

## SCHEDULE 4: RULES OF THE ROUTE, RULES OF THE PLAN AND RESTRICTIONS OF USE

[Note: ~~This amended Schedule 4 is reflective of a steady state position once the changes to this Schedule are fully implemented. The drafting does not therefore deal with the how this Schedule would apply during the implementation period or transition period nor does it~~The drafting does not address how open access passenger operators will be treated if they elect not to have the full rights to compensation for all types of Restrictions of Use.]

PART 1  
NOT USED

PART 2  
NOT USED

### PART 3: COMPENSATION FOR RESTRICTIONS OF USE

#### SECTION A

[This Section A of Part 3 Schedule 4:

- is applicable to the payment of any compensation attributable to Restrictions of Use (including any Over-runs connected to such Restrictions of Use) occurring on or after [the implementation date] unless the compensation amount or the specific<sup>1</sup> method of calculating the compensation amount has been agreed or determined prior to [the implementation date] under Section B and such compensation amount or calculation method relates to Restrictions of Use occurring before [a date which is 6 months after the implementation date];
- is not applicable to any Over-run which is connected to a Restriction of Use which is compensated under Section B or under Part G of the Network Code [identify "old" Part G].
- is applicable to the whole of any Restriction of Use which starts before [the implementation date] and finishes after [the implementation date] if half or more than half of the duration of that Restriction of Use occurs after [the implementation date].

For the purposes of the definition of "Sustained Planned Disruption":

- the reference to 3 or 7 consecutive Periods cannot include periods before [the implementation date]; and
- references to Restrictions of Use shall exclude any Restriction of Use for which compensation has been agreed under the version of Part G of the Network Code [identify "old" Part G].

#### **1 Definitions**

##### 1.1 *Defined terms*

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

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<sup>1</sup> In this context only, "specific" means that where possessions are agreed under a Major Project Notice or a Network Change Notice on the basis that the TOC has an entitlement to compensation, neither Access Party can claim that the calculation regime in the old Schedule 4 is the "method of calculating" that compensation. In such circumstances, the parties would have to agree what the appropriate calculation method is having regard to the timing of the compensation claim and the transitional arrangements on which version of schedule 4 should be applied. Specific therefore means a bespoke agreement on compensation methodology.

<b>“Applicable Timetable”</b>	means, in respect of any day, that part of the Working Timetable in respect of that day which is required to be drawn up in accordance with Condition D1.6.1 as at 22:00 hours on the day prior to that day;
<b>“Cancellation Minutes”</b>	shall have the meaning ascribed to it in Schedule 8;
<b>“Cap”</b>	shall have the meaning ascribed to it in Schedule 8;
<b>“Corresponding Day”</b>	means, in respect of any day (the <b>“first day”</b> ): <ul style="list-style-type: none"><li>(a) a day which is contained in the same Timetable Period as the first day and on which the Services scheduled in the First Working Timetable are the same as would have been scheduled on the first day but for Restrictions of Use reflected in the First Working Timetable for the first day; or</li><li>(b) if no day is found under paragraph (a) above, then a day which is contained in the equivalent Timetable Period for the time of year, in the year immediately preceding the Timetable Period which includes the first day and on which the Services scheduled in the First Working Timetable are the same as would have been scheduled on the first day but for Restrictions of Use reflected in the First Working Timetable for the first day; or</li><li>(c) if no day is found under paragraph (a) or (b) above, such other day as the parties may agree or as may be determined in accordance with paragraph 12.2;</li></ul>
<b>“Corresponding Day Timetable”</b>	means, in relation to a Corresponding Day, the First Working Timetable or such other timetable as may be agreed between the parties or otherwise determined in accordance with paragraph 12.2;
<b>[“CTRL Possession”</b>	shall have the meaning ascribed to it in Part 4 or Part 6 of this Schedule 4 as appropriate;]
<b>“Day 42 Statement”</b>	shall have the meaning ascribed to it in paragraph 13.1(a);
<b>“Disrupted”</b>	means: <ul style="list-style-type: none"><li>(a) cancelled;</li><li>(b) diverted off the Route over which it was scheduled to run in the Corresponding Day Timetable; and/or</li><li>(c) starting or finishing short in comparison with the Service as timetabled in the Corresponding Day Timetable;</li></ul>

**“First Restriction”** [shall have the meaning ascribed to it in paragraph 2.12\(a\)\(i\);](#)

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

**“First Working Timetable”** means, in respect of any day, the version of the Working Timetable for that day provided by Network Rail in accordance with Condition D3.2.7, as amended pursuant to Condition D3.2.9;

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

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

**“Monitoring Point”** shall have the meaning ascribed to it in Schedule 8;

**“Network Rail Restriction of Use”** means any Restriction of Use other than an Operator Restriction of Use, a CTRL Possession or, if applicable, a Thameslink Possession;

**“Notification Factor” or “NF”** shall have the meaning ascribed to it in paragraph 9;

**“Operator Restriction of Use”** means a Restriction of Use of the type referred to in paragraph 2.3;

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

**“Period”** means each consecutive period of 28 days during the term of this contract commencing at 00:00 hours on 1 April in each year, provided that the length of the first and last such Period in any year may be varied by up to 7 days on reasonable prior notice from Network Rail to the Train Operator;

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

**“Recovery Allowance”** means an allowance for additional time incorporated in the First Working Timetable or (where the Train Operator requests that the allowance is not incorporated in the First Working Timetable and Network Rail complies with that request) the Applicable Timetable to allow a Train to regain time lost during an earlier part of its journey;

**“Restriction of Use”** means, in respect of any day, any restriction of use of all or any part of the Routes (other than one caused by a Recovery Allowance which was contained in the Applicable Rules of the Plan relevant to that day notified to each Bidder on or before the end of the Drafting Period under Part D of the Network Code) which results in:

- (a) a difference between the Applicable Timetable on that day as compared with the First Working

	Timetable in respect of that day; and/or
	(b) a difference between the First Working Timetable on that day as compared with the Corresponding Day Timetable in respect of the Corresponding Day;
<b>“Restriction of Use Day”</b>	means a day on which a Network Rail Restriction of Use is taken or deemed to be taken;
<b>“RoU Claim Notice”</b>	means a notice issued by either party pursuant to paragraph 2.8;
<b>“RoU Direct Costs”</b>	means the aggregate amount of: <ul style="list-style-type: none"><li>(a) bus and taxi hire costs;</li><li>(b) publicity costs;</li><li>(c) train planning and diagramming costs; and</li><li>(d) other costs directly related to the organisation and management of the Train Operator’s response to a Type 2 Restriction of Use,</li></ul> reasonably incurred by the Train Operator as a result of a Type 2 Restriction of Use, adjusted by: <ul style="list-style-type: none"><li>(i) adding any increase in RoU Variable Costs; and</li><li>(ii) deducting any decrease in RoU Variable Costs;</li></ul>
<b>“RoU Liability”</b>	means any costs, direct losses and expenses (including any loss of revenue) reasonably incurred or reasonably expected to be incurred by the Train Operator (including any increase in RoU Variable Costs but net of any benefit arising from the taking of a Restriction of Use including any decrease in RoU Variable Costs) as a consequence of a Type 3 Restriction of Use or any Restriction(s) of Use relevant to an SPD Claim;
<b>“RoU Losses”</b>	means any RoU Direct Costs or RoU Liability (as applicable);
<b>“RoU Trigger Date”</b>	means, in respect of any Period, the later to occur of the following: <ul style="list-style-type: none"><li>(a) the date on which Network Rail issues a Day 42 Statement; and</li><li>(b) in the event of any dispute in respect of Network Rail’s Day 42 Statement, the date on which such dispute is agreed or determined;</li></ul>
<b>“RoU Variable Costs”</b>	means any Train Operator costs which vary as a result of a Restriction of Use <u>or where applicable an Over-run</u> arising directly from changes in train mileage including maintenance, fuel or electricity costs, the Variable Track Usage Charge and the Capacity Charge;

“SPD Claim”	has the meaning specified in paragraph 2.10(c);
“SPD Notice”	means a notice issued by either party pursuant to paragraph 2.10(a);
“SPD Period”	means the period for which a claim is being made in an SPD Claim which is consistent with the requirements of paragraph 2.10(d);
“SPD Cost Threshold No.1”	means <del>[●]</del> <u>[£500,000]/[£250,000]</u> <sup>2,4</sup> ;
“SPD Cost Threshold No.2”	means <del>[●]</del> <u>[£1,000,000]/[£500,000]</u> <sup>3,2</sup> ;
“SPD Revenue Threshold No.1”	means [●]; <sup>34</sup>
“SPD Revenue Threshold No.2”	means [●]; <sup>45</sup>
“Sustained Planned Disruption” or “SPD”	means a circumstance where: (a) the aggregate of all payments made by Network Rail which were calculated in accordance with paragraph 3 for any Restriction of Use during: (i) 3 or more consecutive Periods is equal to or exceeds SPD Revenue Threshold No.1; or (ii) 7 or more consecutive Periods is equal to or exceeds SPD Revenue Threshold No.2, and that the difference between the RoU Liability calculated in accordance with paragraph 8 exceeds the amount already received by the Train Operator for such Restrictions of Use during that period by more than £10,000; or (b) in respect of any Restrictions of Use during any: (i) 3 consecutive Periods the difference between the Train Operator’s RoU Liability (excluding any loss of revenue) calculated in accordance with paragraph 8 and the Train Operator’s actual costs calculated under paragraph 4 is more than SPD Cost Threshold No. 1; or (ii) 7 consecutive Periods the difference between the Train Operator’s RoU Liability

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<sup>2</sup> The lower threshold shall only apply in respect of the following small operators: Chiltern, Merseyrail, C2C and non-franchised passenger operators.

<sup>4</sup> ~~The Policy Group will propose a figure for each SPD Cost Thresholds in its submission to ISG in February.~~

<sup>3</sup> Ibid.

<sup>2</sup> ~~Ibid.~~

<sup>34</sup> The methodology for calculating the threshold will be set out in the Criteria and Procedures. The Policy Group ~~is currently considering how this will be calculated. The Policy Group’s current proposal is that the SPD Threshold should be a percentage (which the Policy Group will propose in its submission to ISG in February) of the Train Operator’s Revenue Thresholds should be 20% and 15% over 3 and 7 Periods respectively of the~~ projected annual fairbox revenue ~~for that Service Group or Train Operator.~~ The reference to “revenue” ~~is expected to mean~~ means a reference to the revenue of a TOC used to calculate Network Rail’s payment rate in Schedule 8.

<sup>45</sup> Ibid.

(excluding any loss of revenue) calculated in accordance with paragraph 8 and the Train Operator's actual costs calculated under paragraph 4 is more than SPD Cost Threshold No. 2;

- “Service Code”** shall have the meaning ascribed to it in Schedule 8;
- “Service Group”** shall have the meaning ascribed to it in Schedule 8;
- [“Thameslink Possession”** shall have the meaning ascribed to it in Part 4;]
- “Train”** shall have the meaning ascribed to it in Schedule 8;
- “Train–Bus–Train Pattern”** means a situation where:
- (a) a Restriction of Use occurs on any section of track between:
    - (i) successive Monitoring Points; or
    - (ii) the station of origin and the next Monitoring Point; and
  - (b) the Train Operator uses a substitute bus or other alternative road service between any pair of stations situated:
    - (i) between or including such successive Monitoring Points; or
    - (ii) at or between the station of origin and the next Monitoring Point;
- “Tri-annual Timetable”** means either of the following:
- (a) the Corresponding Day Timetable for all days in the period from and including the Principal Change Date up to but excluding the immediately following Subsidiary Change Date; or
  - (b) the Corresponding Day Timetable for all days from and including the Subsidiary Change Date up to but excluding the immediately following Subsidiary Change Date or Principal Change Date, as the case may be;
- “Type 1 Restriction of Use”** means any single Restriction of Use which does not fall within the definition of Type 2 Restriction of Use or Type 3 Restriction of Use;
- “Type 2 Restriction of Use”** means:
- (a) a single Restriction of Use of more than 60 hours (excluding any part of that Restriction of Use which occurs during a Public Holiday);
  - (b) excluding any Restriction of Use which falls within the definition of Type 3 Restriction of Use; and

<b>“Type 3 Liability Claim”</b>	(c) which results in a Service being Disrupted; has the meaning specified in paragraph 2.7(b);
<b>“Type 3 Restriction of Use”</b>	means a single Restriction of Use of more than 120 hours (including any part of that Restriction of Use which occurs during a Public Holiday);
<b><u>“Unplanned Over-run Period”</u></b>	<u>shall have the meaning ascribed to it in paragraph 2.12(a)(ii)(A);</u>
<b>“Week”</b>	means a period commencing at 00:00:00 hours on any Saturday and ending at 23:59:59 hours on the next following Friday; and
<b>“White Period”</b>	means any period during which the taking of a Restriction of Use would not result in any compensation being payable in accordance with paragraph 3.

## 1.2 *Suspension Notices*

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

## 1.3 *Possession*

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

## 1.4 *White Period*

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

## **2 Application of this Part**

### 2.1 *Entry into effect*

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

### 2.2 *Applicable Rules of the Route and the Network Code*

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

- (a) Network Rail’s right to take Restrictions of Use under or pursuant to the Applicable Rules of the Route;
- (b) the establishment of any amended Working Timetable under Part H of the Network Code; and

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

### 2.3 *Operator Restriction of Use*

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

- (a) required as a result of any damage to the Network or Environmental Damage which in each case:
  - (i) arises wholly or mainly from the operations of the Train Operator or its failure to comply with its obligations under this contract; and
  - (ii) Network Rail demonstrates is in excess of fair wear and tear arising from use of the Network by the Train Operator;
- (b) requested by the Train Operator (other than for the purposes of inspection, maintenance, renewal or repair of the Network); or
- (c) required in connection with a Network Change proposed by the Train Operator under Condition G3.

### 2.4 *Network Rail payments*

Subject to paragraph 2.3, Network Rail shall make payments to the Train Operator (in accordance with the procedure in paragraph 13) in respect of Restrictions of Use calculated on the following basis:

- (a) for each Network Rail Restriction of Use, in accordance with paragraphs 2.5 to 2.7 and 2.10 where applicable; and
- (b) for each CTRL Possession and Thameslink Possession, in accordance with Part 4.

### 2.5 *Type 1 Restriction of Use*

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

### 2.6 *Type 2 Restriction of Use*

- (a) Except where paragraph 2.6(c) applies, Network Rail shall make payments (in accordance with the procedure in paragraph 13) calculated in accordance with paragraphs 3 and 4 to the Train Operator in respect of any Type 2 Restriction of Use.
- (b) If either party reasonably believes or expects that the difference between RoU Direct Costs calculated in accordance with paragraph 6 would exceed the costs calculated under paragraph 4 by more than £10,000 then that party will be entitled to require that the costs be calculated in accordance with paragraph 6 by serving an RoU Claim Notice within the time periods set out in paragraph 2.8.
- (c) Following a request in accordance with paragraph 2.6(b), if it is agreed or determined that the difference between RoU Direct Costs calculated in accordance with paragraph 6 exceeds the costs calculated under paragraph 4 by more than £10,000 then the relevant party shall make payments to the other (in accordance with the procedure in paragraph 13) calculated in accordance with paragraphs 3 and 6.

2.7 *Type 3 Restriction of Use*

- (a) Except where paragraph 2.7(c) applies, Network Rail shall make payments (in accordance with the procedure in paragraph 13) calculated in accordance with paragraphs 3 and 4 to the Train Operator in respect of any Type 3 Restriction of Use.
- (b) If either party reasonably believes or expects that the difference between RoU Liability calculated in accordance with paragraph 7 would exceed the costs and losses calculated under paragraphs 3 and 4 by more than £10,000 then that party will be entitled to require that the costs and losses be calculated in accordance with paragraph 7 instead by serving an RoU Claim Notice within the time periods set out in paragraph 2.8 (a “Type 3 Liability Claim”).
- (c) Following a request in accordance with paragraph 2.7(b), if it is agreed or determined that the difference between RoU Liability calculated in accordance with paragraph 7 exceeds the costs and losses calculated under paragraphs 3 and 4 by more than £10,000 then the relevant party shall make payments to the other (in accordance with the procedure in paragraph 13) calculated in accordance with paragraph 7.<sup>56</sup>

2.8 *RoU Claim Notice*

- (a) Either party must notify the other that a Restriction of Use is a Type 2 Restriction of Use or a Type 3 Restriction of Use and that the circumstances in paragraph 2.6(b) or 2.7(b) (as applicable) apply within [56] days of the RoU Trigger Date.
- (b) The notice referred to in paragraph 2.8(a) must include details of the estimate of the RoU Direct Costs or RoU Liability (as applicable) which the Train Operator has incurred in respect of the relevant Restriction of Use.

2.9 *Changes to Restrictions of Use*

- (a) Where a single Restriction of Use falls within the definition of one type of Restriction of Use and there is a change which means that no Restriction of Use occurs or that the Restriction of Use occurs as another type of Restriction of Use, then that Restriction of Use shall be treated, for the purposes of the calculation and payment of compensation, as if it had always been the latter type of Restriction of Use (or, where applicable, as if it had not been a Restriction of Use).
- (b) For the purposes of paragraph 2.9(c), a Restriction of Use shall be deemed to be taken if and to the extent that it results in any difference between timetables of the type referred to in the definition of “Restriction of Use” when notified, whether or not the restriction giving rise to that Restriction of Use was subsequently cancelled in whole or in part.
- (c) Where a change to a Restriction of Use reduces the impact of the Restriction of Use and accordingly changes its type or means that there is no Restriction of Use in accordance with paragraph 2.9(a), the Train Operator may, within 28 days of the date on which the change to the Restriction of Use was notified to the Train Operator by Network Rail, serve a notice on Network Rail which sets out any costs to which the Train Operator is already committed or has already incurred and any costs associated with responding to the Restriction of Use. The Train Operator shall be

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<sup>56</sup> Network Rail is still considering the issue raised by ATOC about the consequences of two simultaneous possessions taking out both the main route and the relief route identified in the look-up table.

entitled to recover such costs provided that such costs are reasonable and were properly committed or incurred in the circumstances.

2.10 *Sustained Planned Disruption*

- (a) If either party reasonably believes that a Sustained Planned Disruption has occurred then that party will be entitled to require that the costs and losses for the Restrictions of Use during the period when the Sustained Planned Disruption is considered to have occurred be calculated in accordance with paragraph 8 by serving a notice on the other (an “SPD Notice”) in accordance with paragraph 2.10(b).
- (b) Unless otherwise agreed in writing, an SPD Notice must be served no later than the day falling [56] days after the issue of the Day 42 Statement which followed the end of the 3 or 7 Periods when the Sustained Planned Disruption is considered to have occurred and must include a short explanation of why it thinks a Sustained Planned Disruption has occurred.
- (c) Following the issue of an SPD Notice the party that issued that notice must serve a claim (an “SPD Claim”):
  - (i) no later than the day falling [56] days after the issue of the Day 42 Statement which followed a Period where no Sustained Planned Disruption is considered to have occurred; or
  - (ii) where a Sustained Planned Disruption is considered to have exceeded 13 Periods in length or the termination or expiry of this Access Agreement, whichever comes first, unless otherwise agreed in writing, no later than the day falling [112] days of the Day 42 Statement which followed that 13 Period period [or the termination or expiry of this Access Agreement (as applicable)],whichever is the earlier.<sup>6Z</sup>
- (d) Provided a party has issued an SPD Notice in accordance with paragraph 2.10(b), nothing in paragraph 2.10(c) shall prevent that party from issuing more than one SPD Claim in respect of the same Sustained Planned Disruption, provided that:
  - (i) each such SPD Claim relates to a different period within the said Sustained Planned Disruption; and
  - (ii) no SPD Claim can be issued after the period specified under paragraph 2.10(c).
- (e) An SPD Claim must include details of when and why that party considers that a Sustained Planned Disruption has occurred and in particular:
  - (i) if the claim is made by the Train Operator, such details as may reasonably be available of the RoU Liability which the Train Operator has incurred or reasonably expects to incur in respect of the relevant Restrictions of Use during the SPD Period; or

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<sup>6Z</sup> This clause may need to be amended if, once the analysis of the data being put together by Network Rail is complete, it is agreed that a tailing-off period is required.

- (ii) if the claim is made by Network Rail, the reasons why Network Rail considers that the Train Operator has been overcompensated or may be overcompensated by more than the relevant amount.
- (f) Following the issue of an SPD Claim, if it is agreed or determined that a Sustained Planned Disruption has occurred during the relevant SPD Period then the relevant party shall make payments to the other (in accordance with the procedure in paragraph 13) calculated in accordance with paragraph 8.

#### 2.11 *Early notice of RoU Losses*

The parties may at any time engage in discussions on any matter likely to result in payments in respect of any RoU Losses and shall use reasonable endeavours to agree whether such RoU Losses calculated in accordance with paragraph 6, 7 or 8 are likely to arise and/or what mitigating actions should be contemplated to reduce or avoid such RoU Losses. The party initiating such discussions shall provide to the other reasonable evidence in writing of why it thinks such RoU Losses will arise or mitigating actions should be contemplated. Following any agreement or determination that such RoU Losses are likely to arise in connection with one or more future Restrictions of Use or that mitigating actions should be contemplated, the parties shall where reasonably practicable engage in discussions on any options for mitigating costs, revenue loss and/or disruption including any advance compensation for such Restriction(s) of Use to the extent such advance compensation would or would reasonably be expected to facilitate the mitigation of the contemplated disruption. Nothing in this Agreement shall prevent Network Rail and the Train Operator agreeing any options for mitigating costs and disruption in respect of any Restriction(s) of Use. Unless otherwise agreed, the timescales for claiming RoU Losses shall still apply.

#### 2.12 Over-runs

- (a) For the purposes of this paragraph 2.12, an over-run ("Over-run") occurs where:
    - (i) there is a Restriction of Use (the "First Restriction");
    - (ii) following the period of the relevant difference between whichever of the timetables referred to in sub-paragraphs (a) and (b) of the definition of Restriction of Use which served to establish the existence of that Restriction of Use (the "First Restriction Period"), there is either:
      - (A) a period of at least one hour during which Services are Disrupted due to any incident attributed under Schedule 8 to circumstances arising from any restriction of operation of the Network which are a consequence of the First Restriction or any act or omission in connection with any activities planned or undertaken which are directly attributable to the First Restriction (including any failure to remove the First Restriction by the time scheduled for its removal in the Applicable Rules of the Route) but excluding any act or omission by the Train Operator for which it would be allocated responsibility under this Contract (the "Unplanned Over-run Period"); and/or
      - (B) a further Restriction of Use (a "Further Restriction") is taken at the same location as all or part of the First Restriction.
- in each case without there being any intervening period between the First Restriction and the relevant Unplanned Over-run Period or Further

- Restriction, which is not either a White Period, Unplanned Over-run Period or a Further Restriction; and
- (iii) where a Further Restriction is itself subject to one or more Over-runs, then the entire duration from the start of the original First Restriction to the end of the Over-run in respect of the Further Restriction shall be treated as making up the single Restriction of Use.
- (b) Where there is an Over-run which results in a Service being Disrupted:
- (i) for the purposes only of calculating RoU Direct Costs for Type 2 Restrictions of Use and the costs and expenses element only of RoU Liability for Type 3 Restrictions of Use, in determining whether there is a Type 2 Restriction of Use or a Type 3 Restriction of Use and identifying its extent, the relevant Restriction of Use shall be deemed to be the aggregate of the duration of the First Restriction Period and any Unplanned Over-run Period and any Further Restriction connected with the relevant First Restriction, such that the aggregate duration of those periods is treated as making up a single Restriction of Use; and
- (ii) which:
- (A) notwithstanding paragraph 2.12(b)(i), is not part of either a Type 2 or Type 3 Restriction of Use;
- (B) lasts for more than one hour; and
- (C) results in the Train Operator incurring costs in the category of RoU Direct Costs in relation to the Over-run in excess of £10,000,
- then the Unplanned Over-run Period element of that Over-run (but not the relevant First Restriction Period or the period of any Further Restriction) shall for the purposes only of calculating RoU Direct Costs be deemed to constitute a Type 2 Restriction of Use.
- (c) For the purposes only of calculating RoU Liability under paragraph 8 when there is agreed or determined to be a Sustained Planned Disruption, the amount of the RoU Liability shall be calculated:
- (i) including costs, direct losses and expenses (including loss of revenue and any increase in RoU Variable Costs) reasonably incurred or reasonably expected to be incurred by the Train Operator as a consequence of any Unplanned Over-run Period; and
- (ii) offsetting any benefit as a consequence of the Unplanned Over-run Period including:
- (A) any reduction in RoU Variable Costs;
- (B) any payments made as result of paragraph 2.12(b); and
- (C) any payments received by the Train Operator under Schedule 8.
- (d) This paragraph 2.12 shall not result in any Unplanned Over-run Period being subject to either revenue loss compensation for Network Rail Restrictions of Use under paragraph 3 or costs compensation for Network Rail Restrictions of Use under paragraph 4 or revenue loss compensation under paragraph 7.

### **3 Revenue loss compensation for Network Rail Restrictions of Use**

#### **3.1 Basis for calculations**

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

#### **3.2 Separate calculations**

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

- (a) Network Rail Restrictions of Use which are taken into account in the First Working Timetable; and
- (b) Network Rail Restrictions of Use which are not so taken into account but are taken into account in the Applicable Timetable.

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

In paragraph 3.4:

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

#### **3.4 Formula**

The formula referred to in paragraph 3.1 is as follows:

$$RP = \sum((WACM + NREJT) \bullet BF \bullet MRE \bullet NF)$$

where:

- (a)  $\Sigma$  is the sum across all Network Rail Restrictions of Use and all Restriction of Use Days in the Period;
- (b) WACM is the weighted average of Cancellation Minutes for the Service(s) (or part(s) thereof) in that Service Group as a result of a Network Rail Restriction of Use, calculated according to the following formula:

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

where:

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

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

$\Sigma$  is the sum across all Monitoring Points in the Service Group;

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

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

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

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

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

where:

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

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

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

if otherwise,

EJT is the lesser of:

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

(ii)  $AJT \cdot ((u-v)/v)$ ,

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

where:

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

- u is the average speed of Trains in the Service Group scheduled for that day in T1, and shall be equal to the aggregate of the number of miles scheduled to be run in T1 by such Trains divided by the aggregate of the Journey Times scheduled in T1 in respect of such Trains; and
- v is the speed to which the average speed of Trains in the Service Group scheduled for that day in T2 is reduced as a result of the Network Rail Restrictions of Use (calculated by reference to the aggregate of the number of miles which such Trains are scheduled to run in T2 divided by the aggregate of the end to end Journey Times scheduled in T2 in respect of such Trains),

and for the purposes of this paragraph 3.4:

“Journey”

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

“Journey Time”

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

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

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

where:

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

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

- (e) MRE is the marginal revenue effect specified in column C of Appendix 1 to Schedule 8, as indexed according to the relevant provisions of Schedule 8.

### 3.5 *High Speed Diversions*

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

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

where:

ANRP is the additional Network Rail payment;

TDR<sub>SG</sub> is, in respect of each Service Group and each Restriction of Use Day on which a High Speed Diversion applies, the number of Trains in the Service Group scheduled in T2 to be subject to the High Speed Diversion;

TDT<sub>SG</sub> is the total number of Trains scheduled to be run in the Service Group in T1;

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

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

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

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

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

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

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

where:

ANRP is the additional Network Rail payment;

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

TTR<sub>SG</sub> is the total number of Trains scheduled to be run in the Service Group in T1;

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

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

DV shall have the value of 0.125,

provided that if:

TTR<sub>SG</sub> is less than TTS<sub>SG</sub> then  $\frac{TTS_{SG}}{TTR_{SG}}$  shall be deemed to have the value of one.

In such a situation the Train Operator shall provide Network Rail with evidence, either that the Train-Bus-Train Pattern resulting from the Network Rail Restriction of Use is an

arrangement that has been commonly used in the past by that Train Operator on the Services in question, or that it has arisen due to a change in circumstances.

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

## **4 Costs compensation for Network Rail Restrictions of Use**

### *4.1 Basis for calculations*

For each Period and for each Service Group, Network Rail shall calculate the compensation payable in respect of all Network Rail Restrictions of Use on each Restriction of Use Day in that Period by applying the formulae in paragraph 4.2. For the purposes of determining for this paragraph 4 to which Service Group a particular Train is allocated, a Train (or portion of a Train) shall be treated as allocated to a particular Service Group by reference to its Service Code<sup>78</sup>, provided that where a particular Train (or portion of a Train) is given a different Service Code in the First Working Timetable from the Service Code given to it in the Applicable Timetable or a different Service Code in the Corresponding Day Timetable from the Service Code given to it in the First Working Timetable it shall be treated as part of the Service Group in relation to whichever of those Service Codes most correctly applies to that Train or, where both Service Codes could equally apply to that Train, to the Service Code applied to that Train in the First Working Timetable.

### *4.2 Cost compensation formula*

The formula referred to in paragraph 4.1 is as follows:

$$\text{Cost compensation} = \sum (\text{RRBC} + \text{TMC})$$

where:

- (a)  $\sum$  is the sum across all applicable Network Rail Restrictions of Use in the Period;
- (b) RRBC is the rail replacement bus cost, calculated according to the following formula:

$$\text{RRBC} = \text{EBM} \times \text{EBMPR}$$

where:

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

EBMPR is the payment rate per EBM, which is £[●]<sup>89</sup>.

and

$$\text{EBM} = \sum (\text{RL} \times \text{TA} \times \text{EBMW} [\times \text{ITS}])$$

where:

RL is the length of route, in miles, over which train services are affected;

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<sup>78</sup> The references to Service Codes depends on further work by Faber Mansell.

<sup>89</sup> It is anticipated that there will be two rates - one for London and the SE and one for the rest of the Network.

- TA is the number of trains affected, compared to the Corresponding Day Timetable;
- EBMW is the weighting applicable to the affected route, as set out in Annex B to this Part 3 of Schedule 4; and
- ITS is 1 or the percentage of trains stopping at intermediate stations for those cases where EBMW = 50%.

and

- (c) TMC is the cost or saving resulting from train mileage change, calculated according to the following formula:

$$TMC = TM \times TMPR$$

where:

TM is the change in train mileage; and

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

## **5 Estimated Bus Miles change mechanism<sup>910</sup>**

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

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

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

- (a) The party who wishes to amend Annex B shall notify the other party of any such proposed change and the date from which it proposes that such change will have effect:
- (i) where such change relates to a forthcoming timetable change, on or before the first day of the month 6 months before the relevant Principal Change Date or Subsidiary Change Date on which that timetable change is due to occur; and
  - (ii) in any other case prior to the date from which it proposes such change shall have effect.
- (b) Any notice under sub-paragraph 5.2(a) shall specify as far as possible that party's proposed amendments to Annex B. Promptly following the service of any such notice the parties shall endeavour to agree whether Annex B should be amended in accordance with this paragraph 5 and if so the amendments.
- (c) If the parties fail to reach agreement within 90 days after service of the relevant notice, or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, the matter shall be referred for expert determination in accordance with Part D of the Access Dispute Resolution Rules save that:

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<sup>910</sup> The Policy Group assumes that the ORR issues some guidance in its Criteria and Procedures on the circumstances when it would approve changes under this paragraph. It should also be noted that discussions on paragraph 17 of Schedule 8 may affect the contents of this paragraph.

- (i) the parties shall each request that the expert's determination in writing is delivered to the parties no later than 56 days after the date of referral of the matter to the expert, and that the expert establishes such rules and procedures for the conduct of the determination as he sees fit having regard to that timescale;
  - (ii) each of the parties shall abide by the rules and procedures established by the expert; and
  - (iii) the parties shall direct the expert to have regard to any relevant criteria issued by the Office of Rail Regulation.
- (d) Any amendment to Annex B shall take effect only when it has been approved by ORR under section 22 of the Act. Accordingly, as soon as reasonably practicable after any such amendment is agreed or determined in accordance with this paragraph 5, the parties shall use all reasonable endeavours to ensure that ORR is furnished with such amendment and sufficient information and evidence as it shall require to determine whether or not to approve the amendment.
- (e) Any amendment to Annex B shall apply with effect from:
- (i) the relevant Principal Change Date or Subsidiary Change Date (where paragraph 5.2 (a) (i) applies); or
  - (ii) subject to paragraph 5.2 (d) the date proposed by the party requesting the change in accordance with paragraph 5.2 (a) (ii) (unless otherwise agreed by the parties or determined by the expert in relation to the change).

### 5.3 *Costs of implementing amendment*

Network Rail shall (subject to any determination of an expert as to costs, where a matter is referred to that expert under paragraph 5.2(c)) be entitled to [●]<sup>4011</sup> percent of costs incurred by or on behalf of Network Rail in assessing and implementing any amendments to Annex B, provided that those costs shall be the minimum reasonably necessary for Network Rail to assess and implement that amendment.

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

### 6.1 *Compensation arrangements*

- (a) Following receipt of an RoU Claim Notice in respect of a Type 2 Restriction of Use, Network Rail and the Train Operator shall (if they have not already done so) commence negotiations in respect of the compensation in relation to the RoU Direct Costs to be paid by one party to the other in respect of such Type 2 Restriction of Use and, subject to paragraph 10, shall continue such negotiations in good faith until they are concluded.
- (b) Once the compensation referred to in paragraph 6.1(a) has been agreed or determined, in the event of:
  - (i) a shortfall for the Train Operator, the compensation to be paid by Network Rail to the Train Operator shall be the full amount of the RoU Direct Costs actually incurred by the Train Operator less any amounts calculated under

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<sup>4011</sup>

The Policy Group will propose how to deal with this in its February submission to ISG.

paragraph 4 which have already been paid or are due for such Restriction of Use and any other amounts in respect of any RoU Direct Costs received by the Train Operator from Network Rail in respect of such Restriction of Use; or

- (ii) an overpayment by Network Rail to the Train Operator, the compensation to be paid by the Train Operator to Network Rail shall be the difference between the amount received by the Train Operator which was calculated under paragraph 4 and the RoU Direct Costs actually incurred by the Train Operator in respect of such Restriction of Use.
- (c) Network Rail shall include in the statement provided by it in respect of each Period under paragraph 13.1(a) details of the compensation agreed or determined under this paragraph 6 and paragraph 10 to be payable in respect of any Type 2 Restriction of Use taken in that Period and that compensation shall be due and payable by the relevant party to the other in accordance with paragraph 13.1.

## **7 RoU Liability compensation for Type 3 Restrictions of Use**

### **7.1 Compensation arrangements**

- (a) Following receipt of an RoU Claim Notice in respect of a Type 3 Restriction of Use, Network Rail and the Train Operator shall (if they have not already done so) commence negotiations in respect of the compensation in relation to such RoU Liability to be paid by one party to the other in respect of the Type 3 Restriction of Use and, subject to paragraph 10, shall continue such negotiations in good faith until they are concluded.
- (b) Once the compensation referred to in paragraph 7.1(a) has been agreed or determined, in the event of:
  - (i) a shortfall for the Train Operator, the compensation to be paid by Network Rail to the Train Operator shall be the full amount of the RoU Liability actually incurred by the Train Operator less any amounts calculated under paragraphs 3 and 4 which have already been paid or are due for such Restriction of Use and any other amounts received by the Train Operator from Network Rail in respect of such Restriction of Use; or
  - (ii) an overpayment by Network Rail to the Train Operator, the compensation to be paid by the Train Operator to Network Rail shall be the difference between the amount received by the Train Operator which was calculated under paragraphs 3 and 4 and the RoU Liability actually incurred by the Train Operator in respect of such Restriction of Use.
- (c) Network Rail shall include in the statement provided by it in respect of each Period under paragraph 13.1(a) details of the compensation agreed or determined under this paragraph 7 and paragraph 10 to be payable in respect of any Type 3 Restriction of Use taken in that Period and that compensation shall be due and payable by the relevant party to the other in accordance with paragraph 13.1.

## **8 Sustained Planned Disruption payments**

### **8.1 Payment arrangements**

- (a) Following an agreement or determination that a Sustained Planned Disruption has occurred during an SPD Period, Network Rail and the Train Operator shall (if they have not already done so) commence negotiations in respect of the compensation in relation to such RoU Liability to be paid by one party to the other in respect of the Restrictions of Use during the relevant SPD Period and, subject to paragraph 10, shall continue such negotiations in good faith until they are concluded.
- (b) Once the compensation referred to in paragraph 8.1(a) has been agreed or determined, in the event of:
  - (i) a shortfall for the Train Operator, the compensation to be paid by Network Rail to the Train Operator in respect of the Restrictions of Use during the relevant SPD Period shall be the full amount of the RoU Liability actually incurred by the Train Operator less any amounts calculated under paragraphs 3 and 4 which have already been paid or are due for Restrictions of Use during the relevant SPD Period and any other amounts received by the Train Operator from Network Rail in respect of such Restrictions of Use; or
  - (ii) an overpayment by Network Rail to the Train Operator, the compensation to be paid by the Train Operator to Network Rail shall be the difference between the amount received by the Train Operator for Restrictions of Use during the relevant SPD Period and the RoU Liability actually incurred by the Train Operator during the same SPD Period.
- (c) Following any agreement or determination of an amount to be paid by one party to the other in respect of a Sustained Planned Disruption that amount shall (subject to the terms of any compensation arrangements agreed in writing between the parties) be due and payable by one party to the other in accordance with paragraph 13.1.

## **9 Notification Factors**

### **9.1 Early notification**

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

- (a) the Network Rail Restriction of Use is reflected in the First Working Timetable; or
- (b)
  - (i) details of the Network Rail Restriction of Use are notified to the Train Operator on or before the end of the Drafting Period in the Applicable Rules of the Route for the Timetable Period in respect of the Restriction of Use Day but, at the request of the Train Operator (as accepted by Network Rail), are not reflected in the First Working Timetable; and
  - (ii) subject to paragraph 9.1(b)(iii), the Network Rail Restriction of Use is reflected in the Working Timetable as entered into the train service database at 22:00 hours on the day which is 12 Weeks before the Restriction of Use Day; or
  - (iii) where paragraph 9.1(b)(ii) does not apply because the Train Operator has failed to give Network Rail a Revised Bid in accordance with Condition

[D4.8.3], the Network Rail Restriction of Use is reflected in the Applicable Timetable in respect of the Restriction of Use Day.

9.2 *Notification by Revision Notification Date*

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

- (a) details of the Network Rail Restriction of Use are notified to the Train Operator by the Revision Notification Date; and
- (b)
  - (i) the Network Rail Restriction of Use is reflected in the Working Timetable as entered into the train service database at 22:00 hours on the day which is 12 Weeks before the Restriction of Use Day; or
  - (ii) where paragraph 9.2(b)(i) does not apply because the Train Operator has failed to give Network Rail a Revised Bid in accordance with Condition D4.8.3, the Network Rail Restriction of Use is reflected in the Applicable Timetable in respect of the Restriction of Use Day.

9.3 *Late Notification*

The NF in respect of a Network Rail Restriction of Use in respect of any Service Group shall have the value specified for that Service Group in column E of Annex A to this Part 3 if and to the extent paragraphs 9.1 and 9.2 do not apply but the Network Rail Restriction of Use is reflected in the Applicable Timetable, and includes where paragraph 9.1(b) or paragraph 9.2 would have been applicable but for a failure by Network Rail to fulfil the terms of paragraph 9.1(b)(ii) or paragraph 9.2(b)(i) respectively, notwithstanding the Train Operator having given a Revised Bid in accordance with Condition D4.8.3.

**10 Dispute resolution**

If the Train Operator and Network Rail fail to reach agreement as required under paragraph 2.6(b), 2.7(b), 2.8(b), 2.9, 2.10, 2.12, 6, 7 or 8 within 28 days following provision of the RoU Claim Notice, either party may notify the other that the dispute resolution procedure set out in paragraph 13.3 is to apply. Such procedure shall then apply in accordance with its terms (save that references to paragraph 13.2 shall be construed as being references to this paragraph10).

**11 Schedule 8 application**

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

**12 Restriction of Use Day and Corresponding Day**

12.1 *Information provision*

In respect of any Restriction of Use Day for which compensation may be payable in a Period under paragraph 3, Network Rail shall accurately record such information as it uses and as

may properly and reasonably be required to make the calculations required under paragraph 3 (including the determination of NF and the relevant version of the Working Timetable referred to in paragraph 9.1(b)(ii) or paragraph 9.2(b)(i). Network Rail shall maintain that information until the compensation payable under paragraph 3 in respect of that Period is finally agreed or determined and provide such information to the Train Operator at its reasonable request.

## 12.2 *Corresponding Day*

- (a) If, for the purpose of identifying a Corresponding Day, no day is found under paragraph (a), (b) or (c) of the definition “Corresponding Day” and the parties have failed to reach agreement on the Corresponding Day by the date falling eight Weeks before the relevant Passenger Change Date then either party may require that the identification of the Corresponding Day be resolved by the relevant ADRR Panel.
- (b) The relevant ADRR Panel's remit shall be that it shall:
  - (i) reach a decision which is fair and reasonable; and
  - (ii) identify the day in either any version of the Working Timetable or any Draft Timetable notified to the Train Operator on or before the end of the Drafting Period in either case which has been produced in accordance with the Network Code as at the Restriction of Use Day and which most closely reflects the Services which would have been scheduled on the first day (as that term is used in the definition of Corresponding Day [save that in respect of any Restriction of Use lasting more than two Timetable Periods, the first day may occur in any year preceding the Timetable Period]) but for Restrictions of Use reflected in the First Working Timetable for the first day; or
  - (iii) where a Corresponding Day cannot be identified in accordance with paragraph 12.2(b)(ii) above, determine a notional Corresponding Day. The relevant ADRR Panel may have regard, where appropriate, to any pattern of services which may reasonably be expected to be operated during the relevant period when the Restriction of Use is being taken in the event of the permanent absence of any Corresponding Day.
- (c) If either party is dissatisfied with the decision of the relevant ADRR Panel or the ruling of the Chairman (as the case may be), such party shall be entitled to refer the matter for arbitration, pursuant to Part C of the Access Dispute Resolution Rules (except that Condition C6.3 of those rules shall not apply).

## 13 **Payment procedures**

### 13.1 *Network Rail Restrictions of Use*

- (a) Within 14 days after the end of each Period, Network Rail shall provide to the Train Operator a statement (the “Day 42 Statement”) showing:
  - (i) all Network Rail Restrictions of Use taken during that Period;
  - (ii) any compensation calculated in accordance with paragraphs 3 and/or 4 payable by Network Rail in respect of the Network Rail Restrictions of Use identified; and

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

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

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

### 13.2 *Disputes*

Within 10 days of receipt of a statement from Network Rail under paragraph 13.1, the Train Operator shall notify Network Rail of any aspects of the statement which it disputes, giving reasons for any dispute. Save to the extent that disputes are so notified, the Train Operator shall be deemed to have agreed the contents of the statement.

### 13.3 *Dispute resolution*

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

- (a) within seven days of service of any notice under paragraph 13.2, the parties shall meet to discuss the disputed aspects of the statement with a view to resolving all disputes in good faith;
- (b) if, within seven days of that meeting (the “first meeting”), the parties are for any reason still unable to agree the disputed aspects of the statement, each party shall promptly (and in any event within seven days) prepare a written summary of the disputed aspects of the statement and the reasons for each such dispute and shall submit the summaries to the senior officer of each party;
- (c) within 28 days of the first meeting, the senior officers shall meet with a view to resolving all disputes;
- (d) if no resolution results within 14 days of that meeting, either party may require that the matter be resolved by the relevant ADRR Panel; and
- (e) if either party is dissatisfied with the decision of the relevant ADRR Panel or the ruling of the Chairman (as the case may be), such party shall be entitled to refer the matter for arbitration, pursuant to Part C of the Access Dispute Resolution Rules (except that paragraph C6.3 of those rules shall not apply).

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

Where any amount under paragraph 13.1 is in dispute:

- (a) the undisputed amount shall be paid in accordance with paragraph 13.1;
- (b) the disputed amount shall be paid within 28 days after the dispute is resolved or determined to the extent that the amount in dispute is adjudged or resolved to be payable; and

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

#### 14 Indexation

The EBMPR and the TMPR (as defined in paragraph 4.2) shall be adjusted in respect of Periods in Relevant Year<sup>4112</sup> t in accordance with the following formula:

$$R_t = R_{t-1} \left( 1 + \frac{RPI_{t-1}}{100} \right)$$

where:

$R_t$  is the relevant rate in the Relevant Year t;

$R_{t-1}$  is the relevant rate in the Relevant Year t-1; and

$RPI_{t-1}$  means the percentage change (whether of a positive or negative value) in the Retail Prices Index<sup>4213</sup> published or determined with respect to November in the Relevant Year t-1 and the index published or determined with respect to November in the Relevant Year t-2,

but so that in relation to the Relevant Year commencing on [1 April 2009]<sup>4314</sup>,  $R_t$  shall have the relevant value specified in the relevant column (either E or I) of Appendix 1 of Schedule 8 and in the next following Relevant Year  $R_{t-1}$  shall have the same value.

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<sup>4112</sup> To be defined in the agreement and not by reference to schedule 7.

<sup>4213</sup> Ibid.

<sup>4314</sup> To be confirmed.

**Annex A to Part 3 of Schedule 4 – Notification discount factors**

Name of Service Group A	Service Group B	NFMRE		
		C to FWT	D FWT to ITWTT	E from ITWTT
<b>Anglia</b>				
Anglia InterCity (off peak)	hs01op			
Anglia InterCity (peak)	hs01p			
Anglia Locals	hs02			
<b>Arriva Trains Northern</b>				
North East PTE	hc02			
North East Urban & Long Distance	hc01			
North Yorkshire Urban & L Dist	hc03			
Rural	hc04			
South Yorkshire PTE	hc05			
Transpennine Express North	hc08			
Transpennine Express South	hc09			
West Yorkshire PTE Long	hc06			
West Yorkshire PTE Short	hc07			
Yorkshire Inter PTE	hc10			
<b>c2c</b>				
c2c (off-peak)	ht02op			
c2c (peak)	ht01p			
<b>Cardiff</b>				
South, West and Central Wales	HL02			
Wales to England	HL03			
Cambrian	HL04			
Cardiff Valleys (off peak) <sup>1415</sup>	HL05			
Marches	HL06			
North Wales Rural	HL07			
Inter-Urban N Wales	HL08			
<b>Central</b>				
Core Inter Urban	hg05			

<sup>1415</sup> And Cardiff Valleys (peak)?

Name of Service Group A	Service Group B	NFMRE		
		C to FWT	D FWT to ITWTT	E from ITWTT
East Midlands	hg03			
Liverpool – Norwich	hg07			
Other Inter Urban	hg06			
Robin Hood	hg12			
West Midlands - New Street (off-peak)	hg02op			
West Midlands - New Street (peak)	hg02p			
West Midlands - Snow Hill (off-peak)	hg01op			
West Midlands - Snow Hill (peak)	hg01p			
<b>Chiltern</b>				
Birmingham (off peak)	ho02op			
Birmingham (peak)	ho02p			
Joint (off peak)	ho03op			
Joint (peak)	ho03p			
Met (off peak)	ho01op			
Met (peak)	ho01p			
<b>First Great Western Link</b>				
Inner Charter (off peak)	hn02op			
Inner Charter (peak)	hn02p			
Inner Other	hn04			
Outer Charter (off peak)	hn01op			
Outer Charter (peak)	hn01p			
Outer Other	hn03			
Reading - Gatwick - Three Bridges	hn05			
<b>Gatwick Express</b>				
Gatwick Express (off peak)	hv01op			
Gatwick Express (peak)	hv01p			
<b>Great Eastern</b>				
Great Eastern Inners (off peak)	hr01op			
Great Eastern Inners (peak)	hr01p			
Great Eastern Outers (off peak)	hr03op			

Name of Service Group A	Service Group B	NFMRE		
		C to FWT	D FWT to ITWTT	E from ITWTT
Great Eastern Outers (peak)	hr03p			
Southend and Southminster (off peak)	hr02op			
Southend and Southminster (peak)	hr02p			
<b>Great North Eastern</b>				
Anglo Scottish Aberdeen/Inverness	hb05			
Anglo-Scottish Core	hb01			
West Yorkshire Core	hb02			
West Yorkshire Extensions	hb04			
<b>Great Western</b>				
Avon	hj01			
Bristol-Didcot-Oxford	hj99			
Cotswolds	hj03			
South Wales	hj02			
West of England	hj04			
<b>Merseyrail</b>				
Northern Lines	he01			
Wirral Lines	he02			
<b>Midland Mainline</b>				
Midland Mainline - Class 170s	hi02			
Midland Mainline - HST	hi01			
North West Trains				
Inter Urban NW Express	hd01			
Lancashire & Cumbria Rural	hd09			
<b>Long Distance</b>	hd02			
Manchester North (off peak)	hd04op			
Manchester North (peak)	hd04p			
Manchester South (off peak)	hd03op			
Manchester South (peak)	hd03p			
Merseyside City Lines	hd06			
<b>ScotRail</b>				

Name of Service Group A	Service Group B	NFMRE		
		C to FWT	D FWT to ITWTT	E from ITWTT
East Coast Suburban	ha02			
Express	ha01			
Highland Rural	ha04			
Qualifying Sleepers	ha11			
South West Rural	ha03			
Strathclyde Electric (off peak)	ha06op			
Strathclyde Electric (peak)	ha06p			
Strathclyde PTE Diesel	ha07			
<b>Silverlink</b>				
Express (off peak)	hp03op			
Express (peak)	hp03p			
Orbitals (off peak)	hp01op			
Orbitals (peak)	hp01p			
Rural	hp04			
Watford (off peak)	hp06op			
Watford (peak)	hp06p			
<b>South Eastern</b>				
Kent Coast (off peak)	hu01op			
Kent Coast (peak)	hu04p			
Kent Link (off peak)	hu02op			
Kent Link (peak)	hu05p			
Kent Rural	hu03			
<b>Southern</b>				
Gatwick - Rugby	hw06			
Rural	hw01			
South London Lines (off peak)	hw04op			
South London Lines (peak)	hw05p			
Sussex Coast (off peak)	hw03op			
Sussex Coast (peak)	hw02p			
<b>South West Trains</b>				

Name of Service Group A	Service Group B	NFMRE		
		C to FWT	D FWT to ITWTT	E from ITWTT
Main Suburban (off peak)	hy01op			
Main Suburban (peak)	hy01p			
Portsmouth - Reading & Weymouth	hy02			
Waterloo - Farnham/Alton (off peak)	hy04op			
Waterloo - Farnham/Alton (peak)	hy04p			
Waterloo - Portsmouth (off peak)	hy07op			
Waterloo - Portsmouth (peak)	hy07p			
Waterloo - West England (off peak)	hy03op			
Waterloo - West England (peak)	hy03p			
Waterloo - Weymouth (off peak)	hy08op			
Waterloo - Weymouth (peak)	hy08p			
Windsor Inners (off peak)	hy05op			
Windsor Inners (peak)	hy05p			
Windsor Outers (off peak)	hy06op			
Windsor Outers (peak)	hy06p			
<b>Thameslink</b>				
Bedford Mainline (off peak)	hx01op			
Bedford Mainline (peak)	hx01p			
Brighton Mainline (off peak)	hx02op			
Brighton Mainline (peak)	hx02p			
South London (off peak)	hx03op			
South London (peak)	hx03p			
<b>TransPennine Express</b>				
North Trans Pennine	EA01			
South Trans Pennine	EA02			
North West	EA03			
Yorkshire (Traded)	EA04			
Leeds-Blackpool (Traded)	EA05			
<b>Virgin Cross Country</b>				
Cross Country All Services	hh01			

Name of Service Group A	Service Group B	NFMRE		
		C to FWT	D FWT to ITWTT	E from ITWTT
<b>WAGN</b>				
Anglia Inners (off peak)	hq01op			
Anglia Inners (peak)	hq01p			
Anglia Outers (off peak)	hq03op			
Anglia Outers (peak)	hq03p			
Northern Inners (off peak)	hq04op			
Northern Inners (peak)	hq04p			
Northern Outers (off peak)	hq05op			
Northern Outers (peak)	hq05p			
<b>Wales and West</b>				
Bristol Commuter	hk11			
Devon	hk12			
Wessex Mainline	hk14			
Plymouth and Cornwall	hk15			

**Annex B to Part 3 of Schedule 4 – Lookup Table for EBM Weights**

**Annex C to Part 3 of Schedule 4 – Payment Rate per train mile**

<b>Franchise TOC</b>	<b>Payment Rate per train mile £</b>
Chiltern	
East Coast Mainline	
East Midlands	
Great Western	
Greater Anglia	
London Rail Concession	
Merseyrail	
New Cross Country	
Northern	
Scotrail	
South Central	
South West Trains	
Southeastern First	
Thameslink/GN First	
TPE	
Wales	
West Coast Main Line	
West Midlands	

**PART 4: CTRL AND THAMESLINK**

[Customised arrangements to be submitted for approval]

## PART 5: ACCESS CHARGE SUPPLEMENT FOR RESTRICTIONS OF USE

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

Year	£
2004-2005	[            ]
2005-2006	[            ]
2006-2007	[            ]
2007-2008	[            ]
2008-2009	[            ]

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

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

$$ACSRU_{pt} = ACSRU_t \cdot \frac{(RPI_{t-1})}{RPI[2003]}$$

where:

ACSRU<sub>pt</sub> is the actual amount payable in the Relevant Year t;

ACSRU<sub>t</sub> is the relevant amount specified in paragraph 1 of this Part 5 for the Relevant Year t (before indexation);

RPI<sub>t-1</sub> means the Retail Prices Index published or determined with respect to November in the Relevant Year t-1; and

RPI[2003] means the Retail Prices Index published or determined with respect to November 2003,

but so that in relation to the Relevant Year commencing on 1 April 2004, ACSRU<sub>t</sub> shall have the relevant value specified in the relevant column of the table in paragraph 1.

- 3** ORR may at any time carry out and initiate implementation of an access charges review in relation to:
- (a) compensation under Part 3 of this Schedule 4 and the manner in which it is paid; and
  - (b) access charge supplements under this Part 5 and the manner in which they are paid.

**SECTION B**

[This Section B of Part 3 Schedule 4 is applicable to:

- the payment of any compensation attributable to Restrictions of Use occurring prior to [a date which is 6 months after the implementation date] provided that the compensation amount or the specific<sup>16</sup> method of calculating the compensation amount has been agreed or determined in writing prior to [the implementation date]; and
- (where any Restriction of Use starts before [the implementation date] and finishes after [the implementation date] and if more than half of the duration of that Restriction of Use occurs before [the implementation date]), the part of that Restriction of Use which occurs after [the implementation date] (so that the manner of treatment of compensation of the Restriction of Use is continued on a consistent basis over the period before and after [the implementation date]).

**[Insert current Schedule 4.]**

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<sup>16</sup> In this context only, "specific" means that where possessions are agreed under a Major Project Notice or a Network Change Notice on the basis that the TOC has an entitlement to compensation, neither Access Party can claim that the calculation regime in the old Schedule 4 is the "method of calculating" that compensation. In such circumstances, the parties would have to agree what the appropriate calculation method is having regard to the timing of the compensation claim and the transitional arrangements on which version of schedule 4 should be applied. Specific therefore means a bespoke agreement on compensation methodology.

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