

8. Guide to completing the model passenger track access contract

Introduction

- 8.1 This chapter provides detailed guidance on completing the model passenger track access contract (“the model passenger contract”). As stated elsewhere in this document, we encourage the use of this model contract by Network Rail and passenger operators. However, we understand that in certain circumstances there may be grounds for the adoption of bespoke provisions. Paragraphs 6.2 and 6.3 discuss this further.
- 8.2 Any customisations that are made should not change the numbering of the standard provisions. Where provisions are not required, the text should be deleted and replaced with “Not used”. Similarly, in Schedule 5, the headings of unused tables should be retained, with the words “Not used” substituted for the deleted tables.
- 8.3 The inclusion of this guidance within this document does not mean applicants should not take professional legal advice when producing a draft contract or amendment for approval. In particular, where special arrangements apply to a passenger operator, this guidance may be insufficient. For this reason, it is important that those drafting a contract consider their specific contractual requirements and any bespoke arrangements that may be necessary.
- 8.4 As explained in Chapter 2, the model passenger contract contains a ‘front end’ which sets out the rights and obligations of the parties to the contract, as well as incorporating various schedules that detail the nature of the rights and obligations.

The front end of the contract

The date of the contract

- 8.5 The very first line of the contract, just above the word “BETWEEN”, provides for the insertion of the date on which the contract is signed. This should be filled in only once ORR has approved and directed that Network Rail enter into the track access contract with the beneficiary. It is not sufficient merely to Criteria and procedures for the approval of track access contracts put the date on the

front cover of the contract (though the date should also be inserted where square brackets appear on the front cover).

Parties to the contract

- 8.6 This section should contain the official company name, registered office address and company number of Network Rail and of the beneficiary of the contract, as per their official details registered with Companies House.

Clause 1.1 – Definitions

- 8.7 The terms used in the contract are defined in clause 1.1. Some of these definitions require the parties to insert specific information, as set out below.
- 8.8 The following definitions require the insertion of the date the passenger operator may first operate services under the track access contract:
- (a) Applicable Timetable Planning Rules;
 - (b) Applicable Engineering Access Statement; and
 - (c) Contract Year. This date should normally be the same as the effective date in clause 3.1 (see below).
- 8.9 The Expiry Date of the contract is the date on which the contract will expire as provided for by clause 3.5, unless the contract:
- (a) lapses under clause 3.4 (because of the non-fulfilment of the conditions precedent listed in clause 3.2); or
 - (b) is terminated under Schedule 6 (because of an Event of Default).
- Applicants will need to consider what duration of track access contract would be appropriate, and, accordingly, what the corresponding Expiry Date should be. In doing so, they should have regard to our policy on long-term access contracts so they are aware of what we duration are likely to approve.
- 8.10 The Longstop Date is the date by which the contract will lapse under clause 3.4 if the conditions precedent have not been met. Those drafting the contract will need to specify what this date is.

Clause 3.1 - Effective Date

- 8.11 Those drafting the contract will need to insert the date on which the provisions of the contract (aside from clause 5) become effective. Clause 5 is the clause by which Network Rail grants the passenger operator permission to use the network, but it can only become effective once:
- (a) the conditions precedent in clause 3.2 have been fully satisfied; and

- (b) all other provisions in the contract have become effective (as provided for by clause 3.1). Accordingly, the effective date inserted into clause 3.1 should be the date on which the passenger operator wishes to start operating services under the contract. If the conditions precedent are not satisfied by this date, then services will not be able to commence.

Clause 12 – Governing law

- 8.12 This clause provides for the contract to be subject to the laws of England and Wales. The model passenger contract is drafted to be consistent with the laws of England and Wales, so any railway company based in Scotland that wanted their contract to be subject to Scottish law would need to adjust the provisions appropriately. At present only First ScotRail Limited (ScotRail) has a track access contract that is subject to Scottish law (see paragraphs 3.11 and 3.12 of [Model clauses: the template passenger track access contract – Regulator’s final conclusions, ORR, June 2003](#)).

Clause 15 – Assignment and novation

- 8.13 Clause 15.2 requires Network Rail to participate in a novation under section 30 of the Act when requested by the franchising authority. (The default franchising authority in the model passenger contract is the Secretary of State. However, for situations where the Scottish Ministers hold this authority (though executed through the agency of Transport Scotland), the drafting of this clause should be amended to state the Scottish Ministers). Section 30 provides for circumstances where certain services are no longer to be run under a franchise agreement, in which case the franchising authority may need to novate the relevant contract so that it can provide the services itself or secure their provision through, for example, another train operator.
- 8.14 However, in circumstances where there is a concession authority (such as Merseytravel or Transport for London) rather than a franchising authority, this clause will need to be amended appropriately.
- 8.15 For open access passenger operators, the text of clauses 15.2 and 15.3 should be deleted and replaced with the words “Not used” as such operators do not provide services in accordance with a franchise or concession agreement. Clause 15.1 should be retained.

Clause 18.5 – Counterparts

- 8.16 Clause 18.5 provides that the contract may be executed in counterparts. For contracts to be governed under Scottish Law, the text of this clause should be deleted and replaced with “Not used” because Scottish Law does not permit counterparts.

Clause 18.7 – Contracts (Rights of Third Parties) Act 1999

- 8.17 Clause 18.7 is designed to ensure that only the parties to the contract can enforce the terms of the contract. The only exceptions are the Secretary of State, who can enforce clauses 15.2 and 15.3 (novation) and the Office of Rail Regulation, which can enforce the rights given to it under the contract (including the network code). This clause should only be included in contracts governed by English Law.
- 8.18 Where the Secretary of State is not the franchising authority for the passenger operator (e.g. where the Scottish Ministers hold this authority (through the agency of Transport Scotland)) or there is a concession authority with rights under clauses 15.2 and 15.3, the drafting of this clause should be amended accordingly. 8.19 For open access passenger operators, it is normally the case that the only third party with rights under this provision would be the Office of Rail Regulation; in which case, the text of clause 18.7.3 (Application to the Secretary of State in respect of clauses 15.2 and 15.3) should be deleted and replaced with the words “Not used”.

Clause 19 – Transition (from a previous track access contract)

- 8.20 Clause 19 is designed to ensure a seamless transition between an expiring contract and a new one, either where the incumbent operator is renewing its contract or where a new operator is taking over following refranchising. This clause allows specific actions taken under the previous contract to have effect under the new contract, as if those actions had been taken under the new contract. This includes access proposals made during the timetabling process in Part D of the network code, any consultations undertaken, notices served, matters referred to dispute resolution, agreements reached or determinations made under Parts D, F, G or H of the network code in relation to the Engineering Access Statement, Timetable Planning Rules, Major Projects, Vehicle Change, Network Change and train regulation. For the purposes of Schedule 4 to the contract, notifications made in relation to restrictions of use established under the previous contract are also given effect in the new contract.
- 8.21 Where transition arrangements from a previous access contract are required, the definition of Previous Access Agreement should be completed in clause 19.2. If such arrangements are not required, the text of clause 19 may be deleted and marked as “Not used”.

Schedule 1 – contact particulars

- 8.22 This Schedule should set out the addresses and contact details of the parties for the service of notices. Under clause 18.4.2 of the contract, the parties may make changes to this Schedule without ORR's approval. Any changes must be notified to the other party as soon as reasonably practicable and to ORR within 14 days of being made.

Schedule 2 – the routes

- 8.23 This Schedule should simply list all the routes which the passenger operator has permission to use. This should include the routes over which services are normally scheduled, diversionary routes (for use during engineering work or emergencies), routes for empty coaching stock (ECS) movements and the transfer of rolling stock to and from maintenance depots – where these have not been listed elsewhere in Schedule 2. For ease of reference, routes may be listed under separate headings but, other than listing the routes, this schedule should not purport to give or restrict access. This is because the passenger operator's rights to use the routes comes from clause 5 and Schedule 5 or the network code, not from this schedule.
- 8.24 For ease of use, in Schedule 2 it is preferable that a main route be listed first, followed by those routes that branch off of it, then the next main route etc.

Schedule 3 – collateral agreements

- 8.25 This Schedule lists any collateral agreements which, under clause 3.2(c), must be entered into (executed and delivered) before the passenger operator's "permission to use" the Routes under clause 5 takes effect. In addition, Schedule 6 provides that the breach of a collateral agreement may amount to an Event of Default, which could lead to the suspension or termination of the contract.
- 8.26 The applicant(s) will need to include the relevant collateral agreements when drafting the contract. The wording of paragraph 3 (franchise agreement) will need to be amended where the Scottish Ministers (through the agency of Transport Scotland) are the franchising authority or where there is a concession agreement with a concession authority rather than a franchise agreement. For open access operators, the text of paragraph 3 is not required and should be deleted, with the words "Not used" inserted.

Schedule 4 – restrictions of use regime

- 8.27 Schedule 4 sets out the restrictions of use regime. This provides compensation to the train operator when its train services are disrupted due to planned restrictions of use. It also incentivises Network Rail to plan restrictions of use as efficiently as possible, and give train operators as much notice as possible of a restriction of use. See paragraphs 5.70-5.75 for more on our policy on restrictions of use.
- 8.28 As stated in paragraph 5.72, the Schedule 4 arrangements for open access operators differ from those for franchised operators in that they only receive compensation for long or sustained disruption. Accordingly, until such time as we issue a model contract for open access passenger operators, a Schedule 4 for a new open access operator will need to be adapted to be consistent with this by reference to our Periodic Review 2008 review notice. Where an open access operator wishes to have the full Schedule 4 regime of a franchised operator, it could do so in return for the payment of an access charges supplement. In such cases, the Schedule 4 from the model passenger contract should be used.

Completing Annexes B and C to Part 3 of Schedule 4

- 8.29 Both the open access and franchised passenger operator regimes require the completion of Annex B and Annex C to Part 3 of Schedule 4. The data in these annexes is necessary to calculate both formula based cost compensation (which applies only where an access charges supplement has been paid) and significant possession costs.
- 8.30 Annex B contains a lookup table for estimated bus mile (“EBM”) weights. Estimated bus miles are used to calculate formula cost compensation for rail replacement buses. Annex B describes how estimated bus miles should be calculated for each possession type and service group.
- 8.31 The first part of Annex B is a map which shows ‘viable transfer points’ – the points on the operator’s network area where it is possible to transfer passengers from rail to bus transport. The second part of Annex B is the lookup table for estimated bus miles. For each route and pair of viable transfer points, this table should set out the bus replacement strategy for each type of possession. Bus replacement strategies should be separately identified where they vary according to infrastructure rules (for example which routes are open) and other operating rules (for example whether underground replacement is possible). For each service group affected by the possession, full or partial bus

replacement should be identified together with the distance of the bus replacement.

- 8.32 Annex C contains the payment rate per train mile. This payment rate is used to calculate the cost of any changes in rail costs from a possession, for example the additional rail costs from using a diversion which is longer than the normal route. When completing the contract Annex C should be populated with the rail operating cost per train mile for each service group based on the variable usage charge and fuel cost for the default train consist. Costs should be in 2009/10 prices and diesel fuel costs should be assumed to be 56 pence per litre and electricity charges should be assumed to be 4.74 pence per KWh.

Schedule 5 – the services and specified equipment

- 8.33 Schedule 5 describes the passenger operator's rights to run services on the network. That is, it sets out the number of services between point of origin and destination, along with the characteristics of those services (e.g. service intervals, journey times, calling patterns and the types of rolling stock that can be used).
- 8.34 A passenger operator can have two types of access rights: firm rights and/or contingent rights, both of which are defined in Schedule 5. Broadly speaking, a firm right for the passenger operator is subject only to:
- (a) the applicable Engineering Access Statement and Timetable Planning Rules;
 - (b) Network Rail's rights to flex an access proposal within the terms of the contract; and
 - (c) the operation of any other provisions of the network code.

It is not subject to any other factors. Contingent rights are rights that are subject to additional factors outside the operator's control – normally other operators' firm rights. Contingent rights may not always be satisfied, and space in the working timetable to meet all operators' firm rights (if exercised under Part D by the Priority Date for the timetable in question) is always allocated before any space for contingent rights. The process by which operators' access rights are used to develop the timetable is set out in Part D of the network code. A passenger operator does not need to make an access proposal during the timetabling process if it does not wish to make any changes to the services in the previous timetable. A passenger operator only needs make an access proposal where it intends to amend services or introduce new services.

- 8.35 Schedule 5 has been designed to allow the consistent description of the number and characteristics of the train slots an operator may use. These are defined in the tables showing rights to Passenger Train Slots; service intervals or clockface departures; calling patterns; backstop times for the earliest and latest trains; specified equipment (type of rolling stock); selected maximum or fastest journey times; and, exceptionally, special arrangements such as unusually long or short turnaround times or rights to specific stabling locations or specific station platforms.
- 8.36 When considering making an amendment to parts of an existing contract, the parties should consider whether those amendments require changes to other parts of the contract. For example, a change to one table in Schedule 5, such as the addition of a different type of rolling stock to Table 5.1, may require a change to another table, such as journey time protection (Tables 6.1 – 6.3) or to another part of the contract (e.g. the Default Consist Data in Appendix 7C of Schedule 7).
- 8.37 Not all of the tables in Schedule 5 will necessarily be used by all operators, and it may sometimes be necessary for particular characteristics to be reflected in customised tables. However, the tables should provide clarity in terms of the rights an operator has, and facilitate comparison of the rights Network Rail has allocated on a particular route to different operators. We strongly recommend, and may in circumstances require, that the model clause provisions be used with as little customisation as possible.
- 8.38 A brief description of each table and the relevant provisions is included below. All provisions (other than Key Journey Times) are subject to the Engineering Access Statement and Timetable Planning Rules and to the network code, notably Part D (which sets out the timetabling process).

Paragraph 1.1 of Schedule 5 – definitions

- 8.39 Paragraph 1.1 sets out most of the definitions used in Schedule 5. Nearly all of these are standard and, except as set out below, will not normally require amendment or insertion of additional text.
- 8.40 One exception to this is arrangements for peak and off-peak services. Where there needs to be a distinction between peak and off-peak services in the contract, paragraph 1.1 contains a model definition of “Peak Services” and “Off-Peak Services”. The applicant(s) may either use this definition or, where the passenger operator’s services are of a complex nature (for example, services in cities with different peak times), it might be appropriate for Peak Services to

be defined separately in each service group table (template footnotes to these tables are provided for this purpose).

- 8.41 Where definitions are needed in paragraph 1.1, the times that the Peak Services will run will need to be inserted into the definition in place of the square brackets. The same applies to the footnoted definitions in Tables 2.1 and Table 2.2. However, either the definitions in paragraph 1.1 or the footnotes in Tables 2.1 and 2.2 should be used, but not both. Where one set is used, the other should be deleted. If no classification of “Peak Services” and “Off-Peak Services” is required, both sets of model definitions should be deleted.
- 8.42 For contracts relating to Scotland, the definition of Public Holiday should be amended appropriately as the model clause definition applies to public holidays in England and Wales. Quantum of train slots – paragraph 2 and Tables 2.1 and 2.2
- 8.43 The quantum of Passenger Train Slots and additional slots, described by routing under a service group heading, should be listed in Tables 2.1 and 2.2 respectively of Schedule 5. The rights to start or terminate trains short (paragraph 2.2) and to link services to form through-services (paragraph 2.3) are likely to be bespoke for the individual circumstances surrounding the contract.
- 8.44 The service groups in Tables 2.1 and 2.2 must be consistent with those in Appendix 1 of Schedule 8. Table 2.1 – Passenger Train Slots (firm rights)
- 8.45 Table 2.1 lists the number of train slots in each individual service group to which the operator has firm rights. All subsequent tables in Schedule 5 add characteristics to this quantum of rights.
- 8.46 Column 1 of Table 2.1 (service description) – includes the start point, end point and any key intermediate points necessary to describe the route taken by a particular service.
- 8.47 Full station names should be included – for example “Wakefield Westgate” or “Wakefield Kirkgate” rather than just “Wakefield”. Stations with double names should use the ampersand for clarity – e.g. Sandwell & Dudley (rather than Sandwell and Dudley). The “Via” column should always be filled in where alternative routes are possible so that it is clear which route is to be taken.
- 8.48 TSC is the train service code for timekeeping monitoring system purposes (used for Schedule 8). If the TSC changes en route for a particular service, both TSCs should be included in the table stating, for clarity, where the change takes place.

- 8.49 The “Description” column is intended to describe the different types of service on the route, such as “fast”, “semi-fast” or “all stations”. This provides for easy cross-reference to the different calling patterns in Table 4.1 and, where applicable, the different journey time protection to be applied for these different types of service.
- 8.50 It should always be quite simple to relate column 1 of subsequent Schedule 5 tables back to column 1 of Table 2.1. However, in some tables “Between X And Y” is used instead of “From X To Y” (e.g. Table 5.1, specified equipment). This form of words gives the same rights in each direction without having to have separate entries for both directions, thereby reducing the length of the table by 50%.
- 8.51 Column 2 of Table 2.1 - Passenger Train Slots - shows the total number of slots to which an operator is entitled on weekdays, Saturdays and Sundays. The weekday peak and off-peak totals are also shown. As mentioned in paragraphs 8.40-8.41, the times between which a service is counted as being a “peak” or an “off-peak” service can either be set out in paragraph 1.1 or in the footnotes at the bottom of the table. Where the footnotes are not required, they should be deleted.
- 8.52 If an operator does not differentiate between peak and off-peak services, the columns should be deleted and “Total Weekday” re-titled “Weekday”. If peak and off-peak are only used for certain services, for those services where neither are used, the corresponding cells in the table should be marked “N/A”.
- 8.53 Where peak and off-peak are used for a particular service, “0” should be used instead of N/A if there are no slots for that particular period. The Total Weekday amount should be the sum of all peak and off-peak train slots for the service.
- 8.54 If any entries in column 2 are split between summer and winter, these terms must be defined (in paragraph 1 of Schedule 5) to include the periods to which they refer.
- 8.55 Where there is more than one service group, Table 2.1 should, to ensure logical presentation, be organised as a set of separate tables, each corresponding to a particular service group or part-service group. Taken together, these separate tables then form Table 2.1. In addition, train slots with the same Train Service Code should, as far as possible, be grouped together. A logical layout, such as from London terminal followed by first intermediate point, second intermediate point, etc., then starting from the opposite end of the line and moving towards London, will assist the production of Appendix 1 of Schedule 8.

Table 2.2 – Additional Passenger Train Slots (contingent rights)

- 8.56 Table 2.2 lists the number of train slots to which the operator has contingent rights. These are subject to other operators' firm rights and the Decision Criteria in Part D of the network code. Network Rail is able to flex such access proposals or, indeed, decline them under the timetabling procedures in the network code. Given the flexibility this leaves for Network Rail, our main concern will be over the adequacy of capacity to make the exercise of such contingent rights feasible.
- 8.57 This Table should be used for contingent rights for regular scheduled train slots only – for example, additional summer Saturday services or services which the operator would like to run throughout the timetable but Network Rail cannot guarantee for the duration of the contract. Occasional relief services or services to sporting events, concerts etc. should not be placed in Table 2.2 but are permitted by paragraph 2.8 of Schedule 5 (see paragraph 8.64).
- 8.58 It is not possible to have firm rights attached to contingent rights. For example, a passenger operator cannot have firm rights to service intervals or journey time protection if it only has contingent rights to run the service in the first place. Aside from the details set out in Table 2.2, more specific service characteristics for Additional Passenger Train Slots should be left to the timetabling process.

Paragraph 2.2 – scheduling of part only of a Passenger Train Slot

- 8.59 Paragraph 2.2 allows for both firm rights and contingent rights for services to start or terminate at intermediate stations that are specified in this paragraph. The passenger operator may wish to start or terminate a service at any intermediate stopping point on the route, so long as this is permitted in the Engineering Access Statement and the Timetable Planning Rules. For example, a train could terminate short of the "to" station in this table. However, there may be some stations where it would be impractical to have many trains starting and terminating due to the capacity of the station.

Paragraph 2.3 – through services

- 8.60 There may be circumstances where the operator wishes to provide a through service (i.e. combining separate Passenger Train Slots to form one service). Paragraph 2.3 allows for the operator to be given rights to do this. The model passenger contract allows for the rights to through services to be specified as firm rights or contingent rights, depending on the circumstances.
- 8.61 Where a passenger operator will need to split and join trains at certain locations, it would be appropriate for an additional sub-paragraph to be added to

paragraph 2.3 to provide firm or contingent rights for this. For example: “(c) Firm Rights to couple and uncouple trains at [names of locations].”

Paragraphs 2.4 and 2.5 – contingent rights

8.62 Paragraph 2.4 gives effect to any Additional Passenger Train Slots (contingent rights) set out in Table 2.2. Paragraph 2.5 provides for the passenger operator to use part of any Additional Passenger Train Slot in Table 2.2 and to have that Passenger Train Slot commence from and/or terminate at any station listed in its calling pattern. Paragraphs 2.6 and 2.7 – ancillary movements

8.63 Paragraphs 2.6 and 2.7 give the operator firm rights to make ancillary movements that are necessary or reasonably required to give effect to other firm rights to services that the operator might hold. These rights are subject to Network Rail’s right to vary the times in the access proposal in accordance with the Decision Criteria (see Part D of the network code), in order to maximise the efficient use of the network.

Paragraph 2.8 – relief services for special events

8.64 Paragraph 2.8 gives contingent rights for relief services for seasonal or special events such as Christmas shopping services, sporting events, concerts etc. ORR has issued a general approval which, amongst other things, permits the insertion of paragraph 2.8 into Schedule 5 of a contract where it does not currently exist. This provision does not permit the use of other routes or the calling at stations not already permitted by the contract. This is because its purpose is to provide relief services, rather than open up opportunities for new services.

Paragraphs 2.9 and 2.10 – public holidays

8.65 Paragraph 2.9 should be used to specify what rights (if any) the operator has on 25 and 26 December. Paragraph 2.10 should specify what rights the operator has on other public holidays – for example, whether these are the same rights as on a weekday, Saturday or Sunday.

Paragraph 2.11 – stabling

8.66 Clause 5.2(d) states that, for the purposes of Part D, stabling shall be treated as the use of a train slot. Paragraph 2.11 of Schedule 5 qualifies that treatment by providing that such stabling does not count against the quantum of Passenger Train Slots in Table 2.1. This paragraph should never be deleted as the operator has permission to stable under clause 5.2 (see above) including where there are no firm rights to stable in Table 8.4 of Schedule 5.

Paragraph 3 – service intervals and clockface departures

- 8.67 Schedule 5 of the model passenger contract includes tables both for regular interval services (Tables 3.1, 3.1(a) and 3.1(b)) and for services with clockface departures (Table 3.2). We expect to require these to be used as alternatives, to be chosen according to the type of service and the commercial needs of the passenger operator.
- 8.68 An operator may wish to choose the regular interval table for some of its services or service groups and the clockface departure table for others (or it may opt for one table exclusively or neither). It may also wish to combine services so that, on trunk sections, services dovetail with each other to form regular intervals or interleaving clockface departures. This should be achieved by judicious use of columns 1 and 2 of Tables 3.1 and 3.2. Separate Tables 3.1(a) and 3.1(b) are provided for use if required for peak hour services.
- 8.69 For services passing through a hub station, it may make more sense for regular intervals or clockface departures to apply at this station, rather than at the point of departure. The tables allow for this option.
- 8.70 In discharging our statutory duty to promote the use of the network, we will wish to be satisfied that a requirement for specified service intervals and/or clockface departures will not lead to an inefficient use of capacity. For example, where the capacity on a route is sufficient to allow trains to run at three-minute intervals, it would be inefficient for an operator to have rights to run trains every five minutes since this would effectively reduce the route's capacity from a possible maximum of 20 to 12 trains per hour. However, we accept that there may be valid reasons for seeking such requirements – for example improved reliability through not operating to the minimum intervals between trains theoretically possible, and we will, of course, consider each case, and its justification, on its merits.

Tables 3.1, 3.1a and 3.1b – service intervals

- 8.71 These three tables set out the time gap between trains calling at a station on specified routes. Table 3.1 sets out the station where the interval applies during the day and Tables 3.1a and 3.1b, where appropriate, give more details of the intervals during the morning and evening peak times respectively. The service interval in the tables is a firm right, but only if the operator uses the regular calling pattern for that service (subject to paragraph 4 of Schedule 5, described in paragraph 8.86). Network Rail is entitled to vary these rights by a specified amount of time in order to facilitate efficient network usage.

- 8.72 Table 3.1 is best suited to a frequent service – for example, a commuter service running every 10 or 20 minutes, but up to 60 minutes with other services running part of the way making up part of a more frequent service. We would expect a maximum variation to be up to +/-3 mins (the shorter the interval, the shorter the variation). Any longer could defeat the object of having a firm right to a specified service interval.
- 8.73 If there is to be no differentiation between Peak and Off-Peak for the services (in Tables 3.1, 3.1a or 3.1b), then those columns in Table 3.1 should be merged and then headed “Weekday” (in both columns 3 and 4). However, if Tables 3.1a and 3.1b are used to list separately the morning and evening Peak services, the Peak column in Columns 3 and 4 on Table 3.1 should be deleted. (N.B. In these circumstances, the Off-Peak column should not be renamed Weekday as suggested in the model clause footnote to Table 3.1 – this is an error.) Note that the square brackets in Tables 3.1a and 3.1b need to be populated, and, if necessary, the times shown in square brackets in the headings should be varied. Note also that if Network Rail varies an access proposal such that it falls outside the specified hours by no more than the maximum permitted flex, it is not regarded as being in breach of contract.
- 8.74 Rather than a long list of footnotes listing the periods at which different service intervals apply, we suggest including the times in the table. e.g.

Interval (minutes)		
Weekday	Saturday	Sunday
20 (0530 – 1959)	20 (0530 – 2029)	30 (0833 – 2232)
30 (2000 – 2259)		

If the interval between services changes for different periods throughout the day, the times should not overlap.

- 8.75 Paragraph 3.4 allows Network Rail to vary individual departures (or arrivals) within the established repeating pattern by the number of minutes specified in Tables 3.1, 3.1(a) and 3.1(b). The intention behind this provision is to enable Network Rail to flex individual interval periods up to the maximum permitted variation, provided that the effect of this does not deprive the passenger operator of its rights to quantum. However, the existing text of paragraph 3.4 is not clear as it mentions the “average interval” between Passenger Train Slots. Therefore, we suggest that those drafting the contract consider replacing the

text immediately following paragraph 3.4(b) with: "...with the effect that the interval between any two or more such Passenger Train Slots may be less than or more than that specified in column 3 of Table 3.1, [3.1a and 3.1b,] provided that the combined effect of such flexing does not lead to the Train Operator being given fewer Passenger Train Slots in the working timetable than the quantum to which it would otherwise be entitled."

Table 3.2 – clockface departures

- 8.76 This table sets out services where the operator has firm rights to clockface departures – that is, Passenger Train Slots departing at the same time(s) each hour from specified stations. Clockface departures are best suited to a less frequent regular service (such as an intercity service) – for example, every 60 minute interval, so that the operator can advertise trains at regular times – such as xx:05.
- 8.77 Subject to the operator using the regular calling pattern, paragraphs 3.5-3.7 provide for there to be a regular interval between clockface departures in each specified period (as defined in column 3 of Table 3.2, such as the Peak or Off-Peak). There may be more than one clockface departure in any hour (as set out in column 3 of Table 3.2). Where there are two or more such departures in any hour, the operator has a right to have equal intervals between them. For example, where there are three clockface departures in an hour for a service, these would be spaced at 20 minute intervals. However, Network Rail has the flexibility to set the starting point of the repeating clockface pattern. It can also vary the departures of individual trains from the established clockface departure time by up to the number of minutes specified in paragraph 3.7(b), which will need to be defined by those drafting the contract. We would normally expect this maximum variation to be up to three minutes later. This enables the operator to advertise the train at the regular times even though individual trains in the working timetable may depart up to three minutes later.
- 8.78 If Peak and Off-Peak are not used the columns should be merged and headed "Weekday". To permit clockface departures for a two-hourly service, the heading in Table 3.2 of "per Period of 60 Minutes" may be changed to "per Period of 120 Minutes", though the text in paragraph 3.5 would also need to be amended accordingly.
- 8.79 Rather than a long list of footnotes listing the periods during which different Clockface Departures apply, we suggest including the times in the table, e.g.

Number of Clockface Departures per Period of 60 Minutes		
Weekday	Saturday	Sunday
2 (0600 – 2159)	2 (0630 – 2029)	2 (0833 – 1732)
1 (2000 – 2259)		1 (1933 – 2232)

Table 3.3 – first and last trains

- 8.80 The purpose of Table 3.3 is to set down in the contract the times at which the route should be open for the earliest service in the morning and the latest service in the evening – that is, the earliest service must be no later than xx:xx and the latest service must be no earlier than yy:yy.
- 8.81 In this table, an appropriate balance needs to be struck between the specification of earliest and latest trains, driven by commercial requirements and/or franchise commitments, and the implications this has for safe, effective and adequate overnight maintenance and renewal activity, and its funding.
- 8.82 Table 3.3 is often used far more than necessary. Once a route is protected by one service, other services using the same route do not need to be listed in the table as this adds no value.
- 8.83 The times used should not hard-wire the current first and last trains. We would usually expect a margin so that small variations in the timetable do not require amendments to the table. For example, if the first train on a route currently runs at 0530, we might expect the entry in the table to state that the earliest train must be timetabled no later than 0535.
- 8.84 Network Rail must be careful if agreeing to earliest/latest Passenger Train Slots for services where service intervals and clockface departures would also apply. This is because such combinations can significantly reduce its flexibility in setting the timetable. For example, an Earliest Passenger Train Slot requiring the first train to leave no later than 0605, if combined with a right to two clockface departures per hour from 0600, could restrict Network Rail's flexibility to set the clockface pattern by requiring it to schedule the first clockface departure between 0600 and 0605, with subsequent trains repeating at half hourly intervals thereafter. Without the Earliest Passenger Train Slot, it would have been able to place the first train anywhere between 0600 and 0630, with the clockface pattern following on from that time.

- 8.85 Although these rights, as with almost all firm rights, are subject to the Engineering Access Statement and Timetable Planning Rules, they give the operator a marker which it can use when the Engineering Access Statement and Timetable Planning Rules are being established for each timetable in the Part D timetabling process.

Paragraph 4 and Table 4.1 – calling patterns

- 8.86 Table 4.1 shows the stopping pattern of the specified services. This gives the operator firm rights to call at the stations in column 2, the regular calling pattern, or a sub-set of that calling pattern (see paragraph 4.2). Different calling patterns should be included for fast, semi-fast and services calling at all stations. Again, full names of stations should be used (see paragraph 8.47 for guidance). Where relevant “All stations” may be used instead of the full list of stations. The operator has contingent rights to call at those stations listed in column 3 (“Additional stations”) (but see paragraph 8.8 of Schedule 5 and Table 8.6 for provisions that relate to firm rights to additional calls at stations listed as “Additional stations”). Only the intermediate stations should be listed in columns 2 and 3 of Table 4.1, not the origin and destination stations.
- 8.87 We expect that the calling patterns negotiated for Table 4.1 will take account of any obligations that a passenger operator may have under a franchise agreement. We expect to accept some degree of flexibility in calling patterns: options could be created which enable services to stop at a range of alternative destinations (e.g. stops at A, B and one from C, D or E). However, such flexibility is more likely to be possible on the less busy parts of the network. On very congested parts, little flexibility in calling pattern is likely to be permissible if contractual journey times are to be maintained since the ability to vary calling patterns could have an adverse effect on available capacity. Conversely, the ability to ‘skip-stop’ (i.e. for the operator to omit intermediate stops) can increase available capacity. We will expect to consider to what extent flexible calling patterns impact on available capacity on a given piece of network before such rights are approved.
- 8.88 During the process for making access proposals, the passenger operator may make an access proposal for train slots which would not require the train using the slot to call at all the stations specified in the table, although Network Rail may insert an appropriate amount of pathing time to compensate for this missed stop. (If the train misses a stop it may conflict with other movements/train slots, so Network Rail may need pathing time to remove this conflict.) If the operator excludes a station from a Passenger Train Slot during the timetable

development process, then the regular calling pattern for that service is considered to be maintained for the purposes of paragraphs 3.3 and 3.6 and the calling pattern is considered to be maintained for the purposes of paragraphs 6.3(a), 6.6(b) and 6.8(a) of Schedule 5 relating to journey time protection.

Table 5.1 Specified equipment

- 8.89 The passenger operator has firm rights to use the Standard Specified Equipment in column 2 and contingent rights to use the Additional Specified Equipment in column 3 of Table 5.1. However, paragraph 5.3 says that any Additional Specified Equipment that is capable of at least equivalent performance to the Standard Specified Equipment shall be deemed as Standard Specified Equipment for the purposes of service intervals, clockface departures and journey time protection. The Standard Specified Equipment is that which will normally operate the service and on which the timetable should be developed.
- 8.90 In the interests of flexibility, we wish operators to be able to vary the rolling stock they operate on particular services or service groups. However, such flexibility cannot be open-ended. The ability to run stock with different operational characteristics, for example in terms of speed, acceleration and deceleration, could have an adverse effect on the efficient use of capacity, and could also constrain Network Rail's ability to model future timetables and thus be clear about the extent of capacity available.
- 8.91 We expect to approve provision for several types of rolling stock with similar (although not necessarily identical) operational characteristics to be included as "Standard Specified Equipment" in column 2 of Table 5.1 of the template. Rolling stock with inferior performance and not intended to be in regular service on the route in question, should meanwhile be described as "Additional Specified Equipment" in Column 3 – with the operator holding only contingent rights. Therefore, depending on the circumstances and the precise provisions of the contract, an inability by Network Rail to accommodate those rights, based on using that Additional Specified Equipment, in the timetable would not constitute a breach of the contract.
- 8.92 Unless there is a limit specified in Table 5.1, the passenger operator can operate trains up to the maximum length that the network can accommodate, subject to Network Rail varying train length where it cannot accommodate all access proposals to operate to the maximum length (for example, because of power supply constraints or insufficient platform length or the requirements of

other operators). Variations of this nature will be made according to the Decision Criteria in Part D of the network code. Where the number of vehicles can affect train performance, we will expect this to be reflected in the table (e.g. HST 2+8, CI.90+10 MkIII coaches); enabling Network Rail to understand the nature of the rights it is selling. Multiple units would normally be expressed only by the class number, not the number of vehicles to be operated, as performance would not be affected by the addition of extra units. Restrictions on the length of trains can be found in the Timetable Planning Rules and/or the Sectional Appendices.

Tables 6.1 to 6.3 – journey time protection

- 8.93 The model passenger contract provides templates for three different types of journey time protection: maximum journey times; fastest key journey times; and maximum key journey times. In summary:
- (a) maximum journey times are, in effect, contractual caps on the length of journey time for a service that Network Rail can put into the timetable; and
 - (b) key journey times (either in the form of a maximum key journey time or fastest key journey time) not only require Network Rail to provide a timetable that meets the key journey times, but give added benefit to operators by protecting against the degradation of the network affecting journey times. They do this by preventing Network Rail proposing changes to the Engineering Access Statement or Timetable Planning Rules that would prevent the key journey times being met.
- 8.94 All of these apply to specific services with specified calling patterns and specified rolling stock. Their purpose is to safeguard the length of journey times for the operator whilst giving different degrees of flexibility to Network Rail for when it compiles the timetable.
- 8.95 The calling patterns listed in column 2 must either be the full regular calling pattern or a sub-set of the regular calling pattern (i.e. the firm rights to calling patterns given by Table 4.1). Each of these calling patterns may be given its own journey time protection. If a train operator were to make an access proposal for using further sub-sets (further stations omitted) of the calling patterns listed, it would retain the journey time protection, but with the same timings as the calling pattern listed in column 2.
- 8.96 However, journey time protection in a contract should not be used to set the timetable. Regulations 16(9) and 18(3) of the Access and Management Regulations prohibit the specification of any train path in detail and forbid the

infrastructure manager from allocating capacity in the form of specific train paths for longer than a working timetable period (one timetable year).

- 8.97 Maximum journey times should be specified in Table 6.1. They are expressed in minutes, and can be varied for peak and off-peak services and for weekdays and weekends. They entitle the operator to have the specified maximum journey times met in the working timetable provided the services are operated to the specified calling pattern and with the specified rolling stock. This type of protection gives the greatest flexibility to Network Rail as the journey times in the table are automatically amended to reflect any changes in sectional running times, station dwell times, performance allowances, engineering recovery allowances and any other allowances provided for in the Engineering Access Statement and Timetable Planning Rules.
- 8.98 Changes to the Engineering Access Statement and the Timetable Planning Rules are proposed by Network Rail, but operators are consulted, and may appeal against the changes to the Timetabling Panel of the Access Disputes Committee and ultimately to ORR.
- 8.99 To provide flexibility, a maximum journey time may be expressed as a number of minutes, with a certain number or percentage of trains allowed to be timetabled to a stipulated higher time or required to be timetabled to a lower time. It gives Network Rail the ability to insert larger amounts of pathing time for those services where there is more likely to be a conflict (e.g. peak hour services or late night services running on two tracks rather than the normal four track railway), while ensuring that the average journey time remains lower. Such an approach would also reflect the way in which obligations tend to be expressed in franchise agreements.
- 8.100 Maximum journey times can be established for defined groupings of services, depending on the nature of the passenger operator's services. We do not wish to be prescriptive in this regard.
- 8.101 Negotiations for maximum journey times might be based on journey times currently achieved in practice, although we would not expect such times simply to flow through to Table 6.1, given the need to retain some flexibility for the construction of future timetables. A franchised operator may wish to base negotiations for such journey time protection partly on its franchise obligations. However, Table 6.1 is unlikely to be a simple reproduction of these obligations as it may not prove possible in practice for Network Rail to produce a timetable that resolves all conflicts and delivers all franchised operators' obligations.

8.102 Applicants using the maximum journey time provisions will need to insert the date that services will commence in place of the square brackets in paragraphs 6.4(a) and (b) of Schedule 5. This date will normally be the same as the effective date in clause 3.1 of the contract.

8.103 Fastest key journey times may be specified in Table 6.2. This is the highest level of protection available, and gives the least flexibility to Network Rail. They are intended to protect the capability of the network by establishing the fastest time that a specified train can travel between set points on the network, subject to a very limited degree of flexibility. This time would not normally be achievable for all train slots, but gives the operator a “headline” journey time. Fastest key journey times would, for instance, be used for “flagship” intercity train slots. Again, the operator must use the specified equipment and the specified calling pattern. The operator must make an access proposal for at least three slots on any weekday with the characteristics specified in the table. Network Rail can then choose which of the train slots should run within the fastest key journey time. In practice, these journeys should have minimal pathing time.

8.104 Maximum key journey times may be specified in Table 6.3. The obligation they create on Network Rail is to ensure that the timetable is constructed so as to avoid the maximum key journey times being breached. We would expect that maximum key journey times in Table 6.3 would only be set for the operator's most commercially important services on key routes. As with the other types of journey time protection, these times relate to services with the same calling pattern and specified equipment, which must be set out in the tables. These journey times should include a reasonable amount of additional time above the minimum achievable to afford Network Rail some flexibility in the design of the timetable.

8.105 Because of the restrictions on Network Rail's flexibility in constructing the timetable, we would not expect all journeys to be covered by key journey times.

Further guidance on the use of journey time protection provisions

8.106 Tight constraints on the timetabling of journey times clearly create significant limitations on Network Rail's ability to flex rights to put together the working timetable from operators' access proposals. Whilst recognising that a degree of contractual protection for journey times is of commercial importance to operators, and a legitimate part of the access ‘product’ that Network Rail supplies, we will expect proposed contracts to apply journey time constraints only to a limited range of key services, sufficient to provide an operator with the appropriate degree of comfort in respect of the physical network over which that

operator runs trains. We would not usually expect services with the same calling pattern and the same specified equipment to be given both maximum journey times and maximum key journey times; they should have one or the other.

8.107 We have deliberately not prescribed a formula for the calculation of journey times, or the difference between maximum and fastest key journey times. Our view is that Network Rail and operators should have the flexibility to ensure an efficient, robust and safe timetable, based on what is achievable. We will consider each case on its merits rather than necessarily applying exactly the same approach to every case, and the criteria for the expert's determination (paragraph 7.8(d) of Schedule 5) should provide a sufficient basis for the relevant factors to be taken into account.

8.108 A fuller discussion of the rationale for journey time protection can be found in Chapter 2 of Great Western Trains Company Ltd, South West Trains Ltd, Gatwick Express Ltd and South Central Ltd, Rail Regulator's conclusions on applications under section 17 of the Railways Act 1993, Office of the Rail Regulator, June 2002.

Paragraph 7 – key journey times and restrictions on changes to the Engineering Access Statement and Timetable Planning Rules

8.109 Paragraph 7.1(a) obliges Network Rail not to propose or agree to changes to the Engineering Access Statement or Timetable Planning Rules if this would prevent it from scheduling a key journey time in the working timetable. However, paragraph 7.1(c) provides that Network Rail will not be in breach of this obligation if its failure to schedule a key journey time is as a result of a Network Rail Restriction of Use, a Competent Authority Restriction of Use, an Operator Restriction of Use, or special project based possessions. Two examples of special project based possessions are provided in square brackets in the current version of the model passenger contract. These should be deleted unless there are special arrangements for such projects in Schedule 4, in which case the paragraph should be amended appropriately.

Key journey times and network change

8.110 If, during a timetable period, 90% or more of trains relating to a specific service, which have the characteristics defined in any part of the key journey Tables 6.2 or 6.3, exceed their scheduled journey time as a direct result of the condition or operation of the network then this is treated as a network change. The result of this is that Network Rail could be liable to pay compensation under the provisions of Part G of the network code. If there is a network change for this

reason, there is provision for the parties to agree a revised journey time, and/or to refer the matter to arbitration or mediation. Journey Time Review Notices

8.111 At any time, ORR may issue a Journey Time Review Notice which requires the parties to agree an amendment to one or more of the journey times set out in Tables 6.1, 6.2 and/or 6.3. (The notice must contain ORR's reasons for issuing it). In the case of maximum journey times in Table 6.1, we would only expect to issue a Journey Time Review Notice at the request of one of the parties and only where the circumstances were wholly outside the control of that party. In general, we would expect maximum journey times to be changed via changes to the Engineering Access Statement or Timetable Planning Rules, and would need to be persuaded that using this route would not be possible before issuing a Journey Time Review Notice. Either party may approach us to request that we issue a notice to amend the journey times in Tables 6.1, 6.2 and 6.3 and, if we do, the parties are thereby required to agree and submit an amendment to the access contract for our consent. If they fail to agree, there is provision to refer the matter to an independent expert who is required to make a determination on the basis of set criteria.

8.112 Once the parties have submitted to us a proposed amendment to the relevant journey times for our consent, we can if we consider it appropriate, and after consultation, issue a modification notice requiring any changes to the amendment we consider necessary. Once issued, the consent notice/modification notice then amends the contract.

Other rights

8.113 Tables 8.1-8.6 (with their associated paragraphs) provide for certain other rights that the parties may wish to negotiate for commercial purposes. However, these are for use in exceptional circumstances only and we do not expect to approve them as a matter of course. Operators will need to demonstrate that such rights are a very important commercial requirement and Network Rail will need to demonstrate that they do not create an undue constraint on its ability to exercise flexing rights. Network Rail will also need to be satisfied that the rights do not unduly constrain the aspirations of other users or potential users of the network. This list of other rights is not exhaustive and we will consider other bespoke provisions based on the same tests.

8.114 Where the tables are not used, they can be deleted and the text of the corresponding paragraphs can be replaced with "Not used". Table 8.1 – platform rights

8.115 This table gives firm rights to use particular platforms at specified stations. In practice, we approve very few rights to specific platforms as we believe platforming should be left to the Decision Criteria. Exceptional cases may be where specific platform facilities are required by one operator more than another.

Table 8.2 – connections

8.116 This table can be used to specify connections between the services listed. This means that the two services must be linked in a logical order during the timetabling process in order to facilitate provision of connecting services for passengers. This table should never be used for connections with the services of another operator as that third party cannot be bound by a bilateral contract.

Table 8.3 – departure time ranges

8.117 This table specifies a time slot during which the operator is entitled to departures from the specified station(s). This provision should be used only to satisfy specific franchise obligations or where there is some other very strong justification. For example, for children travelling to or from school, or journeys to and from ferry terminals. It should not be used to give ranges for the first and last trains which should be covered by Table 3.3.

Table 8.4 – stabling facilities

8.118 Clause 5.2(d) of the model passenger contract gives the passenger operator permission to Stable, which is treated, for the purposes of Part D of the network code, as the use of a Train Slot and subject to the network code. Stabling is defined in clause 1.1 of the model passenger contract as the “parking or laying up of the Specified Equipment or such other railway vehicles as the passenger 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”.

8.119 As the operator already has the rights to stabling necessary or reasonably required for giving full effect to its services, there is no need for contingent rights to stabling. For this reason, Table 8.4 in the model passenger contract covers firm rights only.

8.120 Table 8.4 gives the operator firm rights to use stabling facilities at locations other than maintenance depots, such as platforms and network sidings. It will include the type of train, number of vehicles and times when these facilities must be available. As firm rights to stabling can limit Network Rail’s ability to make the best use of all available stabling facilities in accordance with the Decision

Criteria, operators will need to explain in their application why they consider the right to stable under clause 5.2(d) is insufficient for their purposes and why it is important for them to have firm rights to stabling at these specific locations.

Table 8.5 – turnaround times

8.121 This table specifies the minimum turnaround time (the time between the train arriving and departing again) to which an operator is entitled at the specified stations. Turnaround times are normally specified in the Timetable Planning Rules and we would only expect to see firm rights to turnaround times where something different from the Timetable Planning Rules was required. For example, sleeper services may require extended times.

Table 8.6 – quantum of additional calls

8.122 These rights are intended for use when an operator has a franchise requirement to stop at minor stations a very limited number of times in a day. However, even then it would normally only be used where the stations are on a route over which the passenger operator is not the dominant operator. Thus, if a passenger operator was responsible for local services over a route where an InterCity passenger train operator was dominant, and there was a small number of calls of the type described, it might be appropriate for the passenger operator to protect its franchise commitment in this way. The passenger operator would have the relevant stations listed as “Additional stations” in Table 4.1. Table 8.6 is not intended for the use of a passenger operator whose service has multiple random calls at medium-sized stations. The latter would be better included in the regular calling pattern, with stops omitted from individual trains as required.

Schedule 6 – events of default, suspension and termination

8.123 This Schedule provides for the suspension and, ultimately, termination of the contract where a party is in default. 8.124 Paragraph 2.4(b) of Schedule 6 relates to the abatement of payment of the Fixed Track Charge (defined in Schedule 7) where a Suspension Notice has been served by Network Rail. Where there is no Fixed Track Charge in the contract, this paragraph is not required and the text should be deleted and replaced with the words “Not used”.

8.125 Paragraph 2.4(b) contains some square brackets around the term of “Corresponding Day”. These should be removed without amendment of the text unless the applicant(s) consider there is a need for some bespoke. However, this is not normally necessary.

Schedule 7 – access charges

- 8.126 Schedule 7 sets out the charges that the passenger operator must pay to Network Rail in return for access to the network and for any electricity traction charges that are to be incurred.
- 8.127 For most operators, the model Schedule 7 will not need to be amended. However, an exception to this is where there has been a franchise remapping exercise and a new franchisee does not have its name listed on the Schedule of Fixed Charges or List of Capacity Charge Rates issued by us as part of an access charges review. Network Rail and passenger operators should satisfy themselves that the charging provisions of Schedule 7 will work correctly for their situation and, where this is not the case, to consider any bespokeing of the model provisions. In recent cases where, following remapping, a new franchisee has sought a new track access contract and its name was not listed on the Schedule of Fixed Charges or List of Capacity Charge Rates, the definitions of these terms in paragraph 1 of Part 1 of Schedule 7 were amended to specify the charges within that definition, rather than referring to a separate document.
- 8.128 A further exception is where the passenger operator is obliged to pay additional permitted charges – for example, for the extension of signal box opening hours. See paragraphs 5.11-5.16.
- 8.129 See chapter 5 for more information on the track access charging framework.

Appendix 7C - Default Train Consist Data

- 8.130 In order to calculate the variable charge for a train movement, Network Rail needs to know the length and type of train used in that movement. This information is called the Train Consist Data. Normally, this information will be available to Network Rail through industry systems. However, it may not always be possible for Network Rail to determine what the Train Consist Data was for a particular movement, and so applicant(s) should insert into Appendix 7C of Schedule 7 a list of the most likely formation for each service, to be used as Default Train Consist Data when necessary.
- 8.131 ORR has issued a general approval which permits, amongst other things, the amendment of data in Appendix 7C.

Schedule 8 – performance regime

- 8.132 Schedule 8 contains the performance regime. This provides a compensation mechanism in the event of poor operational performance and incentivises Network Rail and the passenger operator to improve operational performance. It also drives decision-making by Network Rail and the passenger operator in relation to performance management. Further information is available in paragraphs 5.38-5.62.
- 8.133 The main body of Schedule 8 sets out the framework of the regime. The only areas of the main body that would normally be amended when a contract is being drafted relate to arrangements for the Passenger's Charter. Where these provisions are being used, Table A (Access Charges Supplement) in paragraph 14.10(a) should be completed. Where the Passenger's Charter provisions are to be disapplied, the text of paragraph 14 should be deleted and replaced with "Not used".
- 8.134 When completing the contract, appendices 1 and 3 of Schedule 8 should be populated. Appendix 2 is optional and its use depends on whether the Passenger's Charter is to apply to the contract. If it is not used then the words "Not used" should be inserted after both the Part 1 and Part 2 headings.
- 8.135 Appendix 1 to Schedule 8 contains a table setting out performance points, etc. The service groups must reflect those in Table 2.1 of Schedule 5. Performance Points are specified (by reference to historical data) for both parties to the contract, and are subject to annual adjustment in accordance with ORR's final determinations of performance improvements for each control period. The direction in column M should be stated as either "Forward" or "Reverse". The weighting will normally be 50% of the whole for the service group in each direction, spread by commercial importance. Weightings may be shown either as percentages to two decimal places, or as decimals of 1, to the fourth decimal place, as long as the units used are clear. The weightings for each service group must total to either 100% or 1, as appropriate.
- 8.136 Our policy on monitoring points is set out in paragraphs 5.50-5.55. In summary, our position is that each service should be monitored for performance throughout its journey and that all end points should be a monitoring point. However, our policy provides for certain exceptions to this.
- 8.137 Appendix 2 relates to the Passenger's Charter (though this is left blank if the Passenger's Charter is not to apply to the contract).

8.138 Appendix 3 contains the Sustained Poor Performance (“SPP”) thresholds. These are levels of performance over time sufficiently poor that we have deemed it a point at which the passenger operator should be able to apply for additional compensation over and above the standard Schedule 8 compensation payable. Paragraphs 18 and 19 of Schedule 8 set out the mechanism for this. The numbers in Appendix 3 are set at a percentage worse than the benchmark, with this percentage set by us at a periodic review. Currently, SPPs apply only to franchised/concession operators; other passenger operators might incorporate these provisions if moving from Local Output Commitments to Joint Performance Improvement Plans (see paragraphs 5.94-5.97).

Schedule 9 – limitation on liability

8.139 This schedule sets out the limitations on the liability of each party. Applicant(s) will need to specify the liability cap in paragraphs 1(a) and 1(b) (i), having regard to our policy on limitation on liability.

Schedule 10 – network code modifications

8.140 This schedule is the mechanism by which consequential modifications may be made to the track access contract as a result of changes to the network code. When changes are made to the network code, under the procedure in Part C of the code, these are incorporated by reference into track access contracts and take effect even if the contract does not make specific reference to the changes. However, consequential modifications to track access contracts may be needed, to provide clarity and to avoid ambiguities developing between provisions in a consolidated track access contract and in the network code (for example, a defined term in the network code could be replaced or modified and consequential changes to track access contracts would bring them into line and avoid ambiguity).

8.141 This schedule does not require the applicant(s) to specify any particular information within it.