business;

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

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

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

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

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

"Relevant Losses" means, in relation to:

(a) a breach of this contract; or

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

(c) in the case of Schedule 8, the matter specified in paragraph 18 of Schedule 8 (a "breach" for the purposes of this definition only),

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

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

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

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

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

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

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

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

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

"Specified Equipment" means the railway vehicles which the Train Operator is entitled to use in the provision of Services as specified in paragraph 5.1 of Schedule 5;

"SPP Threshold" has the meaning ascribed to it in paragraph 18 of Schedule 8;

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

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

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

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

"Timetable Participant" shall have the meaning ascribed to it in Part D of the Network Code;

"Track Charges" means the charges payable by or on behalf of the Train Operator to Network Rail, as set out in paragraph 1 of Part 2 of Schedule 7 or under the Traction Electricity Rules;

"Traction Electricity Rules" means the document known as the Traction Electricity Rules published by Network Rail on its website and as may be amended from time to time;

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

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

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

"TW-X" has the meaning ascribed to it in Part D of the Network Code;

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

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

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

1.2 ***Interpretation***

In this contract, unless the context otherwise requires:

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

(b) any one gender includes the other;

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

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

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

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

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

appendix is to a part of the appendix in which the reference appears; and reference in a schedule to a Table is a reference to the table included in or annexed to that schedule;

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

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

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

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

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

(m) any reference to the term "possession", either by itself or as part of any composite definition, shall be construed as a reference to a Restriction of Use as defined in Schedule 4;

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

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

(p) words and expressions defined in the Traction Electricity Rules shall have the same meanings in this contract; and

(q) if there is any conflict of interpretation between this contract (not including the Traction Electricity Rules) and the Traction Electricity Rules, the following order of precedence shall apply: (1) the Traction Electricity Rules; and (2) this contract (not including the Traction Electricity Rules).

1.3 ***Indemnities***

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

2. **Network Code and Traction Electricity Rules**

2.1 ***Incorporation***

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

2.2 ***Modifications to the Network Code or the Traction Electricity Rules***

If either the Network Code or the Traction Electricity Rules or both are 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.

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 Applicable Engineering Access Statement and Applicable Timetable Planning Rules***

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

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

Schedule 4 shall have effect.

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

Schedule 5 shall have effect.

5.7 ***Performance***

Schedule 8 shall have effect.

5.8 ***Stabling***

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

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

6.1 ***General***

Without prejudice to the other provisions of this contract:

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

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

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

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

(a) trespass;

(b) vandalism; and

(c) intrusions on to the Network by animals,

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

6.3 ***Safety***

In relation to Safety Obligations:

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

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

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

6.4.1 *General*

The parties shall:

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

(b) comply with the Systems Code.

6.4.2 *Provision of Train Consist Data*

Without prejudice to clause 6.4.1, the Train Operator shall:

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

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

7. Track Charges and other payments

Schedule 7 shall have effect.

8. Liability

8.1 *Performance Orders in relation to breach*

In relation to any breach of this contract:

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

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

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

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

9. Not used

10. Liability - other matters

10.1 ***Train Operator indemnity***

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

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

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

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

10.2 ***Network Rail indemnity***

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

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

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

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

11. Restrictions on claims

11.1 ***Notification and mitigation***

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

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

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

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

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

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

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

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

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

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

(c) shall:

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

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

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

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

(a) shall exclude any Relevant Losses to the extent that they result from delays to or cancellations of trains (other than delays or cancellations in circumstances where the SPP Threshold has been exceeded as provided for in paragraph 18 of Schedule 8); 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 4, Schedule 5, Schedule 7 or Schedule 8 (other than under paragraph 18 of Schedule 8) or under the Traction Electricity Rules;

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

(c) subject to clause 18.3.3.

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

11.6.1 *General*

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

11.6.2 *Restriction of application*

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

11.6.3 *Liability for small claims*

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

12. Governing law

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

13. Dispute resolution

13.1 ***ADRR***

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

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

(b) any Part of Schedule 4, 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 two months after the Expiry Date or, if this contract lapses or is terminated earlier, is made within two months after the date on which this contract lapses or is terminated;

(b) is reasonable; and

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

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

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

14.5 ***Ownership of Confidential Information***

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

14.6 ***Network Code, Schedule 7 and the Traction Electricity Rules***

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

15. Assignment and novation

15.1 ***Assignment***

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

15.2 ***Novation***

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

(a) agree to the novation of the rights and obligations of the Train Operator under this contract in favour of another person (including the Secretary of State or a person nominated by him) in any circumstances where the Secretary of State requests Network Rail to participate in such a novation in the course of exercising its powers under section 30 of the Act; and

(b) execute such contracts and do such things as the Secretary of State may reasonably request to give effect to the novation.

15.3 ***Novation terms***

Any novation under clause 15.2 shall be on terms that:

(a) the Train Operator shall not be released from:

(i) any accrued but unperformed obligation;

(ii) the consequences of any breach of this contract which is the subject of any proceedings (arbitral or otherwise) for the resolution of a dispute between the parties; or

(iii) any liability in respect of anything done under this contract before, or as at the date of, any such novation (except to the extent that such other person agrees to assume and be responsible for it); and

(b) such other person shall not be required by Network Rail, as a term of or a condition to the novation, to agree to assume and be responsible for any unperformed obligation, liability or consequence of a breach of the kind referred to in clause 15.3(a), but this shall not prevent any such agreement being a term or condition of the novation if required by the Secretary of State.

16. Payments, interest and VAT

16.1 ***Payment***

16.1.1 *No deduction*

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

16.1.2 *Delivery of invoices[11th]*

All invoices issued under Schedule 7, or statements of amounts payable under Schedule 4, Schedule 5 or Schedule 8, or under the Network Code, or under the Traction Electricity Rules, 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[11th]*

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 4, Schedule 5, Schedule 7 and Schedule 8 or the Traction Electricity Rules; or

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

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

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

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

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

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

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

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

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

17.4 ***Procedure for claiming relief***

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

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

17.5.1 *Force Majeure Notice*

In relation to any Relevant Force Majeure Event:

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

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

17.5.2 *Force Majeure Report*

Following the giving of a Force Majeure Notice:

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

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

17.5.3 *Other information*

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

17.6 ***Mitigation***

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

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

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

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

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

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

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

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

17.8 ***Availability of Performance Order***

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

18. **Miscellaneous**

18.1 ***Non waiver***

18.1.1 *No waiver*

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

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

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

18.2 ***Variations***

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

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

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

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

18.2.2 *Exceptions*

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

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

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

18.2.3 *No Office of Rail and Road approval needed*

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

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

(b) modifications effected by virtue of the Network Code or the Traction Electricity Rules,

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*[11th]

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 as set out in Schedule 1. [11th]

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*[11th]

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

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

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

(c) if sent by 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.

18.7.3 *Application to the Secretary of State*

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

18.7.4 *Application of the Traction Electricity Rules to other train operators*

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

19. Transition

19.1 *Corresponding Rights*

In relation to any Corresponding Right:

(a) any Access Proposal or Rolled Over Access Proposal 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 an Access Proposal or Rolled Over Access Proposal 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;

(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; and

(d) in applying Schedule 4, effect shall be given:

(i) in relation to any Restriction of Use which was notified before the Transition Date, to any Previous Notification Factor;

(ii) in relation to any Significant Restrictions of Use, to any bespoke compensation arrangements established under the Previous Access Agreement; and

(iii) in relation to any Competent Authority Restrictions of Use, to any bespoke compensation arrangements established under the Previous Access Agreement.

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 5 February 2004 between Network Rail Infrastructure Limited and The Chiltern Railway Company Limited (as amended by way of supplemental agreement from time to time)

"Previous Notification Factor" means the Notification Factor as established by reference to Column C, D or E of Annex A to Part 3 of Schedule 4 under the relevant Previous Access Agreement; and

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

Schedule 1

(Contract Particulars)

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

Address:	Network Rail Infrastructure Limited Waterloo General Office London SE1 8SW
Tel:	033 085 78000
Email:	notices@networkrail.co.uk

All written notices to be marked:

"URGENT: ATTENTION THE COMPANY SECRETARY AND SOLICITOR"

and copied to:

The Route Director

Network Rail London North Western

Floor 1, Baskerville House

Centenary Square

Birmingham

B1 2ND

Tel: 0330 854 0128

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

Address	Chiltern Rail Limited Great Central House Marylebone Station Melcombe Place London NW1 6JJ
Tel:	[•]
Tel:	[•]

Email: Track.Access@chilternrailways.co.uk

All written notices to be marked:

"URGENT: ATTENTION"

and copied to: The Managing Director

Schedule 2

(The Routes)

1. In order to provide the Services, the Train Operator has permission to use the routes specified in Column 1 of Table 2.1 and Table 2.2 in Annex 1 to Schedule 5.

2. In order to provide Services when any part of the route is unavailable, the Train Operator has permission to use any reasonable route for diversionary purposes, subject to obtaining any necessary route clearance for the Specified Equipment over the route in question.

3. In order to make Ancillary Movements, the Train Operator has permission to use any reasonable route, subject to obtaining any necessary route clearance for the Specified Equipment over the route in question.

4. In order to Stable railway vehicles, the Train Operator has permission to use any reasonable location, subject to obtaining any necessary route clearance for the Specified Equipment for the location in question.

5. Use of all routes is subject to the Network Code.

Schedule 3

(Collateral Agreements)

1. 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. The national rail contract dated 2 December 2021 between (1) The Secretary of State for Transport; and (2) the Train Operator under which the Secretary of State appointed the Train Operator to provide all or a material part of the Services in line with its statutory duties.

3. 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

(Engineering Access Statement, Timetable Planning Rules and Restrictions of Use)

Part 1

(Not used)

Part 2

(Not used)

Part 3

(Compensation for Restrictions of Use)

A1. Change in Effect of Schedule 4*11th*

A1.1 The Train Operator may serve a notice, in the form set out in Appendix 4A, informing Network Rail that this Schedule 4 shall have no effect, save for this paragraph A1 and paragraph 1.1 of Part 3 (and any further paragraphs of Part 3 necessary to give effect to paragraph 1.1 of Part 3) (an "**Opt-out Notice**"). This Opt-out Notice may only be served in the event of:

a) the commencement of services pursuant to the award of a franchise agreement following re-tendering of the Services;

b) the commencement of services pursuant to a direct award of the Services by a franchising authority;

c) the commencement of services following a change in identity of an operator of a franchise agreement that is not as a result of paragraph A1.1(a) and which results in a significant change in the Services;

d) the commencement of services following a change of franchising authority; or

e) ORR publishing a notice pursuant to paragraph 17.1A of Schedule 8 and ORR notifying the Train Operator that such notice will result in a significant change in accordance with paragraph 2.7(e) of 'PR23 final determination: Policy position – Schedules 4 and 8 incentives regimes',

each being a "**Trigger Event**".

A1.2 The Train Operator must serve an Opt-out Notice given pursuant to paragraph A1.1 on Network Rail no later than two months after the date of the relevant Trigger Event. Promptly following the service of the notice the parties shall endeavour to agree the required amendment. As soon as reasonably practicable after the parties have agreed the required amendment pursuant to the Opt-out Notice, they shall use all reasonable endeavours to ensure that ORR is furnished with such amendment and sufficient information and evidence as it shall require to determine whether or not to approve the amendment. Any amendment pursuant to the Opt-out Notice shall apply only where ORR approval is granted under section 22 of the Act and with retrospective effect from the date of the Trigger Event.

A1.3 Where an Opt-out Notice has been served and taken effect, the Train Operator may serve a subsequent notice, in the form set out in Appendix 4B, informing Network Rail that the whole of this Schedule 4 shall have effect (an "Opt in Notice"). This Opt-in Notice may only be served on the occurrence of a further Trigger Event.

A1.4 The Train Operator must serve an Opt-in Notice given pursuant to paragraph A1.3 on Network Rail no later than two months after the date of the relevant Trigger Event. Promptly following the service of the notice the parties shall endeavour to agree the required amendment. As soon as reasonably practicable after the parties have agreed the required amendment pursuant to the Opt-in Notice, they shall use all reasonable endeavours to ensure that ORR is furnished with such amendment and sufficient information and evidence as it shall require to determine whether or not to approve the amendment. Any amendment pursuant to the Opt-in Notice shall apply only where ORR approval is granted under section 22 of the Act and with retrospective effect from the date of the Trigger Event.

1. Definitions*11th*

1.1 *Defined terms*

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

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

"Bi-annual Timetable" means either of the following:

(a) the Corresponding Day Timetable for all days in the period from and including the Principal Change Date up to but excluding the immediately following Subsidiary Change Date; or

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

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

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

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

(a) a day which is contained in the same Timetable Period as the first day and on which the Services scheduled in the New Working Timetable are the same as would have been scheduled on the first day but for Restrictions of Use reflected in the New Working Timetable for the first day; or

(b) if no day is found under paragraph (a) above, then a day which is contained in the equivalent Timetable Period for the time of year, in the year immediately preceding the Timetable Period which includes the first day and on which the Services scheduled in the New Working Timetable are the same as would have been scheduled on the first day but for Restrictions of Use reflected in the New Working Timetable for the first day; or

(c) if no day is found under paragraph (a) or (b) above, such other day as the parties may agree or as may be determined in accordance with paragraph 12.2;

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

"CPI" shall have the meaning ascribed to it in Schedule 7;

"Day 42 Statement" shall have the meaning ascribed to it in paragraph 13.1(a);

"Defined Service Group Revenue" shall have the relevant value as set out in Annex D to Part 3 of this Schedule 4;

"Disrupted" means:

(a) cancelled;

(b) diverted off the Route over which it was scheduled to run in the Corresponding Day Timetable; and/or

(c) starting or finishing short in comparison with the Service as timetabled in the Corresponding Day Timetable;

"First Restriction" shall have the meaning ascribed to it in paragraph 2.12(a)(i);

"First Restriction Period" shall have the meaning ascribed to it in paragraph 2.12(a)(ii);

"Further Restriction" shall have the meaning ascribed to it in paragraph 2.12(a)(ii)(B);

"High Speed Diversion" means a situation in which a Train is diverted between successive Monitoring Points such that it travels a longer distance at a higher average speed than that normally scheduled and arrives at its destination at a time later than that specified in the New Working Timetable;

"Monitoring Point" shall have the meaning ascribed to it in Schedule 8;

"Network Rail Restriction of Use" means any Restriction of Use other than an Operator Restriction of Use;

"Notification Factor" or "NF" shall have the meaning ascribed to it in paragraph9;

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

"Operator Restriction of Use" means a Restriction of Use of the type referred to in paragraph 2.3;

"Over-run" shall have the meaning ascribed to it in paragraph 2.12(a);

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

"Performance Monitoring System" shall have the meaning ascribed to it in Schedule 8;

"Period" shall have the meaning ascribed to it in Schedule 8;

"Restriction of Use" means, in respect of any day, any difference from the normal capability of all or any part of the Routes (where the normal capability of the Routes is expressed in the Applicable Timetable Planning Rules relevant to that day notified to each Timetable Participant on or before D-26) which results in:

(a) a difference between the Applicable Timetable on that day as compared with the New Working Timetable in respect of that day; and/or

(b) a difference between the New Working Timetable on that day as compared with the Corresponding Day Timetable in respect of the Corresponding Day;

"Restriction of Use Day" means a day on which a Network Rail Restriction of Use is taken or deemed to be taken;

"RoU Claim Notice" means a notice issued by either party pursuant to paragraph 2.8;

"RoU Direct Costs" means the aggregate amount of:

(a) bus and taxi hire costs;

(b) publicity costs;

(c) train planning and diagramming costs; and

(d) other costs directly related to the organisation and management of the Train Operator's response to a Type 2 Restriction of Use,

reasonably incurred by the Train Operator as a result of a Type 2 Restriction of Use, adjusted by:

(i) adding any increase in RoU Variable Costs; and

(ii) deducting any decrease in RoU Variable Costs;

"RoU Liability" means any costs, direct losses and expenses (including any loss of revenue) reasonably incurred or reasonably expected to be incurred by the Train Operator (including any increase in RoU Variable Costs but net of any benefit arising from the taking of a Restriction of Use including any decrease in RoU Variable Costs) as a consequence of a Type 3 Restriction of Use or any Restriction(s) of Use covered by an SPD Claim;

"RoU Losses" means any RoU Direct Costs or RoU Liability (as applicable);

"RoU Trigger Date" means, in respect of any Period, the later to occur of the following:

(a) the date on which Network Rail issues a Day 42 Statement; and

(b) in the event of any dispute in respect of Network Rail's Day 42 Statement, the date on which such dispute is agreed or determined;

"RoU Variable Costs" means any Train Operator costs which vary as a result of a Restriction of Use or where applicable an Over-run arising directly from changes in train mileage including maintenance, fuel or the Traction Electricity Charge and the Variable Usage Charge and the VUC Default Charge (as such terms are defined in Schedule 7);

"SPD Claim" has the meaning specified in paragraph 2.10(d);

"SPD Notice" means a notice issued by either party pursuant to paragraph 2.10(a);

"SPD Period" means the period of any 3 or 7 (as the case may be) consecutive Periods in which it is agreed or determined that Sustained Planned Disruption has occurred in respect of the Train Operator, together with any subsequent consecutive Period up to but excluding the first Period to occur in respect of which it is agreed or determined that the test for Sustained Planned Disruption is not satisfied in respect of the Train Operator;

"SPD Cost Threshold No.1" means £423,998; *11th*

"SPD Cost Threshold No.2" means £847,996; *11th*

"SPD Revenue Threshold No.1" means 20% of 1/13th of the relevant Defined Service Group Revenue over three consecutive Periods;

"SPD Revenue Threshold No.2" means 15% of 1/13th of the relevant Defined Service Group Revenue over seven consecutive Periods;

"SPD Termination Notice" has the meaning specified in paragraph 2.10(c);

"Sustained Planned Disruption" or "SPD" means a circumstance where:

(a) the aggregate of the compensation payable in respect of a Service Group calculated in accordance with paragraph 3 for any one or more Restrictions of Use during:

(i) three consecutive Periods is equal to or exceeds SPD Revenue Threshold No.1; or

(ii) seven consecutive Periods is equal to or exceeds SPD Revenue Threshold No.2,

and that the difference between the RoU Liability calculated in accordance with paragraph 8 and the compensation calculated in accordance with paragraph 3 and paragraph 4 for such Restrictions of Use during that period would be more than £10,000; or

(b) in respect of any one or more Restrictions of Use during:

(i) three consecutive Periods the difference between the Train Operator's RoU Liability (excluding any loss of revenue) calculated in accordance with paragraph 8 and the Train Operator's costs calculated under paragraph 4 would be more than SPD Cost Threshold No. 1; or

(ii) seven consecutive Periods the difference between the Train Operator's RoU Liability (excluding any loss of revenue) calculated in accordance with paragraph 8 and the Train Operator's costs calculated under paragraph 4 would be more than SPD Cost Threshold No. 2;

"Service Code" shall have the meaning ascribed to it in Schedule 8;

"Service Group" shall have the meaning ascribed to it in Schedule 8;

"Train" shall have the meaning ascribed to it in Schedule 8;

"Train–Bus–Train Pattern" means a situation where:

(a) a Restriction of Use occurs on any section of track between:

(i) successive Monitoring Points; or

(ii) the station of origin and the next Monitoring Point; and

(b) the Train Operator uses a substitute bus or other alternative road service between any pair of stations situated:

(i) between or including such successive Monitoring Points; or

(ii) at or between the station of origin and the next Monitoring Point;

"Type 1 Restriction of Use" means any single Restriction of Use which does not fall within the definition of Type 2 Restriction of Use or Type 3 Restriction of Use;

"Type 2 Restriction of Use" means:

(a) a single Restriction of Use of more than 60 consecutive hours (excluding any part of that Restriction of Use which occurs during a Public Holiday); and

(b) which results in a Service being Disrupted

but excluding any Restriction of Use which falls within the definition of Type 3 Restriction of Use;

"Type 3 Liability Claim" has the meaning specified in paragraph 2.7(b);

"Type 3 Restriction of Use" means a single Restriction of Use of more than 120 consecutive hours (including any part of that Restriction of Use which occurs during a Public Holiday);

"Unplanned Over-run Period" shall have the meaning ascribed to it in paragraph 2.12(a)(ii)(A);

"Viable Transfer Point" a station normally served by the services operated by the Train Operator, and equipped to enable the efficient and safe transfer of trainloads of passengers to and from alternative modes of transport, and/or services operated by other Train Operators, and which the parties have agreed, and set out in Annex B, shall be used for the purpose of providing bus substitution services, and for calculating the cost of bus substitution services in accordance with the provisions of paragraph 4 "Costs compensation for Network Rail Restrictions of Use";

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

"White Period" means any period during which the taking of a Restriction of Use would not result in any compensation being payable in accordance with paragraph 3.

1.2 ***Suspension Notices***

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

1.3 ***Possession***

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

1.4 ***White Period***

In respect of any Type 1 Restriction of Use, Type 2 Restriction of Use or Type 3 Restriction of Use, where a Restriction of Use starts before and/or ends after a White Period, the entire length of the Restriction of Use shall be taken into account when counting the cumulative total hours.

2. **Application of this Part**

2.1 ***Entry into effect***

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

2.2 ***Applicable Engineering Access Statement and the Network Code***

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

(a) Network Rail's right to take Restrictions of Use under or pursuant to the Applicable Engineering Access Statement;

(b) the establishment of any amended Working Timetable under Part H of the Network Code; and

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

2.3 ***Operator Restriction of Use***

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

(a) required as a result of any damage to the Network or Environmental Damage which in each case:

(i) arises wholly or mainly from the operations of the Train Operator or its failure to comply with its obligations under this contract; and

(ii) Network Rail demonstrates is in excess of fair wear and tear arising from use of the Network by the Train Operator;

(b) requested by the Train Operator (other than for the purposes of inspection, maintenance, renewal or repair of the Network); or

(c) required in connection with a Network Change proposed by the Train Operator under Condition G3 of the Network Code.

2.4 ***Network Rail payments***

Subject to paragraph 2.3, Network Rail shall make payments to the Train Operator (in accordance with the procedure in paragraph 13) in respect of a Network Rail Restriction of Use calculated in accordance with paragraphs 2.5 to 2.7 and 2.10 where applicable.

2.5 ***Type 1 Restriction of Use***

Network Rail shall make payments (in accordance with the procedure in paragraph 13) calculated in accordance with paragraphs 3 and 4 to the Train Operator in respect of any Type 1 Restriction of Use.

2.6 ***Type 2 Restriction of Use***

(a) Except where paragraph 2.6(c) applies, Network Rail shall make payments (in accordance with the procedure in paragraph 13) calculated in accordance with paragraphs 3 and 4 to the Train Operator in respect of any Type 2 Restriction of Use.

(b) If either party reasonably believes or expects that the difference between RoU Direct Costs calculated in accordance with paragraph 6 and the costs calculated under paragraph 4 would exceed £10,000 then that party will be entitled to require that the costs be calculated in accordance with paragraph 6 by serving an RoU Claim Notice within the time periods set out in paragraph 2.8.

(c) Following a request in accordance with paragraph 2.6(b), if it is agreed or determined that the difference between RoU Direct Costs calculated in accordance with paragraph 6 and the costs calculated under paragraph 4 exceeds £10,000 then the relevant party shall make payments to the other (in accordance with the procedure in paragraph 13) calculated in accordance with paragraphs 3 and 6.

2.7 ***Type 3 Restriction of Use***

(a) Except where paragraph 2.7(c) applies, Network Rail shall make payments (in accordance with the procedure in paragraph 13) calculated in accordance with paragraphs 3 and 4 to the Train Operator in respect of any Type 3 Restriction of Use.

(b) If either party reasonably believes or expects that the difference between RoU Liability calculated in accordance with paragraph 7 and the costs and losses calculated under paragraphs 3 and 4 would exceed £10,000 then that party will be entitled to require that the costs and losses be calculated in accordance with paragraph 7 instead by serving an RoU Claim Notice within the time periods set out in paragraph 2.8 (a **"Type 3 Liability Claim"**).

(c) Following a request in accordance with paragraph 2.7(b), if it is agreed or determined that the difference between RoU Liability calculated in accordance with paragraph 7 and the costs and losses calculated under paragraphs 3 and 4 exceeds £10,000 then the relevant party shall make payments to the other (in accordance with the procedure in paragraph 13) calculated in accordance with paragraph 7.

2.8 ***RoU Claim Notice***

(a) Either party wishing to make a request pursuant to paragraph 2.6(b) or paragraph 2.7(b) must notify the other that a Restriction of Use is a Type 2 Restriction of Use or a Type 3 Restriction of Use and that the circumstances in paragraph 2.6(b) or 2.7(b) (as applicable) apply within 56 days of the RoU Trigger Date relating to the Period in which that Restriction of Use commences.

(b) The notice referred to in paragraph 2.8(a) must, if provided by the Train Operator, include details of the estimate of the RoU Direct Costs or RoU Liability (as applicable) which the Train Operator has incurred in respect of the relevant Restriction of Use.

2.9 ***Changes to Restrictions of Use***

(a) Where a single Restriction of Use falls within the definition of one type of Restriction of Use and there is a change which means that no Restriction of Use occurs or that the Restriction of Use occurs as another type of Restriction of Use, then that Restriction of Use shall be treated, for the purposes of the calculation and payment of compensation, as if it had always been the latter type of Restriction of Use (or, where applicable, as if it had not been a Restriction of Use).

(b) For the purposes of paragraph 2.9(c), a Restriction of Use shall be deemed to be taken if and to the extent that it results in any difference between timetables of the type referred to in the definition of "Restriction of Use" when notified, whether or not the restriction giving rise to that Restriction of Use was subsequently cancelled in whole or in part.

(c) Subject to paragraph 2.9(d), where a change to a Restriction of Use reduces the impact of the Restriction of Use and accordingly changes its type or means that there is no Restriction of Use in accordance with paragraph 2.9(a), the Train Operator may, within 28 days of the date on which the change to the Restriction of Use was notified to the Train Operator by Network Rail, serve a notice on Network Rail which sets out any costs to which the Train Operator is already committed or has already incurred and any costs associated with responding to the Restriction of Use (both before and after the change). The Train Operator shall be entitled to recover such costs provided that such costs are reasonable and were properly committed or incurred in the circumstances. For the purposes of this paragraph 2.9(c), references to "costs" shall mean those categories of costs which the Train Operator would have been entitled to recover under this Schedule 4 for that type of Restriction of Use which the Restriction of Use was classified as prior to its change.

(d) Notwithstanding paragraph 2.9(c), where:

(i) the notice served by the Train Operator under paragraph 2.9(c) is in respect of a cancellation of a Type 1 Restriction of Use that was notified to the Train Operator less than 12 weeks before the date on which that Type 1 Restriction of Use was scheduled to occur; and

(ii) the costs to which the Train Operator is committed or which it has already incurred prior to the cancellation of the Type 1 Restriction of Use and any costs associated with responding to that cancellation, amount to £5000 or more,

the Train Operator shall be entitled to recover those costs provided that such costs are reasonable and were properly committed or incurred in the circumstances. For the purposes of this paragraph 2.9(d), references to "costs" shall mean those categories of costs described in the definition of "RoU Direct Costs" (save that references in that definition to "Type 2 Restriction of Use" shall be deemed to refer to "Type 1 Restriction of Use").

2.10 ***Sustained Planned Disruption***

(a) If either party reasonably believes that a Sustained Planned Disruption has occurred then that party will be entitled to require that the costs and losses for the Restrictions of Use for the relevant services during the relevant SPD Period be calculated in accordance with paragraph 8 by serving a notice on the other (an **"SPD Notice"**) in accordance with paragraph 2.10(b).

(b) Unless otherwise agreed in writing, an SPD Notice must be served no later than the day falling 56 days after the issue of the Day 42 Statement which followed the end of the relevant SPD Period and must include a short explanation of why it reasonably believes a Sustained Planned Disruption has occurred and a statement of when the SPD Period commenced.

(c) Following the issue of an SPD Notice, either party may serve a notice (an **"SPD Termination Notice"**) stating that it reasonably believes that the relevant Sustained Planned Disruption is no longer occurring, such notice to include a short explanation of why the party serving it reasonably believes that the Sustained Planned Disruption has ceased and stating the Period in which such cessation has occurred. A party receiving an SPD Termination Notice shall within 30 days of its receipt by notice to the serving party either accept or reject the SPD Termination Notice and where it rejects the notice it shall include with its rejection notice a short explanation of why it reasonably believes the Sustained Planned Disruption is continuing. If the parties fail to reach agreement within 30 days after service of a rejection notice, or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, either party may notify the other that the dispute resolution procedure set out in paragraph 13.3 is to apply (save that references to paragraph 13.2 shall be construed as being references to this paragraph).

(d) Following the issue of an SPD Notice the party that issued that notice must serve a claim (an **"SPD Claim"**):

(i) no later than the day falling 112 days after the issue of the Day 42 Statement for the last Period in the relevant SPD Period; or

(ii) where an SPD Period has exceeded 13 consecutive Periods in length or upon the termination or expiry of this contract, whichever comes first, unless otherwise agreed in writing, no later than the day falling 112 days after the issue of the Day 42 Statement which followed the 13th consecutive Period or the termination or expiry of this contract (as applicable),

whichever is the earlier.

(e) Provided a party has issued an SPD Notice in accordance with paragraph 2.10(b), nothing in paragraph 2.10(d) shall prevent that party from issuing more than one SPD Claim in respect of the same Sustained Planned Disruption, provided that:

(i) each such SPD Claim relates to a different period within the said SPD Period (so there is no double-counting); and

(ii) no SPD Claim can be issued after the last day for serving notice specified under paragraph 2.10(d).

(f) An SPD Claim must include details of when and why that party reasonably believes that a Sustained Planned Disruption has occurred and in particular:

(i) if the claim is made by the Train Operator, such details as may reasonably be available of the RoU Liability which the Train Operator has incurred or reasonably expects to incur in respect of the relevant Restrictions of Use during the SPD Period; or

(ii) if the claim is made by Network Rail, the reasons why Network Rail reasonably believes that the Train Operator has been overcompensated or may be overcompensated by more than the relevant amount.

(g) Following the service of an SPD Claim, if and to the extent it is agreed or determined that a Sustained Planned Disruption has occurred in the period covered by the claim then the relevant party shall make payments to the other (in accordance with the procedure in paragraph 13) calculated in accordance with paragraph 8 in respect of the SPD Period (or where applicable the part of the SPD Period) covered by the SPD Claim.

2.11 ***Early notice of RoU Losses***[11th]

a) The parties may at any time engage in discussions on any matter likely to result in payments in respect of any RoU Losses and shall use reasonable endeavours to agree whether such RoU Losses calculated in accordance with paragraphs 6, 7 or 8 are likely to arise and/or what mitigating actions should be contemplated to reduce or avoid such RoU Losses. The party initiating such discussions shall provide to the other reasonable evidence in writing of why it thinks such RoU Losses will arise or mitigating actions should be contemplated.

b) Following any agreement or determination that such RoU Losses are likely to arise in connection with one or more future Restrictions of Use or that mitigating actions should be contemplated, the parties shall where reasonably practicable engage in discussions on any options for mitigating costs, revenue loss and/or disruption. This may include any advance compensation for such Restriction(s) of Use to the extent such advance compensation would or would reasonably be expected to facilitate the mitigation of the contemplated disruption.

c) Nothing in this contract shall prevent Network Rail and the Train Operator agreeing any options for mitigating costs and disruption in respect of any Restriction(s) of Use.

d) Unless otherwise agreed, the timescales for claiming RoU Losses shall still apply.

2.12 ***Over-runs***

(a) For the purposes of this paragraph 2.12, an over-run (**"Over-run"**) occurs where:

(i) there is a Restriction of Use which is not an Operator Restriction of Use (the **"First Restriction"**);

(ii) following the end of the relevant period of difference between timetables referred to in sub-paragraphs (a) and (b) of the definition of Restriction of Use which served to establish the existence of that Restriction of Use (the **"First Restriction Period"**), there is either:

(A) a further period of at least one hour during which Services are Disrupted due to (1) any incident attributed under Schedule 8 to circumstances arising from any restriction of operation of the Network which are a consequence of the First Restriction or (2) any act or omission in connection with any activities planned or undertaken which are directly attributable to the First Restriction (including any failure to remove the First Restriction by the time scheduled for its removal in the Applicable Engineering Access Statement) but excluding any act or omission by the Train Operator for which it would be allocated responsibility under this contract (the **"Unplanned Over-run Period"**); and/or

(B) a further Restriction of Use is taken which is at the same location as all or part of the First Restriction and directly connected with or attributable to any activities undertaken or planned to be undertaken under the First Restriction (a **"Further Restriction"**),

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

(b) Where a Restriction of Use is subject to one or more Over-runs, then the entire duration from the start of the First Restriction to the end of the last Over-run in respect of the Restriction of Use shall be treated as making up a single Restriction of Use.

(c) Where there is an Over-run which results in a Service being Disrupted which:

(i) is not part of either a Type 2 or Type 3 Restriction of Use;

(ii) lasts for more than one hour; and

(iii) results in the Train Operator incurring costs in the category of RoU Direct Costs in relation to the Over-run in excess of £10,000,

then the Unplanned Over-run Period element of that Over-run (but not the relevant First Restriction Period or the period of any Further Restriction) shall for the purposes only of calculating RoU Direct Costs be deemed to constitute a Type 2 Restriction of Use.

(d) For the purposes of calculating RoU Liability under paragraph 7 (when it is agreed or determined that the requirements of paragraph 2.7(c) are satisfied) or paragraph 8 when there is agreed or determined to be a Sustained Planned Disruption, the amount of the RoU Liability shall be calculated:

(i) including costs, direct losses and expenses (including loss of revenue and any increase in RoU Variable Costs) reasonably incurred or reasonably expected to be incurred by the Train Operator as a consequence of any Unplanned Over-run Period; and

(ii) offsetting any benefit as a consequence of the Unplanned Over-run Period including:

(A) any reduction in RoU Variable Costs;

(B) any payments made as result of paragraph 2.12(c); and

(C) any payments received by the Train Operator under Schedule 8.

(e) This paragraph 2.12 shall not result in any Unplanned Over-run Period being subject to either revenue loss compensation for Network Rail Restrictions of Use under paragraph 3 or costs compensation for Network Rail Restrictions of Use under paragraph 4.

3. Revenue loss compensation for Network Rail Restrictions of Use

3.1 *Basis for calculations*

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

3.2 *Separate calculations*

In applying the formula in paragraph 3.4, Network Rail shall calculate the compensation payable separately in respect of all:

(a) Network Rail Restrictions of Use which are taken into account in the New Working Timetable; and

(b) Network Rail Restrictions of Use which are not so taken into account but are taken into account in the Applicable Timetable.

3.3 ***Meaning of T1 and T2***

In paragraph 3.4:

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

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

3.4 ***Formula***

The formula referred to in paragraph 3.1 is as follows:

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

where:

(z) NRP is the Network Rail Payment;

(a) ∑ is the sum across all Network Rail Restrictions of Use and all Restriction of Use Days in the Period;

(b) WACM is the weighted average of Cancellation Minutes for the Service(s) (or part(s) thereof) in that Service Group as a result of a Network Rail Restriction of Use, calculated according to the following formula:

$$WACM = (CM - NRPP) \bullet \sum \frac{(MPW \bullet CS)}{SS}$$

where:

CM is the Cancellation Minutes for the Service Group in question specified in column F of Appendix 1 to Schedule 8;

NRPP is the Network Rail performance point for the Service Group in question specified in column B of Appendix 1 to Schedule 8;

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

MPW is the weighting attributable to the Monitoring Point, as specified in column K of Appendix 1 to Schedule 8;

CS is the number by which the number of stops at that Monitoring Point scheduled for that day in T2 is less than SS as a result of the Network Rail Restriction of Use; and

SS is the number of stops at the Monitoring Point scheduled for that day in T1;

(c) NREJT is the extended Journey Time as a result of a Network Rail Restriction of Use in respect of Services in that Service Group, for the Restriction of Use Day, being Services which are not cancelled, calculated according to the following formula:

$$NREJT = EJT \bullet (1 - \sum \frac{(MPW \bullet CS)}{SS})$$

where:

∑, MPW, CS and SS have the meanings ascribed to them in paragraph 3.4(b) above; and

EJT is the extended Journey Time as a result of a Network Rail Restriction of Use in respect of Services in that Service Group calculated according to the following formula:

if no Train in that Service Group is scheduled in T2 for that day, then EJT shall equal 0;

if otherwise,

EJT is the lesser of:

(i) the number of minutes specified as the Cap for the Service Group in column G of Appendix 1 to Schedule 8; and

(ii) $AJT \bullet ((u - v)/v)$

provided always that if v equals or is greater than u, EJT shall equal 0;

where:

AJT is the average Journey Time for Trains in the Service Group scheduled for that day in T1, and shall be equal to the aggregate of the Journey Times scheduled in T1 in respect of such Trains divided by the aggregate number of Journeys scheduled in T1 in respect of such Trains;

u is the average speed of Trains in the Service Group scheduled for that day in T1, and shall be equal to the aggregate of the number of miles scheduled to be run in T1 by such Trains divided by the aggregate of the Journey Times scheduled in T1 in respect of such Trains; and

v is the speed to which the average speed of Trains in the Service Group scheduled for that day in T2 is reduced as a result of the Network Rail Restrictions of Use (calculated by reference to the aggregate of the number of miles which such Trains are scheduled to run in T2 divided by the aggregate of the end to end Journey Times scheduled in T2 in respect of such Trains),

and for the purposes of this paragraph 3.4:

"Journey" means the journey of the Train scheduled in the relevant timetable from its station of origin to its destination station; provided that if a Train crosses a Service Group boundary then in respect of each Service Group the Train's station of origin and destination station shall respectively mean the station at which the Train commences that part of its journey in that Service Group and the station at which it ends that part of its journey in that Service Group; and that where any Train splits to become more than one Train then that part of the Train's journey up to the station where it splits shall be treated as one journey and each Train into which the Train splits shall be treated as making a separate journey; and

"Journey Time" shall be calculated in respect of each journey by reference to the difference in minutes between the time of departure from the station of origin and the time of arrival at the destination station;

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

$$BF = \sum \frac{(MPW \bullet SS)}{AS}$$

where:

AS is the average number of stops at the Monitoring Point (being the Monitoring Point referred to in the definition of MPW) per day scheduled in the Bi-annual Timetable; and

MPW and SS have the meanings ascribed to them in paragraph 3.4(b); and

(e) NRPR is the Network Rail payment rate specified in column C of Appendix 1 to Schedule 8, as indexed according to the relevant provisions of Schedule 8.

3.5 ***High Speed Diversions***

Where there is a High Speed Diversion and WACM, as defined in paragraph 3.4(b), has a value equal to or less than zero then the following formula shall apply:

$$ANRP = \frac{TDR_{SG}}{TDT_{SG}} \bullet (CM - NRPP) \bullet NRPR \bullet BF \bullet NF$$

where:

ANRP is the additional Network Rail payment;

TDR_{SG} is, in respect of each Service Group and each Restriction of Use Day on which a High Speed Diversion applies, the number of Trains in the Service Group scheduled in T2 to be subject to the High Speed Diversion;

TDT_{SG} is the total number of Trains scheduled to be run in the Service Group in T1;

T1 and T2 shall have the meanings ascribed to them in paragraph 3.3; and

CM, NRPP, NRPR and BF shall have the meanings ascribed to them in paragraph 3.4.

In such a situation, the Train Operator shall provide Network Rail with evidence, either that the High Speed Diversion has been common for the Services in question in the past or that the High Speed Diversion would arise as a result of a change in circumstances.

In default of agreement, in relation to the adequacy of such evidence, between the Train Operator and Network Rail within 28 days after the New Working Timetable is issued reflecting the relevant Network Rail Restriction of Use, the mechanism and procedure for dispute resolution set out in paragraphs 13.2, 13.3 and 13.4 shall apply.

3.6 ***Train-Bus-Train Patterns***

If any Service Group on any day is subject to a Train-Bus-Train Pattern on account of a Network Rail Restriction of Use, and where WACM, as defined in paragraph 3.4(b), has a value equal to or less than zero, then Network Rail shall pay to the Train Operator an additional payment calculated as follows:

$$ANRP = \frac{TTS_{SG}}{TTR_{SG}} \bullet (CM - NRPP) \bullet DV \bullet NRPR \bullet BF \bullet NF$$

where:

ANRP is the additional Network Rail payment;

TTS_{SG} is the total number of Trains scheduled in T2 to be run in the Service Group for that Restriction of Use Day to terminate at a destination other than that shown for those Trains due to a Train-Bus-Train Pattern in T1;

TTR_{SG} is the total number of Trains scheduled to be run in the Service Group in T1;

T1 and T2 shall have the meanings ascribed to them in paragraph 3.3;

CM, NRPP, NRPR and BF shall have the meanings ascribed to them in paragraph 3.4; and

DV shall have the value of 0.125,

provided that if:

TTR_{SG} is less than TTS_{SG} then $\frac{TTS_{SG}}{TTR_{SG}}$ shall be deemed to have the value of one.

In such a situation the Train Operator shall provide Network Rail with evidence, either that the Train-Bus-Train Pattern resulting from the Network Rail Restriction of Use is an arrangement that has been commonly used in the past by that Train Operator on the Services in question, or that it has arisen due to a change in circumstances.

In default of agreement, in relation to the adequacy of such evidence, between the Train Operator and Network Rail within 28 days after the New Working Timetable is issued reflecting the relevant Network Rail Restriction of Use, the mechanism and procedure for dispute resolution set out in paragraphs 13.2, 13.3 and 13.4 shall apply.

4. Costs compensation for Network Rail Restrictions of Use

4.1 *Basis for calculations*

For each Period and for each Service Group, Network Rail shall calculate the compensation payable in respect of all Network Rail Restrictions of Use on each Restriction of Use Day in that Period by applying the formulae in paragraph 4.2. For the purposes of determining for this paragraph 4 to which Service Group a particular Train is allocated, a Train (or portion of a Train) shall be treated as allocated to a particular Service Group by reference to its Service Code, provided that where a particular Train (or portion of a Train) is given a different Service Code in the New Working Timetable from the Service Code given to it in the Applicable Timetable or a different Service Code in the Corresponding Day Timetable from the Service Code given to it in the New Working Timetable it shall be treated as part of the Service Group in relation to whichever of those Service Codes most correctly applies to that Train or, where both Service Codes could equally apply to that Train, to the Service Code applied to that Train in the New Working Timetable.

4.2 *Cost compensation formula*[11th]

The formula referred to in paragraph 4.1 is as follows:

$$Cost\ compensation = \sum(RRBC + TMC)$$

where:

(a) $\sum$ is the sum across all applicable Network Rail Restrictions of Use and all Restriction of Use Days in the Period;

(b) RRBC is the rail replacement bus cost, for the Service(s) (or part(s) thereof) in that Service Group as a result of a Network Rail Restriction of Use, calculated according to the following formula:

$$RRBC = EBM \times EBMPR$$

where:

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

EBMPR is the payment rate per EBM, which is £19.66.

If there is a full bus replacement

$$EBM = EBMW \times FBR_{miles}$$

If there is partial bus replacement

$$EBM = EBMW \times 0.5 \times PBR_{miles} \times ITS$$

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

$$EBM = EBMW \times 0$$

where:

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

FBR_{miles} is the length of route, in miles, between the applicable pair of Viable Transfer Points over which train services are affected and for which full bus replacement is required as set out in Annex B to this Part 3 of Schedule 4;

PBR_{miles} is the length of route, in miles, between the applicable pair of Viable Transfer Points over which train services are affected and for which partial bus replacement is required as set out in Annex B to this Part 3 of Schedule 4;

ITS is 1 or the percentage of trains stopping at intermediate stations for those cases where EBMW = 50%; and

(c) TMC is the cost or saving, expressed in pence per train mile and rounded to two decimal places, resulting from train mileage change, for the Service(s) (or part(s) thereof) in that Service Group as a result of a Network Rail Restriction of Use, calculated according to the following formula:

$$TMC = TM \times TMPR$$

where:

TM is the change in train mileage; and

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

5. **Estimated bus miles change mechanism**

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

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

5.2 ***Procedure for amendments to Annex B***

(a) The party who wishes to amend Annex B shall notify the other party of any such proposed change and the date from which it proposes that such change will have effect:

(i) where such change relates to a forthcoming timetable change, on or before the first day of the month which falls six months before the relevant Principal Change Date or Subsidiary Change Date on which that timetable change is due to occur; and

(ii) in any other case prior to the date from which it proposes such change shall have effect.

(b) Any notice under sub-paragraph 5.2(a) shall specify as far as possible that party's proposed amendments to Annex B. Promptly following the service of any such notice the parties shall endeavour to agree whether Annex B should be amended in accordance with this paragraph 5 and if so the amendments.

(c) If the parties fail to reach agreement within 90 days after service of the relevant notice, or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, the matter may be referred for resolution in accordance with the ADRR. In respect of any such dispute which is referred for resolution under the ADRR the parties shall agree in a Procedure Agreement, as defined in the ADRR, that the relevant ADRR Forum shall have regard to any relevant criteria and/or policy statement most recently issued by ORR.

(d) Any amendment to Annex B shall take effect only when it has been approved by ORR under section 22 of the Act. Accordingly, as soon as reasonably practicable after any such amendment is agreed or determined in accordance with this paragraph 5, the parties shall use all reasonable endeavours to ensure that ORR is furnished with such amendment and sufficient information and evidence as it shall require to determine whether or not to approve the amendment.

(e) Any amendment to Annex B shall apply with effect from:

(i) the relevant Principal Change Date or Subsidiary Change Date (where paragraph 5.2(a)(i) applies); or

(ii) subject to paragraph 5.2(d) the date proposed by the party requesting the change in accordance with paragraph 5.2(a)(ii) (unless otherwise agreed by the parties or determined by the expert in relation to the change).

5.3 ***Costs of implementing amendment***

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

6. **RoU Direct Costs compensation for Type 2 Restrictions of Use**

6.1 ***Compensation arrangements***

(a) Following receipt of an RoU Claim Notice in respect of a Type 2 Restriction of Use, Network Rail and the Train Operator shall (if they have not already done so) commence negotiations in respect of the RoU Direct Costs compensation to be paid by one party

to the other in respect of such Type 2 Restriction of Use and, subject to paragraph 10, shall continue such negotiations in good faith until they are concluded.

(b) Once the compensation referred to in paragraph 6.1(a) has been agreed or determined (and has been compared against any amounts calculated under paragraph 4 together with any other amounts paid or due to the Train Operator from Network Rail in relation to such Restriction of Use) then, in the event of:

(i) a shortfall for the Train Operator, the compensation to be paid by Network Rail to the Train Operator shall be the full amount of the RoU Direct Costs actually incurred by the Train Operator less any amounts calculated under paragraph 4 which have already been paid or are due for such Restriction of Use and any other amounts in respect of any RoU Direct Costs received by the Train Operator from Network Rail in respect of such Restriction of Use; or

(ii) an overpayment by Network Rail to the Train Operator, the compensation to be paid by the Train Operator to Network Rail shall be the difference between the amount received by the Train Operator which was calculated under paragraph 4 and the RoU Direct Costs actually incurred by the Train Operator in respect of such Restriction of Use.

(c) Network Rail shall include in the statement provided by it in respect of each Period under paragraph 13.1(a) details of the compensation agreed or determined under this paragraph 6 and paragraph 10 to be payable in respect of any Type 2 Restriction of Use taken in that Period and that compensation shall be due and payable by the relevant party to the other in accordance with paragraph 13.1.

7. RoU Liability compensation for Type 3 Restrictions of Use

7.1 *Compensation arrangements*

(a) Following receipt of an RoU Claim Notice in respect of a Type 3 Restriction of Use, Network Rail and the Train Operator shall (if they have not already done so) commence negotiations in respect of the RoU Liability compensation to be paid by one party to the other in respect of the Type 3 Restriction of Use and, subject to paragraph 10, shall continue such negotiations in good faith until they are concluded.

(b) Once the compensation referred to in paragraph 7.1(a) has been agreed or determined (and has been compared against the aggregate of any amounts calculated under paragraphs 3 and 4 together with any other amounts paid or due to the Train Operator from Network Rail in relation to such Restriction of Use) then, in the event of:

(i) a shortfall for the Train Operator, the compensation to be paid by Network Rail to the Train Operator shall be the full amount of the RoU Liability actually incurred by the Train Operator less any amounts calculated under paragraphs 3 and 4 which have already been paid or are due for such Restriction of Use and any other amounts received by the Train Operator from Network Rail in respect of such Restriction of Use; or

(ii) an overpayment by Network Rail to the Train Operator, the compensation to be paid by the Train Operator to Network Rail shall be the difference between the amount received by the Train Operator which was calculated under paragraphs 3 and 4 and the RoU Liability actually incurred by the Train Operator in respect of such Restriction of Use.

(c) Network Rail shall include in the statement provided by it in respect of each Period under paragraph 13.1(a) details of the compensation agreed or determined under this paragraph 7 and paragraph 10 to be payable in respect of any Type 3 Restriction of Use taken in that Period and that compensation shall be due and payable by the relevant party to the other in accordance with paragraph 13.1.

8. Sustained Planned Disruption payments

8.1 *Payment arrangements*

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

(b) Once the compensation referred to in paragraph 8.1(a) has been agreed or determined (and has been compared against the aggregate of any amounts calculated under paragraphs 3 and 4 together with any other amounts paid or due to the Train Operator from Network Rail in respect of such Restriction of Use) then, in the event of:

(i) a shortfall for the Train Operator, the compensation to be paid by Network Rail to the Train Operator in respect of the Restrictions of Use during the relevant SPD Period shall be the full amount of the RoU Liability actually incurred by the Train Operator less any amounts calculated under paragraphs 3 and 4 which have already been paid or are due for Restrictions of Use during the relevant SPD Period and any other amounts received by the Train Operator from Network Rail in respect of such Restrictions of Use; or

(ii) an overpayment by Network Rail to the Train Operator, the compensation to be paid by the Train Operator to Network Rail shall be the difference between the amount received by the Train Operator for Restrictions of Use during the relevant SPD Period and the RoU Liability actually incurred by the Train Operator during the same SPD Period.

(c) Following any agreement or determination of an amount to be paid by one party to the other in respect of a Sustained Planned Disruption that amount shall (subject to the terms of any compensation arrangements agreed in writing between the parties) be due and payable by one party to the other in accordance with paragraph 13.1.

(d) Where a Sustained Planned Disruption applies due to a circumstance which it is agreed or determined affects a part only of the Train Operator's services (including whether by reference to geographic location or Service Group), then in agreeing or determining the RoU Liability in respect of that SPD the RoU Liability in respect of the part of the Train Operator's services not affected by that circumstance shall (unless otherwise proven) be presumed to be equal to the payments made under paragraphs 3 and 4 of this Schedule 4 in respect of those other services.

9. Notification Factors

9.1 *Early notification*

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

(a) the Network Rail Restriction of Use is reflected in the New Working Timetable; or

(b)

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

(ii) subject to paragraph 9.1(b)(iii), the Network Rail Restriction of Use is reflected in the Working Timetable as set out in the Performance Monitoring System at 22:00 hours on the day which is 12 Weeks before the Restriction of Use Day; or

(iii) where paragraph 9.1(b)(ii) does not apply because the Train Operator has failed to give Network Rail a revised Access Proposal in accordance with Condition D3.4.9 of the Network Code, the Network Rail Restriction of Use is reflected in the Applicable Timetable in respect of the Restriction of Use Day.

9.2 ***Notification by TW-22***

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

(a) details of the Network Rail Restriction of Use are notified to the Train Operator by TW-22; and

(b)

(i) the Network Rail Restriction of Use is reflected in the Working Timetable as set out in the Performance Monitoring System at 22:00 hours on the day which is 12 Weeks before the Restriction of Use Day; or

(ii) where paragraph 9.2(b)(i) does not apply because the Train Operator has failed to give Network Rail a revised Access Proposal in accordance with Condition D3.4.9 of the Network Code, the Network Rail Restriction of Use is reflected in the Applicable Timetable in respect of the Restriction of Use Day.

9.3 ***Late Notification***

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

10. **Dispute resolution***11th*

10.1 If the Train Operator and Network Rail fail to reach agreement as required under paragraph 2.6(c), 2.7(c), 2.10(g), 2.11, 6, 7, or 8, or fail to reach agreement on the amount of costs notified under paragraph 2.9(c):

(a) within 6 months, or such other period as the parties may agree, of the issue of the relevant notice (as set out in paragraph 2.6(b), 2.7(b), 2.9(c), 2.10(d), 6.1(a) or 7.1(a) or once discussions or negotiations have commenced (as required under 2.11 and 8.1(a)) (as applicable), the parties shall meet to discuss outstanding aspects of the claim, which may include but is not limited to the provision of information or points in dispute;

(b) if no later than 28 days after the date of the meeting referred to in paragraph 10.1(a) the claim is not resolved or withdrawn:

(i) the parties shall agree a timetable for a subsequent meeting; or

(ii) either party may refer the matter for resolution in accordance with the ADRR.

10.2 Notwithstanding paragraph 10.1, either party may refer the matter for resolution in accordance with the ADRR at any time following the issue of the relevant notice(s) in accordance with paragraph 2.6(b), 2.7(b), 2.9(c), 2.10(d), 6.1(a) or 7.1(a) and/or once the discussions or negotiations have commenced in accordance with paragraph 2.11 or 8.1(a).

11. Schedule 8 application

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

12. Restriction of Use Day and Corresponding Day

12.1 *Information provision*

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

12.2 *Corresponding Day*

(a) If, for the purpose of identifying a Corresponding Day, no day is found under paragraph (a), (b) or (c) of the definition "Corresponding Day" and the parties have failed to reach agreement on the Corresponding Day by the date falling eight Weeks before the relevant Timetable Change Date then either party may require that the identification of the Corresponding Day be resolved as a dispute in accordance with the ADRR.

(b) The parties shall agree in a Procedure Agreement, as defined in the ADRR, that the relevant ADRR Forum's remit shall be to:

(i) reach a decision which is fair and reasonable; and

(ii) identify the day in either any version of the Working Timetable or any version of the New Working Timetable on or before D-26 in either case which has been produced in accordance with the Network Code as at the Restriction of Use Day and which most closely reflects the Services which would have been scheduled on the first day (as that term is used in the definition of Corresponding Day save that in respect of any Restriction of Use lasting more than two Timetable Periods, the first day may occur in any year preceding the Timetable Period) but for Restrictions of Use reflected in the New Working Timetable for the first day; or

(iii) where a Corresponding Day cannot be identified in accordance with paragraph 12.2(b)(ii) above, determine a notional Corresponding Day. The relevant ADRR Forum may have regard, where appropriate, to any pattern of services which may reasonably be expected to be operated during the relevant period when the Restriction of Use is being taken in the event of the permanent absence of any Corresponding Day.

13. Payment procedures

13.1 *Network Rail Restrictions of Use*

(a) Within 14 days after the end of each Period, Network Rail shall provide to the Train Operator a statement (the **"Day 42 Statement"**) showing:

(i) all Network Rail Restrictions of Use taken during that Period;

(ii) any compensation calculated in accordance with paragraphs 3 and/or 4 payable by Network Rail in respect of the Network Rail Restrictions of Use identified; and

(iii) following any agreement or determination in the Period referred to in paragraph 13.1(a) of any RoU Losses in respect of a Type 2 Restriction of Use, a Type 3 Restriction of Use or a Sustained Planned Disruption (as applicable), any payment to be made by one party to the other,

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

(b) The aggregate liabilities of Network Rail and the Train Operator, in respect of any and all compensation for which either is liable to the other under this Part 3 and under Part 5 in respect of each Period shall, to the extent that such compensation is not under dispute, be set off against each other and the balance (if any) shall be payable by Network Rail or the Train Operator, as the case may be, within 35 days after the end of that Period.

13.2 ***Disputes***[11th]

Within 15 days of receipt of a statement from Network Rail under paragraph 13.1, the Train Operator shall notify Network Rail of any aspects of the statement which it disputes, giving reasons for any dispute. Save to the extent that disputes are so notified, the Train Operator shall be deemed to have agreed the contents of the statement.

13.3 ***Dispute resolution***

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

(a) within seven days of service of any notice under paragraph 13.2, the parties shall meet to discuss the disputed aspects of the statement with a view to resolving all disputes in good faith;

(b) if, within seven days of that meeting (the **"first meeting"**), the parties are for any reason still unable to agree the disputed aspects of the statement, each party shall promptly (and in any event within seven days) prepare a written summary of the disputed aspects of the statement and the reasons for each such dispute and shall submit the summaries to the senior officer of each party;

(c) within 28 days of the first meeting, the senior officers shall meet with a view to resolving all disputes;

(d) if no resolution results within 14 days of that meeting, either party may refer the matter for resolution in accordance with the ADRR.

13.4 ***Payments in the event of a dispute***

Where any amount under paragraph 13.1 is in dispute:

(a) the undisputed amount shall be paid in accordance with paragraph 13.1;

(b) the disputed amount shall be paid within 28 days after the dispute is resolved or determined to the extent that the amount in dispute is adjudged or resolved to be payable; and

(c) the disputed amount shall carry interest (incurred daily and compounded monthly) at the Default Interest Rate from the date on which such amount would but for such dispute have been due to be paid until the date of payment.

14. **Indexation***11th*

14.1 The indexation formula applicable to this paragraph 14 is:

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

where:

RI_t is the relevant indexation value in the Relevant Year t;

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

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

14.2 Each of the values for EBMPR (defined and specified in paragraph 4.2), TMPR (defined in paragraph 4.2 and specified in Annex C to this Part 3 of Schedule 4) and Defined Service Group Revenues (specified in Annex D to this Part 3 of Schedule 4) shall be adjusted in respect of Periods in Relevant Year t by multiplying them by the relevant indexation value, as set out in paragraph 14.1.

14.3 Each of the SPD Cost Threshold No.1 and SPD Cost Threshold No.2, as set out in paragraph 1.1 of this Schedule 4, shall be adjusted in respect of Periods in Relevant Year t by multiplying them by the relevant indexation value, as set out in paragraph 14.1.

15. **Circumstances in which ORR may amend Schedule 4***11th*

15.1 Where there has been a change in Appendix 1 to Schedule 8 arising as a result of a notice issued under paragraph 17.1A of Schedule 8 that ORR considers requires an amendment to any of the following:

(a) the definition of “SPD Revenue Threshold 1” and “SPD Revenue Threshold 2” in Part 3 of Schedule 4;

(b) Annex A to Part 3 of Schedule 4;

(c) Annex D to Part 3 of Schedule 4;

(d) Part 5 of Schedule 4;

(e) any other part of Schedule 4 as a consequence of any amendments required under (a) – (d) above,

it may amend the relevant part of Schedule 4.

15.2 Where paragraph 15.1 applies, ORR may issue a notice to the parties setting out the amendments to be made and the date from which they shall take effect.

Annex A
to Part 3 of Schedule 4[h]

Notification Factors

	A	B	C	D	E
Service Group Description	**Service Group Code**	**Type**	**By D-26**	**By TW-22**	**After TW-22**
The Chiltern Railway Company Limited					
Met	HO01	Off-Peak	0.65	0.65	0.94
Met	HO01	Peak	0.65	0.65	0.94
Birmingham	HO02	Off-Peak	0.59	0.59	0.94
Birmingham	HO02	Peak	0.59	0.59	0.94
Joint	HO03	Off-Peak	0.62	0.62	0.94
Joint	HO03	Peak	0.62	0.62	0.94
Oxford	HO04	Off-Peak	0.66	0.66	0.94
Oxford	HO04	Peak	0.66	0.66	0.94

Annex B
to Part 3 of Schedule 4

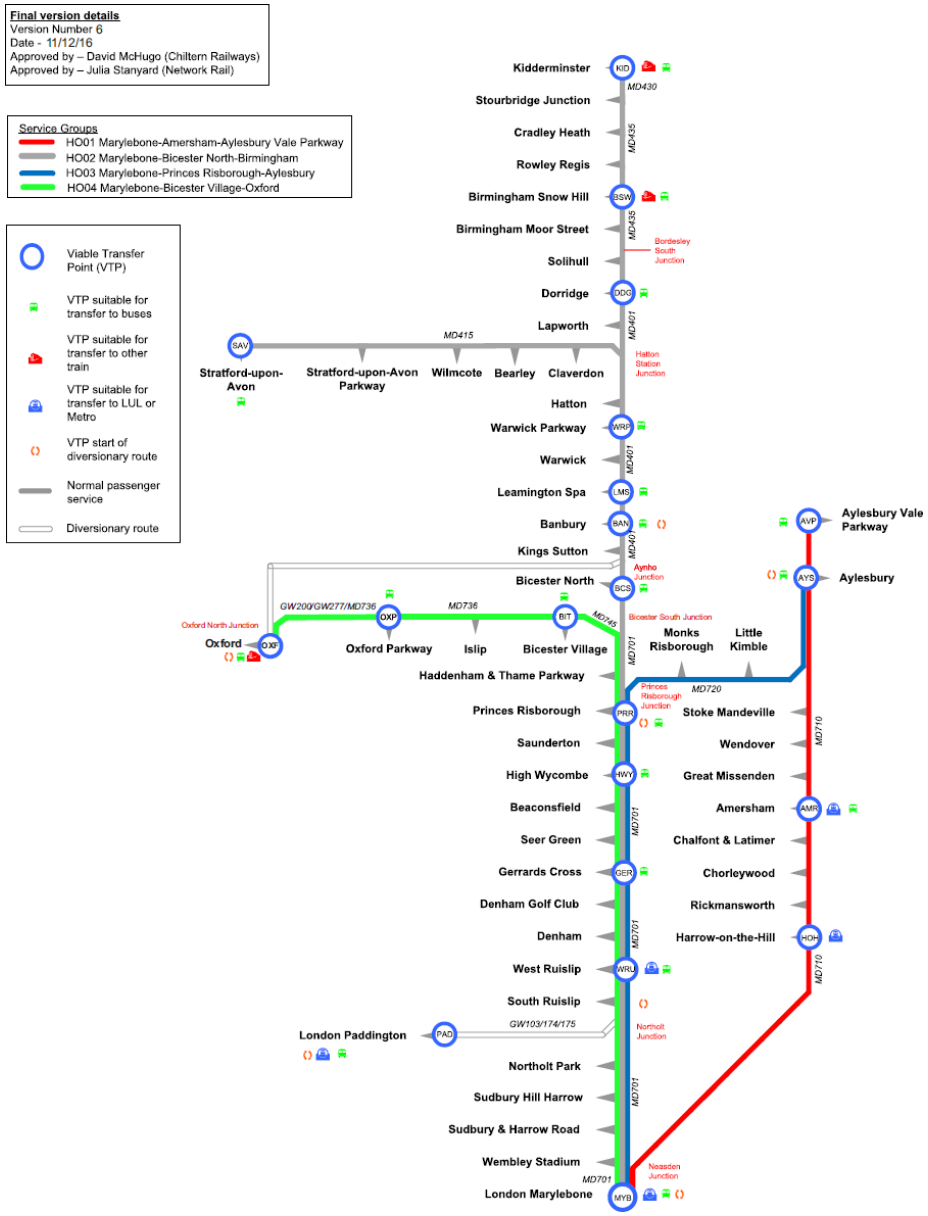
Lookup Table for EBM Weights

Viable Transfer Point (VTP)	Viable Transfer Point (VTP)	Via	Applicable Infrastructure Rules	Other Operating Rules	S4CS Code	Description of Possession Response	Comments	Service Group	% Applicable	FULL Bus Replacement 100%)				PARTIAL Bus Replacement (50% x X%)					No Bus Replacement (%)	EBM Total
										From	To	Miles	Trains	From	To	Miles	Trains	% Trains		
MD701/ MD710 London to Aylesbury via Amersham																				
London Marylebone (MYB)	Harrow on the Hill (HOH)				HO001	No bus replacement – passengers use LUL between Harrow and Baker Street													0	0
																			0	0
																			0	0
Harrow on the Hill (HOH)	Amersham (AMR)				HO002	Partial bus replacement Harrow on the Hill to Amersham (Trains restart at Amersham)		HO01						HOH	AMR	14.5		100%	0	0
																			0	0
																			0	0
Amersham (AMR)	Aylesbury (AYS)				HO003			HO01	100%	AMR	AYS	14.25							0	0
																			0	0
																			0	0
Aylesbury (AYS)	Aylesbury Vale Parkway (AVP)				HO017			HO01	100%	AYS	AVP	2.25							0	0
MD720 Princes Risborough - Aylesbury																				
Princes Risborough (PRR)	Aylesbury (AYS)				HO004			HO03	100%	PRR	AYS	7.5							0	0
																			0	0
																			0	0

Viable Transfer Point (VTP)	Viable Transfer Point (VTP)	Via	Applicable Infrastructure Rules	Other Operating Rules	S4CS Code	Description of Possession Response	Comments	Service Group	% Applicable	FULL Bus Replacement 100%)				PARTIAL Bus Replacement (50% x X%)					No Bus Replacement (%)	EBM Total
										From	To	Miles	Trains	From	To	Miles	Trains	% Trains		
MD801 London Marylebone – Princes Risborough via High Wycombe																				
London Marylebone (MYB)	West Ruislip (WRU)				HO005	No bus replacement – Trains generally diverted to London Paddington or passengers to us LUL		HO02											0	0
								HO03											0	0
								HO04											0	0
West Ruislip (WRU)	Gerrards Cross (GER)				HO006	Full bus replacement West Ruislip to Gerrards Cross for HO03. Partial bus replacement West Ruislip to Gerrards Cross for HO02 and HO04, which 1 tph diverted via Amersham		HO02						WRU	GER	5.5		100%	0	0
								HO03	100%	WRU	GER	5.5							0	0
								HO04						WRU	GER	5.5		100%	0	0
Gerrards Cross (GER)	High Wycombe (HWY)				HO007	Full bus replacement Gerrards Cross to High Wycombe for HO03. Partial bus replacement Gerrards Cross to High Wycombe for HO02 and HO04, with 1 tph diverted via Amersham		HO02						GER	HWY	9		100%	0	0
								HO03	100%	GER	HWY	9							0	0
								HO04						GER	HWY	9		100%	0	0
High Wycombe (HWY)	Princes Risborough (PRR)				HO008	Full bus replacement High Wycombe to Princes Risborough for HO03. Partial bus replacement High Wycombe to Princes Risborough for HO02 and		HO02						HWY	PRR	8.25		100%	0	0
								HO03	100%	HWY	PRR	8.25							0	0
								HO04						HWY	PRR	8.25		100%	0	0

Viable Transfer Point (VTP)	Viable Transfer Point (VTP)	Via	Applicable Infrastructure Rules	Other Operating Rules	S4CS Code	Description of Possession Response	Comments	Service Group	% Applicable	FULL Bus Replacement 100%)				PARTIAL Bus Replacement (50% x X%)					No Bus Replacement (%)	EBM Total
										From	To	Miles	Trains	From	To	Miles	Trains	% Trains		
						HO04 with 1 tph delivered via Amersham														
MD401 / MD430 / MD435 / MD701 Princes Risborough - Kidderminster																				
Princes Risborough (PRR)	Bicester North (BCS)				HO009	Partial bus replacement Princes Risborough to Bicester North with option to divert trains to Bicester Village		HO02						PRR	BCS	18.75		100%	0	0
																			0	0
																			0	0
Bicester North (BCS)	Banbury (BAN)				HO010	Partial bus replacement Bicester North to Banbury with option to divert trains to Oxford for services to London		HO02						BCS	BAN	14		100%	0	0
																			0	0
																			0	0
Banbury (BAN)	Leamington Spa (LMS)				HO011			HO02	100%	BAN	LMS	20							0	0
																			0	0
																			0	0
Leamington Spa (LMS)	Warwick Parkway (WRP)				HO012			HO02	100%	LMS	WRP	3.25							0	0
																			0	0
																			0	0
Warwick Parkway (WRP)	Dorridge (DDG)				HO013			HO02	100%	WRP	DDG	9.5							0	0
																			0	0
																			0	0
Dorridge (DDG)	Birmingham Snow Hill (BSW)																			
					HO014			HO02	100%	DDG	BSW	10.5							0	0

Viable Transfer Point (VTP)	Viable Transfer Point (VTP)	Via	Applicable Infrastructure Rules	Other Operating Rules	S4CS Code	Description of Possession Response	Comments	Service Group	% Applicable	FULL Bus Replacement 100%)				PARTIAL Bus Replacement (50% x X%)					No Bus Replacement (%)	EBM Total
										From	To	Miles	Trains	From	To	Miles	Trains	% Trains		
																			0	0
																			0	0
Birmingham Snow Hill (BSW)	Kidderminster (KID)				HO015	No bus replacement – passengers use London Midland services or London Midland buses													0	0
																			0	0
																			0	0
MD415 Stratford-Upon-Avon branch																				
Warwick Parkway (WRP)	Stratford-Upon-Avon (SAV)				HO016			HO02	100%	WRP	SAV	12							0	0
																			0	0
																			0	0
MD701 / MD745 / MD736 Princes Risborough via Bicester Chord to Oxford Parkway																				
Princes Risborough (PRR)	Bicester Village (BIT)				HO018	Partial bus replacement Princes Risborough to Bicester Village with option to divert trains to Bicester North		HO04						PRR	BIT	18.75		100%	0	0
																			0	0
																			0	0
Bicester Village (BIT)	Oxford Parkway (OXP)				HO019			HO04	100%	BIT	OXP	8.25							0	0
																			0	0
																			0	0
MD736 / GW277 / GW200 Oxford Parkway to Oxford																				
Oxford Parkway (OXP)	Oxford (OXF)			HO020				HO04	100%	OXP	OXF	3.5							0	0


Final version details
Version Number 6
Date - 11/12/16
Approved by – David McHugo (Chiltern Railways)
Approved by – Julia Stanyard (Network Rail)
Service Groups
HO01 Marylebone-Amersham-Aylesbury Vale Parkway
HO02 Marylebone-Bicester North-Birmingham
HO03 Marylebone-Princes Risborough-Aylesbury
HO04 Marylebone-Bicester Village-Oxford
Viable Transfer Point (VTP)
VTP suitable for transfer to buses
VTP suitable for transfer to other train
VTP suitable for transfer to LUL or Metro
VTP start of diversionary route
Normal passenger service
Diversionary route
Kidderminster
Stourbridge Junction
Cradley Heath
Rowley Regis
Birmingham Snow Hill
Birmingham Moor Street
Solihull
Dorridge
Lapworth
Stratford-upon-Avon
Stratford-upon-Avon Parkway
Wilmcote
Bearley
Claverdon
Hatton
Warwick Parkway
Warwick
Leamington Spa
Banbury
Kings Sutton
Bicester North
Oxford
Oxford Parkway
Islip
Bicester Village
Haddenham & Thame Parkway
Princes Risborough
Saunderton
High Wycombe
Beaconsfield
Seer Green
Gerrards Cross
Denham Golf Club
Denham
West Ruislip
South Ruislip
London Paddington
Northolt Park
Sudbury Hill Harrow
Sudbury & Harrow Road
Wembley Stadium
London Marylebone
Aylesbury Vale Parkway
Aylesbury
Monks Risborough
Little Kimble
Stoke Mandeville
Wendover
Great Missenden
Amersham
Chalfont & Latimer
Chorleywood
Rickmansworth
Harrow-on-the-Hill

Annex C
to Part 3 of Schedule 4*11th*

Payment Rate per train mile

Service Group	Description	Compensation Rate	Total Train Cost per Mile (Pence)
HO01 Off-Peak	Met	LSE	[redacted]
HO01 Peak	Met	LSE	[redacted]
HO02 Off-Peak	Birmingham	LSE	[redacted]
HO02 Peak	Birmingham	LSE	[redacted]
HO03 Off-Peak	Joint	LSE	[redacted]
HO03 Peak	Joint	LSE	[redacted]
HO04 Off-Peak	Oxford	LSE	[redacted]
HO04 Peak	Oxford	LSE	[redacted]

Annex D
to Part 3 of Schedule 4

Defined Service Group Revenue

Service Group	Description	Defined Service Group Revenue
HO01 Off-Peak	Met	[redacted]
HO01 Peak	Met	[redacted]
HO02 Off-Peak	Birmingham	[redacted]
HO02 Peak	Birmingham	[redacted]
HO03 Off-Peak	Joint	[redacted]
HO03 Peak	Joint	[redacted]
HO04 Off-Peak	Oxford	[redacted]
HO04 Peak	Oxford	[redacted]

Part 4

(Not Used)

Part 5

PART 5: ACCESS CHARGE SUPPLEMENT FOR RESTRICTIONS OF USE

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

Year	£
2026-27	[redacted]
2027-28	[redacted]
2028-29	[redacted]

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

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

$$ACSRU_{pt} = ACSRU_t \times (1 + \frac{CPI_{t-1} - CPI_{2022}}{CPI_{2022}})$$

where:

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

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

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

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

Appendix 4A*11th*

Opt-out Notice

[Name of train operator representative]

[Position]

Telephone: [xxx]

E-mail: [xxx]

[Date]

[Enter name of person specified in paragraph 1 of Schedule 1 to the contract]

Network Rail Infrastructure Limited

[Enter address specified in paragraph 1 of Schedule 1 to the contract]

Dear [Enter name of person specified in paragraph 1 of Schedule 1 to the contract]

Opt-out from the Schedule 4 Restrictions of Use provisions

This is an Opt-out Notice in respect of Schedule 4 of the track access contract between Network Rail Infrastructure Limited and [Enter train operator name here], dated [insert date of track access contract] ("the contract").

[Enter train operator name here] hereby exercises its right to opt out of the provisions of Schedule 4, pursuant to paragraph A1.1 of Part 3 to Schedule 4 to the contract.

This notice does not apply to paragraphs A1 and 1.1 of Part 3 of Schedule 4, and any further paragraphs of Part 3 necessary to give effect to paragraph 1.1 of Part 3.

{I have sent a copy of this notice to [any other person at Network Rail entitled to a copy as set out in paragraph 1 of Schedule 1 to the contract].}

Yours faithfully

[Name of train operator representative]

Appendix 4B[11th]

Opt-in Notice

[Name of train operator representative]

[Position]

Telephone: [xxx]

E-mail: [xxx]

[Date]

[Enter name of person specified in paragraph 1 of Schedule 1 to the contract]

Network Rail Infrastructure Limited

[Enter address specified in paragraph 1 of Schedule 1 to the contract]

Dear [Enter name of person specified in paragraph 1 of Schedule 1 to the contract]

Opt-in to the Schedule 4 Restrictions of Use provisions

This is an Opt-in Notice in respect of Schedule 4 of the track access contract between Network Rail Infrastructure Limited and [Enter train operator name here], dated [insert date of track access contract] ("the contract").

[Enter train operator name here] hereby exercises its right to opt in to all of the Schedule 4 provisions, pursuant to paragraph A1.3 of Part 3 to Schedule 4 to the contract.

{I have sent a copy of this notice to [any other person at Network Rail entitled to a copy as set out in paragraph 1 of Schedule 1 to the contract].}

Yours faithfully

[Name of train operator representative]

Schedule 5

(The Services and the Specified Equipment)

1. **Definitions**

1.1 In this Schedule unless the context otherwise requires:

"Calling Pattern" means a list of stations related to one or more Passenger Train Slots, at which stops are to be Scheduled in the Working Timetable;

"Contingent Right" means a right under this Schedule 5 which is not a Firm Right and which is subject to the fulfilment of all competing Exercised Firm Rights and any additional contingency specified in this Schedule 5;

"Day" means any period of 24 hours beginning at 02:00 hours and ending immediately before the next succeeding 02:00 hours, and any reference in this Schedule to any named day of the week shall be to such period commencing on that named day;

"Exercised" has the meaning ascribed to it in Part D of the Network\Code;

"Firm Right" has the meaning ascribed to it in Part D of the Network Code;

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

"Off-Peak Services" means Services Scheduled on any part of a Weekday which are not **"Peak Services"**, and "Off-Peak" shall be construed accordingly;

"Passenger Train Slot" means a Train Slot intended by the Train Operator to be used for the provision of a Service;

"Peak Services" means Services Scheduled on any Weekday (excluding Public Holidays) (i) to arrive at London Marylebone between 07:00 hours and 09:59 hours or (ii) to depart from London Marylebone between 16:00 hours and 18:59 hours, and “Peak” shall be construed accordingly;

"Reduced Regular Calling Pattern" has the meaning ascribed to it in paragraph 4.1;

"Regular Calling Pattern" has the meaning ascribed to it in paragraph 4.1;

"Scheduled" means, in relation to the quantum, timing or any other characteristic of a train movement, that quantum, timing or other characteristic as included in the applicable Working Timetable;

"Service Group" means any one or more (as the context may require) of the service groups described in this Schedule;

"Timetable Period" means the period of time between (and including) one Timetable Change Date and (but excluding) the immediately succeeding Timetable Change Date;

"Timing Load" means, in relation to a Service, the timing reference code as defined from time to time in the Working Timetable;

"Train Service Code" or **"TSC"** means the eight character code applied in the Performance Monitoring System and used to identify Services;

"Weekday" means any day (including, except for the purposes of paragraphs 6 and 7, a Public Holiday) which is not a Saturday or Sunday; and

"xx20" means, as an example of this notation, 20 minutes past the hour.

1.2 Unless otherwise stated, where in this Schedule a period is expressed to be between two specific times that period shall be inclusive of both such times.

1.3 The Train Operator's rights under this Schedule as to numbers of Passenger Train Slots per Day are calculated by reference to departures from the Scheduled start point on the Day in question, notwithstanding that a Passenger Train Slot may not be Scheduled to arrive at its end point until the immediately succeeding Day.

2. Passenger Train Slots

For Passenger Train Slots please refer to Table 2.1 in Annex 1 to this Schedule 5

Passenger Train Slots

2.1 The Train Operator has Firm Rights to the number of Passenger Train Slots in the Working Timetable in respect of a Service Group as listed against each Service specified in Table 2.1 in Annex 1 to this Schedule 5 on the Days and within the Peak and Off-Peak times so listed using any Specified Equipment included in paragraph 5.1(a) that is capable of achieving the Timing Load shown. If the Train Operator makes an Access Proposal, or relies on a Rolled Over Access Proposal, to operate any of the Services specified in Table 2.1 in Annex 1 to this Schedule 5 using Specified Equipment that is not capable of achieving the Timing Load shown, then the rights will be treated as Contingent Rights for the purposes of Part D of the Network Code.

2.2 : In order to provide for the Scheduling of part only of Passenger Train Slots specified in Table 2.1 in Annex 1 to this Schedule 5 the Train Operator has:

(a) Firm Rights for such a Passenger Train Slot to commence from and/or terminate at Birmingham Moor Street; and

(b) Contingent Rights for:

(i) any Service to commence from or terminate at Bicester North;

(ii) any Service to commence from or terminate at Princes Risborough;

(iii) any Service to commence from or terminate at High Wycombe;

(iv) any Service to commence from or terminate at Gerrards Cross; and

(v) any Service to commence from or terminate at Aylesbury, Banbury and Oxford Parkway,

provided that any such Service is to terminate at or commence from London Marylebone.

2.3 In order to provide through Services the Train Operator has:

(a) Not used; and

(b) Not used.

Table 2.2: Additional Passenger Train Slots

For Additional Passenger Train Slots please refer to Table 2.2 in Annex 1 to this Schedule 5

Additional Passenger Train Slots

2.4 The Train Operator has Contingent Rights to additional Passenger Train Slots in the Working Timetable in respect of a Service Group up to the number listed against each Service specified in Table 2.2 in Annex 1 to this Schedule 5 and on the Days so listed.

2.5 A Contingent Right for an additional Passenger Train Slot under paragraph 2.4 includes:

(a) a Contingent right to call at any station listed in Table 4.1 in Annex 1 to this Schedule 5;

(b) a Contingent Right to have Scheduled part only of the Passenger Train Slot in question; and

(c) a Contingent Right to combine Passenger Train Slots to provide a through Service.

Ancillary Movements

2.6 The Train Operator has Firm Rights to make Ancillary Movements of Specified Equipment to the extent necessary or reasonably required to give full effect to the other Firm Rights of the Train Operator, including:

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

(b) movements for driver training purposes; and

(c) empty stock movements.

2.7 For the purpose of paragraph 2.6, Ancillary Movements shall not include movements of rolling stock for the purpose of testing or driver training to the extent that:

(a) the rolling stock concerned has not achieved vehicle and route acceptance necessary for its use in the carriage of passengers on the route in question; or

(b) where the route in question is not used by the Train Operator for carriage of passengers, the rolling stock concerned has not achieved vehicle and route acceptance necessary to operate on the route without passengers on board.

Relief Passenger Train Slots

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

(a) the relief Passenger Train Slot being additional to a Service for which the Train Operator has access rights in table 2.1 or 2.2 the relief passenger Train Slot being additional to a Service for which the Train Operator has access rights in Table 2.1 or 2.2 in Annex 1 to this Schedule 5; and

(b) each relief Passenger Train Slot being allocated the relevant Train Service Code as shown in Schedule 7, Appendix 7C.

2.9 Save by prior agreement with Network Rail, the Train Operator shall not be entitled to operate Services on 25 and 26 December in any year. Any prior agreement shall be subject to such conditions as Network Rail may reasonably impose, including paying for Network Rail's reasonable costs for providing such access.

2.10 Subject to paragraph 2.8, Public Holidays Shall be treated for the purposes of this Schedule as Saturdays.

2.11 The exercise of a Stabling right shall not count against the number of Passenger Train Slots listed in Table 2.1 in Annex 1 to this Schedule 5.

2.12 The Train Operator has Contingent Rights to operate Class 196 rolling stock as non-passenger train slots for the purposes of carrying out train testing until 23:59 hours 31 December 2024 between Birmingham Snow Hill and Oxford, Banbury and London Marylebone, Oxford and Milton Keynes Central.

Subject to necessary vehicle and route acceptance to operate on the route without passengers onboard, Trains may call (not in passenger service) as required at:

(a) Oxford, Oxford Parkway, Islip, Bicester Village, Winslow, Bletchley High Level, Bletchley Low Level, Fenny Stratford, Milton Keynes Central, Banbury, Bicester North, Birmingham Moor Street, Birmingham Snow Hill, London Marylebone, Wembley Stadium.

(b) in addition to the locations shown in 2.12 (a) the following line of routes are permitted, included with line of route codes:

I. Birmingham Snow Hill and Oxford via Dorridge, Banbury, Aynho Jn Heyford GW200, GW277, MD401, MD435
II. Banbury to Marylebone via Aynho Jn, Bicester North, High Wycombe, Neasden South Jn and London Marylebone MD701
III. Oxford and Milton Keynes Central via Bicester Village, Gavray Jn, Bletchley High Level, Denbigh Hall South and Milton Keynes Central MD101, MD736
IV. Gavray Jn to Bicester South Jn MD745
V. Princes Risborough to Aylesbury MD720
VI. Bletchley High Level to Fenny Stratford MD140
VII. Fenny Stratford to Bletchley Low Level MD740

(c) trains may also run as required into: Banbury Depot, Aylesbury Depot, Aylesbury Carriage Sidings, Birmingham Moor Street Sidings, Birmingham Snow Hill Sidings, Oxford Carriage Sidings, Bletchley TMD, Wembley Depot 5th

2.13 The Train Operator has Contingent Rights to operate Class 165, 168 and 196 rolling stock as non-passenger train slots for the purposes of carrying out route learning and infrastructure commissioning until 23:59 hours 31 December 2024 between Milton Keynes Central, Bletchley High Level, Winslow, Bicester Village, Oxford Parkway & Oxford.

Subject to necessary vehicle and route acceptance necessary to operate on the route without passengers on board, Trains may call (not in passenger service) as required at:

(a) Oxford, Oxford Parkway, Islip, Bicester Village, Winslow, Bletchley High Level, Bletchley Low Level, Fenny Stratford, Milton Keynes Central, Banbury, Bicester North, Birmingham Moor Street, Birmingham Snow Hill, London Marylebone, Wembley Stadium.

(b) in addition to the locations shown in 2.12 (a) the following line of routes are permitted, included with line of route codes:

I. Birmingham Snow Hill and Oxford via Dorridge, Banbury, Aynho Jn Heyford GW200, GW277, MD401, MD435
II. Banbury to Marylebone via Aynho Jn, Bicester North, High Wycombe, Neasden South Jn and London Marylebone MD701

III. Oxford and Milton Keynes Central via Bicester Village, Gavray Jn, Bletchley High Level, Denbigh Hall South and Milton Keynes Central MD101, MD736
IV. Gavray Jn to Bicester South Jn MD745
V. Princes Risborough to Aylesbury MD720
VI. Bletchley High Level to Fenny Stratford MD140
VII. Fenny Stratford to Bletchley Low Level MD740

(c) trains may also run as required into: Banbury Depot, Aylesbury Depot, Aylesbury Carriage Sidings, Birmingham Moor Street Sidings, Birmingham Snow Hill Sidings, Oxford Carriage Sidings, Bletchley TMD, Wembley Depot 5th

3. **(Not used)**

4. Calling Patterns

For Calling Patterns please refer to Table 4.1 in Annex 1 to this Schedule 5

Calling Patterns

4.1 In respect of each Service specified in column 1 of Table 4.1 in Annex 1 to this Schedule 5, the Train Operator has Firm Rights to the corresponding Calling Pattern listed in column 2 of that Table (the **"Regular Calling Pattern"**) or any subset of the Calling pattern (the **"Reduced Regular Calling Pattern"**)

Additional calls

4.2 The Train Operator has Contingent Rights to have Scheduled, in respect of any Passenger Train Slot, calls at one or more of the stations set out opposite the Service in column 3 of Table 4.1 in Annex 1 to this Schedule 5 being stations which do not form part of the Regular Calling Pattern.

5. Specified Equipment

Specified Equipment

5.1 In order to provide the Services specified in this Schedule 5, subject to obtaining any necessary route clearance for the route in question, the Train Operator has:

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

Class 165/0
Class 168/0, Class 168/1, Class 168/2, Class 168/3
Class 68 plus six Mark III carriages plus Driving Van Trailer
Class 196

and

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

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

Train length

5.2 The Train Operator has a Firm Right to the maximum train length in metres which the Network can from time to time accommodate, subject to a right of Network Rail to vary the train length in cases where the Network cannot accommodate all Access Proposals and Rolled Over Access Proposals to operate to the maximum length.

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

Schedule 6

(Events of Default, Suspension and Termination)

1. **Events of Default**

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

The following are Train Operator Events of Default:

(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 or the Franchisee;

(c)

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

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

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

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

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

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

(g) the Franchise Agreement is terminated.

1.2 ***Notification***

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

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

The following are Network Rail Events of Default:

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

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

(c)

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

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

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

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

1.4 ***Notification***

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

2. **Suspension**

2.1 ***Right to suspend***

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

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

2.2 ***Contents of Suspension Notice***

A Suspension Notice shall specify:

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

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

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

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

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

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

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

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

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

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

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

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

(d) service of the Suspension Notice shall not affect the Train Operator's Firm Rights (as defined in Schedule 5) for the purposes of Part D of the Network Code.

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

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

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

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

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

(d) the service of the Suspension Notice shall not affect the Train Operator's Firm Rights (as defined in Schedule 5) for the purposes of Part D of the Network Code.

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

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

(a) railway vehicles;

(b) Services;

(c) Routes; and

(d) categories of train movements or railway vehicles,

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

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

(a) railway vehicles;

(b) Services;

(c) Routes; and

(d) categories of train movements or railway vehicles,

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

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

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

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

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

3. Termination

3.1 *Network Rail's right to terminate*

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

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

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

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

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

3.2 *Train Operator's right to terminate*

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

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

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

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

3.3 *Contents of Termination Notice*

A Termination Notice shall specify:

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

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

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

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

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

3.4 ***Effect of Termination Notice***

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

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

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

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

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

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

4. **Consequence of termination**

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

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

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

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

4.3 ***Evidence of costs***

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

Schedule 7

Track Charges

Part 1

(Interpretation)

1. **Definitions***11th*

In Parts 1 - 7 inclusive, unless the context otherwise requires:

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

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

"Adjusted Sum" means the amount calculated in accordance with paragraph 8I.3;

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

"Asset Life" means the thirty (30) year life of an MS Enhanced Asset of which an MS Deliverable forms part, which runs from the relevant MS Deliverable Facility Charge Date;

"Backstop Date" means the date upon which EG3 Phase 1 or EG3 Phase 2 (as appropriate) reaches Stage Gate 5;

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

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

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

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

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

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

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

"Default Train Consist Data" means the data listed in Appendix 7C as amended from time to time in accordance with paragraph 10.4 of Part 2;

"Deliverable Financing Charge" means the interest, calculated at a pre-tax annual rate which is 0.06 in accordance with the ORR's CP4 pre-tax rate, chargeable by Network Rail on the Purchase Price for the MS Deliverables in respect of the period between the dates of payment for the MS Deliverables and the relevant MS Deliverable Facility Charge Date, and compounded at the end of each Relevant Year;

"Deliverables" means the EG3 Phase 1 Deliverables;

"EG3 Asset Life" means in respect of EG3 Phase 1 only, the thirty year life of an EG3 Asset of which a Deliverable forms part which runs from the EG3 Phase 1 Facility Charge Date;

"EG3 Deliverable Financing Charge" means the interest, calculated at a pre-tax annual rate which is 0.06 in accordance with the ORR's CP4 pre-tax rate, chargeable by Network Rail on the Purchase Price for the Deliverables in respect of the period between the date of payment for the Deliverables and the EG3 Phase 1 Timetable Change Date, and compounded at the end of each Relevant Year;

"EG3 Incremental MRR Charge" means each of the Phase 1 Incremental MRR Charge, the Water Eaton Incremental MRR Charge and the Oxford Incremental MRR Charge as calculated in accordance with paragraph 8K;

"EG3 Phase 1 Accrued DFC" has the meaning given in paragraph 8H.1(a);

"EG3 Phase 1 Additional Accrued DFC" has the meaning given in paragraph 8H.1(b);

"EG3 Phase 1 Additional Deliverable Financing Charge" means the interest, calculated at a pre-tax annual rate which is 0.06 in accordance with the ORR's CP4 pre-tax rate, chargeable by Network Rail on the Purchase Price for the Deliverables in respect of the period between the EG3 Phase 1 Timetable Change Date, or if later, the dates of payment for the EG3 Phase 1 Deliverables, and the EG3 Phase 1 Facility Charge Date compounded at the end of each Relevant Year;

"EG3 Phase 1 Revised Completion Date" means 4th September 2011 or such other date as Network Rail agrees in its absolute discretion;

"EG3 Phase 1 Deliverable" means an EG3 Phase 1 deliverable specified in Schedule 2 of the EG3 Asset Purchase Agreement;

"EG3 Phase 1 Facility Charge" means the charge payable by the Train Operator to Network Rail in respect of the capital cost of an EG3 Phase 1 Deliverable purchased by Network Rail and any associated EG3 Phase 1 Accrued DFC, the total amount of such EG3 Phase 1 Facility Charge being calculated for each Relevant Year in accordance with paragraph 8H of this Schedule 7 (Track Charges);

"EG 3 Phase 1 Facility Charge Date" means the earlier of:

(a) the EG3 Phase 1 Revised Completion Date;

(b) the date of termination of the EG3 Asset Purchase Agreement; and

(c) the date of termination of the EG3 Asset Protection Agreement;

"EG3 Phase 1 Timetable Change Date" means the 22 May 2011;

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

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

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

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

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

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

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

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

"Final Contribution Sum Determination Date" means the date on which the Water Eaton Final Facility Charge and the Oxford Final Facility Charge are determined pursuant to paragraph 4 of part 3 of Schedule 2 of the Contribution Agreement;

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

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

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

"Grant Agreement" means the Grant Agreement made on or before 31 March 2024 between the Secretary of State and Network Rail for the payment of network grant; *11th*

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

"Grant Mechanism" means the provisions agreed on or before 31 January 2024 between Network Rail and the Secretary of State (and approved by ORR for the purposes of Part 3A on or before 28 February 2024) setting out how the annual amounts of network grant contained in Table 1 may vary or if no such provisions are agreed and approved, such provisions as ORR may determine on or before 31 March 2024 after consulting Network Rail and the Secretary of State; *11th*

"GRIP" has the meaning given to it in the EG3 Asset Protection Agreement;

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

"Incremental MRR Charge" has the meaning given in paragraph 8K.3;

"kgtm" means 1000 Gross Tonne Miles;

"kWh" means kilowatt hours;

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

(a) a train of a particular type; or

(b) a specific train having a train ID,

as specified in Appendix 7D of this Schedule 7;

"MS Accrued DFC" has the meaning given in paragraph 8F.1;

“MS Additional Deliverable” means the Regulatory Asset Base addition as specified in the ORR letter from John Larkinson to Graham Cross of Chiltern Railway Company Limited dated 30 March 2011;

“MS additional Facility Charge Accrued DFC” has the meaning given in paragraph 8L.1;

“MS Additional Facility Charge” means the charge payable by the Train Operator to Network Rail in respect of the capital cost of an MS Additional Deliverable purchased by Network Rail and any associated MS Additional Facility Charge Accrued DFC, the total amount of such MS Additional Facility Charge being calculated for each Relevant Year in accordance with paragraph 8L.1 of this Schedule 7 (Track Charges);

“MS Additional Deliverable Facility Charge Date” means the date upon which an MS Additional Deliverable is Taken into Use as part of an MS Enhanced Asset;

“MS Additional Facility Charge Term” has the meaning given to it in paragraph 8L.3(b)(ii)(B);

“MS Deliverable” means a deliverable specified in Schedule 3 of the MS Asset Purchase Agreement;

“MS Deliverable Facility Charge Date” means the date upon which an MS Deliverable is Taken into Use as part of an MS Enhanced Asset;

“MS Facility Charge” means the charge payable by the Train Operator to Network Rail in respect of the capital cost of an MS Deliverable purchased by Network Rail and any associated MS Accrued DFC, the total amount of such MS Facility Charge being calculated for each Relevant Year in accordance with paragraph 8F of this Schedule 7 (Track Charges);

“MS Purchase Price” has the meaning given to it in the MS Asset Purchase Agreement;

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

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

“New Modelled Train” means a type of train for which Etmo is to be calculated for the purposes of paragraph 4.1.1 of Part 2 but in relation to which no train category i, and no modelled consumption rate, is shown in the Passenger Traction Electricity Modelled Consumption Rates for CP7 table in the Traction Electricity Modelled Consumption Rates List; *11th*

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

“Notice of Consent” means a notice given by the ORR to the parties under paragraph 8K.4(g);

“Notice of Determined Relevant Schedule 7 Modifications” means a notice given by the ORR to the parties under paragraph 8K.4(h)(ii);

“Notice of Procedural Modifications” means a notice given by the ORR to the parties under paragraph 8K.4(l) modifying any aspect of the procedures in paragraph 8K.4;

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

“ORR’s Criteria” means the criteria set out in paragraph 8K.4(k);

“Oxford Contribution Sum” means the sum calculated in accordance with paragraph 3 of Part 3 of Schedule 2 of the Contribution Agreement less an amount that is equal to the Wolvercot Tunnel Capital Sum;

“Oxford Facility Charge” means the charge payable by the Train Operator to Network Rail in relation to the Oxford Works as determined by reference to the Oxford Contribution Sum, the total amount of such Oxford Facility Charge being calculated for each Relevant Year in accordance with paragraph 8I.2 of this Schedule 7 (Track Charges);

“Oxford Facility Charge Date” means with effect from the Oxford Effective Date the earlier of the date upon which the Oxford Services are first to be operated by the Train Operator on the Routes from Bicester South Junction to Oxford via Bicester Village and the date that is six (6) months from the Oxford Effective Date;[114th]

“Oxford Final Contribution Sum” means the sum calculated in accordance with paragraph 4.3 of Schedule 2 Part 3 of the Contribution Agreement less an amount that is equal to the Wolvercot Tunnel Capital Sum;

“Oxford Final Facility Charge” means the charge payable by the Train Operator to Network Rail in relation to the Oxford Works, the total amount of such Oxford Final Facility Charge being calculate for each Relevant Year in accordance with paragraph 8I.5 of the Schedule 7 (Track Charges);

“Oxford Incremental MRR Charge” means the charge calculated in accordance with paragraph 8K.1(C) of this Schedule 7 (Track Charges);

“Oxford Services“ means the railway passenger services specified in Tables 2.1(d)(B), 3.1(d)(B), 3.3(d)(B), 4.1(d)(B), 5.1(d)(B), 6.1(d)(B) and 6.2(b)(B) of Appendix 8(b) of Schedule 5;

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

“Phase 1 Incremental MRR Charge” means the charge calculated in accordance with paragraphs 8K.1(A) of this Schedule 7 (Track Charges);

"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;

“Purchase Price” has the meaning given to it in the EG3 Asset Purchase Agreement;

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

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

(a) a franchise operator; or

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

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

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

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

"Relevant Schedule 7 Modifications" means:

(a) the value of the Incremental MRR Charge for each of the EG3 Phase 1 Assets and the EG3 Phase 2 Assets (as appropriate); and

(b) any modifications to any other provision of the Contract which are necessary as a consequence of any modifications under limb (a) above;

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

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

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

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

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

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

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

"Schedule of Fixed Charges" means the document entitled "Schedule of Fixed Charges" published by Network Rail on or about 20 December 2023; *11th*

"Stage Gate 4" has the meaning given to it in the EG3 Asset Protection Agreement;

"Stage Gate 5" means the approval stage reached in accordance with GRIP when approval of detailed design is required, as may be amended from time to time

"Start Date" means the date upon which EG3 Phase 1 or EG3 Phase 2 (as appropriate) passes Stage Gate 4;

"Table 1" means the row entitled "England and Wales" of Table 1: CP7 Network Grant, cash prices in the letter from ORR to Network Rail dated 2 November 2023, as may be varied by ORR on or before 31 March 2024 after consulting with Network Rail and the Secretary of State; *11th*

"Taken into Use" has the meaning given to it in the MS Asset Purchase Agreement;

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

"Track Usage Price List" means the document entitled "Track Usage Price List" published by Network Rail on or about 20 December 2023 which, for the purposes of this contract, shall be

deemed to incorporate any supplements to that document consented to or determined pursuant to paragraph 9.10 of Part 2 of Schedule 7 to this contract or a passenger track access contract previously held by the Train Operator; *11th*

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

"Traction Electricity Modelled Consumption Rates List" means the document entitled "Traction Electricity Modelled Consumption Rates List" published by Network Rail on or about 20 December 2023 and specifying freight and passenger traction electricity modelled consumption rates which, for the purposes of this contract, shall be deemed to incorporate: *11th*

(a) any supplements to that document consented to or determined pursuant to paragraph 9.3A of Part 2 of Schedule 7 of this contract;

(b) any supplements to the document entitled "Traction Electricity Modelled Consumption Rates List" published by Network Rail on or about 20 December 2018 which ORR consents to or determines after 20 December 2023;

"Traction Electricity Modelled Default Rate" means, in respect of any New Modelled Train used on the Network by the Train Operator, the corresponding default consumption rate for that type of vehicle set out in the section of the Traction Electricity Modelled Consumption Rates List entitled "Traction Electricity Modelled Default Rates for CP7";

"Traction Electricity Modelled Default Rate Period" means the period from the date on which the New Modelled Train is first used on the Network by the Train Operator until the date on which the train in question has been added to Appendix 7D of this Schedule; *11th*

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

"Traction-Train Compatible" means a situation in which a Bimodal Electric Multiple Unit or Bimodal Locomotive is located on the Network with a system of electricity traction supply that the Bimodal Electric Multiple Unit or Bimodal Locomotive is capable of drawing current from;

"train category i" means the train category i as identified in the relevant section of the Traction Electricity Modelled Consumption Rates List where there is a modelled consumption rate for a particular passenger vehicle type operating on a particular Train Service Code, the relevant category set out in the table entitled "Passenger Traction Electricity Modelled Consumption Rates for CP7"; *11th*

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

"Train Mile" in relation to a train, means a mile travelled by that train on the Network;

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

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

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

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

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

"VUC Default Charge" means a variable charge calculated in accordance with paragraph 3.3 of Part 2;

"VUC Default Period" means the period from the later of:

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

(b) 1 April 2024, *11th*

until the date on which ORR consents to or determines a supplement to the Track Usage Price List under paragraph 9.10 of Part 2 in respect of that New Specified Equipment;

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

"Water Eaton Contribution Sum" means the sum calculated in accordance with paragraph 2 of Part 3 of Schedule 2 of the Contribution Agreement;

"Water Eaton Facility Charge" means the charge payable by the Train Operator to Network Rail in relation to the Water Eaton Works as determined by reference to the Water Eaton Contribution Sum, the total amount of such Water Eaton Facility Charge being calculated for each Relevant Year in accordance with paragraph 8I.1 of this Schedule 7 (Track Charges);

"Water Eaton Facility Charge Date" means until the Oxford Effective Date the earlier of the date upon which the Water Eaton Services are first to be operated by the Train Operator on the Routes from Bicester South Junction to Oxford Parkway via Bicester Village and the date that is six (6) months from the Water Eaton Effective Date;[114th]

"Water Eaton Final Facility Charge" means the charge payable by the Train Operator to Network Rail in relation to the Water Eaton Works, the total amount of such Water Eaton Final Facility Charge being calculated for each Relevant Year in accordance with paragraph 8I.4 of this Schedule 7 (Track Charges);

"Water Eaton Final Contribution Sum" means the sum calculated in accordance with paragraph 4.3 of Schedule 2 Part 3 of the Contribution Agreement;

"Water Eaton Incremental MRR Charge" means the charge calculated in accordance with paragraph 8K.1(B) of this Schedule 7 (Track Charges);

"Water Eaton Services" means the railway passenger services specified in Tables 2.1(d)(A), 3.1(d)(A), 3.3(d)(A), 4.1(d)(A), 5.1(d)(A), 6.1(d)(A) and 6.2(b)(A) of Appendix 8(b) of Schedule 5;

"Weekday" has the meaning ascribed to it in paragraph 1.1 of Schedule 5;

"Wolvercot Tunnel Works" means the works in relation to Wolvercot tunnel more fully described in the Contribution Agreement at Schedule 3 paragraph 2.2(b);

"Wolvercot Tunnel Facility Charge" means the charge payable by the Train Operator to Network Rail in respect of the capital cost for the Wolvercot Tunnel Works the total amount of such charge being calculated for each Relevant Year in accordance with paragraph 8J of this Schedule 7 (Track Charges); and

"Wolvercot Tunnel Capital Sum" means the capital cost of the Wolvercot Tunnel Works being £16,600,000 (pounds sterling sixteen million, six hundred thousand)

2. **Interpretation**

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

Part 2

(Track Charges)

1. **Principal formula** *11th*

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

$T_t = F_t + V_t + D_t + E_t + EAV_t - W_t$ *11th*

where:

T_t means Track Charges in Relevant Year t;

F_t means an amount in respect of the Fixed Track Charge in Relevant Year t, expressed in pounds sterling and rounded to two decimal places, which shall be the total of the amounts set out in the row relating to the Train Operator and the column relating to that year in the Schedule of Fixed Charges, multiplied by the Fixed Track Charge Indexation calculated in accordance with paragraph 2.2; *11th*

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

D_t means an amount (if any) in respect of the VUC Default Charge in Relevant Year t which is calculated in accordance with paragraph 3.3;

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

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

W_t means an amount (which shall not be a negative value) in respect of the Network Rail Rebate in Relevant Year t, calculated in accordance with the provisions of paragraph 7.1.

2. **Fixed Track Charge Indexation** *11th*

2.1 Not used;

2.2 The Fixed Track Charge Indexation in respect of any Relevant Year t commencing on or after 1 April 2024 shall be derived from the following formula: *11th*

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

where:

$FTCI_t$ means the Fixed Track Charge Indexation in Relevant Year t;

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

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

3. Variable Usage Charge[11th]

3.1 *Variable Usage Charge* [11th]

For the purposes of paragraph 1, the term V_t means an amount in respect of the Variable Usage Charge in Relevant Year t which is derived from the following formula:

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

where:

V_{it} means an amount for vehicle type i for Relevant Year t, expressed in pence per Vehicle Mile and rounded to two decimal places, which is derived from the following formula:

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

where:

CPI_{t-1} has the meaning set out in paragraph 2.2 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, Vit-1 shall have, in respect of vehicle type i, the corresponding variable usage charge rate per Vehicle Mile for that vehicle type i set out in the Track Usage Price List;

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

$\sum$ means the summation across all relevant categories of vehicle types i.

3.2 *Not used*

3.3 *VUC Default Charge*[11th]

For the purposes of paragraph 1, the term D_t means the amount of VUC Default Charge payable in respect of New Specified Equipment in Relevant Year t which is derived from the following formula:

$$D_t = \sum D_{nt} \bullet UD_{nt}$$

where:

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

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

where:

CPI_{t-1} has the meaning set out in paragraph 2.2 above; and

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

but so that in relation to the Relevant Year commencing on 1 April 2024, Dnt-1 shall have, in respect of New Specified Equipment, the corresponding VUC Default Rate for that New Specified Equipment;

UD_{nt} means the actual volume of usage of New Specified Equipment in Vehicle Miles during the VUC Default Period in Relevant Year t operated by or on behalf of the Train Operator; and

∑ means the summation across all relevant New Specified Equipment.

4. **Traction Electricity Charge**

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

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

where:

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

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

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

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

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

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

Calculation of modelled consumption[11th]

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

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

where:

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

E_{tmog} is derived from the following formula:

$$E_{tmog} = \sum C_i \bullet EF_{gjt} \bullet UE_{igjt}$$

where:

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

C_i means, as appropriate:

(a) the consumption rate:

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

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

for train category i shown in the Traction Electricity Modelled Consumption Rates List, taking into account any Regenerative Braking Discount applied in accordance with the Traction Electricity Rules; or*11th*

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

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

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

Calculation of consumption using metered consumption data

4.1.3 E_{tme} is derived from the following formula:

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

where:

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

E_{tmeg} is derived from the following formula:

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

where:

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

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

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

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

4.1.4

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

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

where:

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

E_{tmugAC} is derived from the following formula:

$$E_{tmugAC} = \sum(CME_{mgjtAC} \bullet EF_{gjt}) \bullet \lambda_{ACg}$$

where:

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

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

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

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

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

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

where:

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

E_{tmugDC} is derived from the following formula:

$$E_{tmugDC} = \sum(CME_{mgjtDC} \bullet EF_{gjt}) \bullet \lambda_{DCg}$$

where:

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

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

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

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

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

4.1.5

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

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

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

4.2

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

(b) Any notice under sub-paragraph 4.2(a) shall be accompanied by information and evidence in reasonable detail supporting the changes proposed and setting out the reasons for those changes, and Network Rail shall respond in writing within 56 days of service of any such notice.

(c) Promptly following any response served by Network Rail under sub-paragraph 4.2(b), the parties shall endeavour to agree whether the contract should be amended in connection with that proposal and, if so, the amendments.

(d) If the parties agree an amendment to the contract in connection with the proposal referred to in sub-paragraph 4.2(a), that amendment shall take effect only when it has been approved by ORR under section 22 of the Act. Accordingly, as soon as reasonably practicable after any such amendment is agreed, the parties shall ensure that ORR is furnished with such amendment and such information and evidence as it shall require to determine whether or not to approve the amendment.

(e) Any agreed amendment to the contract in connection with the proposal referred to in sub-paragraph 4.2(a) which is approved by ORR under section 22 of the Act shall apply with effect from the date agreed by the parties.

(f) If the parties fail to reach agreement within 90 days after service of a notice under sub-paragraph 4.2(a), or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, either party may notify ORR and request that ORR determines the matter. The parties shall, within such timescales as ORR may specify, furnish ORR with such information and evidence as ORR shall require to determine the matter. If a party fails to furnish such information and evidence within the specified timescale, ORR shall be entitled to determine the matter without that information and evidence and the party in default shall have no grounds for complaint in that respect.

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

5. **Not used**

6. **Not used**

7. **Network Rail Rebate***11th*

7.1 For the purpose of paragraph 1, the Network Rail Rebate in respect of any Relevant Year t (W_t) is an amount (which shall not be a negative value) by way of a return of Track Charges paid in accordance with paragraph 7.5, derived from the following formula:

$$W_t = RA_t \bullet \frac{Ft}{AF_t}$$

where:

RA_t means the Rebatable Amount declared by Network Rail in relation to Relevant Year t under paragraph 7.2;

F_t has the meaning ascribed to it in paragraph 1 for Relevant Year t; and

AF_t means the Aggregate Fixed Charge in Relevant Year t.

7.2 The Rebatable Amount shall be the amount, if any:

(a) which represents such proportion of Network Rail's total income for Relevant Year t as it reasonably considers that it does not require in order to discharge its obligations under its network licence and any contracts to which it is a party;

(b) which Network Rail, acting reasonably, considers it appropriate to rebate as an amount representing a return of Track Charges payable by persons who provide services for the carriage of passengers by railway under the relevant access agreements to which they are parties; and

(c) which Network Rail notifies as such to ORR within nine months after the end of each Relevant Year t.

7.3 No amount of Track Charges shall be rebated under this paragraph 7 unless ORR has consented to such rebate.

7.4 Without prejudice to the generality of clause 16.3.1, any payment of a Network Rail Rebate (a **"rebate payment"**) shall be made on the basis that it is to be treated as exclusive of VAT, so that where and to the extent that the rebate payment is consideration for a supply for VAT purposes Network Rail shall in addition pay to the Train Operator an amount equal to the amount of VAT due in respect of that rebate payment and either:

(a) the Train Operator shall issue a VAT invoice to Network Rail in respect of the relevant amount; or

(b) if the parties so agree and have entered into an applicable self-billing agreement (within the meaning of regulation 13(3A) of the Value Added Tax Regulations 1995 (the **"VAT Regulations"**)) that continues in force then Network Rail shall produce for itself a self-billed invoice (within the meaning of regulation 13(3) of the VAT Regulations) in respect of the relevant amount.

7.5 If, pursuant to paragraph 7.1, the Train Operator is entitled to payment of a Network Rail Rebate in respect of Relevant Year t, then such payment shall be made by Network Rail to the Train Operator as a lump sum payment within 28 days after the end of the Period in which ORR gives its consent under paragraph 7.3.

7.6 If, pursuant to paragraph 7.2, Network Rail notifies ORR of the Rebatable amount in respect of Relevant Year t after this contract has expired or has otherwise been terminated then, notwithstanding the expiration or termination of this contract, paragraph 7.5 shall apply.

7.7 If Network Rail has, prior to 31 March 2024 and pursuant to the provisions of this contract in force as at that date, notified ORR of a Rebatable Amount for the Relevant Year ending on that date, then such provisions shall continue to apply to the extent (and only to the extent) necessary to enable determination and payment (where applicable) of a Network Rail Rebate based on that Rebatable Amount. *11th*

8. **Electrification Asset Usage Charge***11th*

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

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

where:

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

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

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

where:

CPI_{t-1} has the meaning set out in paragraph 2.2 above; and

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

but so that in relation to the Relevant Year commencing on 1 April 2024, EVt-1k shall have, in respect of each electrified Vehicle Mile on route type k, the value per electrified Vehicle Mile for the Electrification Asset Usage Charge set out in the Track Usage Price List; and *11th*

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

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

(ii) where the Bimodal Electric Multiple Unit or Bimodal Locomotive is a Metered Train m, in accordance with paragraph 4.1.5 above.

8F **Facility Charge**

8F.1 From the date upon which Network Rail pays the Train Operator for an MS Deliverable, the Deliverable Financing Charge for that MS Deliverable shall accrue (the MS Accrued DFC).

8F.2

(a) During each Relevant Year (and, where relevant, pro-rationed for each day of any period of this Contract comprising less than a full Relevant Year) from each relevant MS Deliverable Facility Charge Date, the Train Operator shall pay each MS Facility Charge for each relevant MS Deliverable.

(b) The MS Accrued DFC for each MS Deliverable shall be paid to Network Rail by the Train Operator as part of the MS Facility Charge in accordance with paragraph 8F.3 from each relevant MS Deliverable Facility Charge Date.

8F.3 The MS Facility Charge due and payable for an MS Deliverable in Relevant Year t shall be calculated as follows:

(a) in each Relevant Year (or part year) prior to the relevant MS Deliverable Facility Charge Date, zero; and

(b) from the relevant MS Deliverable Facility Charge Date, calculated in accordance with the following formula:

$$FC_t = (AC_t + RC_t)\ x\ [1 + \frac{RPI_{t-1}}{100}]$$

where:

(i) **FC_t** means an amount of the MS Facility Charge in Relevant Year t;

(ii) **AC_t** means the amortisation charge calculated in accordance with the following formula:

$$AC_t = [\frac{FCDValue}{30}]\ x\ [\frac{TPP_t}{365}]$$

where:

(A) **FCDValue** means:

$$[DPnt + DFC]$$

where:

(i) **DPnt** means the net amount paid by Network Rail for an MS Deliverable referenced number n in Schedule 3 of the MS Asset Purchase Agreement in the Relevant Year t, as may be reduced from time to time following any capital payment to Network Rail by the Train Operator in respect of that MS Deliverable in accordance with the terms of the MS Asset Purchase Agreement; and

(ii) **DFC** means the MS Accrued DFC for an MS Deliverable referenced number n in Schedule 3 of the MS Asset Purchase Agreement that is not paid to Network Rail prior to the relevant MS Deliverable Facility Charge Date;

(B) **TPP_t** means:

(i) in the first year of payment of ACt, the number of days from the relevant MS Deliverable Facility Charge Date to the end of Relevant Year t; and

(ii) in all subsequent years, the number of days from the start of the Relevant Year to the earlier of:

a) the date of expiry of the Asset Life; and

b) the end of the Relevant Year t;

(iii) **RC_t** means the return charge derived from the following formula:

$$RC_t = \left(\frac{OB_t + CB_t}{2}\right) x\ ROR$$

where:

(A) **OBt** means the sum derived from the formulas in paragraphs (1)(a) and (2)(a) below as appropriate;

(B) **CBt** means the sum derived from the formulas in paragraphs (1)(b) and (2)(b) below as appropriate;

(i) in relation to the Relevant Year in which the relevant MS Deliverable Facility Charge Date occurs:

a) **OB_t** = *DPnt*

b) **CB_t** = *DPnt* - AC_t

(ii) in relation to each subsequent Relevant Year:

a) $\mathbf{OB_t} = CB_{t-1}$

b) $\mathbf{CB_t} = OB_t - AC_t$

(C) **ROR** means:

$$[\frac{AROR x TPP_t}{365}]$$

where:

(i) $\mathbf{TPP_t}$ means:

a) in the Relevant Year in which the relevant MS Deliverable Facility Charge Date occurs, the number of days from the relevant MS Deliverable Facility Charge Date to the end of the Relevant Year t; and

b) in each subsequent Relevant Year, the number of days from the start of the Relevant Year to the earlier of:

i) the expiry of the Asset Life; and

ii) the end of the Relevant Year t;

(ii) **AROR** means the applicable rate of annual return which is 0.06 in accordance with the ORR's CP4 pre tax rate of return for the investment framework.

(iv) $\mathbf{RPI_{t-1}}$ means the percentage change (whether of a positive or negative value) between the Retail Prices Index published or determined with respect to November in Relevant Yeart-1 and the index published or determined with respect to November in the Relevant Year before the Relevant Year in which the date that Network Rail pays for an MS Deliverable occurs.

8G Not used.

8H EG3 Phase 1 Facility Charge

8H.1

(a) From the date upon which Network Rail pays the Train Operator for an EG3 Phase 1 Deliverable up to and including the EG3 Phase 1 Timetable Change Date, the EG3

Deliverable Financing Charge for that EG3 Phase 1 Deliverable shall accrue (the **EG3 Phase 1 Accrued DFC**).

(b) From the day after the EG3 Phase 1 Timetable Change Date or, if later, the date upon which Network Rail pays the Train Operator for an EG3 Phase 1 Deliverable until the EG3 Phase 1 Facility Charge Date, the EG3 Phase 1 Additional Deliverable Financing Charge for that EG3 Phase 1 Deliverable shall accrue (the **EG3 Phase 1 Additional Accrued DFC**).

8H.2

(a) During each Relevant Year (and, where relevant, pro-rationed for each day of any period of this Contract comprising less than a full Relevant Year) from the EG3 Phase 1 Facility Charge Date, the Train Operator shall pay each EG3 Phase 1 Facility Charge for each EG3 Phase 1 Deliverable.

(b) The EG3 Phase 1 Accrued DFC and the EG3 Phase 1 Additional Accrued DFC for each EG3 Phase 1 Deliverable shall be paid to Network Rail by the Train Operator as part of the EG3 Phase 1 Facility Charge in accordance with paragraph 8H.3 from the EG3 Phase 1 Facility Charge Date.

8H.3 The EG3 Phase 1 Facility Charge due and payable for an EG3 Phase 1 Deliverable in Relevant Year t shall be calculated as follows:

(a) in each Relevant Year (or part year) prior to the EG3 Phase 1 Facility Charge Date, zero; and

(b) from the EG3 Phase 1 Facility Charge Date, calculated in accordance with the following formula:

$$FC^1_t = (AC^1_t + RC^1_t + AC^a_t + RC^a_t)\ x\ [1 + \frac{RPI_{t-1}}{100}]$$

where:

(i) FC^1_t means an amount of the EG3 Phase 1 Facility Charge in Relevant Year t;

(ii) AC^1_t means the amortisation charge, calculated in accordance with the following formula:

$$AC^1_t = [\frac{FCDValue}{EG3P1Term}]\ x\ [\frac{TPP^1_t}{365}]$$

where:

(A) **FCD Value** means:

$$[DPnt^1 + DFC^1]$$

where:

(i) **DPnt[1]** means the net amount paid by Network Rail for an EG3 Phase 1 Deliverable referenced number n in Schedule 2 of the EG3 Asset Purchase Agreement, as may be reduced from time to time following any capital payment to Network Rail

by the Train Operator in respect of that EG3 Phase 1 Deliverable in accordance with the terms of the EG3 Asset Purchase Agreement; and

(ii) **DFC¹** means the EG3 Phase 1 Accrued DFC for an EG3 Phase 1 Deliverable referenced number n in Schedule 2 of the EG3 Asset Purchase Agreement that is not paid to Network Rail prior to the EG3 Phase 1 Timetable Change Date;

(B) EG3P1 Term means the period (expressed in whole and fractions of a year (rounded to the nearest month) over which the EG3 Phase 1 Facility Charge is paid for, being the period from the EG3 Phase 1 Revised Completion Date to the date 30 years after the EG3 Phase 1 Timetable Change Date;

(C) TPP_t^1 means

(i) in the first year of payment of $\boldsymbol{AC_t^1}$ the number of days from the EG3 Phase 1 Facility Charge Date to the end of Relevant Year t; and

(ii) in all subsequent years, the number of days from the start of the Relevant Year to the earlier of:

a) the date of expiry of the EG3 Asset Life; and

b) the end of the Relevant Year t

(iii) RC_t^1 means the return charge derived from the following formula:

$$RC_t^1 = [\frac{OB_t^1 + CB_t^1}{2}] \; x \; ROR^1$$

where:

(A) OB_t^1 means the sum derived from the formulas in paragraphs (1)(a) and (2)(a) below (as appropriate);

(B) CB_t^1 means the sum derived from the formulas in paragraphs (1)(b) and (2)(b) below (as appropriate);

(i) in relation to the Relevant Year in which the EG3 Phase 1 Facility Charge Date occurs:

a) $OB_t^1 = DPnt^1$

b) $CB_t^1 = DPnt^1 - AC_t^1$

(ii) in relation to each subsequent Relevant Year:

a) $OB^1_t = CB^1_{t-1}$

b) $CB^1_t = OB^1_t - AC^1_t$

(C) ROR^1 means:

$$[\frac{AROR\ x\ TPP^1_t}{365}]$$

where:

(i) $\boldsymbol{TPP^1_t}$ means:

a) in the Relevant Year in which the EG3 Phase 1 Facility Charge Date occurs, the number of days from the EG3 Phase 1 Facility Charge Date to the end of the Relevant Year t; and

b) in each subsequent Relevant Year, the number of days from the start of the Relevant Year to the earlier of:

i) the expiry of the EG3 Asset Life; and

ii) the end of the Relevant Year t;

(ii) AROR means the applicable rate of annual return which is 0.06 in accordance with the ORR's CP4 pre-tax rate of return for the investment framework;

(iv) AC^a_t means the additional accrued DFC amortisation charge, calculated in accordance with the following formula:

$$AC^a_t = [\frac{ADFC}{ASFCTerm}]\ x\ [\frac{TPP^a_t}{365}]$$

where:

(A) ADFC means the EG3 Phase 1 Additional Accrued DFC for an EG3 Phase 1 Deliverable referenced number n in Schedule 2 of the EG3 Asset Purchase Agreement that is not paid to Network Rail prior to the EG3 Phase 1 Facility Charge Date;

(B) ADFC Term means the period (expressed in whole and fractions of a year (rounded to the nearest month)) over which the EG3 Phase 1 Additional Accrued DFC is paid for, being the period from the EG3 Phase 1 Facility Charge Date to 31 December 2021;

(C) TPP^a_t means:

(i) in the first year of payment of $\boldsymbol{AC_t^a}$ the number of days from the EG3 Phase 1 Facility Charge Date to the end of Relevant Year t; and

(ii) in all subsequent years, the number of days from the start of the Relevant Year to the earlier of:

a) the date of expiry of the ADFC Term and

b) the end of the Relevant Year t;

(v) RC_t^a means the additional accrued DFC return charge derived from the following formula:

$$RC_t^a = \left(\frac{OB_t^a + CB_t^a}{2}\right) x\ ROR_t^a$$

where:

(A) OB_t^a means the sum derived from the formulas in paragraphs (1)(a) and (2)(a) below (as appropriate);

(B) CB_t^a means the sum derived from the formulas in paragraphs (1)(b) and (2)(b) below (as appropriate):

(i) in relation to the Relevant Year in which the EG3 Phase 1 Facility Charge Date occurs:

a) $OB_t^a = ADFC$

b) $CB_t^a = ADFC - AC_t^a$

(ii) in relation to each subsequent Relevant Year:

a) $OB_t^a = CB_{t-1}^a$

b) $CB_t^a = OB_t^a - AC_t^a$

(C) ROR^a means:

$$\left[\frac{AROR\ x\ TPP_t^a}{365}\right]$$

where:

(i) $\boldsymbol{TPP_t^a}$ means:

a) in the Relevant Year in which the EG3 Phase 1 Facility Charge Date occurs, the number of days from the EG3 Phase 1 Facility Charge Date

to the end of the Relevant Year t; and

b) in each subsequent Relevant Year, the number of days from the start of the Relevant Year to the earlier of:

i) the expiry of the ADFC Term; and

ii) the end of the Relevant Year t

(ii) AROR means the applicable rate of annual return which is 0.06 in accordance with the ORR's CP4 pre-tax rate of return for the investment framework; and

(vi) RPI_{t-1} means the percentage change (whether of a positive or negative value) between the Retail Prices Index published or determined with respect to November in Relevant Yeart-1 and the index published or determined with respect to November in the Relevant Year before the Relevant Year in which the date that Network Rail pays for an EG3 Phase 1 Deliverable occurs.

8I **The EG3 Phase 2 Facility Charges plus the Adjustment Sum**

8I.1 **The Water Eaton Facility Charge**

(a) During each Relevant Year (and, where relevant, pro-rationed for each day of any period of this Contract comprising less than a full Relevant Year) from the Water Eaton Facility Charge Date until the Final Contribution Sum Determination Date the Train Operator shall pay the Water Eaton Facility Charge.

(b) The Water Eaton Facility Charge due and payable in Relevant Year t shall be calculated as follows:

(i) in each Relevant Year (or part year) prior to the Water Eaton Facility Charge Date, zero; and

(ii) from the Water Eaton Facility Charge Date, calculated in accordance with the following formula:

$$WFC_t = (AC_t + RC_t) \times [1 + \frac{RPI_{t-1}}{100}]$$

where:

WFC_t means an amount of the Water Eaton Facility Charge in Relevant Year t;

AC_t means the amortisation charge, calculated in accordance with the following formula:

$$AC_t = [\frac{WCS}{30}] \times [\frac{TPP_t}{TAP}]$$

where

(A) *WCS* is the Water Eaton Contribution Sum;

(B) *TAP* is equal to 365, or if February 29 falls during the Relevant Year t, then 366;

(C) TPP_t means

(1) in the first year of payment of AC_t the number of days from the Water Eaton Facility Charge Date to the end of Relevant Year *t*; and

(2) in all subsequent years, the number of days from the start of the Relevant Year to the earlier of:

a) the date which is 30 years after the Water Eaton Facility Charge Date; and

b) the end of the Relevant Year *t*

RC_t means the return charge derived from the following formula:

$$RC_t^2 = \left(\frac{OB_t \pm CB_t}{2}\right) \times ROR$$

where

(A) OB_t means the sum derived from the formulas in paragraphs (1)(a) and (2)(a) below (as appropriate) (being the opening balance for the Relevant Year)

(B) CB_t means the sum derived from the formulas in paragraphs (1)(b) and (2)(b) below (as appropriate) (being the closing balance for the Relevant Year);

1) in relation to the Relevant Year in which the Water Eaton Facility Charge Date occurs:

a) $OB_t = WCS$

b) $CB_t = WCS - AC_t$

2) in relation to each subsequent Relevant Year:

a) $OB_t = CB_{t-1}$

b) $CB_t = OB_t - AC_t$

(C) *ROR* means

$$\left[\frac{AROR \times TPP_t}{TAP}\right]$$

where

1) TPP_1^t means

(a) in the Relevant Year in which the Water Eaton Facility Charge Date occurs, the number of days from the Water Eaton Facility Charge Date to the end of the Relevant Year t; and

(b) in each subsequent Relevant Year, the number of days from the start of the Relevant Year to the earlier of:

i) the date which is 30 years after the Water Eaton Facility Charge Date; and

ii) the end of the Relevant Year *t*;

2) *AROR* means the applicable pre-tax rate of annual return for the investment framework applicable in respect of the control period commencing 1 April 2014 as determined by the ORR;

(ii) RPI_{t-1} means the percentage change (whether of a positive or negative value) between the Retail Prices Index published or determined with respect to November in Relevant Yeart-1 and the index published or determined with respect to November in the Relevant Year before the Relevant Year in which the Water Eaton Works Completion Certificate is issued.

8I.2 Oxford Facility Charge

(a) During each Relevant Year (and, where relevant, pro-rationed for each day of any period of this Contract comprising less than a full Relevant Year) from the Oxford Facility Charge Date until the Final Contribution Sum Determination Date the Train Operator shall pay the Oxford Facility Charge.

(b) The Oxford Facility Charge due and payable in Relevant Year t shall be calculated as follows:

(i) in each Relevant Year (or part year) prior to the Oxford Facility Charge Date, zero; and

(ii) from the Oxford Facility Charge Date, calculated in accordance with the following formula:

$$OFC_t = (AC_t + RC_t) \times [1 + \frac{RPI_{t-1}}{100}]$$

where:

OFC_t means an amount of the Oxford Facility Charge in Relevant Year t;

AC_t means the amortisation charge, calculated in accordance with the following formula:

$$AC_t = [\frac{OCS}{30}] \times [\frac{TPP_t}{TAP}]$$

Where

(A) *OCS* is the Oxford Contribution Sum;

(B) *TAP* is equal to 365, or if February 29 falls during the Relevant Year t, then 366;

(C) *TPP_t* means

(1) in the first year of payment of AC_t the number of days from the Oxford Facility Charge Date to the end of Relevant Year *t*; and

(2) in all subsequent years, the number of days from the start of the Relevant Year to the earlier of:

a) the date which is 30 years after the Oxford Facility Charge Date; and

b) the end of the Relevant Year *t*

RC_t means the return charge derived from the following formula:

$$RC_t = (\frac{OB_t + CB_t}{2}) \times ROR$$

where

(A) *OB_t* means the sum derived from the formulas in paragraphs (1)(a) and (2)(a) below (as appropriate) (being the opening balance for the Relevant Year)

(B) *CB_t* means the sum derived from the formulas in paragraphs (1)(b) and (2)(b) below (as appropriate) (being the closing balance for the Relevant Year);

1) in relation to the Relevant Year in which the Oxford Facility Charge Date occurs:

a) $OB_t = OCS$

b) $CB_t = OCS - AC_t$

2) in relation to each subsequent Relevant Year:

a) $OB_t = CB_{t-1}$

b) $CB_t = OB_t - AC_t$

(C) *ROR* means

$$\left[\frac{AROR \times TPP_1^t}{TAP}\right]$$

where

1) TPP_1^t means

(a) in the Relevant Year in which the Oxford Facility Charge Date occurs, the number of days from the Oxford Facility Charge Date to the end of the Relevant Year t; and

(b) in each subsequent Relevant Year, the number of days from the start of the Relevant Year to the earlier of:

i) the date which is 30 years after the Oxford Facility Charge Date; and

ii) the end of the Relevant Year *t*;

2) *AROR* means the applicable pre-tax rate of annual return for the investment framework applicable in respect of the control period commencing 1 April 2014 as determined by the ORR;

(ii) RPI_{t-1} means the percentage change (whether of a positive or negative value) between the Retail Prices Index published or determined with respect to November in Relevant Yeart- 1 and the index published or determined with respect to November in the Relevant Year before the Relevant Year in which the Oxford Works Completion Certificate is issued.

8I.3 **Adjustment Sum**

(a) On the Final Contribution Sum Determination Date, an adjustment sum shall be determined as follows:

$$Adjustment\ Sum = (WEFC + OFC) - (FWFC + FOFC)$$

where:

WEFC	is the amount of the Water Eaton Facility Charge paid by the Train Operator to Network Rail pursuant to paragraph 8I.1 in respect of the period from the Water Eaton Facility Charge Date until the Final Contribution Sum Determination Date;
OFC	is the amount of the Oxford Facility Charge paid by the Train Operator to Network Rail pursuant to paragraph 8I.2 in respect of the period from the Oxford Facility Charge Date until the Final Contribution Sum Determination Date;
FWFC	is the amount of the Water Eaton Facility Charge that would have been payable by the Train Operator to Network Rail pursuant to paragraph 8I.1 in respect of the period from the Water Eaton Facility Charge Date until the Final Contribution Sum Determination Date had the Water Eaton Facility Charge been calculated using the Water Eaton Final Contribution Sum;
FOFC	is the amount of the Oxford Facility Charge that would have been payable by the Train Operator to Network Rail pursuant to paragraph 8I.2 in respect of the period from the Oxford Facility Charge Date until Final Contribution Sum Determination Date had the Oxford Facility Charge been calculated using the Oxford Final Contribution Sum;

(b) Within 90 days of the determination of the Adjustment Sum pursuant to paragraph 8I.3(a) above, an amount that is equal to the Adjustment Sum shall be paid by the Train Operator to Network Rail where the Adjustment Sum is a negative amount and by Network Rail to Train Operator where the Adjustment Sum is a positive amount.

8I.4 **The Water Eaton Final Facility Charge**

(a) During each Relevant Year (and, where relevant, pro-rationed for each day of any period of this Contract comprising less than a full Relevant Year) from the Final

Contribution Sum Determination Date the Train Operator shall pay the Water Eaton Final Facility Charge.

(b) The Water Eaton Final Facility Charge due and payable in Relevant Year t shall be calculated as follows:

(i) in each Relevant Year (or part year) prior to the Final Contribution Sum Determination Date, zero; and

(ii) from the Final Contribution Sum Determination Date, calculated in accordance with the following formula:

$$WFFC_t = (WAC_t + RC_t) \times [1 + \frac{RPI_{t-1}}{100}]$$

where:

$WFFC_t$ means an amount of the Water Eaton Final Facility Charge in Relevant Year t;

WAC_t means the amortisation charge, calculated in accordance with the following formula:

$$WAC_t = [\frac{WFS}{30}] \times [\frac{TPP_t}{TAP}]$$

where

(A) *WFS* is the amount that is equal to the Water Eaton Final Contribution Sum.

(B) *TAP* is equal to 365, or if February 29 falls during the Relevant Year *t*, then 366

(C) *$TAPP_t$* means

(1) in the first year of payment of *WAC_t* the number of days from the Final Contribution Sum Determination Date to the end of Relevant Year *t*; and

(2) in all subsequent years, the number of days from the start of the Relevant Year to the earlier of:

a) the date which 30 years after the Water Eaton Facility Charge Date; and

b) the end of the Relevant Year t

RC_t means the return charge derived from the following formula:

$$RC_t = (\frac{OB_t + CB_t}{2}) \times ROR$$

where

(A) *OB_t* means the sum derived from the formulas in paragraphs (1)(a) and (2)(a)

below (as appropriate) (being the opening balance for the Relevant Year)

(B) *CB_t* means the sum derived from the formulas in paragraphs (1)(b) and (2)(b) below (as appropriate) (being the closing balance for the Relevant Year);

1) in relation to the Relevant Year in which the Water Eaton Final Facility Charge Date occurs:

a) $OB_t = CB_{t-1}$

b) $CB_t = WFS - AC_t$

2) in relation to each subsequent Relevant Year:

a) $OB_t = CB_{t-1}$

b) $CB_t = OB_t - AC_t$

(C) *ROR* means

$$\left[\frac{AROR \times TPP_1^t}{TAP}\right]$$

where

1) TPP_1^t means

(a) in the Relevant Year in which the Water Eaton Final Facility Charge Date occurs, the number of days from the Final Contribution Sum Determination Date to the end of the Relevant Year t; and

(b) in each subsequent Relevant Year, the number of days from the start of the Relevant Year to the earlier of:

i) the date which 30 years after the Water Eaton Facility Charge Date; and

ii) the end of the Relevant Year t;

2) *AROR* means the applicable pre-tax rate of annual return for the investment framework applicable in respect of the control period commencing 1 April 2014 as determined by the ORR;

(ii) RPI_{t-1} means the percentage change (whether of a positive or negative value) between the Retail Prices Index published or determined with respect to November in Relevant Yeart-1 and the index published or determined with respect to November in the Relevant Year before

the Relevant Year in which the Water Eaton Works Completion Certificate is issued.

8I.5 **Oxford Final Facility Charge**

(a) During each Relevant Year (and, where relevant, pro-rationed for each day of any period of this Contract comprising less than a full Relevant Year) from the Final Contribution Sum Determination Date the Train Operator shall pay the Oxford Final Facility Charge.

(b) The Oxford Final Facility Charge due and payable in Relevant Year t shall be calculated as follows:

(i) in each Relevant Year (or part year) prior to the Oxford Final Facility Charge Date, zero; and

(ii) from the Final Contribution Sum Determination Date, calculated in accordance with the following formula:

$$OFFC_t = (AC_t + RC_t) \times [1 + \frac{RPI_{t-1}}{100}]$$

where

$OFFC_t$ means an amount of the Oxford Final Facility Charge in Relevant Year t;

AC_t means the amortisation charge, calculated in accordance with the following formula:

$$AC_t = [\frac{OFS}{30}] \times \frac{TPP_t}{TAP}$$

where

(A) *OFS* is the amount that is equal to the Oxford Final Contribution Sum;

(B) *TAP* is equal to 365, or if February 29 falls during the Relevant Year *t*, then 366;

(C) *$TAPP_t$* means

(1) in the first year of payment of *AC_t* the number of days from the Oxford Final Facility Charge Date to the end of Relevant Year *t*; and

(2) in all subsequent years, the number of days from the start of the Relevant Year to the earlier of:

a) the date which is 30 years after the Oxford Facility Charge Date; and

b) the end of the Relevant Year *t*

RC_t means the return charge derived from the following formula:

$$RC_t = \left(\frac{OB_t + CB_t}{2}\right) \times ROR$$

where

(A) *OB_t* means the sum derived from the formulas in paragraphs (1)(a) and (2)(a) below (as appropriate) (being the opening balance for the Relevant Year)

(B) *CB_t* means the sum derived from the formulas in paragraphs (1)(b) and (2)(b) below (as appropriate) (being the closing balance for the Relevant Year);

1) in relation to the Relevant Year in which the Oxford Facility Charge Date occurs:

a) $OB_t = OFS$

b) $CB_t = OFS - AC_t$

2) in relation to each subsequent Relevant Year:

a) $OB_t = CB_{t-1}$

b) $CB_t = OB_t - AC_t$

(C) *ROR* means

$$\left[\frac{AROR \times TPP_1^t}{TAP}\right]$$

where

1) TPP_1^t means

(a) in the Relevant Year in which the Oxford Facility Charge Date occurs, the number of days from the Oxford Facility Charge Date to the end of the Relevant Year *t*; and

(b) in each subsequent Relevant Year, the number of days from the start of the Relevant Year to the earlier of:

i) the date which is 30 years after the Oxford Facility Charge Date; and

ii) the end of the Relevant Year *t*;

2) *AROR* means the applicable pre-tax rate of annual return for the investment framework applicable in respect of the control period commencing 1 April 2014 as determined by the ORR;

(ii) RPI_{t-1} means the percentage change (whether of a positive or negative value) between the Retail Prices Index published or determined with respect to November in Relevant Yeart-1 and the index published or determined with respect to November in the Relevant Year before the Relevant Year in which the Oxford Works Completion Certificate is issued."

8J **Wolvercot Tunnel Facility Charge**

8J.1 During each Relevant Year (and, where relevant, pro-rationed for each day of any period of this Contract comprising less than a full Relevant Year) from the Oxford Facility Charge Date until the end of the Contract, the Train Operator shall pay each Wolvercot Tunnel Facility Charge for the Wolvercot Tunnel Works.

8J.1 The Wolvercot Tunnel Facility Charge due and payable for the Wolvercot Tunnel Works in each Relevant Year t shall be calculated as follows:

(a) in each Relevant Year (or part year) prior to the Oxford Facility Charge Date, zero; and

(b) from the Oxford Facility Charge Date, calculated in accordance with the following formula:

$$WOCT_t = (AC_t + RC_t) \times [1 + \frac{RPI_{t-1}}{100}]$$

where:

$WOCT_t$ means an amount of the Wolvercot Tunnel Facility Charge in Relevant Year t;

AC_t means the amortisation charge, calculated in accordance with the following formula:

$$AC_t = [\frac{WOCTS}{10}] \times [\frac{TPP_t}{TAP}]$$

where

(A) *WOCTS* is the amount that is equal to the Wolvercot Tunnel Capital Sum;

(B) *TAP* is equal to 365, or if February 29 falls during the Relevant Year t, then 366;

(C) *TPP_t* Means

(1) in the first year of payment of AC_t the number of days from the Oxford Facility Charge Date to the end of Relevant Year t; and

(2) in all subsequent years, the number of days from the start of the Relevant Year to the earlier of:

a) the date which is 10 years after the Oxford Facility Charge Date; and

b) the end of the Relevant Year *t*

RC_t means the return charge derived from the following formula:

$$RC_t = (\frac{OB_t + CB_t}{2}) \times ROR$$

where

(A) *OB_t* means the sum derived from the formulas in paragraphs (1)(a) and (2)(a) below (as appropriate) (being the opening balance for the Relevant Year)

(B) *CB_t* means the sum derived from the formulas in paragraphs (1)(b) and (2)(b) below (as appropriate) (being the closing balance for the Relevant Year);

1) in relation to the Relevant Year in which the Oxford Facility Charge Date occurs:

a) $OB_t = WOCTS$

b) $CB_t = WOCTS - AC_t$

2) in relation to each subsequent Relevant Year:

a) $OB_t = CB_{t-1}$

b) $CB_t = OB_t - AC_t$

(C) *ROR* means

$$[\frac{AROR \times TPP_1^t}{TAP}]$$

where

1) TPP_1^t means

(a) in the Relevant Year in which the Oxford Facility Charge Date occurs, the number of days from the Oxford Facility Charge Date to the end of the Relevant Year t; and

(b) in each subsequent Relevant Year, the number of days from the start of the Relevant Year to the earlier of:

i) the date which is 10 years after the Oxford Facility Charge Date; and

ii) the end of the Relevant Year t;

2) *AROR* means the applicable pre-tax rate of annual return for the investment

framework applicable in respect of the control period commencing 1 April 2014 as determined by the ORR;

(ii) RPI_{t-1} means the percentage change (whether of a positive or negative value) between the Retail Prices Index published or determined with respect to November in Relevant Yeart-1 and the index published or determined with respect to November in the Relevant Year before the Relevant Year in which the Oxford Works Completion Certificate is issued.

8K **EG3 Incremental MRR Charge**

8K.1 During each Relevant Year (and, where relevant, pro-rationed for each day of any period of this Contract comprising less than a full Relevant Year) from:

(i) in respect to any EG3 Asset relating to EG3 Phase 1, the date that such EG3 Asset is Taken into Use until the date that is thirty years after such EG3 Asset is Taken into Use;

(ii) in respect of any Water Eaton Works, the Water Eaton Facility Charge Date until the date that is thirty years after the Water Eaton Facility Charge Date; and

(iii) in respect of any Oxford Works, the Oxford Facility Charge Date until the period that is thirty years after the Oxford Facility Charge Date,

Network Rail shall levy, and the Train Operator shall pay, each EG3 Incremental MRR Charge as calculated in accordance with the following formulas:

(A) in relation to EG3 Phase 1:

$$10M_t = X \times [1 + \frac{RPI_{t-1}}{100}]$$

Where:

$10M_t$ means the amount of the Phase 1 Incremental MRR Charge payable in Relevant Year t;

X means the Incremental MRR Charge based on the EG3 Assets in respect of EG3 Phase 1 that are Taken into Use as calculated in accordance with paragraphs 8K.3 and 8K.4; and

RPI_{t-1} means the percentage change (whether positive or negative value) between the between the Retail Prices Index published or determined with

respect to November in Relevant Yeart-1 and the index published or determined with respect to November in the Relevant Year before the Relevant Year in which the first EG3 Asset relating to EG3 Phase 1 is Taken into Use;

(B) in relation to the Water Eaton Works:

$$WIM_t = X_w \times [1 + \frac{RPI_{t-1}}{100}]$$

Where:

WIM_t	means the amount of the Water Eaton Incremental MRR Charge payable in Relevant Year t;
X_w	means the Incremental MRR Charge relating to the Water Eaton Works as calculated in accordance with paragraphs 8K.3 and 8K.4; and
RPI_{t-1}	means the percentage change (whether positive or negative value) between the between the Retail Prices Index published or determined with respect to November in Relevant Yeart-1 and the index published or determined with respect to November in the Relevant Year before the Relevant Year in which the Water Eaton Completion Certificate is issued;

(C) in relation to the Oxford Works:

$$OIM_t = X_o \times [1 + \frac{RPI_{t-1}}{100}]$$

where:

OIM_t	means the amount of the Oxford Incremental MRR Charge payable in Relevant Year t;
X_o	means the Incremental MRR Charge relating to the Oxford Works as calculated in accordance with paragraphs 8K.3 and 8K.4; and
RPI_{t-1}	means the percentage change (whether positive or negative value) between the between the Retail Prices Index published or determined with respect to November in Relevant Yeart-1 and the index published or determined with respect to November in the Relevant Year before the Relevant Year in which the Oxford Completion Certificate is issued;

8K.2 The first Phase 1 Incremental MRR Charge shall be made in respect of the Period in which the first Taken into Use of an EG3 Asset relating to EG3 Phase 1 falls; and

8K.3 In relation to the EG3 Assets, the Incremental MRR Charge shall be agreed between the parties and approved by the ORR in accordance with the provisions of paragraph 8K.4.

8K.4 For each of EG3 Phase 1 and EG3 Phase 2:

(a) the Contract shall have effect:

(i) with the Relevant Schedule 7 Modifications; and

(ii) from the date,

specified by the ORR in a Notice of Consent or Notice of Determined Relevant Schedule 7 Modifications;

(b) a Notice of Consent or Notice of Determined Relevant Schedule 7 Modifications may have retrospective effect;

(c) in respect of the Relevant Schedule 7 Modifications:

(i) the parties shall, within the period between the relevant Start Date and the relevant Backstop Date, meet and negotiate and attempt to agree the Relevant Schedule 7 Modifications;

(ii) each party shall ensure that:

(A) such negotiations are conducted in a timely, efficient and economical manner, with appropriate recourse to professional advice; and

(B) the ORR's Criteria are applied in the negotiations; and

(C) the negotiations shall not continue after the relevant Backstop Date;

(d) if the parties fail to agree the Relevant Schedule 7 Modifications on or before the relevant Backstop Date:

(i) the matter shall be submitted to arbitration in accordance with Part C of the Access Dispute Resolution Rules; and

(ii) Network Rail shall within five (5) Working Days notify the ORR in writing of such submission to arbitration;

(e) if a matter is referred to arbitration under paragraph 8K.4(d), the arbitrator shall be required by the parties to:

(i) determine the Relevant Schedule 7 Modifications in accordance with the ORR's Criteria and make such orders in his award as he considers necessary to establish the requisite Relevant Schedule 7 Modifications;

(ii) provide reasons for his award; and

(iii) state the extent to which and ways in which the ORR's Criteria have been applied in determining the Relevant Schedule 7 Modifications and, in any case where they have not been applied, give the reasons;

(f) not later than seven (7) days after the relevant Backstop Date or the conclusion of arbitration, as the case may be, the Relevant Schedule 7 Modifications shall be sent by the parties to the ORR for its consent, together with a statement, signed by or on behalf of both parties:

(i) stating the reasons for the Relevant Schedule 7 Modifications;

(ii) stating the extent to which and ways in which the ORR's Criteria have been applied in determining the Relevant Schedule 7 Modifications and, in any case where they have not been applied, the reasons; and

(iii) giving such other information as the ORR may have requested;

(g) if the ORR is satisfied with the Relevant Schedule 7 Modifications submitted to it pursuant to paragraph 8K.4(f), and it gives a notice to that effect, such modifications shall have effect as provided for in paragraph 8K.4(a);

(h) if the ORR gives notice to the parties that it is not satisfied with any or all of the proposed Relevant Schedule 7 Modifications, it may:

(i) require the parties again to follow the procedure or any part of the procedure set out in paragraphs 8K.4(c) to 8K.4(f) for agreeing the Relevant Schedule 7 Modifications (with such modifications as to time limits as it specifies), in which case they shall do so; or

(ii) following such consultation with the parties as it considers necessary, determine the Relevant Schedule 7 Modifications itself and give a notice specifying such Relevant Schedule 7 Modifications;

(i) within ten (10) Working Days of the date of any notice referred to in paragraph 8K.4(a) the parties shall make such adjustments to the payments made under this paragraph

8K (EG3 Incremental MRR Charge) as are necessary to ensure that the parties are in the financial position in respect of the Relevant Schedule 7 Modifications as if those modifications had had effect from the date specified in the notice given under paragraph 8K.4(a);

(j) if the ORR gives notice to either or both of the parties that it requires from either or both of them information in relation to the Relevant Schedule 7 Modifications or proposed Relevant Schedule 7 Modifications:

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

(ii) if that party fails timeously to do so, the 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;

(k) any Relevant Schedule 7 Modifications shall:

(i) take account, where relevant, of the 'Criteria and procedures for the approval of track access contracts' published by the ORR and dated 21 August 2009; and

(ii) take account of the duties of the ORR under section 4 of the Act;

(l) in relation to the procedure in paragraphs 8K.4(c) – 8K.4(i) for the Relevant Schedule 7 Modifications (including the times within which any step or thing requires to be done or achieved):

(i) such procedure may be modified by the ORR by a Notice of Procedural Modifications; but

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

(m) in this paragraph 8K.4:

(i) where provision is made for a date to be specified or stated by the 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

(ii) any notice given by the ORR which states a date may state different dates for different purposes;

(n) not later than twenty eight (28) days after the giving of a Notice of Consent or Notice of Determined Relevant Schedule 7 Modifications, Network Rail shall prepare and send to the Train Operator and the ORR a copy of this Contract containing such Relevant Schedule 7 Modifications; and

(o) nothing in this paragraph 8K.4 affects the right of either party to approach and obtain from the ORR guidance in relation to the Relevant Schedule 7 Modifications.

8L MS Additional Facility Charge

8L.1 From the date upon which Network Rail pays the Train Operator for an MS Additional Facility Deliverable, the MS Deliverable Financing Charge for that MS Deliverable shall accrue (the **MS Additional Accrued DFC**).

8L.2

(a) During each Relevant Year (and, where relevant, pro-rationed for each day of any period of this Contract comprising less than a full Relevant Year) from the MS Additional Deliverable Facility Charge Date, the Train Operator shall pay the MS Additional Facility Charge.

(b) The MS Accrued DFC for the MS Additional Facility Charge shall be paid to Network Rail by the Train Operator in accordance with paragraph 8L.3.

8L.3 The MS Additional Facility Charge due and payable for an MS Additional Deliverable in Relevant Year t shall be calculated as follows:

(a) in each Relevant Year (or part year) prior to the relevant MS Additional Facility Charge Date, zero; and

(b) from the MS Additional Facility Charge Date, calculated in accordance with the following formula:

$$FC_t^m = (AC_t^m + RC_t^m) \times [1 + \frac{RPI_{t-1}}{100}]$$

where:

(i) FC_t^m means an amount of the MS Additional Facility Charge in Relevant Year t;

(ii) AC_t^m means the amortisation charge, calculated in accordance with the following formula:

$$AC_t^m = [\frac{FCDValue}{MSAC\ Term}] \times [\frac{TPP_t^m}{365}]$$

where:

(A) **FCDValue** means:

$$[DPnt^m + DFC^m]$$

Where

1) *DPnt*^{m} means the net amount paid by Network Rail for the MS Additional Deliverable referenced in Schedule 3 of the MS Asset Purchase Agreement, as may be reduced from time to time following any capital payment to Network Rail by the Train Operator in respect of that MS Additional Deliverable in accordance with the terms of the MS Asset Purchase Agreement; and

2) *DFC*^{m} means the MS Additional Facility Charge Accrued DFC for the MS Additional Deliverable referenced number in Schedule 3 of the MS Asset Purchase Agreement that is not paid to Network Rail prior to the MS Additional Facility Charge Date;

(B) MSAC Term — means the period (expressed in whole and fractions of a year (rounded to the nearest month)) over which the MS Additional Deliverable is paid for, being the period from the MS Additional Facility Charge Date to 31 December 2021;

(C) TPP_t^m means:

(1) in the first year of payment of AC_t^m the number of days from the MS Additional Facility Charge Date to the end of Relevant Year t; and

(2) in all subsequent years, the number of days from the start of the Relevant Year to the earlier of:

a) the date of expiry of the MSAC Term; and

b) the end of the Relevant Year t;

(iii) RC_t^m means the return charge derived from the following formula

$$RC_{t}^{m} = \left(\frac{OB_t^m + CB_t^m}{} \right) \times ROR_{t}^{m}$$

where

(A) OB_t^m means the sum derived from the formulas in paragraphs (1)(a) and (2)(a) below (as appropriate);

(B) CB_t^m means the sum derived from the formulas in paragraphs (1)(b) and (2)(b) below (as appropriate);

1) in relation to the Relevant Year in which the MS Additional Facility Charge Date occurs:

a) $OB_t^m = DPnt^m$

b) $CB_t^m = DPnt^m - AC_t^m$

2) in relation to each subsequent Relevant Year:

a) $OB_t^m = CB_{t-1}^m$

b) $OB_t^m = OB_t^m - AC_t^m$

(C) ROR^m means:

$$\left[\frac{ARROR \times TPP_t^m}{365}\right]$$

where:

1) TPP_t^m means

a) in the Relevant Year in which the MS Additional Facility Charge Date occurs, the number of days from the MS Additional Facility Charge Date to the end of the Relevant Year t; and

b) in each subsequent Relevant Year, the number of days from the start of the Relevant Year to the earlier of:

i) the expiry of the MSAC Term; and

ii) the end of the Relevant Year t;

2) AROR means the applicable rate of annual return which is 0.06 in accordance with the ORR's CP4 pre-tax rate of return for the investment framework; and

(iv) RPI_{t-1} means the percentage change (whether of a positive or negative value) between the Retail Prices Index published or determined with respect to November in Relevant Yeart-1 and the index published or determined with respect to November in the Relevant Year before the Relevant Year in which the date that Network Rail pays for the MS Additional Deliverable occurs.

9. **Bilateral supplements to the Track Usage Price List***11th*

9.1 Where the Train Operator intends to use New Specified Equipment on the Network, it shall where reasonably practicable inform Network Rail in writing of the date or likely date from which it intends to do so.

9.2 Where the Train Operator uses New Specified Equipment on the Network, the Train Operator shall pay Network Rail the relevant VUC Default Charge during the VUC Default Period.

9.2 A Where the Train Operator uses a New Modelled Train on the Network, Network Rail shall apply the Traction Electricity Modelled Default Rate in order to calculate the Traction Electricity Charge for the purposes of paragraph 4.1.2 above, during the Traction Electricity Modelled Default Rate Period.

9.3 No supplement to the Track Usage Price List shall have effect unless it has been:

(a) agreed between the parties and ORR has consented to it; or

(b) determined by ORR.

9.3 A For the purposes of finalising any supplement to the document entitled "Traction Electricity Modelled Consumption Rates List" published by Network Rail on or about 20 December 2018 which has been proposed by either the Train Operator or Network Rail before 1 April 2024, paragraphs 9.3 to 9.13 of Part 2 of Schedule 7, any relevant definitions in paragraph 1 of Part 1 of Schedule 7, and any further paragraphs of Schedule 7 necessary to give effect to paragraph 1 of Part 1 of Schedule 7 of the version of this contract that was in force up until 31 March 2024 shall continue to apply. *11th*

9.4 Either the Train Operator or Network Rail shall be entitled to propose that the Track Usage Price List be supplemented as necessary to include a new vehicle type and corresponding rate. *11th*

9.5 Any proposal of a kind referred to in paragraph 9.4 shall be made by notice to the other party and shall be accompanied by a specification of the proposal in reasonable detail and the reasons for it. The parties shall thereafter seek to agree in good faith the necessary supplement. *11th*

9.6 Either party may request from the other such information that it reasonably requires in connection with the proposal and the party from whom the information was requested shall use reasonable endeavours to provide this information promptly.

9.7 Where the parties agree to a supplement following a proposal under paragraph 9.4, they shall request ORR's consent to it and provide such information as ORR reasonably requires in order to decide whether to give its consent.

9.8 If the parties fail to reach agreement within 45 days of the date of the notice given under paragraph 9.5, at any point thereafter either party shall be entitled to refer the matter to ORR for determination.

9.9 Following a reference to ORR under paragraph 9.8, the parties shall, within such timescales as ORR may reasonably specify, furnish ORR with such information and evidence as ORR shall reasonably require to determine the matter. If a party fails to furnish such information and evidence within the specified timescale, ORR shall be entitled to determine the matter without that information and evidence and the party in default shall have no grounds for complaint in that respect.

9.10 ORR may:

(a) consent to any supplement that is agreed by the parties and submitted to it under paragraph 9.7, or following consultation with the parties, determine that a different supplement should apply; or

(b) following a referral to ORR under paragraph 9.8, determine the supplement that should apply.

9.11 Not used; *11th*

9.12 The supplement shall have retrospective effect from the first day of the VUC Default Period. *11th*

9.13 Following ORR's consent or determination under paragraph 9.10 Network Rail shall: *11th*

(a) apply the supplement from the date in accordance with paragraph 9.12 above; and

(b) within 28 days of the date of ORR's consent or determination:

(i) issue any adjusting invoice or credit note to the Train Operator, which will reflect the difference between the amount paid by the Train Operator for the VUC Default Charge during the VUC Default Period and the amount that it would have paid during the VUC Default Period in respect of the Variable Usage Charge had the supplement been in place at the time the Train Operator first used the relevant railway vehicle on the Network; and

(ii) publish on its website details of the supplement alongside the details of any other such supplements to which ORR has consented or determined pursuant to this or any other track access contract to which Network Rail is a party.

9.14 Any supplement to the Track Usage Price List which ORR has consented to or determined pursuant to a passenger track access contract previously held by the Train Operator shall also apply to this contract.

10. Payment of Track Charges and other sums due under the contract

10.1 *Payment of Track Charges and other sums due under the contract*[11th]

(a) Save where the contract provides otherwise, the Train Operator shall pay or procure the payment to Network Rail of:

(i) the Variable Usage Charge;

(ii) the Traction Electricity Charge;

(iii) not used;

(iv) the Electrification Asset Usage Charge;

(v) the VUC Default Charge;

(vi) not used; and[11th]

(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) The Train Operator shall pay or procure the payment to Network Rail of that part of the Fixed Track Charge attributable to any Period as invoiced by Network Rail on or after the expiry of each such Period within seven days of the invoice date or seven days after the end of the Period, whichever is later.

(c) Any invoice issued by Network Rail under paragraph 18.5 of the Traction Electricity Rules (relating to modelled and actual rates of electricity consumption) shall be payable by the Train Operator within 21 days of the relevant invoice date.

(d) The Train Operator shall pay or procure the payment to Network Rail of that part of the MS Facility Charge and the MS Additional Facility Charge due and payable in respect of any Period as invoiced by Network Rail on or after expiry of each such Period within twenty eight (28) days of the invoice date or ten (10) Working Days after the end of the Period, whichever is later.

(e) The Train Operator shall pay or procure the payment to Network Rail of that part of the EG3 Phase 1 Facility Charge, the Water Eaton Facility Charge, the Oxford Facility Charge, the Water Eaton Final Facility Charge, the Oxford Final Facility Charge and the Wolvercot Tunnel Facility Charge due and payable in respect of any Period as invoiced by Network Rail on or after the expiry of each such Period within twenty-eight (28) days of the invoice date or ten (10) Working Days after the end of the Period, whichever is later.

10.2 *Train Consist Data*

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

10.3 *Invoices and right to object to invoices*

(a) Network Rail will notify the Train Operator on a weekly basis of the train movements for which Default Train Consist Data has been used to establish the Variable Charges payable by the Train Operator. At either party's request, the parties shall consult with

a view to substituting Train Consist Data for Default Train Consist Data but such consultation shall not delay the issue by Network Rail of the invoice for the Variable Charges in respect of the Period concerned.

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

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

(ii) Train Consist Data agreed by the parties under paragraph 10.3(a) in respect of any train movement; or

(iii) Train Consist Data provided by the Train Operator in respect of any train movement (other than any train movement where the Specified Equipment used in operating the relevant movement is loco hauled) by the end of the day on which such train movement has been completed,

or (to the extent that (i) or (ii) or (iii) above do not apply) Default Train Consist Data. Each such invoice will be payable in accordance with the provisions of paragraph 10.1.

(c) Either party shall be entitled, at any time prior to the later of 23:59 hours on the 14th day following the expiration of the relevant Period and seven days following receipt by the Train Operator of the relevant invoice or credit note, to notify the other that it objects to any Train Consist Data (including, where applicable, the use of Default Train Consist Data) on which the whole or any part of the Variable Charges included in the relevant invoice or credit note are based and any such notice shall specify in reasonable detail what that party believes to be the Train Consist Data for the relevant train movement(s) (**"notice of objection"**). In the absence of any notice of objection being served within such time the Train Consist Data used in the relevant invoice or credit note shall be final and binding on the parties. The Train Operator shall supply the data to Network Rail in the format:

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

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

(e) Within 14 days of any Train Consist Data being agreed or determined in accordance with paragraph 10.3(d), Network Rail shall, if any consequential or financial adjustment of the relevant invoice is required, issue a further invoice to, or (as the case may be) a credit note in favour of, the Train Operator in the amount of the relevant adjustment. The invoice or credit note shall be payable at the same time as the invoice for Variable Charges for the relevant Period or, if issued later than 21 days after the end of the relevant Period, within seven days after the date of its issue.

(f) The actual volume of usage used to calculate any supplementary amount payable under paragraph 18 of the Traction Electricity Rules shall be established on the basis of the Train Consist Data and the Default Train Consist Data applied in calculating the

Variable Charges for each of the Periods in Relevant Year t as adjusted in accordance with paragraph 10.3(d) on or before 90 days after the end of Relevant Year t.

(g) Where, as a result of any invoice or credit note issued pursuant to paragraph 10.3, any sum of money which has been paid shall become repayable or any sum of money which has been unpaid shall become payable the party to whom such sum shall be paid shall be paid or allowed interest at the Default Interest Rate on such sum from the date when it (if repayable) was paid or the date when such sum (if payable) ought to have been paid until the date of payment or repayment.

10.4 ***Unrepresentative Train Consist Data***

(a) If at any time during this contract either party considers the Default Train Consist Data specified in Appendix 7C is not representative of the Train Operator's Services and in particular, but without limitation, the type(s) of railway vehicles then in use and the regular number of carriages forming part of those railway vehicles in the operation of its Services, either party shall be entitled on written notice to the other to request that the Default Train Consist Data be amended. Any such request shall specify in reasonable detail the grounds for the request and the proposed amendments to the Default Train Consist Data.

(b) The parties shall endeavour to reach agreement on any amendments to the Default Train Consist Data within 21 days of the date of the request referred to in paragraph 10.4(a) and if the parties are unable to agree such amendments within such time period, either party may refer the matter for resolution in accordance with the ADRR.

(c) Upon the earlier of agreement between the parties or determination by a relevant ADRR Forum, the parties shall notify ORR of the proposed amendments to the Default Train Consist Data and, subject to ORR not objecting to the proposed amendments within 14 days (the **"14 day period"**) of receipt of the notification by ORR, such amendments shall take effect from the first day of the next Period following the earlier of ORR confirming its consent to the proposed amendments and the expiry of the 14 day period. If ORR objects to the proposed amendments within the 14 day period, the parties shall endeavour to reach agreement with ORR on the appropriate amendments, if any, to the Default Train Consist Data which shall then take effect on the first day of the Period next following that in which agreement is reached.

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

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

(b) Where a party has given notice under paragraph 10.5(a) that it disputes part of any invoiced amount:

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

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

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

Part 3

(Not used)

Part 3A

(English & Welsh Grant Dilution)

1. **Grant Amounts**

1.1 ***Grant Amounts, Basic Amounts and Payment Dates***[11th]

For the purposes of this Part 3A:

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

(b) the Grant Amount, in respect of any Relevant Year, is the network grant amount set out in Table 1 as the annual amount to be paid in that Relevant Year by the Secretary of State to Network Rail by way of grant under section 6 of the Railways Act 2005, as adjusted from time to time in accordance with the Grant Mechanism; and

(c) the Payment Dates are the dates set out in the Grant Agreement for the payment of grant by the Secretary of State in each of the Relevant Years commencing on 1 April 2024, 1 April 2025, 1 April 2026, 1 April 2027, 1 April 2028 or, if no such dates are set out, the first Wednesday of each railway period in each such Relevant Year.

1.2 ***Not used.***

2. **English & Welsh Grant Dilution**

2.1 ***Meaning of English & Welsh Grant Dilution***

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

(a) the Secretary of State does not, for any reason, pay the whole or any part of the Basic Amount on or before the relevant Payment Date;

(b) the Secretary of State has not, for any reason, paid the whole of the Grant Amount for any Relevant Year minus any amounts already paid as Basic Amounts for that Relevant Year (**"the Balance of the Grant Amount"**) on or before the final Payment Date of that Relevant Year; or

(c) the payment of the whole or any part of the Basic Amount or of the Balance of the Grant Amount in respect of that Payment Date is:

(i) subject to the performance by Network Rail or any other person of any obligation;

(ii) subject to the exercise by the Secretary of State or any other person of any discretion; or

(iii) contingent upon the happening of any event or circumstance, or any act or omission of any person.

2.2 ***Meaning of English & Welsh Grant Dilution Date***

In respect of any English & Welsh Grant Dilution:

(a) if the English & Welsh Grant Dilution is of the kind referred to in paragraph 2.1(a) or in paragraph 2.1(b), the English & Welsh Grant Dilution Date shall be the Payment Date in respect of which the Secretary of State does not pay the whole or any part of the Basic Amount or the Balance of the Grant Amount due on that date; and

(b) if the English & Welsh Grant Dilution is of the kind referred to in paragraph 2.1(c), each Payment Date which falls during any period during which the payment of the whole or any part of a Basic Amount or the Balance of the Grant Amount is:

(i) subject to any of the matters specified in paragraph 2.1(c)(i) or (ii); or

(ii) contingent upon any of the matters specified in paragraph 2.1(c)(iii),

shall be an English & Welsh Grant Dilution Date.

3. **English & Welsh Grant Compensation Amount**

3.1 ***Payment obligation***[11th]

If an English & Welsh Grant Dilution occurs:

(a) Network Rail shall notify the Train Operator and ORR that an English & Welsh Grant Dilution has occurred, and the circumstances in which it has occurred; and

(b) the Train Operator shall:

(i) send a copy of the notification it has received from Network Rail under paragraph 3.1(a) to any Passenger Transport Executive within whose area it provides services for the carriage of passengers by railway;

(ii) if the English & Welsh Grant Dilution is of the kind described in paragraph 2.1(a) or in paragraph 2.1(b), pay Network Rail an English & Welsh Grant Compensation Amount calculated in accordance with paragraph 3.2 one month after the English & Welsh Grant Dilution Date; and[11th]

(iii) if the English & Welsh Grant Dilution is of the kind described in paragraph 2.1(c), pay Network Rail an English & Welsh Grant Compensation Amount calculated in accordance with paragraph 3.2 one month after each English & Welsh Grant Dilution Date. [11th]

3.2 ***Calculation***[11th]

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

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

where:

GC means the English & Welsh Grant Compensation Amount;

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

P means: *11th*

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

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

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

AF_t means the Aggregate Fixed Charge in Relevant Year t.

Part 4

(Not used)

Part 5

(Not used)

Part 6[11th]

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

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

(c) the rate of Traction Electricity Charge and the number of Vehicle Miles applicable to vehicles for each service or Gross Tonne Miles applicable to units for each service so charged, for the purposes of calculating E_{tmo} in accordance with paragraph 4.1.2 of Part 2;

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

(e) not used;

(f) not used;

(g) not used;

(h) the amount of any sum W_t payable as provided in paragraph 7 of Part 2;

(i) the amount of any sum $S1_{t\omega}$ and/or $S2_{t\omega}$ and/or any Charge Correction Amount payable as provided in paragraph 18 of the Traction Electricity Rules;

(j) not used;

(k) in respect of any other sums which have fallen due in accordance with any provisions of this contract other than Part 3A, separately the amount payable in respect of each head of charge. [11th]

Part 7[11th]

(Future Access Charges Reviews)

1. **General**[11th]

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[11th]

(b) as provided in paragraph 2 (and only as provided in paragraph 2), an access charges review such that amendments to this contract to give effect to the conclusions of such an access charges review come into operation before 1 April 2029. [11th]

2. **Access charges reviews capable of coming into operation before 1 April 2029**[11th]

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

(a) that there has been, or is likely to be, a material change, other than an excluded change, in the circumstances of Network Rail or in relevant financial markets or any part of such markets; and

(b) that there are compelling reasons to initiate an access charges review, having due regard to its duties under section 4 of the Act, including in particular the duty to act in a manner which it considers will not render it unduly difficult for persons who are holders of network licences to finance any activities or proposed activities of theirs in relation to which ORR has functions under or by virtue of Part I of the Act.

3. **Interpretation**

In this Part 7 references to ORR carrying out an access charges review shall be construed as including references to its initiating implementation of that review.

4. **Interim treatment of future access charges reviews**

4.1 ***Interim treatment prior to implementation***

If the terms of a Proposed Review Notice proposing amendments to the contract are not implemented in accordance with paragraph 7 of Schedule 4A to the Act on the date stipulated that they will come into operation in the Proposed Review Notice for any reason, then, irrespective of such terms not having been so implemented, each proposed amendment to the contract set out in the Proposed Review Notice shall have effect for the period (the "Interim Period") commencing on that date (or from any later date (or dates) specified in the Proposed Review Notice in respect of any individual amendment), in each case until such time as:

(a) following the service of a Review Implementation Notice relating to the Proposed Review Notice, the changes specified in that Review Implementation Notice come into operation; or

(b) following a reference to the Competition and Markets Authority in accordance with paragraph 9 of Schedule 4A to the Act, any amendments to the contract, made in accordance with paragraphs 12(8), 12(9) or 14(3) of Schedule 4A to the Act, come into operation.

4.2 ***Reconciliation Payment***

(a) Within 28 days after the end of the Interim Period, Network Rail shall calculate whether a reconciliation payment is due to or from the Train Operator. In order to calculate such reconciliation payment, Network Rail shall compare (i) the sums paid by the Train Operator during the Interim Period with (ii) the sums which would have been payable if the amendments required by either paragraphs 4.1(a) or (b) above had taken effect on the date(s) stipulated in the Proposed Review Notice, and shall provide to the Train Operator:

(i) a statement of the amount due to or from the Train Operator; and

(ii) such background data and workings as may reasonably be required for a proper understanding of the calculation.

(b) Within 14 days after the date upon which Network Rail shall have provided to the Train Operator the information referred to in paragraph 4.2(a) above, the Train Operator shall notify Network Rail of any aspects of the statement which it disputes, giving reasons for any dispute. Save to the extent that disputes are so notified, the Train Operator shall be deemed to have agreed the contents of the statement.

(c) If any dispute is notified under paragraph 4.2(b) above, it shall be resolved according to the following procedure:

(i) within seven days of service of the relevant notice, the parties shall meet to discuss the disputed aspects with a view to resolving all disputes in good faith;

(ii) if, for any reason, within seven days of the meeting referred to in paragraph 4.2(c)(i) above, the parties are still unable to agree any disputed aspects, each party shall promptly and in any event within seven days prepare a written summary of the disputed aspects and the reasons for each such dispute and submit such summaries to the senior officer of each party;

(iii) within 28 days of the first meeting of the parties, the senior officers of the parties shall meet with a view to resolving all disputes; and

(iv) if no resolution results before the expiry of 14 days following that meeting, then either party may refer the matter for resolution in accordance with the ADRR.

(d) Within 28 days after the date upon which Network Rail shall have provided to the Train Operator the information referred to in paragraph 4.2(a) above (if not disputed) or 28 days of resolution or determination of any dispute in accordance with paragraph 4.2(c) above, any amount due shall be invoiced (or presented in a credit note, as the case may be) for payment, and payable, as provided under this contract.

Appendix 7A

(Not used)

Appendix 7B

(Not used)

Appendix 7C

Default Train Consist Data

Train Service Code	Type of Train Movement	Default Train Consist Data
25210004	Train movement(s) between Marylebone – Harrow on the Hill / Aylesbury	1 Class 165 (3 motor vehicles)
25211004	Train movement(s) between Marylebone – High Wycombe – Princes Risborough – Aylesbury	1 Class 165 (3 motor vehicles)
25530004	Train movement(s) between Marylebone – Banbury – Leamington – Birmingham – Kidderminster / Stratford-upon-Avon	1 Class 168 (4 motor vehicles)
25535004	Train movement(s) between Marylebone – Bicester Village – Oxford	1 Class 168 (3 motor vehicles)
25217004	Unplanned Gemini – Chiltern*	1 Class 168 (3 motor vehicles)

Note

*covers all movements of train multiple units made pursuant to a Train Operator Variation Request, which do not fall under other types of train movements included or to be included in this Table.

Appendix 7D

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

Train Type	Train ID	Traction Type
NA	NA	NA

Schedule 8

(Performance Regime)

1. Interpretation

1.1 *Definitions*[11th]

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

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

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

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

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

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

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

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

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

"ETCS" means the European Train Control System;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.2 ***Interpretation***

For the purposes of this Schedule 8:

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

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

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

1.3 ***Suspension Notices***

Wherever a Suspension Notice is in force, the effects of that Suspension Notice shall be the subject of clause 3.6 and not of this Schedule 8. Accordingly, for the purposes of this Schedule 8:

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

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

2. **Calculation of Minutes Late**

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

$$Minutes\ Late = \sum L$$

where:

L in respect of a Train is the lesser of:

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

(ii) the Cap,

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

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

3. **Calculation of Minutes Delay**

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

(a) in respect of the first Recording Point triggered by that Train on any day, the number of minutes (rounded down to the nearest whole minute) by which the time at which that Train triggers the Recording Point is later than the time at which that Train is scheduled in the Applicable Timetable to do so; and

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

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

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

where:

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

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

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

provided that:

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

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

4. Recording of performance information

4.1 *Recording of lateness, Minutes Delay and Cancelled Stops*

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

(a) the time at which the Train stops to set down passengers at each Monitoring Point;

(b) each Cancelled Stop and the incident(s) causing such Cancelled Stop where the incident can be identified;

(c) the time at which the Train triggers each Recording Point;

(d) the Minutes Delay for that Train at each Recording Point;

(e) where the Minutes Delay which that Train has accrued since the last Recording Point are greater than or equal to three minutes:

(i) the incident(s) causing each minute of any delay included in Minutes Delay; and

(ii) those Minutes Delay for which Network Rail is unable to identify a cause; and

(f) for each Charter Destination Point in respect of Trains for which the Charter Destination Point is a destination for the purposes of a Passenger's Charter, the time of the Train's arrival.

The provisions of this Schedule 8, which concern the recording of train performance information or which refer to information regarding train performance, and the rights and remedies of the parties in respect of the recording of that information, shall be subject to and interpreted in accordance with the provisions of the Performance Data Accuracy Code.

4.2 ***Recording of allocated responsibility for Minutes Delay and Cancelled Stops***

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

(a) for which Network Rail is allocated responsibility in accordance with paragraph 5.2;

(b) for which the Train Operator is allocated responsibility in accordance with paragraph 5.3;

(c) for which Network Rail and the Train Operator are allocated joint responsibility, in accordance with paragraph 5.4;

(d) for which no cause can be identified; and

(e) which are planned incidents in accordance with paragraph 5.7.

4.3 ***Failed Recording Points***

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

(a) to restore as soon as reasonably practicable any failed Recording Point; and

(b) pending such restoration, to compile such information from manual records and other sources, including the Train Operator, and otherwise to substitute such information as is appropriate to reflect as accurately as is reasonably practicable the actual performance of the relevant Trains for the purposes of this Schedule 8.

4.4 ***Provision of information by Train Operator***

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

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

5. **Allocation of responsibility for Minutes Delay and Cancelled Stops**

5.1 ***Assessment of incidents causing Minutes Delay and Cancelled Stops***

(a) In assessing the cause of any Minutes Delay or Cancelled Stop, there shall be taken into account all incidents contributing thereto including:

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

(ii) where a Restriction of Use overruns due to the start of such Restriction of Use being delayed by a late running Train, the incident(s) giving rise to that late running;

(b) The parties shall take reasonable steps to avoid and mitigate the effects of any incidents upon the Trains and any failure to take such steps shall be regarded as a separate incident;

(c) Network Rail shall identify:

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

(ii) in respect of each incident recorded under paragraph 4.1(b), the extent to which that incident caused the Cancelled Stop;

(d) So far as Network Rail is reasonably able to do so, it shall identify whether responsibility for incidents causing Minutes Delay or Cancelled Stops is to be allocated to Network Rail or to the Train Operator or to them jointly in accordance with the following provisions of this paragraph 5.

5.2 ***Network Rail responsibility incidents***

Responsibility for Minutes Delay and Cancelled Stops on a day caused by incidents for which Network Rail is allocated responsibility pursuant to this paragraph 5.2 shall be allocated to Network Rail. Unless and to the extent otherwise agreed, Network Rail shall be allocated responsibility for an incident other than a planned incident (as defined in paragraph 5.7), if that incident is caused wholly or mainly:

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

(b) (whether or not Network Rail is at fault) by circumstances within the control of Network Rail in its capacity as operator of the Network; or

(c) (whether or not Network Rail is at fault) by any act, omission or circumstance originating from or affecting the Network (including its operation), including, subject to paragraph 5.3(b)(i), any incident in connection with rolling stock on the Network for which any train operator other than the Train Operator would be allocated responsibility if it were the Train Operator under this contract.

5.3 ***Train Operator responsibility incidents***

Responsibility for Minutes Delay and Cancelled Stops on a day caused by incidents for which the Train Operator is allocated responsibility pursuant to this paragraph 5.3 shall be allocated to the Train Operator. Unless and to the extent otherwise agreed, the Train Operator shall be allocated responsibility for an incident other than a planned incident (as defined in paragraph 5.7) if that incident:

(a) is caused wholly or mainly:

(i) by breach by the Train Operator of any of its obligations under this contract; or

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

(iii) (whether or not the Train Operator is at fault) by any act, omission or circumstance originating from or affecting rolling stock operated by or on behalf of the Train Operator (including its operation), including any such act, omission or circumstance originating in connection with or at any station (other than in connection with signalling under the control of Network Rail at that station or physical works undertaken by Network Rail at that station), any light maintenance depot or any network other than the Network; or

(b) causes delay to:

(i) rolling stock operated by or on behalf of another train operator which is delayed in entering or leaving the Network due to any act, omission or circumstance originating in connection with a light maintenance depot or network other than the Network and, as a result of that delay, rolling stock operated by or on behalf of the Train Operator which is scheduled to leave or enter the Network at the connection with that light maintenance depot or other network is then delayed behind the first mentioned rolling stock; or

(ii) the commencement of a Train's journey, which is caused by the late running for any reason whatever of any rolling stock included in that Train when that rolling stock is operated by or on behalf of another train operator.

5.4 ***Joint responsibility incidents***

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

(i) any incident which is not a planned incident (as defined in paragraph 5.7), caused by an act, omission or circumstance originating in connection with or at a station which:

(1) is an act, omission or circumstance which affects the Network, or its operation, and prevents a Train entering or passing through a station at the time it is scheduled to do so; and

(2) prevents the access of passengers through the station to or from the Train;

and paragraphs 5.2 and 5.3 shall not apply to any such incident; or

(ii) any identified incident in respect of which Network Rail and the Train Operator are equally responsible and for which neither Network Rail nor the Train Operator is allocated responsibility under paragraph 5.2 or 5.3.

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

5.5 ***Unidentified incidents: Minutes Delay***

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

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

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

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

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

5.6 ***Unidentified incidents: Cancelled Stops***

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

5.7 ***Planned incidents***

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

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

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

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

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

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

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

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

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

5.11 ***Network Rail Cancelled Stops at Monitoring Point level***

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

5.12 ***Train Operator Cancelled Stops at Monitoring Point level***

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

6. **Statement of allocated responsibility**

6.1 ***Initial statement***

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

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

(b) a summary for each Service Group showing:

(i) the aggregate Minutes Delay and Cancelled Stops recorded under each category set out in paragraph 4.2; and

(ii) a list of the Minutes Delay and Cancelled Stops (in each case broken down by incident) recorded as the responsibility of Network Rail and as the responsibility of the Train Operator.

6.2 ***Further statements***

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

6.3 ***Adjustment statements***

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

6.4 ***Disputes about statements of allocated responsibility***

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

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

(i) within the next two clear Working Days after notification of any dispute, nominated representatives of the parties shall attempt to resolve that dispute; and

(ii) if agreement has not been reached after two clear Working Days, representatives authorised by a more senior level of management of the parties shall use all reasonable endeavours to negotiate a resolution of the dispute.

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

7. **Allocation of Minutes Late to Network Rail**

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

if MD is greater than zero

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

or if MD is equal to zero

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

where:

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

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

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

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

$$DMLNR = RC \bullet CM$$

where:

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

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

8. **Allocation of Minutes Late to the Train Operator**

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

if MD is greater than zero

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

or if MD is equal to zero

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

where:

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

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

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

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

$$DMLT = TC \bullet CM$$

where:

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

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

9. **Network Rail Performance Sums***11th*

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

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

where:

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

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

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

where:

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

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

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

SP is the aggregate number of stops to set down passengers at that Monitoring Point scheduled for the Period in the Applicable Timetable for which a stop or Cancelled Stop is recorded in accordance with paragraphs 4.1(a) and (b) except that if SP=0 for any Monitoring Point, then for that Monitoring Point it shall be deemed that $\frac{(MLNR \bullet MPW)}{SP}$ shall equal zero; *11th*

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

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

where:

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

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

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

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

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

provided that:

(i) if a Capped Value is specified in respect of that Service Group in Appendix 1 and the value of NRPS in respect of any Period is determined in accordance with the formula set out in this paragraph to be greater than the Capped Value in respect of such Period, then the value of NRPS shall be deemed to be equal to the Capped Value in respect of such Period;

(ii) the Capped Value shall be multiplied by the CV indexation figure for the Relevant Year;

(iii) the CV indexation figure in Relevant Year t shall be derived from the following formula: *11th*

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

where:

CV_t means the CV indexation in Relevant Year t;

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

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

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

10. **Train Operator Performance Sums**

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

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

where:

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

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

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

where:

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

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

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

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

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

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

where:

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

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

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

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

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

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

11. *Notification of Performance Sums*

11.1 *Notification*

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

(a) any Performance Sums for which Network Rail or the Train Operator is liable, together with such supporting information (other than information in respect of incidents recorded as the responsibility of Network Rail) as the Train Operator may reasonably require; and

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

11.2 *Disputes*

Within 14 days after receipt by the Train Operator of a statement required under paragraph 11.1, the Train Operator shall notify Network Rail of any aspects of such statement which it disputes, giving reasons for each such dispute. The Train Operator shall not dispute any matter which it has agreed or deemed to have agreed under paragraph 6. Such disputes and any matter referred to in paragraph 11.1(b) shall be resolved in accordance with the procedure in

paragraph 16. Save to the extent that disputes are so notified, the Train Operator shall be deemed to have agreed the contents of each statement.

12. Payment procedures[11th]

12.1 *Payments and set-off*

(a) In respect of any and all Performance Sums for which Network Rail and the Train Operator are liable in any Period, the aggregate liabilities of Network Rail and the Train Operator shall be set off against each other. The balance shall be payable by Network Rail or the Train Operator, as the case may be, within 35 days after the end of the Period to which the payment relates.

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

12.2 *Payments in the event of dispute*

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

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

(b) the disputed balance (or such part of it as has been agreed or determined to be payable) shall be paid or set off (as the case may be) within 35 days after the end of the Period in which the dispute is resolved or determined; and

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

12.3 *Application of paragraph 12.4*[11th]

Paragraph 12.4 shall apply if:

(a) the provisions in the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 relating to performance schemes are amended; and

(b) ORR issues a notice to the parties confirming that paragraph 12.4 shall take effect.

12.4 *Restrictions on payments*[11th]

Save in relation to paragraph 12.2, no payments under paragraph 12.1(a) and/or paragraph 18 shall be made from the date, which may be retrospective, specified in the notice issued by ORR under paragraph 12.3(b).

12.5 *Reinstatement of payments*[11th]

Where paragraph 12.4 applies, ORR may issue a subsequent notice to the parties reinstating the payments under paragraph 12.1(a) and/or paragraph 18 from the date specified in the subsequent notice.

13. **Payment rates** *11th*

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

(a) if, pursuant to paragraph 17.1 or 17.1A, amendments to columns C and/or E of Appendix 1 took effect in Relevant Year t, each value specified in Appendix 1 (as so amended) expressed in pounds sterling and rounded to two decimal places, shall be multiplied by the below indexation figure for the Relevant Year:

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

where:

RI_t means the indexation figure in the Relevant Year t;

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

CPI_{2022} has the same meaning as set out in paragraph 9.1 above of this Schedule 8.

(b) in any other Relevant Year, in accordance with the following formula:

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

where:

R_t is the relevant rate in the Relevant Year t;

R_{t-1} is the relevant rate in the Relevant Year t-1;

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

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

but so that in relation to the Relevant Year commencing on 1 April 2024, R_{t-1} shall have the relevant value specified in the relevant column (either C or E) of Appendix 1.

14. **Not used**

15. **Notices** *11th*

15.1 All notices under this Schedule 8 shall be given in writing and shall be sent by prepaid first class post, email or delivered by hand to the party in question at the address for service last notified by that party. *11th*

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

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

(b) if sent by hand, when delivered;

(c) not used; and*11th*

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

16. **Disputes***11th*

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

(a) within seven days of service of the relevant notice (or, if the dispute relates to an incident the responsibility for which is or is to be the subject of a Joint Inquiry, within seven days of publication of the conclusion of that Joint Inquiry), the parties shall meet to discuss the disputed aspects with a view to resolving all disputes in good faith;

(b) if, for any reason, within seven days of the meeting referred to in paragraph 16.1(a), the parties are still unable to agree any disputed aspects, each party shall promptly and in any event within seven days prepare a written summary of the disputed aspects and the reasons for each such dispute and submit such summaries to the senior officer of each party;

(c) within 28 days of the first meeting of the parties, the senior officers of the parties shall meet with a view to resolving all disputes; and

(d) if no resolution results before the expiry of 14 days following that meeting, then either party may refer the matter for resolution in accordance with the ADRR.

17. **Amendments to Appendix 1***11th*

17.1 ***Circumstances in which parties agree to amend Appendix 1*** *11th*

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

17.1 A ***Circumstances in which ORR may amend Appendix 1*** *11th*

(a) ORR may amend Appendix 1 of Schedule 8 during CP7 to give effect to any recalibration carried out 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 to Appendix 1 and that they shall take effect on the date specified by ORR in its notice (save that such date shall not be earlier than 1 April 2026).

(b) Notwithstanding paragraph 17.1A(a) above, ORR may amend Appendix 1 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 to Appendix 1 and the date, which shall not be retrospective, from which they shall take effect.

17.2 ***Procedure for amendments to Appendix 1 under paragraph 17.1****11th*

(a) The party who wishes to amend Appendix 1 in accordance with paragraph 17.1 shall notify the other party of any such proposed change and the date from which it proposes that such change will have effect: *11th*

(i) where such change relates to a forthcoming timetable change, on or before the first day of the month six months before the relevant Principal Change Date or Subsidiary Change Date on which that timetable change is due to occur; and

(ii) in any other case, prior to the date from which it proposes such change shall have effect.

(b) Any notice under paragraph 17.2(a) shall:

(i) specify as far as possible that party's proposed amendments to Appendix 1; and

(ii) be accompanied by information and evidence in reasonable detail supporting the change proposed and setting out the reasons for it.

(c) The party receiving a notice issued under paragraph 17.2(a) shall respond to that notice in writing, in reasonable detail and with reasons for its response, within 56 days of service of such notice.

(d) Promptly (and in any event within 34 days) following the service of any response under paragraph 0(c), the parties shall endeavour to agree whether Appendix 1 should be amended in accordance with this paragraph 17 and, if so, the amendments.

(e) If the parties fail to reach agreement within 90 days of service of a notice under paragraph 17.2(a), or if prior to that date both parties agree that agreement is unlikely to be reached within that period:

(i) either party may notify ORR; and

(ii) if ORR elects to determine the matter, the parties shall furnish ORR with such information and evidence as ORR shall require in order to determine the matter, such determination to be binding on the parties.

(f) If ORR does not elect to determine the matter within 56 days of receipt by ORR of notification in accordance with paragraph 17.2(e)(i), either party may refer the matter for resolution in accordance with the ADRR and the parties shall agree in a Procedure Agreement (such term to have the same meaning as in the ADRR) that:

(i) the relevant ADRR Forum shall have regard to any relevant criteria and/or policy statement issued by ORR including in relation to the introduction of any capped value in respect of any Service Group in Appendix 1; and

(ii) that the relevant ADRR Forum will set out its reasoning in any determination.

(g) An amendment to Appendix 1 shall take effect only when it has been approved by ORR under section 22 of the Act. Accordingly, as soon as reasonably practicable after any such amendment is agreed or determined in accordance with this paragraph 17 (other than a determination by ORR pursuant to paragraph 17.2(e)(ii)), the parties shall ensure that ORR is furnished with such amendment and such information and evidence as ORR requires to decide whether or not to approve the amendment.

(h) Any agreed amendment to Appendix 1 in connection with the proposal referred to in paragraph 17.1 which is agreed by the parties or determined by the relevant ADRR Forum, and which is approved by ORR under section 22 of the Act shall apply with effect from either:

(i) the relevant Principal Change Date or Subsidiary Change Date (where paragraph 17.2(a)(i) applies); or

(ii) the date proposed by the party requesting the change (where paragraph 17.2(a)(ii) applies), unless otherwise agreed by the parties or determined by the relevant ADRR Forum in accordance with paragraph 17.2(f).

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

17.3 ***Adjustments to the Performance Monitoring System***[11th]

Network Rail shall make appropriate amendments to the Performance Monitoring System to reflect the amendments to Appendix 1 by the date when in accordance with paragraph 17.1A or paragraph 17.2 such amendments are to take effect, or as soon as reasonably practicable thereafter. Where any such amendment to Appendix 1 or any consequential amendment to the Performance Monitoring System is not made until after that date, Network Rail shall, promptly following such amendments being made, issue to the Train Operator a statement showing the necessary adjustments to the statements already issued and the payments already made in respect of Performance Sums up to and including the Period commencing on the date when in accordance with paragraph 17.1A or paragraph 17.2 such amendments to Appendix 1 are to take effect. Any such adjusting statement shall be treated as if it were a statement under paragraph 11.1 and, subject to paragraph 12.2, an adjusting payment shall be payable within 35 days of that adjusting statement.

17.4 ***Costs of implementing amendment***

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

17.5 ***Relationship with Appendix 3 and remainder of Schedule 8***

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

17A **ETCS Amendments**

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

(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 of the Routes that the Train Operator has permission to use (**"ETCS Amendments"**).

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

17A.2 ***ETCS Amendments agreed by the parties***

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

(c) Promptly, and in any event within 20 Working Days following service of a response pursuant to paragraph 17A.2(b), the parties shall use reasonable endeavours to agree the wording of the proposed ETCS Amendments and the date on which they are to have effect.

(d) If:

(i) the parties agree to make ETCS Amendments pursuant to paragraph 17A.2(c); or

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

they shall notify ORR.

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

(a) If ORR:

(i) receives a notification under paragraph 17A.2(d); or

(ii) proposes to make ETCS Amendments itself,

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

(A) give the parties and such other persons, if any, as it considers appropriate, the opportunity to make representations in relation to the proposed ETCS Amendments; and

(B) take into account any representations received before making its decision, such decision to specify the date on which the ETCS Amendments shall have effect.

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

18. **Compensation for sustained poor performance***11th*

18.1 ***Definitions****11th*

In this paragraph 18, unless the context otherwise requires:

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

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

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

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

18.2 ***Indemnity***[11th]

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

18.3 ***Determination of Relevant Losses***[11th]

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

$$SPPL = RL - PS$$

where:

RL means the Train Operator's Relevant Losses arising as a direct result of Minutes Delay and Cancelled Stops during the Calculation Term in each case insofar as these do not arise as a result of an incident for which the Train Operator is allocated responsibility pursuant to paragraph 5.3; and

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

18.4 ***Restrictions on claims by Train Operator***[11th]

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

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

(b) in relation to any Calculation Term or part of it that precedes the Transition Date as referred to in clause 19; or[11th]

(c) for any Period of any Relevant Losses incurred after the date, which may be retrospective, specified in the notice issued by ORR under paragraph 12.3(b). [11th]

19. **SPP Indexation**[11th]

19.1 ***SPP Indexation***[11th]

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

19.2 ***Application of SPP Indexation***[11th]

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

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

where:

$SPPI_t$ means the SPP indexation in Relevant Year t;

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

CPI_{2022} has the meaning as set out in paragraph 9.1 above of this Schedule 8.

Appendix 1 to Schedule 8

A	B		C	D		E	F	G	H		I	J	K
Service Group	Network Rail			TOC			Cancellation Minutes	Cap	Service Code		Direction	Monitoring Point	Weighting
	Performance Point		Payment Rate (£)	Performance Point		Payment Rate (£)							
HO01	[redacted]	[redacted]	[redacted]	[redacted]		[redacted]	51	180	210	Marylebone - Harrow - Aylesbury	Forward	AMERSHAM	[redacted]
Met	[redacted]	[redacted]							210	Marylebone - Harrow - Aylesbury	Forward	LONDON MARYLEBONE	[redacted]
Off-Peak	[redacted]	[redacted]							210	Marylebone - Harrow - Aylesbury	Reverse	AMERSHAM	[redacted]
									210	Marylebone - Harrow - Aylesbury	Reverse	AYLESBURY	[redacted]
									210	Marylebone - Harrow - Aylesbury	Reverse	AYLESBURY VALE PARKWAY	[redacted]
HO01	[redacted]	[redacted]	[redacted]	[redacted]		[redacted]	28	180	210	Marylebone - Harrow - Aylesbury	Forward	AMERSHAM	[redacted]
Met	[redacted]	[redacted]							210	Marylebone - Harrow - Aylesbury	Forward	LONDON MARYLEBONE	[redacted]
Peak	[redacted]	[redacted]							210	Marylebone - Harrow - Aylesbury	Reverse	AMERSHAM	[redacted]
									210	Marylebone - Harrow - Aylesbury	Reverse	AYLESBURY	[redacted]
									210	Marylebone - Harrow - Aylesbury	Reverse	AYLESBURY VALE PARKWAY	[redacted]
HO02	[redacted]	[redacted]	[redacted]	[redacted]		[redacted]	50	180	530	Marylebone - Banbury - Birmingham	Forward	BIRMINGHAM SNOW HILL	[redacted]
Birmingham	[redacted]	[redacted]							530	Marylebone - Banbury - Birmingham	Forward	HIGH WYCOMBE	[redacted]
Off-Peak	[redacted]	[redacted]							530	Marylebone - Banbury - Birmingham	Forward	LEAMINGTON SPA	[redacted]
									530	Marylebone - Banbury - Birmingham	Forward	LONDON MARYLEBONE	[redacted]
									530	Marylebone - Banbury - Birmingham	Reverse	BANBURY	[redacted]
									530	Marylebone - Banbury - Birmingham	Reverse	BICESTER NORTH	[redacted]
									530	Marylebone - Banbury - Birmingham	Reverse	BIRMINGHAM MOOR STREET	[redacted]

							530	Marylebone - Banbury - Birmingham	Reverse	BIRMINGHAM SNOW HILL	[redacted]
							530	Marylebone - Banbury - Birmingham	Reverse	HIGH WYCOMBE	[redacted]
							530	Marylebone - Banbury - Birmingham	Reverse	STOURBRIDGE JUNCTION	[redacted]
							530	Marylebone - Banbury - Birmingham	Reverse	STRATFORD UPON AVON	[redacted]
HO02	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	32	180	530	Marylebone - Banbury - Birmingham	Forward	BIRMINGHAM SNOW HILL	[redacted]
Birmingham	[redacted]	[redacted]						530	Marylebone - Banbury - Birmingham	Forward	HIGH WYCOMBE	[redacted]
Peak	[redacted]	[redacted]						530	Marylebone - Banbury - Birmingham	Forward	LEAMINGTON SPA	[redacted]
								530	Marylebone - Banbury - Birmingham	Forward	LONDON MARYLEBONE	[redacted]
								530	Marylebone - Banbury - Birmingham	Reverse	BANBURY	[redacted]
								530	Marylebone - Banbury - Birmingham	Reverse	BICESTER NORTH	[redacted]
								530	Marylebone - Banbury - Birmingham	Reverse	BIRMINGHAM MOOR STREET	[redacted]
								530	Marylebone - Banbury - Birmingham	Reverse	BIRMINGHAM SNOW HILL	[redacted]
								530	Marylebone - Banbury - Birmingham	Reverse	STOURBRIDGE JUNCTION	[redacted]
HO03	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	50	156	211	Marylebone - High Wycombe / P Risboro / Aylesbury	Forward	LONDON MARYLEBONE	[redacted]
Joint	[redacted]	[redacted]						211	Marylebone - High Wycombe / P Risboro / Aylesbury	Forward	PRINCES RISBOROUGH	[redacted]
Off-Peak	[redacted]	[redacted]						211	Marylebone - High Wycombe / P Risboro / Aylesbury	Reverse	AYLESBURY	[redacted]
								211	Marylebone - High Wycombe / P Risboro / Aylesbury	Reverse	GERRARDS CROSS	[redacted]
								211	Marylebone - High Wycombe / P Risboro / Aylesbury	Reverse	HIGH WYCOMBE	[redacted]

							211	Marylebone - High Wycombe / P Risboro / Aylesbury	Reverse	PRINCES RISBOROUGH	[redacted]
							211	Marylebone - High Wycombe / P Risboro / Aylesbury	Reverse	WEST RUISLIP	[redacted]
HO03	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	28	126	211	Marylebone - High Wycombe / P Risboro / Aylesbury	Forward	HIGH WYCOMBE	[redacted]
Joint	[redacted]	[redacted]						211	Marylebone - High Wycombe / P Risboro / Aylesbury	Forward	LONDON MARYLEBONE	[redacted]
Peak	[redacted]	[redacted]						211	Marylebone - High Wycombe / P Risboro / Aylesbury	Reverse	GERRARDS CROSS	[redacted]
								211	Marylebone - High Wycombe / P Risboro / Aylesbury	Reverse	HIGH WYCOMBE	[redacted]
								211	Marylebone - High Wycombe / P Risboro / Aylesbury	Reverse	PRINCES RISBOROUGH	[redacted]
								211	Marylebone - High Wycombe / P Risboro / Aylesbury	Reverse	WEST RUISLIP	[redacted]
HO04	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	46	180	535	London Marylebone - Oxford	Forward	BICESTER VILLAGE	[redacted]
Oxford	[redacted]	[redacted]						535	London Marylebone - Oxford	Forward	LONDON MARYLEBONE	[redacted]
Off-Peak	[redacted]	[redacted]						535	London Marylebone - Oxford	Reverse	BICESTER VILLAGE	[redacted]
								535	London Marylebone - Oxford	Reverse	OXFORD	[redacted]
								535	London Marylebone - Oxford	Reverse	OXFORD PARKWAY	[redacted]
HO04	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	42	160	535	London Marylebone - Oxford	Forward	BICESTER VILLAGE	[redacted]
Oxford	[redacted]	[redacted]						535	London Marylebone - Oxford	Forward	LONDON MARYLEBONE	[redacted]
Peak	[redacted]	[redacted]						535	London Marylebone - Oxford	Reverse	BICESTER VILLAGE	[redacted]
								535	London Marylebone - Oxford	Reverse	OXFORD	[redacted]
								535	London Marylebone - Oxford	Reverse	OXFORD PARKWAY	[redacted]

Appendix 2

Charter Destination Points

(Not used)

Aylesbury

Amersham

Marylebone

High Wycombe

Princes Risborough

Gerrards Cross

Banbury

Leamington Spa

Birmingham Snow Hill

Bicester North

Warwick North

Warwick Parkway

Stourbridge Junction

Kidderminster

Appendix 3 to Schedule 8

SPP Threshold

Year	Period:	3	6	10	13
2026/27		[redacted]	[redacted]	[redacted]	[redacted]
2027/28		[redacted]	[redacted]	[redacted]	[redacted]
2028/29		[redacted]	[redacted]	[redacted]	[redacted]

Schedule 9

(Limitation on Liability)

1. Definitions

In this Schedule

"Contract Year" means each yearly period commencing on the Subsidiary Change Date in 2023 and subsequently on each anniversary of such date;

"Liability Cap" means:

(a) in relation to the first Contract Year, the sum of £10,000,000; and

(b) in relation to any subsequent Contract Year, the sum calculated in accordance with the following formula:

$$C_n = C_1 \left[\frac{CPI_n}{CPI_1}\right]$$

where:

(i) C_1 is the sum of £10,000,000;

(ii) C_n is the Liability Cap in the nth subsequent Contract Year;

(iii) CPI_n is the Consumer Prices Index (as defined in Schedule 7) published or determined with respect to the first month of the subsequent Contract Year n; and

(iv) CPI_1 is the Consumer Prices Index (as defined in Schedule 7) published or determined with respect to the month in which this contract became effective under Clause 3.1.

2. Application

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

3. Limitation on Network Rail's liability

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

(a) Network Rail shall not be liable to make payments in relation to such claims which are admitted in writing or finally determined in any Contract Year to the extent that its liability for such claims exceeds the Liability Cap for such Contract Year; and

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

4. Limitation on Train Operator's liability

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

(a) the Train Operator shall not be liable to make payments in relation to such claims which are admitted in writing or finally determined in any Contract Year to the extent that its liability for such claims exceeds the Liability Cap for such Contract Year; and

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

5. **Disapplication of limitation**

To the extent that any Relevant Losses:

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

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

such Relevant Losses:

(i) shall not be subject to the limitation of liability in Schedule 9; and

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

6. **Exclusion of legal and other costs**

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

7. **Exclusion of certain Relevant Losses**

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

8. **Continuing breaches**

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

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

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

(c) is a breach of a Performance Order in relation to a breach of contract,

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

9. **Final determination of claims**

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

Schedule 10

(Network Code and Traction Electricity Modifications)

1. **Automatic effect**

1.1 ***General***

This contract shall have effect:

(a) with the modifications; and

(b) from the date,

specified by ORR in a modification notice as supplemented (where appropriate) by a notice of consent to requisite adaptations or a notice of determined requisite adaptations.

1.2 ***Retrospective effect***

No relevant notice may have retrospective effect.

2. **Modification notice**

2.1 ***Meaning***

A modification notice is a notice given by ORR to the parties for the purposes of this contract which modifies specified provisions of this contract (other than this Schedule 10) by making such modifications as are consequential upon, or necessary to give full effect to, any change to the Network Code or the Traction Electricity Rules.

2.2 ***Contents of modification notice***

A modification notice shall state:

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

(b) the date from which specified modifications are to have effect; and, if any such modifications are to have effect from different dates, the dates applicable to each modification; and

(c) which of the specified modifications are to be subject to adaptation and the backstop date for the requisite adaptations in question.

3. **Adaptation procedure**

3.1 ***Application***

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

3.2 ***Negotiation of adaptations***

In respect of the modifications in each modification notice:

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

(b) each party shall ensure that:

(i) such negotiations are conducted in good faith in a timely, efficient and economical manner, with appropriate recourse to professional advice; and

(ii) ORR's criteria are applied in the negotiations; and

(c) the negotiations shall not continue after the backstop date.

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

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

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

(b) stating the extent to which and ways in which ORR's criteria have been applied in arriving at the agreed requisite adaptations and, in any case where they have not been applied, the reasons; and

(c) giving such other information as ORR may have requested.

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

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

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

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

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

(b) determine the requisite adaptations itself.

3.6 ***Requisite adaptations - failure to agree or submit***

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

3.7 ***Notice of determined requisite adaptations***

A notice of determined requisite adaptations is a notice:

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

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

3.8 ***Effect of requisite adaptations***

Requisite adaptations established either:

(a) by agreement of the parties and in respect of which ORR has given a notice of consent to requisite adaptations under paragraph 3.4; or

(b) by the determination of ORR under paragraph 3.5 or 3.6 and stated in a notice of determined requisite adaptations,

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

4. ***Procedural matters***

4.1 ***More than one notice***

More than one modification notice may be given.

4.2 ***Differences etc as to requisite adaptations***

Any difference or question as to whether any thing is a requisite adaptation shall be determined by ORR:

(a) on the application of either party; and

(b) in accordance with such procedure (including as to consultation) as ORR may by notice to the parties determine.

4.3 ***Co-operation and information***

If ORR gives notice to either or both of the parties that it requires from either or both of them information in relation to any requisite adaptation or proposed requisite adaptation:

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

(b) if that party fails timeously to do so, ORR shall be entitled to proceed with its consideration of the matter in question and to reach a decision in relation to it without the information in question and the party in default shall have no grounds for complaint in that respect.

4.4 ***Office of Rail and Road's criteria***

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

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

(b) modify the criteria after consultation.

4.5 ***Procedural modifications***

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

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

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

4.6 ***Dates***

In this Schedule 10:

(a) where provision is made for a date to be specified or stated by ORR it may, instead of specifying or stating a date, specify or state a method by which a date is to be determined, and references to dates shall be construed accordingly; and

(b) any notice given by ORR which states a date may state different dates for different purposes.

4.7 ***Requirement for prior consultation***

No relevant notice shall have effect unless:

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

(b) in the consultations referred to in paragraph 4.7(a), ORR has made available to the parties and the Secretary of State such drafts of the proposed relevant notice as it considers are necessary so as properly to inform them of its contents;

(c) ORR has given each party and the Secretary of State the opportunity to make representations in relation to the proposed relevant notice and has taken into account all such representations (other than those which are frivolous or trivial) in making its decision on the relevant notice to be given;

(d) ORR has notified the parties and the Secretary of State as to its conclusions in relation to the relevant notice in question (including by providing to each such person a copy of the text of the proposed relevant notice) and its reasons for those conclusions; and

(e) in effecting the notifications required by paragraph 4.7(d), ORR has treated as confidential any representation (including any submission of written material) which (and to the extent that) the person making the representation, by notice in writing to ORR or by endorsement on the representation of words indicating the confidential nature of such representation, has specified as confidential information.

4.8 ***Consolidated contract***

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

(a) a modification notice; and

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

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

4.9 ***Saving***

Nothing in this Schedule 10 affects:

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

(b) the right of ORR at any time to effect modifications to either the Network Code under Condition C8 of that code, or the Traction Electricity Rules pursuant to the provisions contained therein.

5. **Definitions**

In this Schedule 10:

"backstop date" means the date (being not earlier than 28 days from the date of the modification notice) specified as such in a modification notice (or such later date as may be established under paragraph 3.5(a) or 4.6);

"modification notice" has the meaning ascribed to it in paragraph 2.1;

"notice of consent to requisite adaptations" means a notice given by ORR under paragraph 3.4;

"notice of determined requisite adaptations" has the meaning ascribed to it in paragraph 3.7;

"notice of procedural modification" means a notice given by ORR to the parties under paragraph 4.5 modifying any aspect of the procedure in this Schedule 10 for the agreement or establishment of requisite adaptations;

"ORR's criteria" means the criteria established by ORR for the purposes of the negotiation of requisite adaptations and given to the parties, or modified, under paragraph 4.4;

"relevant notice" means a modification notice, notice of determined requisite adaptations, notice of procedural modification or notice of modification of ORR's criteria;

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

"specified" means specified in a modification notice.

In Witness whereof the duly authorised representatives of Network Rail and the Train Operator have executed this contract on the date first above written.

Signed by .....

Print name Denise Wetton 28-09-22

Duly authorised for and on behalf of
Network Rail Infrastructure Limited

Signed by .....

Print name Richard Allan

Duly authorised for and on behalf of
The Chiltern Railway Company Limited