

SCHEDULE 5: THE SERVICES

1. Definitions

1.1 *Definitions*

“Arrival Window” means the period of time during which a Service shall be Planned to arrive at its Destination;

“**Association**” means a Special Term linking the planning of two Services at any location or locations;

“**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 (and which is identified in the Rights Table by the notation “Contingent” in the column headed “Special Terms”);

“**Contract Miles**” has the meaning ascribed to it in Schedule 7;

“**Day**” means any period of 24 hours beginning at 0000 hours and ending immediately before the next succeeding 0000 hours, and any reference in this Schedule to any named day of the week shall be to such period commencing on that named day. The following convention shall be used to denote days of the week:

M - Monday; T - Tuesday; W - Wednesday; Th - Thursday; F - Friday;

S - Saturday; SUN - Sunday; EWD - Monday to Saturday inclusive;

O indicates Services are run on that day alone (e.g. MFO - Monday and Friday only); and

X indicates Services are run on days other than the day or days shown with the exception of Sunday (e.g. MX - Monday excepted);

“**Days per week**” means the Days on which the Train Operator has a Freight Access Right to a Train Slot to operate that Service, expressed as the Day on which that Service is to be Planned to commence from its Origin;

“**Departure Window**” means the period of time during which the Service shall be Planned to depart from its Origin;

“**Destination Stanox**” means a numeric reference used in Network Rail systems to describe the physical location, either part of the Network or a facility adjoining the Network, to which the Service will be Planned to operate;

“**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;

“Flexing Rights” has the meaning ascribed to it in Part D of the Network Code;

“Freight Access Right” means either:

(a) a Firm Right to a Train Slot relating to a Service with the characteristics set out in the Rights Table; or

(b) a Contingent Right to a Train Slot relating to a Service with the characteristics set out in the Rights Table (and which is identified in the Rights Table by the notation “Contingent” in the column headed “Special Terms”);

“Loading Gauge” has, in relation to any Service, the meaning ascribed to it by Section D2 of the “Working Manual for Rail Staff - Section 2 - Loading and Conveyance of Freight Traffic” (as defined for each section of the Network within the various sectional appendices to the Working Timetable), and as denoted in the Rights Table by the equivalent W number of the Specified Equipment, where this exceeds that permitted by the Operating Constraints;

“Maximum Length of Train” means, in relation to any Service, the train length, excluding the length of a locomotive and brakevan, expressed in standard length units (“SLUs”) of 21 feet, to be used in the compilation of the New Working Timetable as denoted in the Rights Table where the length exceeds that permitted by the Operating Constraints;

“Minimum Dwell Time at Intermediate Point” means the minimum period of time that the Service shall be Scheduled to stay at any relevant Intermediate Point;

“Minimum Turn Around Time at Destination” means the minimum time (expressed in minutes) that the Service shall be Planned to stay at its Destination;

“Minimum Turn Around Time at Origin” means the minimum time (expressed in minutes) that the Service shall be Planned to stay at its Origin;

“Origin Stanox” means a numeric reference used in Network Rail systems to describe the physical location, either part of the Network or a facility adjoining the Network, from which the Service will be Planned to originate;

“Principal Change Date” has the meaning ascribed to it in Part D of the Network Code;

“Revised Base Service” has the meaning ascribed to it in Schedule 4;

“Rights Table” means the table at Annex 1 of this Schedule 5;

“Route Availability” has, in relation to any Service, the meaning ascribed to it in the “Working Manual For Rail Staff - Freight Train Operations”, and as denoted in the Rights Table by the equivalent RA number, where this exceeds that permitted by the Operating Constraints;

“Routing” means the route which Network Rail is to use for a Service in preparing the New Working Timetable or the Working Timetable;

“Special Terms” means any special characteristic of a Service which is specified as such in the Special Terms column of the Rights Table;

“Subsidiary Change Date” has the meaning ascribed to it in Part D of the Network Code;

“Timing Load” has the meaning ascribed to it in Part D of the Network Code;

“Train Operator Variation Services” means Services in relation to which Train Operator Variation Requests are made by the Train Operator pursuant to paragraph 2.3;

“Y Path” means, in relation to a specified Service, where the Train Operator has a Freight Access Right to that Service to:

- (a) depart from one or more Origins to the same Destination; and/or
- (b) arrive at one or more Destinations from the same Origin,

as set out in the Rights Table, provided that the Train Operator shall not be entitled to more than one Y Path Option within any one Y Path on any particular Day, such Rights being identified by the letter “Y” in the column headed “Days per Week” and “Y with [*insert the relevant train reporting number*]” in the column headed “Special Terms”; and

“Y Path Option” means in relation to a Y Path, one Origin and one Destination from a combination of one or more Origins and one or more Destinations.

2. Rights and Services

2.1 Train Slots

The Train Operator has:

- (a) Firm Rights to Train Slots in the Working Timetable relating to Services which are not Contingent Rights; and
- (b) Contingent Rights to Train Slots in the Working Timetable (and which are identified in the Rights Table by the notation “Contingent” in the column headed “Special Terms”).

2.2 *Ancillary Movements*

2.2.1 The Train Operator has

- (a) 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; and
- (b) Contingent Rights to make Ancillary Movements of Specified Equipment to the extent necessary or reasonably required to give full effect to the other Contingent Rights of the Train Operator.

2.2.2 For the purposes of paragraph 2.2.1, Ancillary Movements shall include movements:

- (a) to and from maintenance depots for the purpose of maintaining rolling stock;
- (b) for driver training purposes; and
- (c) which do not convey loaded wagons or empty passenger rolling stock;

but shall not include movements of rolling stock for the purpose of testing in furtherance of vehicle acceptance procedures.

2.3 *Train Operator Variation Services*

2.3.1 Train Operator Variation Services are services for which the Train Operator has made a Train Operator Variation Request in accordance with Part D of the Network Code and which Train Operator Variation Request Network Rail has:

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

2.3.2 The duration of any Train Operator Variation Service shall not exceed twelve months.

2.3.3 For the purposes of paragraph 2.3.1, Train Operator Variation Services:

- (a) shall not include Services for the purpose of testing under vehicle acceptance procedures; but
- (b) shall include Services for the purpose of testing rolling stock (including testing for the purpose of mileage accumulation) which has secured an engineering acceptance certificate and a certificate of interim operation.

2.3.4 For the purpose of this paragraph 2.3, where Train Operator Variation Requests for successive Train Operator Variation Services each having substantially the same characteristics are accepted, such Train Operator

Variation Services shall be aggregated for the purpose of ascertaining whether the period of twelve months has been exceeded.

2.3.5 Paragraphs 2.3.2 and 2.3.4 shall not apply to any Service to which a Freight Access Right applies that has been the subject matter of a Train Operator Variation Request.

2.4 *Public holidays*

[arrangements specifying the treatment of public holidays]

3. Network Rail's Flexing Rights

3.1 *Associations*

Where Associations are shown as Special Terms in the Rights Table relating to Firm Rights, Network Rail's Flexing Rights shall not be used to break such Associations.

4. Services

4.1 *Services*

The Services under this contract comprise:

- (a) services with the characteristics set out in the Rights Table in columns 1 to 18;
- (b) any Diverted Services;
- (c) any Ancillary Movements;
- (d) any Train Operator Variation Services; and
- (e) any Revised Base Service.

4.2 *Specified Equipment*

4.2.1 Subject to paragraph 4.2.3, the Train Operator has, in relation to a Service, a Firm Right to use any equipment registered with Network Rail's rolling stock library which has performance characteristics identical to or better than the Timing Load specified in the Rights Table for such Service.

4.2.2 Subject to paragraph 4.2.3, the Train Operator has, in relation to a Service, a Contingent Right to use any equipment registered with Network Rail's rolling stock library.

4.2.3 No rolling stock may be used unless and until it has achieved vehicle and route acceptance necessary for its use on the Network.

4.3 *Information*

The parties make no representations regarding the data set out in columns headed “For information – not part of contract” in the Rights Table and rows entitled “Non-contractual Comments” in the Rights Table. Such data does not form part of this contract and is included in the Rights Table for convenience and information only.

5. Amendment of the Rights Table

5.1 *Circumstances in which parties may amend the Rights Table*

Either party may by notice to the other propose that the Rights Table be amended in accordance with this paragraph 5. Such amendment shall be restricted to a change to the extent of the window in either or both of the columns headed “Arrival Window” or “Departure Window” of the Rights Table.

5.2 *Procedure for amendment of the Rights Table*

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

- (i) the amendment may only take effect on a Principal Change Date or Subsidiary Change Date, but in any event shall not take effect before the Principal Change Date in 2019; and
- (ii) the notice must be given on or before the first day of the month fifteen (15) months before the relevant Principal Change Date or the Subsidiary Change Date as the case may be.

(b) Any notice under paragraph 5.2(a) shall specify that party’s proposed amendments to the extent of the window in either or both of the columns headed “Arrival Window” or “Departure Window”, and be accompanied by information in reasonable detail supporting the change proposed and setting out the reasons for it.

(c) If the party receiving a notice issued under paragraph 5.2(a) agrees that the Rights Table should be amended in accordance with that notice, then it shall as soon as reasonably practicable (and in any event no later than 20 Working Days) after receiving that notice respond in writing setting out its agreement. The parties shall then ensure that ORR is furnished with the agreed amendment and such information and evidence as ORR requires to decide whether or not to approve the amendment.

(d) If the party receiving a notice issued under paragraph 5.2(a) does not agree that the Rights Table should be amended in accordance with that notice, then it shall respond to that notice in writing in reasonable detail and

with reasons for its response within 20 Working Days of service of such notice. Promptly (and in any event within 20 Working Days) following the service of such written notice of disagreement, the parties shall endeavour to agree whether the Rights Table should be amended in accordance with this paragraph 5 and, if so, the amendments. If they do so agree, the parties shall then ensure that ORR is furnished with the agreed amendment and such information and evidence as ORR requires to decide whether or not to approve the amendment.

(e) If the parties fail to reach agreement within 40 Working Days of service of a notice under paragraph 5.2(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) 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) In making its determination under paragraph 5.2(e)(ii), ORR shall have regard to the information and evidence provided by the parties, and the duties set out in section 4 of the Act.

(g) An amendment to the Rights Table shall take effect only when it has been approved (in the case of an amendment agreed by the parties) or determined (in the case of a proposal referred to ORR under paragraph 5.2(e)) in writing by ORR, and shall apply from the relevant Principal Change Date proposed by the party requesting the change (in accordance with paragraph 5.2(a)).