

SCHEDULE 4

Revised extract from Schedule 4 of the model contract – Page 54

“Base Service” means:

- (a) a Planned Service which is not able to operate as Planned; or
- (b) a Train Slot in respect of a Freight Access Right as described in subparagraph “(a)” of that definition contained in Schedule 5 which is not able to be entered in the New Working Timetable or the Working Timetable in accordance with that right;

in either case because of the non-availability of any part of the Network as a result of a Network Rail Early Notice Possession;

Revised extracts from Schedule 4 of the model contract - Pages 55 – 60

provided that:

the relevant variation arises as a direct result of a Network Rail Early Notice Possession; and

a Category 2 Disruption or a Category 3 Disruption has not been claimed and paid in relation to the relevant Base Service;

“Category 2 Disruption” means a variation to any Base Service which would otherwise have operated, where such variation has one or more of the following effects:

there is no Revised Base Service;

- (a) the imposition of more demanding gauge restrictions for the Revised Base Service compared to the Base Service;
- (b) at least one additional locomotive is used for the Revised Base Service over the number used for the Base Service; or
- (c) a diesel locomotive is required to be used for the Revised Base Service in circumstances where Network Rail has agreed to provide electricity for traction purposes for the Base Service as apparent from the column headed “Timing Load” in the Rights Table annexed to Schedule 5;

provided that:

- (i) the relevant variation arises as a direct result of a Network Rail Early Notice Possession; and
- (ii) a Category 3 Disruption has not been claimed and paid in relation to the relevant Base Service;

“Category 3 Disruption” means a variation to any Base Service which would otherwise have operated, where such variation has one or more of the following effects:

- (a) there is no Revised Base Service and the access from the Origin or to the Destination of the Base Service is blocked to all rail freight services (except as a result of the non-availability of the applicable gauge cleared route);
- (b) (i) there is no Revised Base Service due to the lack of an applicable gauge cleared route between the Origin and the Destination which has lasted or lasts in total for more than 60 hours; or
- (ii) the Revised Base Service does not have an applicable gauge cleared route between the Origin and the Destination where:

- (A) the lack of such applicable gauge cleared route has lasted or lasts in total for more than 60 hours; and
- (B) the Revised Base Service operates in whole, or in part, at the relevant location within this 60 hour period;
- (c) all or part of the goods planned to be carried by the Base Service are required to be transported by any mode other than rail, for all or any part of the journey from its Origin to its Destination;
- (d) at least one additional locomotive is used for the Revised Base Service over the number used for the Base Service;
- (e) a diesel locomotive is required to be used for the Revised Base Service in circumstances where Network Rail has agreed to provide electricity for traction purposes for the Base Service as apparent from the column headed "Timing Load" in the Rights Table annexed to Schedule 5; or
- (f) the parties agree that there is a requirement for a specified number of the Train Operator's train crew to acquire knowledge of any diversionary route which may form part of the Revised Base Service and such requirement has come about as a direct result of the exceptional nature of the variation to the Base Service,

provided that the relevant variation arises as a direct result of a Network Rail Early Notice Possession;

"Category 3 Disruption Trigger" means where the Train Operator incurs Actual Costs as a consequence of any Category 3 Disruption arising from a single Network Rail Early Notice Possession;

"Disruption Claim Notice" has the meaning specified in paragraph 3.4.2;

"Disruptive Event" has the meaning ascribed to it in Part H of the Network Code;

"Early Notice Possession" means any Restriction of Use of all or part of the Network notified in all material respects to a Train Operator in accordance with sections 4, 5 or 7 of the Engineering Access Statement prior to the Possession Notice Date;

"Enhanced Planned Disruption Sum" means £800;

"Freight Capacity Charge" has the meaning ascribed to it in Schedule 7;

"Late Notice Actual Costs" 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 Variable Costs but net of:

- (a) any benefit arising from a Relevant Cancellation or Relevant Service Variation (as the case may be) including any decrease in Variable Costs

as a consequence of such Relevant Cancellation or Relevant Service Variation (as the case may be); and

- (b) any Late Notice Cancellation Sum or Service Variation Sum (as the case may be) due to the Train Operator in connection with the relevant Service affected by such Relevant Cancellation or Relevant Service Variation (as the case may be);

“Late Notice Actual Costs Claim Notice” has the meaning specified in paragraph 9.3;

“Late Notice Actual Costs Claim Trigger” means:

- (a) in respect of a Relevant Cancellation, the condition specified in paragraph 9.1(b); or
- (b) in respect of a Relevant Service Variation, the condition specified in paragraph 9.2(b);

“Late Notice Cancellation” has the meaning ascribed to it in Schedule 8;

“Late Notice Cancellation Sum” has the meaning ascribed to it in Schedule 8;

“Network Rail Early Notice Possession” means any Early Notice Possession other than an Operator Early Notice Possession;

“Normal Planned Disruption Sum” means £300;

“Operator Early Notice Possession” means any Early Notice Possession 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; or
- (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.

“Original Service” means a Planned Service which:

- (a) is affected by a Disruptive Event as described in paragraph 4.1; or

(b) is not able to operate because of the non-availability of any part of the Network as described in paragraph 5.1;

“**Originally Requested**” has the meaning specified in paragraph 4.1;

“**Planned Disruption Sum**” means a Normal Planned Disruption Sum or an Enhanced Planned Disruption Sum;

“**Possession Notice Date**” means, in respect of each Service, the day which is 84 days before the day on which the Service is Planned to depart its Origin;

“**Relevant Cancellation**” has the meaning specified in paragraph 9.1;

“**Relevant Service Variation**” has the meaning specified in paragraph 9.2;

“**Revised Base Service**” means a Base Service which is varied and/or operated using a revised Train Slot established in accordance with Condition D2 or D3 of the Network Code;

“**Round Trip**” means a Service and any associated Empty Services and Ancillary Movements;

“**Service Variation**” has the meaning attributed to it in paragraph 7.1;

“**Variable Charge**” has the meaning ascribed to it in Schedule 7; and

“**Variable Costs**” means the Train Operator’s costs which vary as a result of a Category 3 Disruption, a Relevant Cancellation or a Relevant Service Variation (as the case may be) arising directly from changes in train mileage including staff, maintenance, fuel or electricity costs, the Variable Charge and the Freight Capacity Charge.

1.2 *Interpretation*

References in this Schedule to a “**Service**”, except in the definition of “Round Trip”, shall include, in relation to any Planned Service, any Empty Services or Ancillary Movements associated with such Planned Service.

2. **Payment**

Subject to and in accordance with this Schedule 4 and paragraph 9 of Schedule 8, Network Rail shall, in respect of each Charging Period, pay or procure payment of:

(d) a Service Variation Sum in respect of each Service Variation and, where applicable subject to paragraph 9.2, any Late Notice Actual Costs arising from the process set out in paragraph 9.4 and in accordance with paragraph 9.4;

(e) a Late Notice Cancellation Sum in respect of each Late Notice Cancellation and, where applicable subject to paragraph 9.1, any Late

Notice Actual Costs arising from the process set out in paragraph 9.4 and in accordance with paragraph 9.4;

- (f) a Normal Planned Disruption Sum in respect of each Category 1 Disruption;
- (g) an Enhanced Planned Disruption Sum in respect of each Category 2 Disruption;
- (h) an Enhanced Planned Disruption Sum in respect of each Category 3 Disruption and, where applicable subject to paragraph 3.3.2, the Actual Costs arising from the process set out in paragraph 3.3.3 and in accordance with paragraph 3.3.3,

provided that a Train Operator shall not be entitled to receive more than one Planned Disruption Sum or one Service Variation Sum or one Cancellation Sum or one Late Notice Cancellation Sum in respect of an Applicable Service, whether under this Schedule 4 or under Schedule 8 or otherwise.

PART 2 - COMPENSATION FOR NOTIFICATION BEFORE THE POSSESSION NOTICE DATE

3. Disruption compensation

3.1 Category 1 Disruption

Subject to paragraphs 2, 3.4.1 and 3.5, Network Rail shall be liable in any Charging Period for a Normal Planned Disruption Sum in respect of each Category 1 Disruption in respect of any Base Service which is either:

- (a) Planned to depart its Origin in that Charging Period; or
- (b) is a Freight Access Right as described in sub-paragraph “(a)” of that definition contained in Schedule 5 which but for a Network Rail Early Notice Possession a Train Slot in accordance with those rights would have been Planned to depart its Origin in that Charging Period.

3.2 Category 2 Disruptions

Subject to paragraphs 2, 3.4.1 and 3.5, Network Rail shall be liable in any Charging Period for an Enhanced Planned Disruption Sum in respect of each Category 2 Disruption in respect of any Base Service which is either:

- (a) Planned to depart its Origin in that Charging Period; or
- (b) is a Freight Access Right as described in sub-paragraph “(a)” of that definition contained in Schedule 5 which but for a Network Rail Early Notice Possession a Train Slot in accordance with those rights would have been Planned to depart its Origin in that Charging Period.

3.3 *Category 3 Disruptions*

3.3.1 Subject to paragraphs 2, 3.4.1 and 3.5, Network Rail shall be liable in any Charging Period for an Enhanced Planned Disruption Sum in respect of each Base Service affected by a Category 3 Disruption which is either:

- (a) Planned to depart its Origin in that Charging Period; or
- (b) is a Freight Access Right as described in sub-paragraph “(a)” of that definition contained in Schedule 5 which but for a Network Rail Early Notice Possession a Train Slot in accordance with those rights would have been Planned to depart its Origin in that Charging Period.

3.3.2 If the Train Operator reasonably believes or expects that the Category 3 Disruption Trigger will be satisfied then the Train Operator will be entitled to serve an Actual Costs Claim Notice.

3.3.3 Within 56 days (or such other period as the parties may agree) of receipt by Network Rail of an Actual Costs Claim Notice, Network Rail shall notify the Train Operator that either:

- (a) it agrees that the Category 3 Disruption Trigger is satisfied and agrees to the amount of Actual Costs claimed by the Train Operator in the Actual Costs Claim Notice, in which case Network Rail shall also pay such Actual Costs to the Train Operator within 56 days of receipt by Network Rail of the relevant Actual Costs Claim Notice; or
- (b) it agrees that the Category 3 Disruption Trigger is satisfied but does not agree to the amount of the Actual Costs claimed by the Train Operator in the Actual Costs Claim Notice, in which case Network Rail shall:
 - (i) (if it has not already done so) commence negotiations with the Train Operator in respect of its Actual Costs in respect of the Base Service(s) affected by a Network Rail Early Notice Possession and shall continue such negotiations in good faith until they are concluded or until the Actual Costs are determined in accordance with Clause 13; and
 - (ii) pay to the Train Operator its Actual Costs within 28 days of those Actual Costs being agreed or determined in accordance with Clause 13 (as the case may be); or
- (c) it does not agree that the Category 3 Disruption Trigger is satisfied, in which case the matter shall be immediately referred for determination in accordance with Clause 13, and if it is determined in accordance with Clause 13 that the Category 3 Disruption Trigger is satisfied then Network Rail shall:

(if it has not already done so) commence negotiations with the Train Operator in respect of its Actual Costs in respect of the Base Service(s) affected by a Network Rail Early Notice Possession and shall continue such negotiations in